HR

Početna stranica>Obiteljskopravni predmeti i nasljeđivanje>**Obiteljsko uzdržavanje**

## Obiteljsko uzdržavanje

Ako želite zatražiti uzdržavanje, primjerice tako da od roditelja koji ne živi s djetetom tražite mjesečno plaćanje za skrb o djetetu, Pravo EU-a omogućuje vam da se obratite sudu svoje zemlje za utvrđivanje obveze dužnika da plaća uzdržavanje i za određivanje iznosa uzdržavanja. Takva sudska odluka bit će priznata u drugim državama članicama Europske unije.

**Za više informacija odaberite zastavu odgovarajuće države.**

### Pravila od lipnja 2011.

Od 18. lipnja 2011. primjenjuju se nova pravila o pitanjima uzdržavanja. Osobi s pravom na uzdržavanje i dalje je osigurana pravna zaštita tako što joj je omogućeno da tuži dužnika pred sudom vlastite države. Osim toga, u većini se slučajeva Haškim protokolom iz 2007. utvrđuje pravo primjenjivo na obveze uzdržavanja, a sve sudske odluke o uzdržavanju koje su donijeli sudovi država članica slobodno kruže u Europskoj uniji te mogu biti izvršene u svim državama članicama bez dodatnih formalnosti. Naposljetku, osobe s pravom na uzdržavanje i dužnici imaju pravo na administrativnu pomoć koju nude države članice.

Pravila se primjenjuju u svih 27 država članica EU-a, uključujući Dansku, na temelju sporazuma od 19. listopada 2005. između Europske zajednice i Kraljevine Danske o sudskoj nadležnosti, priznavanju i izvršenju sudskih odluka u građanskim i trgovačkim stvarima. Međutim, Danska ne primjenjuje neka pravila, i to posebno pravilo o primjenjivom pravu i suradnji među središnjim tijelima.

Od 1. siječnja 2021. Ujedinjena Kraljevina više nije država članica EU-a. Međutim, u području građanskog pravosuđa postupci koji su u tijeku i postupci pokrenuti prije isteka prijelaznog razdoblja nastavit će se provoditi na temelju prava EU-a. Do kraja 2024. Ujedinjena Kraljevina može se i dalje birati u internetskim (dinamičnim) obrascima za potrebe tih postupaka.

Osim toga, Uredbom je predviđeno da se upravna tijela mogu smatrati sudovima za potrebe postupaka povezanih s uzdržavanjem. Popis tih tijela dostupan je ovdje PDF (288 Kb) hr.

Europski portal e-pravosuđe sadržava informacije o primjeni te uredbe i alat za ispunjavanje obrazaca prilagođen korisnicima. Europska pravosudna mreža u građanskim i trgovačkim stvarima izradila je Smjernice o upotrebi priloga u okviru Uredbe o uzdržavanju dostupne na 23 jezika.

Kad sredstva za uzdržavanje mora dati osoba ili kad idu u korist osobe koja živi u državi koja nije članica EU-a, Konvencija o međunarodnoj naplati tražbina za uzdržavanje djece i drugih oblika obiteljskog uzdržavanja i Protokol o pravu primjenljivom na obveze uzdržavanja mogu vam pomoći pri naplati tražbina za uzdržavanje u državama koje nisu članice EU-a, a koje su ugovorne stranke tih međunarodnih instrumenata. Konvencija je stupila na snagu za EU u odnosu na treće zemlje koje su stranke te Konvencije 1. kolovoza 2014.

### Neobvezni standardni obrazac za izvještaj o dugu za uzdržavanje

Radi olakšavanja praktične provedbe Uredbe o uzdržavanju i učinkovitog ostvarivanja građanskih prava u cijelom EU-u, Europska pravosudna mreža razvila je u građanskim i trgovačkim stvarima neobvezni standardni obrazac za izvješće o dugu za uzdržavanje.

Cilj je tog neobveznog obrasca olakšati povrat duga za uzdržavanje, a dostupan je na 23 jezika. Obrascu je priložen praktični vodič s uputama za ispunjavanje. Obrazac je dostupan u sljedećim oblicima: PDF PDF (1048 Kb) hr i XLS (403 Kb) hr.

### Neobvezni standardni obrazac za sporazumni dogovor

Kako bi se olakšala provedba Uredbe o uzdržavanju i učinkovita prekogranična naplata tražbina za uzdržavanje, Europska pravosudna mreža u građanskim stvarima izradila je (neobvezni) **standardni obrazac za sporazumni dogovor**.

Sporazumno rješavanje spora omogućuje da se izbjegne intervencija suda i/ili postupak izvršenja. Može olakšati da se spriječe dugotrajni i složeni postupci. Ovaj obrazac poslužit će **središnjim tijelima da olakšaju sporazumni dogovor** između stranaka i da se prevladaju jezične prepreke u cilju dobrovoljnog plaćanja tražbina za uzdržavanje. Obrazac je dostupan na 23 jezika. Dostupan je u sljedećim formatima: PDF PDF (144 Kb) hr

Posljednji put ažurirano: 09/12/2023

Stranicu održava Europska komisija. Informacije na ovoj stranici ne odražavaju nužno službeno stajalište Europske komisije. Europska komisija ne preuzima nikakvu odgovornost za informacije ili podatke sadržane ili navedene u ovom dokumentu. Pogledajte pravnu obavijest koja se odnosi na propise za autorska prava za europske stranice.

## Family maintenance - Belgium

### 1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

A ‘maintenance obligation’ may be defined as an obligation imposed on a person by law to provide another person who is in need and is connected with them by a ‘specific family’ link with the assistance necessary for life. ‘Maintenance’ covers not only food but everything that is necessary for life, including keep, clothing, housing and medical care.

The maintenance obligation is based on a family relationship or relationship through marriage or on an alternative obligation when that link is broken. It exists between certain blood relatives and relatives by marriage, between spouses and between legal cohabitants. It is founded in a way on a duty of ‘solidarity’ which may be stronger in certain cases.

**parents towards their children**

There are two types of obligation in such cases:

a wider maintenance obligation under which the father and mother are required to take responsibility, according to their means, for the housing, upkeep, health, supervision, education and training and development of their children. If the child’s education and training are still ongoing, the obligation continues after the child reaches its majority. It exists irrespective of the parent’s resources and the child’s needs. It is wider in the sense that, in addition to the child’s subsistence, it also includes its education and training etc. (Article 203 of the Civil Code);

a maintenance obligation based on parenthood, linked to the child’s needs irrespective of its age and the parent’s resources (Articles 205, 207, 208 and 353-14 of the Civil Code).

**children towards their parents**

The maintenance obligation applicable to parents for their children is reciprocal (Articles 205, 207 and 353-14 of the Civil Code). Children therefore have a maintenance obligation towards their father and mother if they are in need.

**spouses**

Maintenance obligations between spouses are based on the duty of help and assistance and the duty to contribute to the costs of the marriage provided for by the Civil Code (Articles 213 and 221 of the Civil Code). Those duties, linked to the cohabitation duty that is also imposed on the spouses, are reciprocal. If they are not fulfilled, legal proceedings may be brought for equivalent enforcement, in the form of maintenance proceedings or assignment (Articles 213, 221 and 223 of the Civil Code) – see question 10

**divorced spouse towards former spouse**

A distinction is to be made according to the type of divorce: divorce due to irretrievable breakdown or divorce by mutual consent:

Divorce due to irretrievable breakdown: if the spouses have not come to an agreement on the grant of any maintenance (Article 301(1) of the Civil Code), the court may, in the divorce decree or a subsequent decision, at the request of the spouse 'in need', order the other spouse to pay maintenance (first paragraph of Article 301(2) of the Civil Code).

The court may refuse to allow a claim for maintenance after divorce if the defendant proves that the claimant is guilty of serious misconduct making further cohabitation impossible (second paragraph of Article 301(2) of the Civil Code).

The amount of the maintenance may not in any event exceed one third of the income of the spouse liable for payment (third paragraph of Article 301(3) of the Civil Code).

Divorce by mutual consent: the spouses are not obliged to agree on the grant of maintenance for one of the spouses during the proceedings and/or after the divorce. If they so decide, the amount and arrangements for payment and enforcement of the maintenance are freely determined, as are its indexing and any grounds for variation (subparagraph (4) of the first paragraph of Article 1288 of the Judicial Code). Unless the parties have expressly agreed to the contrary, the court may, at the request of one party, increase, reduce or cancel the agreed maintenance after the divorce decree (third paragraph of Article 1288 of the Judicial Code) if, at least, the amount is no longer appropriate in view of new circumstances beyond the parties' control. The maintenance may not be indexed unless indexing is specified.

**Other, in what circumstances?**

The maintenance obligation exists between relatives in the direct line, both ascending and descending (parents/children, children/parents, and also grandchildren/grandparents and vice versa - Articles 205 and 207 of the Civil Code).

Between relatives by marriage there are two possible scenarios:

surviving spouses have an obligation towards children of their deceased spouse of whom they are not the father or mother, within certain limits (Article 203 (3) of the Civil Code);

sons-in-law and daughters-in-law have an obligation towards their fathers-in-law and mothers-in-law and vice-versa. The obligation lapses if the father-in-law or motherinlaw remarries, or if the spouse (through whom there is a relationship by marriage) and the children of the marriage are deceased (Articles 206 and 207 of the Civil Code).

In certain circumstances maintenance is payable to the survivor or ascendants of the deceased from the estate of the deceased spouse (Article 205 bis of the Civil Code).

Children whose paternity is not established may claim maintenance for their upkeep and education and training from the man who had a relationship with their mother during the legal conception period (Article 336 of the Civil Code).

If the harmony between legal cohabitants is seriously disrupted, a party may apply to the court for maintenance under such interim measures as it may order. The same applies if the legal cohabitation ceases, under interim measures (Article 1479 of the Civil Code).

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Normally the maintenance obligation ceases when the child is of full age and capacity. However, it may continue if the child's education and training are still ongoing (Articles 203 and 336 of the Civil Code).

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

The debtor may meet the needs of the creditor voluntarily. Otherwise, if there is a dispute, disagreement or suspension, legal proceedings are necessary.

In a divorce due to irretrievable breakdown, a claim for maintenance after divorce may be made to the divorce court incidentally, either in the originating process or through submissions (fifth paragraph of Article 1254(1) and Article 1254(5) of the Judicial Code).

Outside divorce proceedings, it is the justice of the peace who hears and determines any claim for maintenance (Article 591(7) of the Judicial Code), except in proceedings claiming maintenance without declaration of parentage. See question 5.

Since 1 September 2014, apart from maintenance obligations linked to social integration income, all claims relating to maintenance obligations have come under the jurisdiction of the family court (Article 572 bis (7) of the Judicial Code), including maintenance proceedings without declaration of parentage.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

The action is personal to the person entitled to maintenance (see in particular Article 337 of the Civil Code). The claim is made to the court by the claimant in person or their lawyer (see in particular Articles 1253 ter, 1254 and 1320 of the Judicial Code).

If the person does not have legal capacity, their legal representative acts on their behalf (father, mother, guardian, statutory representative).

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

The justice of the peace has general jurisdiction for maintenance disputes (Article 591(7) of the Judicial Code), but there are exceptions. In those circumstances, the action must be brought in the court for the claimant's domicile, except in the case of applications to reduce or cancel the maintenance (Article 626 of the Judicial Code).

The president of the family court (Article 338 of the Civil Code) has jurisdiction for proceedings brought by a child against a person who had a relationship with its mother during the legal conception period (Article 336 of the Civil Code).

Except in the case of urgent and interim measures, disputes concerning parental authority come under the jurisdiction of the youth court (Article 387 bis of the Civil Code) for the place of residence of the parents, guardians or persons with custody of the child (Article 44 of the Law of 8 April 1965 on the protection of juveniles, care of minors who have committed an offence and reparation for damage caused by the offence).

In the event of conflict between spouses before the divorce proceedings, claims are made to the justice of the peace (Article 594(19) of the Judicial Code) for the place of the last matrimonial home (Article 628(2) of the Judicial Code).

As soon as a petition is filed for divorce due to irretrievable breakdown, the president of the family court has jurisdiction (Article 1280 of the Judicial Code) until the marriage is dissolved. However, approval of the maintenance agreements reached by the parties is the responsibility of the court hearing the merits of the case (first paragraph of Article 1256 of the Judicial Code).

After the final divorce decree, the justice of the peace and the family court have jurisdiction. The president of the family court retains his jurisdiction for interim orders in urgent cases (Article 584 of the Judicial Code).

Since 1 September 2014, apart from maintenance obligations linked to social integration income, all claims relating to maintenance obligations have come under the jurisdiction of the family court (Article 572 bis (7) of the Judicial Code).

Since 1 September 2014, claims between parties who are (or have been) married or are (or have been) legal cohabitants and claims for maintenance obligations relating to children of both parties or children whose relationship to only one of the parents has been established must in principle be made to the court already dealing with a claim (see Article 629 bis (1) of the Judicial Code). That is the court for the domicile of the minor (or, failing that, for their habitual place of residence) for claims relating to maintenance obligations towards a minor who is competent. If the parties have several children, the first court seised has jurisdiction for all the claims (Article 629 bis (2) of the Judicial Code).
If the maintenance obligations relate to other maintenance creditors, the case is brought before the court for the defendant's domicile or the place of the last matrimonial or joint home (Article 629 bis (4) of the Judicial Code).

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

See question 4. Depending on the action brought, the claim is submitted by bailiff summons or by petition. It is not compulsory for a lawyer to be involved.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

The legal proceedings must be paid for. It is not possible to determine the total costs; they will depend on the proceedings brought, the legal costs and the defence costs if a lawyer is involved. Ordinary law rules apply to payment of the costs of proceedings from legal aid (see Legal aid - Belgium).

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

**Form of assistance:**

The assistance takes the form of maintenance. In some cases the maintenance may be capitalised (Article 301(8) of the Civil Code). In exceptional cases it may be paid in kind (Article 210 of the Civil Code).

**Assessment and indexing of assistance**

There is no scale. Maintenance is only awarded in proportion to the need of the claimant and the financial circumstances of the person liable for payment (Articles 208 and 209 of the Civil Code).
The obligation of fathers and mothers (Article 203 of the Civil Code) is determined in proportion to their means and must cover the housing, upkeep, health, supervision, education and training and development of the children (until they have completed their education and training). That maintenance takes the form of a flat-rate monthly contribution to the parent 'with custody'.
The father and mother may each act in their own name to claim from the other a contribution towards the costs of housing, upkeep, etc. (Article 203 bis (2) of the Civil Code).
The amount of maintenance payable by a person who has had a relationship with the child's mother during the conception period is determined by the child's needs and the means, possibilities and social circumstances of the debtor (Articles 336, 339 and 203 bis of the Civil Code).
The law expressly authorises couples going through divorce proceedings to come to an agreement at any time on the award of any maintenance, its amount and the arrangements for reviewing the agreed amount (Article 301(1) of the Civil Code, and first paragraph of Article 1256 and Article 1288(4) of the Judicial Code). However, the court hearing the case may refuse to approve these if they are obviously contrary to the children's interests (second paragraph of Article 1256, second and fifth paragraphs of Article 1290 of the Judicial Code).
In the event of a judicial settlement, the court that decides *in concreto* on the amount of maintenance must, however, apply calculation criteria and limits. The maintenance must in principle cover at least the 'needs' of the beneficiary (first paragraph of Article 301(3) of the Civil Code).
In any event, the amount of the maintenance may not exceed one third of the income of the liable spouse (second paragraph of Article 301(3) *in fine* of the Civil Code). The duration of the maintenance order is limited to the duration of the marriage. In exceptional circumstances the duration of the maintenance order may be extended by the court (Article 301(4) of the Civil Code).
Indexing is automatic in the case of divorce due to irretrievable breakdown and parental contributions to upkeep. In principle the reference index is the consumer price index, but the law allows the court to apply a different system of adjustment to the cost of living (first paragraph of Article 301(6) and Article 203 quater (1) of the Civil Code) and the parties may derogate from that by agreement (Article 203 quater (1) of the Civil Code).
The law allows the maintenance to be increased, reduced or cancelled at the request of one of the parties, on the general grounds set out in the first paragraph of Article 301(7) of the Civil Code and the first paragraph of Article 1293 of the Judicial Code.

**9 How and to whom will the maintenance be paid?**

The maintenance is paid to the creditor or their representative in the form of a monthly payment. In certain cases it may be capitalised (see question 8).

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

A creditor with an enforcement order may have their claim enforced. Subject to certain conditions, an attachment may be placed on the movable or immovable property of a maintenance debtor who fails to comply with the decision setting the maintenance (Article 1494 of the Judicial Code). A garnishee order may even be made for a third party, such as the debtor's employer (Article 1539 of the Judicial Code). Furthermore, in certain circumstances maintenance creditors who do not yet have an enforcement order may arrange for a distraint order to safeguard their rights to future maintenance cover (Article 1413 of the Judicial Code).
A simplified enforcement mechanism has been put in place, namely assignment, in which the creditor is authorised to receive the debtor's income or any other sum payable by a third party direct, up to certain limits. Assignment applies to legal maintenance obligations between spouses or ex-spouses (Articles 220(3), 221, 223 and 301(11) of the Civil Code and 1280 of the Judicial Code), to obligations for the upkeep, education and training of children - including the proceedings between father and mother provided for by Article 203 bis of the Civil Code - and to the legal maintenance obligations between ascendants and descendants (Article 203 ter of the Civil Code).
Finally, the Penal Code contains an article on desertion of the family (Article 391 bis of the Penal Code), under which any person who has been ordered by the court to pay maintenance and has deliberately failed to do so for more than two months may be prosecuted.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Article 2277 of the Civil Code provides that arrears of maintenance are time-barred after five years.
Maintenance awarded by the courts is subject to a ten-year limitation (Article 2262 bis of the Civil Code).
It is suspended between spouses during the marriage (Article 2253) and interrupted by the service of a court summons, an order to pay or a seizure (Articles 2244 and 2248) and by the filing of legal submissions by the creditor and a payment by the debtor.
In principle, under Articles 7 and 8 of the Mortgage Act of 16 December 1851, debtors are required to fulfil their commitments in regard to all their assets. However, according to Article 1408 of the Judicial Code certain tangible items of personal property necessary for the daily life of the debtor and his family, the pursuit of his occupation or continued training or study by the debtor or dependent children living under the same roof are exempt from claims by creditors.
Under Article 1409(1) of the Judicial Code, income from employment and other activities is partly exempt from assignment and seizure.

Article 1412 of the Judicial Code nevertheless provides, firstly, that the rules of immunity from seizure cannot be enforced against a maintenance creditor and, secondly, that that person has absolute priority over the debtor's other creditors. However, if assignment is claimed against a person whose debts are already assigned or attached, the court may consider the overall position of the debtor and the needs of his creditors, particularly in regard to maintenance, and divide the sums assigned or seized equally between them (fifth paragraph of Article 1390 bis of the Judicial Code).
Debtors who are insolvent are eligible for collective debt settlement (Articles 1675/2 et seq. of the Judicial Code). In that context the court may decide, if appropriate, to waive the debts, including arrears of maintenance payments but not relating to maintenance debts.
An attachment may be imposed in order to secure payment of the maintenance in advance as it falls due (second paragraph of Article 1494 of the Judicial Code).

**12 Is there an organisation or an authority which can help me to recover maintenance?**

If maintenance creditors are unsuccessful in obtaining payment despite the above remedies, they may apply to the Maintenance Claims Department (*Service des créances alimentaires*) (in the Federal Public Service Finance), which is responsible for granting advances on one or more specific maintenance instalments and collecting or recovering the advances granted and the balance and arrears of maintenance debts payable by debtors.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

The Maintenance Claims Department may act for debtors and pay the maintenance or part of the maintenance in their place. The Department requires debtors to pay the maintenance and the arrears simultaneously. Debtors either pay the maintenance to the Department voluntarily or recovery is enforced. In the latter case, the result cannot of course be guaranteed. It is dependent on the financial circumstances of the debtor.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

The Central Authority designated under the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance, Council Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations and the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance is the:
Federal Public Service Justice (*Service public fédéral Justice*)
Department of International Judicial Cooperation in Civil Matters
(*Service de coopération judiciaire internationale en matière civile*)
Boulevard de Waterloo, 115
1000 Brussels

**14.2 If so, how can that authority or private organisation be contacted?**

The claimant or his legal adviser may contact that department by post, telephone (+32 (0)2 542 65 11), fax (+32 (0)2 542 70 06) or email aliments@just.fgov.be or alimentatie@just.fgov.be).

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

Claimants resident in a country other than Belgium must contact the Central Authority for their country with responsibility for implementing the above Conventions or the Regulation. They may not contact a Belgian body or authority direct.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

Reply negative (see above).

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

When a claim is referred to the Central Authority, it will verify the location of the debtor and/or his assets in Belgium and, where appropriate, pass the case on to the Legal Aid Office with territorial jurisdiction. Where a claim for child maintenance is made through the Central Authorities, legal aid will be granted without means testing the beneficiary. The aid covers lawyer's fees and the costs of the proceedings.
In other cases, claimants requiring legal aid should apply to the Central Authority, in accordance with Directive 2002/8/EC.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The primary role of the Central Authority is to provide information on the functioning of the Regulation, both in its own system and in the requested State. The Central Authority has resources which enable it to locate the debtor or creditor directly or indirectly and to obtain relevant information on the income and/or assets of the debtor or creditor.
An effort to reach an amicable settlement is made in conjunction with the court proceedings in the exchange of observations by the two parties and more particularly in regard to the requested party during hearings by the judicial authorities. If necessary the Central Authority provides follow-up in order to promote the continued enforcement of the maintenance decisions.
The Central Authority may assist in the collection of documentary evidence and the transmission and service of documents by providing information on the provisions of domestic law applicable and on the rules for implementation of the international instruments in force.
Necessary interim measures designed to ensure the success of a pending maintenance claim may be taken under the power conferred by the Central Authority on the claimant's representative in the Belgian courts.
If necessary, the Central Authority can provide the requesting party with information on the procedures to be followed in establishing the child's paternity in regard to the putative father.

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# Family maintenance - Bulgaria

## 1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

The maintenance obligation is the obligation of one member of a family to provide another member of the family with the means of subsistence. It is statutory, i.e. generally applicable by virtue of the law, subject to certain criteria, rather than by agreement between the parties. It is personal and ends upon the death of the person entitled to claim it.

A person is only entitled to maintenance if they are unfit for work and lack the means to support themselves.

Maintenance can be claimed by the person entitled to it from the following persons and in the following order: a spouse or ex-spouse; children; parents; grandchildren and great-grandchildren; brothers and sisters; grandparents and ascendant relatives. If the person first in line is unable to provide maintenance, maintenance becomes payable by whoever is next in line.

When a person is obliged to maintain a number of others, maintenance is payable in the following order (to the exclusion of those further down the list): children, a spouse or ex-spouse, parents, grandchildren and great-grandchildren, brothers and sisters, grandparents and ascendant relatives.

In the event of divorce, only a spouse not at fault in the divorce is entitled to maintenance.

## 2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

Parents must pay maintenance for minor children under 18 years of age, regardless of whether they are able to work or whether they have the means to support themselves. In the case of children over that age, parents must pay maintenance if the children are unable to support themselves from their own income or from their own property when they are studying regularly at a secondary school (up to 20 years of age), or training college or university (up to 25 years of age), but only if the payment of maintenance does not cause the parents particular difficulties.

Maintenance is payable to an adult only if he or she is unfit for work and cannot subsist on his or her property.

Maintenance for an ex-spouse is payable for a maximum of three years from the termination of the marriage, unless the parties agreed a longer period, and ends if the spouse receiving maintenance remarries. The court may extend the period if the maintenance payee is in a particular hardship and the maintenance payer can pay the maintenance without particular difficulty.

Each person may claim maintenance not only with immediate effect but also retroactively, for a period of up to one year before the application is brought.

## 3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

Maintenance claims are lodged with a court, regardless of their nature, the amount of maintenance, the person claiming maintenance and the person from whom maintenance is being claimed. The district court (rayonen sad) has jurisdiction. Geographical jurisdiction rests with the court of the place of residence of the claimant or the respondent; the claimant may choose which he/she prefers. The procedure is by application under the Civil Procedure Code. A self-standing application for maintenance is examined under the expedited procedure, i.e. within a shorter timeframe.

## 4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

Maintenance claims for minors are lodged by a parent with parental rights or a guardian.

Maintenance claims for minors between 14 and 18 years of age are lodged by the child himself/herself, with the knowledge and consent of the parent with parental rights or the guardian.

## 5 If I plan to bring the case to court, how do I know which court has jurisdiction?

The court with international jurisdiction is determined in conformity with the rules laid down by the Code of International Private Law (KMChP), bilateral international treaties or Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, if applicable.

Under the Code of International Private Law, where an application for maintenance is brought in a matrimonial case, i.e. as part of the divorce petition, Bulgaria’s courts have jurisdiction over the applications for maintenance and the matrimonial petitions if one of the spouses is a Bulgarian national or is habitually resident in Bulgaria. Cases relating to the maintenance of an ex-spouse are handled by the courts with jurisdiction over the divorce petition.

Bulgaria’s courts have jurisdiction over maintenance cases where the respondent is habitually resident in Bulgaria, where the claimant is a Bulgarian national or is habitually resident in Bulgaria.

In the above cases, Bulgarian law is applicable as set out below in Questions 18, 19 and 20.

Where it is determined that the Bulgarian court has international jurisdiction, a district court has natural jurisdiction. Geographical jurisdiction rests with the court of the place of residence of the claimant or the respondent; the claimant may choose which he/she prefers.

## 6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?

Maintenance claims are lodged with a court, regardless of their nature, the amount of maintenance, the person claiming maintenance and the person from whom maintenance is being claimed. The involvement of a lawyer is optional.

## 7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?

Claimants in maintenance cases are exempt from state fees. When granting a maintenance claim, the court orders the respondent to pay state fees and the costs incurred by the claimant in the proceedings.

State fees are charged only in cases in which the claimant is the individual who owes maintenance and he or she claims a reduction in the amount of maintenance.
Legal representation is not necessary in maintenance cases.
The parties to the case can obtain legal aid under the usual terms for its provision. These are laid down in the Legal Aid Act (Zakon za Pravnata Pomosht).

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

The amount of maintenance is determined according to the needs of the person entitled to maintenance and the possibilities of the person who has to pay it.
The minimum amount of maintenance owed by a parent for minors is equivalent to a quarter of the minimum wage fixed by the Council of Ministers (for 2019, the minimum amount of maintenance for a minor is BGN 140). The amount of maintenance is determined by the court according to the needs of the children and the means of the parent.
At the request of the parent, the court may determine a supplement to the maintenance set to cover the child's exclusive needs up to an amount that the parent can pay without particular difficulty. At the party's request, the maintenance order may be amended or revoked if there is a change in circumstances. Any modification must also be effected through the courts.
Maintenance is paid monthly. Statutory interest is due on late payments.

**9 How and to whom will the maintenance be paid?**

The maintenance is paid personally to the person entitled to it. In the case of minors between 14 and 18 years of age, it is paid to them specifically but with the knowledge and consent of the parent with parental rights.
Maintenance for minors under 14 years of age is paid via the parent with parental rights or the guardian.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

Maintenance is paid monthly. Statutory interest is due on late payments.
Court decisions that have entered into force are subject to enforcement under the conditions and procedures laid down in the Code of Civil Procedure (Grazhdanski Protsesualen Kodeks).
Non-payment of maintenance constitutes a criminal offence in the cases provided for in Article 183 of the Criminal Code (Nakazatelen kodeks).

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Enforcement is carried out by a state or private bailiff of the maintenance creditor's choosing.
State bailiffs work for the enforcement service of a district court (rayonen sad) and their area of operation coincides with the geographical jurisdiction of the court.
Private bailiffs operate in the geographical jurisdiction of the relevant provincial court (okrazhen sad).
Under Article 149 of the Family Code, the longest period for which retroactive maintenance can be claimed is one year before the application is brought.
Once the existence and amount of a maintenance obligation has been established by a court decision, that obligation will continue until it is extinguished under the general rules applicable to extinctive prescription: Articles 110 to 120 of the Obligations and Contracts Act (Zakon za zadalzheniyata i dogovorite).
See Enforcement of judgments.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

The Child Protection Act (Zakon za Zakrila na Deteto) provides for a number of protection measures, including keeping children and parents informed of their rights and obligations, and ensuring the provision of legal aid by the state. Pursuant to Article 15 of the Child Protection Act, children are entitled to legal aid and appeals in all proceedings affecting their rights or interests.Legal aid is provided by the National Legal Aid Bureau.
The Bar Act (Zakon za Advokaturata) expressly provides that a Bulgarian or EU lawyer may provide free legal help and assistance to persons who are entitled to maintenance. In such a case, if the opposing party is ordered to pay the costs in the proceedings, the lawyer can claim a lawyer's fee, which is determined by the court.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Where it is established in enforcement proceedings that the individual who owes maintenance has no income and possesses no property, the maintenance awarded is paid by the State on that individual's behalf under the conditions and procedure laid down by a regulation issued by the Council of Ministers. In such a case, the State pays the amount of maintenance laid down in the court decision up to the ceiling set annually by the State Budget of the Republic of Bulgaria Act (Zakon za darzhavniya byudzhet na Republika Balgaria).
Under the social assistance procedure, the State takes care of people in need when nobody else is liable by law or able to provide maintenance.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Yes, under the procedure laid down in Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. The Republic of Bulgaria is also party to a number of mutual legal assistance treaties with countries, including some that are not EU Member States. The Ministry of Justice is a central authority under these treaties and in this capacity provides assistance on applications from members of the public.

**14.2 If so, how can that authority or private organisation be contacted?**

The Ministry of Justice is the central authority and can be contacted at:
Ministry of Justice
Ul. Slavyanska 1
1040 Sofia
Bulgaria
Telephone: (+359 2) 92 37 555
Fax: (+359 2) 987 0098
Contact person:
E_Gyurova@justice.government.bg
M_Parvanova@justice.government.bg

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

Yes, under the procedure laid down in Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. If the applicant is in a country with which the Republic of Bulgaria has concluded a mutual legal assistance treaty, the applicant can seek assistance from the Ministry of Justice as a central authority under that treaty.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

Under the procedure laid down in Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, or under the procedure laid down in the relevant mutual legal assistance treaty.
See above for the contact details of the Ministry of Justice as a Central Authority.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes, the Republic of Bulgaria is bound by the 2007 Hague Protocol.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

See the answer above.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

The applicable rules are laid down in Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, and in Articles 627a to 627c of the Code of Civil Procedure (in force since 18 June 2011).
When a decision is given in a Member State bound by the 2007 Hague Protocol, the application for enforcement of the decision on the basis of the documents referred to in Article 20 of Council Regulation (EC) No 4/2009 is submitted to the provincial court of the debtor's permanent address or for the place of performance of the obligation. A refusal or suspension of enforcement within the meaning of Article 41 of Council Regulation (EC) No 4/2009 is decreed by the provincial court.
An application to declare the enforceability of a decision or another act given in an EU Member State that is not bound by the 2007 Hague Protocol is submitted to the provincial court of the debtor's permanent address or for the place of performance of the obligation. A copy of the application for service on the debtor is not presented. The court examines the application in camera. In the order granting the application, the court sets a deadline for appealing under Article 32(5) of Council Regulation (EC) No 4/2009. Provisional enforcement of the order granting the application may not be granted. In the order granting the application, the court also gives a decision on the interim and precautionary measures sought. The order has the significance of a decision in an action. The order is subject to an appeal on points of fact or law before the Sofia Court of Appeal (Sofiyski apelativen sad) under the terms and procedures laid down in Article 32 of Council Regulation (EC) No 4/2009. The decision of the Sofia Court of Appeal is subject to an appeal on points of law only by the Supreme Court of Cassation.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Changes have been made to the size and structure of the staff of the International Legal Child Protection and Intercountry Adoptions Directorate, whose duties include carrying out the activities assigned to the Ministry of Justice as a central authority under Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Powers have been conferred on that Directorate to interact with the Directorate-General of Civil Registration and Administrative Services (GRAO) of the Ministry of Regional Development and Public Works, the National Revenue Agency and the National Legal Aid Bureau when processing applications from EU Member States relating to maintenance obligations under Council Regulation (EC) No 4/2009.

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## Family maintenance - Czechia

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

The concept 'maintenance' means the sum of what one person gives another to satisfy all their legitimate needs. A key prerequisite for the formation and duration of maintenance obligations under the Civil Code is the existence of family or similar relationship, whether marital, ex-marital or kinship in a direct line, or a relationship between registered partners or former registered partners of the same sex.
The Civil Code specifies the groups of people required to provide and authorised to receive maintenance as follows:
**maintenance between spouses:** this arises when the marriage is concluded and ends on its termination. The spouses have a maintenance obligation to an extent that ensures both the same material and cultural standard, arising from the equal status of a man and a woman in the marriage. The maintenance obligation between spouses takes precedence over the maintenance obligation between parents and children.
**alimony between divorced spouses:** this arises if one of the divorced spouses is incapable of supporting themselves and this incapability originates in connection with the marriage and it can legitimately be requested of the former spouse, particularly in view of the age or state of health of the divorced spouse at the time of the divorce or the termination of care of a child common to the divorced spouses. It terminates on the marriage of the supported spouse or on expiry of the period for which alimony was set for the divorced spouses (a maximum of 3 years).
**maintenance between parents and children:** this arises on the birth of the child and terminates when the child is able to support himself or the maintenance obligation is transferred to another (e.g. through marriage or denial of paternity). The amount of maintenance is determined to ensure that the standard of living of the child is substantially identical to the standard of living of the parents. A child is also obliged to provide his parents with a fair maintenance, according to his/her means, and the parents' standard of living does not have to be identical to the standard of living of the child.

**maintenance between relatives in a descending and ascending line:** this arises between ancestors and descendants. The maintenance obligation of parents to their children precludes the maintenance obligation of grandparents and other relatives in an ascending line to the children. More distant relatives have a maintenance obligation if this cannot be met by closer relatives.
**support paid to a single mother to cover maintenance and other expenses:** this arises if the child's mother is not married to the child's father. In this case, the father is required to provide maintenance for a period of two years after the birth of the child and to make a reasonable contribution towards the costs associated with pregnancy and childbirth.
The maintenance obligation is also regulated by the Act on Registered Partnership. This provides for:
**a reciprocal maintenance obligation between partners.** The scope of the maintenance obligation is established to ensure that the material and cultural standard of both partners is basically the same;
**a maintenance obligation after dissolution of cohabitation of partners** – a former partner who is unable to support him/herself may request the former partner to contribute a reasonable amount of support, in relation to his/her abilities and financial situation. If one of the former partners, who did not contribute to the permanent breakdown of the partnership, is caused serious harm by the termination of the partnership, he/she may be awarded maintenance for a period of three years in the same amount as the maintenance obligation that would have arisen in the event the partnership had not been terminated.
The maintenance obligation for one person to provide support for another person is laid down in the law and cannot be transferred, substituted or surrendered in advance.
One of the pre-requisites for granting a maintenance obligation, which is applied in all cases where a maintenance obligation is fulfilled, is consistency with public morality.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Maintenance may be granted if the beneficiary is not realistically able to support him/herself. The ability to support oneself is traditionally interpreted exclusively as the ability to satisfactorily meet all one's needs (material, cultural, etc.). If a child is not able to support him/herself and is reliant on support from the maintenance payer, the maintenance obligation will not lapse even when he/she reaches adulthood (e.g. if the child continues with his/her studies), and in exceptional cases the maintenance obligation may continue throughout the life of the child and the parents (e.g. if a child is fully disabled and will never be able to support him/herself). In contrast, the maintenance obligation may lapse even before the child reaches adulthood if the child becomes able to support him/herself earlier. There is therefore no specific age limit.
Attaining adulthood is important in terms of procedure (e.g. a court may rule on maintenance for a minor child even without a petition, but a court will only grant maintenance for adult children on the basis of a petition).

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

Only a court may rule on maintenance, on the basis of a petition, while a court may decide on maintenance for a minor child even without a petition.
In addition to the general particulars, the petition must contain the name, surname and address of the parties, a depiction of the critical facts, a designation of the evidence submitted by the claimant and this must clearly show what the claimant is claiming.
The petition must be filed with the locally competent court. See question no. 5.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

A parent who has custody of a child is entitled to apply on the child's behalf for maintenance from the other parent. He/she may also act on behalf of the child as guardian or trustee. A child who has acquired full legal capacity must apply for maintenance in his/her own name.
An application may not be filed in the name of a relative, except in cases where the person does not have full legal capacity and the court appoints a guardian from among the person's relatives.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

International jurisdiction (authority) over proceedings on matters relating to maintenance obligations are assessed in accordance with 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 ('Regulation on Maintenance Obligations'): https://eur-lex.europa.eu/legal-content/CS/TXT/?qid=1409302593149&uri=CELEX:02009R0004-20130701. This Regulation shall not prejudice the application of international treaties to which the Czech Republic is a party and which relate to matters governed by the Regulation on Maintenance Obligations. However, these treaties only apply to relations with non-EU Member States (this particularly concerns bilateral treaties on legal assistance concluded with non-EU Member States or the international Convention on Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano, 30.10.2007) in relation to Norway, Switzerland and Iceland); in relations between European Union Member States, the Regulation on Maintenance Obligations takes precedence over international treaties.
In the Czech Republic, district courts decide in proceedings relating to maintenance obligations in the first instance.
Jurisdiction is mainly determined by the Regulation on Maintenance Obligations, which takes precedence over the Czech legislation. According to Article 3 of the Regulation on Maintenance Obligations, the claimant (plaintiff) may, as he/she chooses petition a court
a) in the place where the defendant is habitually resident, or
b) in the place where the creditor is habitually resident.
Otherwise, based on the application of Article 3 (c) and (d) of the Regulation on Maintenance Obligations, proceedings in the Czech Republic may be brought to the court which has jurisdiction to entertain proceedings to determine paternity or the court which has jurisdiction to entertain proceedings concerning parental responsibility, unless that jurisdiction is based solely on the nationality of one of the parties.
According to Article 5 of the Regulation on Maintenance Obligations, jurisdiction can also be established on the basis of an appearance of the defendant at a court provided the defendant does not later contest the jurisdiction of the court as his/her first subsequent legal act.
The Czech legal rules for determining jurisdiction, which only apply in cases where jurisdiction is not determined on the basis of the Regulation on Maintenance Obligations (i.e. for example in a case where the international jurisdiction of the Czech court is based on Articles 6 and 7 of the Regulation on Maintenance Obligations (subsidiary jurisdiction, forum necessitatis) or on an international treaty with a non-EU Member State), are as follows: for proceedings concerning maintenance for a minor child, the general court of the minor child has jurisdiction, i.e. the court in whose district the minor child is resident, on the basis of an agreement between the parents or a decision of the court or other deciding facts. In other cases, the competent court is the general court of the defendant. The general court of a natural person is the district court in whose district he/she has his/her residence and, if he/she has no residence the court in whose district he/she sojourns. A residence is understood to be a place where the person resides with the intention of staying there permanently (it is also possible that there are a number of such places, in which case the general court is all these courts). If a defendant, who is a citizen of the Czech Republic, has no general court, or does not have one in the Czech Republic, the competent court is the one in whose district he/she had the last known residence in the Czech Republic. Property rights may be applied against a person who has no other competent court in the Czech Republic at the court in whose district he/she owns property.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

The law does not require that a petitioner be represented. However a petitioner may take the decision to be represented before the court on the basis of a power of attorney granted to a representative of his/her choice, for example a lawyer.
A natural person who cannot appear independently before a court must be represented by a legal representative or guardian. In the case of a minor child, the legal representatives are his/her parents.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Proceedings on matters concerning mutual maintenance obligations between parents and children are completely exempt from court fees. In other proceedings to determine maintenance, including its increase, the petitioner is exempt from court fees. This exemption also applies to enforcement proceedings or execution proceedings.
If the petitioner is represented by a lawyer he/she must – unless otherwise agreed – pay remuneration according to the lawyer's tariff rate (which can be downloaded in English from the Czech Bar Association website: http://www.cak.cz/scripts/detail.php?id=2239). If justified by the social and financial status of the petitioner, and provided the case is not arbitrary or a manifestly unsuccessful application or obstruction of rights, the court may appoint a representative free of charge or for a reduced fee if this is absolutely necessary in order to protect the interests of the petitioner; under certain conditions a lawyer will be appointed as this representative.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

Maintenance is paid for the most part in cash – in regularly recurring monthly instalments, always payable one month in advance (unless the court decides otherwise, or the creditor agrees on different conditions with the liable parent), although it may also be provided in some other form, such as by providing housing, by payment in kind, etc.
In addition to laying down conditions binding on the liable parent, the maintenance obligation to the child also determines property relations and the reasonable needs of the child, which primarily depends on his/her age and state of health. It also takes into account the manner in which the child is preparing for his/her future career, extracurricular activities, hobbies, etc. However, the principle is that the standard of living of the child should be identical to that of the parents. If the financial situation of the liable person so allows, the laying down of savings may also be considered to be reasonable needs of the child. When determining the scope of the maintenance obligations of the parents, the parent who is caring for the child and the extent to which that care is being provided is also taken into consideration.
Maintenance between spouses is granted in an amount that will ensure the same material and cultural standard for both parties, arising from the equal status of a man and a woman in the marriage.
Maintenance between divorced spouses is granted when a divorced spouse is incapable of supporting his/herself and this incapability originates from the marriage or in connection with it and it can legitimately be requested of the former spouse, particularly in view of the age or state of health of the divorced spouse at the time of the divorce or the termination of care of a child common to the divorced spouses. Maintenance is granted in a reasonable amount. When deciding on the amount, the length of the marriage prior to the divorce is taken into account, along with other requirements required under the law.
Maintenance for a pregnant mother is granted to cover the reimbursement of costs associated with the pregnancy and birth in a reasonable amount.
The court will grant maintenance for a registered partnership on the basis of a petition, taking into account requirements for the care of the common household. The amount of the maintenance obligation is determined to ensure that the material and cultural standard enjoyed by both partners is basically equal.
The maintenance obligation on dissolution of cohabitation of partners of the same sex may be determined on petition by a former partner who is not capable of supporting him/herself. He/she may petition the former partner to contribute reasonable maintenance depending on his/her abilities, possibilities and property owned. Should they fail to agree, the court shall determine maintenance on the basis of a petition by one of them. If one of the former partners, who did not contribute to the permanent breakdown of the partnership, is caused serious harm by the termination of the partnership, the court may award maintenance from the other former partner for a period of up to three years from the dissolution of the cohabitation in the same amount as the maintenance obligation that would have arisen in the event the cohabitation had not been dissolved.
Czech law does not recognise what is referred to as objectivised maintenance using tables, percentages etc. and neither is it bound by minimum or maximum maintenance. When making its decision the court will take into account the uniqueness of each specific case, such as the possibility of more than one maintenance obligation, increased costs for a handicapped child, etc. The Ministry of Justice only issues a table of recommended amounts: http://portal.justice.cz/Justice2/MS/ms.aspx?o=23&j=33&k=6223&d=315516.
Court decisions on maintenance are issued subject to changes in the situation. They can therefore be modified if the situation of the creditor or the liable party changes significantly.

**9 How and to whom will the maintenance be paid?**

Maintenance is paid in regular, recurring, monthly amounts, which are always payable one month in advance, unless otherwise decided by the court or unless the person liable for the maintenance agrees otherwise with the creditor. In very exceptional cases (e.g. where the liable parent only receives a seasonal income, is engaged in a high-risk business, etc.) the court may order that a sum of money be laid down (a deposit) to cover future maintenance. The court will then take further measures to ensure that individual payments, equivalent to the monthly maintenance payments, are made to the child from this sum. Maintenance must be paid either to the creditor or to the person who has the care of the creditor.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

Under Czech law, a petition can be submitted to the competent court for judicial enforcement or a proposal can be filed with the bailiff for execution proceedings. In general, the procedure for judicial enforcement or execution (including information on the particulars to be entered in the petition) is set out in the information document entitled ‘Procedures for the enforcement of judicial decisions’. Some specific details concerning the recovery of maintenance are provided below.

**Judicial enforcement**

The general court of a minor child (see the response to question no. 5 for the definition of the general court of a minor child) is competent to regulate and enforce a maintenance ruling for a minor child. The general court of the liable party (see the response to question no. 5 for the definition of the general court of the liable party) is competent to decide on other types of maintenance obligation, including maintenance for adult children.
In cases of enforcement of maintenance for a minor child, on a petition by one of the parties, the court will provide assistance in identifying the residence of the liable party. The court may also provide additional assistance to the creditor before ordering enforcement of the decision – for example by asking the liable person to provide information on whether and from whom he/she receives a wage or any regular income, or in which bank or payment institution he /she has his/her accounts and the numbers of these accounts, or by requiring the liable party to declare his/her assets. The court may also provide this assistance for types of maintenance obligation other than maintenance for a minor child.

**Execution proceedings**

A petition to commence enforcement proceedings may be filed with any Czech bailiff. A list of bailiffs is available from the website of the Chamber of Executors of the Czech Republic: http://www.ekcr.cz/seznam-exekutoru. When enforcing payment of maintenance for a minor child, the bailiff has no right to request that the creditor pay a reasonable advance for the costs of the execution. One of the possible methods of execution, in cases concerning the enforcement of maintenance payments for a minor child, is the suspension of the driving licence of the liable party.
If the maintenance obligation has not been fulfilled, in addition to the methods of enforcing maintenance referred to above, criminal charges may also be filed for suspicion of the criminal act of failing to pay mandatory maintenance. In the case of the crime of failure to pay mandatory maintenance, the Criminal Code states that a criminal act is committed by a person who fails, either intentionally or through negligence, to comply with his/her legal obligation to maintain or care for another for a period longer than four months. In such a case, criminal charges may be filed at any police station.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

General information on judicial enforcement or execution (including information on which assets can be subject to judicial enforcement or execution and on remedial measures available) can be found in the information document entitled 'Procedures for the enforcement of judicial decisions'.
The Civil Procedure Code states that unless rights are enforced within the limitation period they will become statute barred and the debtor will be under no obligation to make payment. However, if the debtor made payment after expiry of the limitation period, he/she may not demand reimbursement of monies paid. The right to maintenance is not limited but rights to recurrent performance may be subject to limitation. The length of the limitation period is generally set at three years. However, if rights have been recognised by a ruling by a public authority (for example, a court), the statutory bar will apply ten years after the date on which the ruling required performance. The right to maintenance does not expire after a specific period of time.
Maintenance may only be awarded from the date on which the judicial proceedings commence. However, child maintenance may also be awarded for a maximum period of three years prior to this date. Maintenance for an unmarried mother and reimbursement of costs associated with pregnancy and birth may also be awarded retrospectively, but not more than two years after the date of birth.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

Entities for the social and legal protection of children in the municipal authority of a municipality with extended powers are required to provide assistance in submitting claims on behalf of a minor child for maintenance and for enforcement of maintenance, including assistance in submitting a petition to the court.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

The law does not recognise such an option.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

A creditor may submit an application for assistance in the recovery of maintenance payments to the Office for International Legal Protection of Children in Brno (http://www.umpod.cz/).

**14.2 If so, how can that authority or private organisation be contacted?**

The applicant may contact the organisation using the details set out below:
Office for International Legal Protection of Children
Šilingrovo náměstí 3/4
602 00 Brno
Czech Republic
Tel.: +420 542 215 522
Fax: +420 542 212 836
E-mail: podatelna@umpod.cz
When first contacting the Office, the applicant should provide his/her full name and contact details (telephone or e-mail) as well as the name and date of birth of the child to which the question or request refers.
If the applicant is requesting the Office's assistance in the recovery of maintenance from abroad, an informal written request for assistance in the recovery of maintenance must first be submitted to the Office, along with a completed questionnaire, which can be downloaded in Czech from the Office's website: http://www.umpod.cz/vyzivne/postup-pri-vymahani-vyzivneho/. The request should include basic information concerning the child and the liable person and basic facts to explain why the applicant is requesting the recovery of maintenance. Copies of any documents, in particular court rulings establishing a maintenance obligation, should be attached to the request. The Office will then assess the possibility of recovering maintenance for the specific case and, if necessary, will send detailed instructions on how to proceed further in the matter.
Should the Office so request, additional documentation may have to be provided. Generally the judgement providing for a maintenance obligation will have to be submitted, together with a notarised translation into the language of the state from which the maintenance will be recovered, including orders for finality of judgement and execution. In cases where maintenance is to be recovered from a European Union Member State, the court will prepare an extract from the decision in accordance with Article 56 of the Regulation on Maintenance Obligation. A power of attorney for the government authority abroad, a certificate of study for the creditor, if he/she is over 15 years of age, or a certificate of living are also generally required. The local court for the place of residence of the applicant should assist him/her in obtaining a translation of the documents (normally the court that decided the matter in the first instance). The court will either give the completed documents to the applicant, or will send them directly to the Office. The Office will examine the documentation received and, provided all the requirements have been met, will submit a proposal to the foreign court or refer the matter for further proceedings to the competent foreign authority or organisation. The Office will inform the applicant at regular intervals of its actions, as well as the progress and outcome of the proceedings.
In the event maintenance is recovered, either by legal means or through voluntary payments by the liable person to the account of a foreign partner, these payments are generally sent to the Office's account once a month (for administrative, accounting and quantitative reasons) through an aggregate transfer payment. The Office's Economic Department forwards the payments to the creditor within one month, as requested by the creditor. In the event the creditor receives direct payments from the liable person abroad, he/she is required immediately to inform the Office of such payments. He/she is also required to inform the Office of any changes that might affect the proceedings (change of address, change in the care of the child, completion of the child's education, etc.).

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

An applicant for maintenance who lives abroad should contact the competent authority in that country, which will contact the Office for International Legal Protection of Children (see above for the Office's contact details).

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

On receipt of an application from another country, the Office for International Legal Protection of Children will take the following steps:
Consider whether the application meets all the requirements of the EU regulations and international agreements, or ask for additional documents.

Send a written appeal to the liable person in the Czech Republic and ask him/her to pay the maintenance debt and the regular maintenance amounts voluntarily.
If the liable person does not respond, the Office finds out his/her financial situation and files a motion for the recognition and enforcement of the order to the competent court in the Czech Republic. The Office represents the applicant (the creditor living abroad) in the proceedings and takes all the necessary actions to obtain the maintenance payments and to secure the transfer of the amounts recovered to the foreign country. The Office and the transferring authority abroad inform each other of the measures taken, as well as of the progress and outcome of the enforcement of the maintenance decision.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

Proceedings on matters concerning mutual maintenance obligations between parents and children are completely exempt from court fees. In other proceedings to determine maintenance, including its increase, the petitioner is exempt from court fees. This exemption also applies to enforcement proceedings or execution proceedings. The petitioner is not required to be represented by a lawyer in proceedings relating to a maintenance obligation. The services of the Office for International Legal Protection of Children are provided free of charge. The office will represent the petitioner (the creditor living abroad) in court proceedings, will take all actions necessary to secure payment of maintenance in his/her name and will ensure the transfer of the amounts recovered abroad.
If justified by the social and financial status of the petitioner, and provided the case is not arbitrary or a manifestly unsuccessful application or obstruction of rights, the court may exempt a party partly or wholly from the payment of court fees. If a representative has been appointed for a party who has been exempted from the payment of court fees, this exemption also applies, in the scope in which it was granted, to the cash expenses of the representative and to the cost of the representation. A party who has been exempted from the payment of court fees cannot be obliged to pay a deposit towards the costs of evidence or obliged to reimburse the state for costs it has incurred (i.e. witnesses, expert witnesses, interpreting, etc.). Costs incurred in connection with the fact that a party appears before the court speaking in his/her native language or communicates using communication systems for deaf or deafblind persons are borne by the state and no compensation may be sought for such costs.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

According to Act No. 359/1999 Coll., on the social and legal protection of children, as amended, when providing social and legal protection with respect to foreign countries, the Office for International Legal Protection of Children, which is the central body for the Czech Republic, will carry out the following tasks:
§ perform the tasks of the central government body in accordance with the Regulation on Maintenance Obligation
§ perform the role of the child's guardian
§ require reports on the situation of children who are citizens of the Czech Republic but do not permanently reside in the territory thereof, from relevant bodies and other legal entities and individuals upon the request of parents living in the Czech Republic or the social and legal protection authorities
§ mediate the delivery of personal documents and other deeds to foreign countries and provide documents and other deeds from foreign countries
§ cooperate with government authorities or other organisations of a foreign country similar to the Office, if they are duly authorised to perform social and legal protection activities in their country, and with other authorities, facilities and legal entities, where useful
§ assist in searching for the parents of a child, if the parent(s) live(s) abroad, family members and persons with a maintenance obligation, investigate the material and financial situation to determine maintenance, mediate the filing of motions aimed at enforcing the maintenance obligation, namely motions to regulate the maintenance obligation and upbringing and to determine paternity
§ provide for the translation of deeds needed to exercise competence in social and legal protection pursuant to international treaties and the directly applicable regulations of the European Union
For the purpose of exercising the Office's competence, the relevant bodies and other individuals and legal entities are required to provide the Office with any assistance requested in the necessary scope; the provisions of the Enforcement Regulations concerning mandatory assistance by third parties will apply appropriately. Mandatory assistance in the scope required will also be provided, for example, by the courts, the Police of the Czech Republic, banks, social security institutions, Labour Offices, operators of postal services, electronic service providers, insurance companies, the Ministry of Interior as regards the provision of information from records of residents and foreigners, etc.

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## Family maintenance - Germany

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

People obliged to pay maintenance:
children may have to pay maintenance to their parents

parents may have to pay maintenance to their children
one spouse may have to pay maintenance to the other spouse
(great-)grandchildren may have to pay maintenance to their (great-)grandparents
(great-)grandparents may have to pay maintenance to their (great-)grandchildren
an unmarried parent many have to pay maintenance to the other parent, if a child is in their care
a registered partner may have to pay maintenance to the other registered partner.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

There is no age limit for child maintenance: it must be paid as long as the child is dependent on it, unless the child is at fault. However, as soon as children have finished their education and training, they are usually expected to provide for themselves. German maintenance legislation generally privileges children who are minors over adult children who have completed their general education. The requirements imposed on the person liable for maintenance are stricter, and minors take priority over children who have reached full age.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

For a maintenance obligation to be recognised, the entitled party must normally apply to a court, the Youth Welfare Office (*Jugendamt*) or a notary, in order to obtain an enforceable title (*vollstreckungsfähiger Titel*) that allows a sum of money to be compulsorily collected.
If the claim is contested, it must be tried in court. However, the obligation to satisfy a claim can be recognised before a notary or the Youth Welfare Office
The scope of the authority of the Youth Welfare Office is more restricted than that of the notary: the Youth Welfare Office can record an obligation to maintain a child up to the age of 21, or a claim by a mother or a father arising from the birth of a child.
Disputes over maintenance claims are family law cases and are dealt with by the family court (*Familiengericht*). The proceedings are regulated by the Act on Procedure in Family Matters and Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit* – FamFG) and the Code of Civil Procedure (*Zivilprozessordnung* – ZPO).

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

According to Section 1629(1) of the Civil Code (*Bürgerliches Gesetzbuch* – BGB) the parents represent the child jointly; one parent may represent the child alone if he or she exercises parental custody alone or if he or she is authorised to take a decision alone under Section 1628 of the Civil Code. The general rule, therefore, is that parents may assert a claim on behalf of the child as the legal representatives of that child. However, according to the first sentence of Section 1629(2) of the Civil Code, the father and the mother are not permitted to represent the child whenever Section 1795 of the Code would prevent a guardian from representing the child owing to a conflict of interest. Among other things, this covers legal disputes between the child and a parent's spouse. In this case, a person referred to as an 'additional carer' (*Ergänzungspfleger*) must be appointed to act as the child's representative and assert the claim on his or her behalf. Maintenance claims are an exception to the general rule. According to the second sentence of Section 1629(2) of the Civil Code, if the parents share joint parental responsibility for a child, then the parent who has care of the child may bring a maintenance claim relating to the child against the other parent. Section 1629(3) of the Civil Code modifies this provision in cases where the parents of the child are still married to each other or are registered partners but are living apart, or there are divorce/separation proceedings pending between them. In this case, a parent is permitted to assert the child's maintenance claims against the other parent only in his or her own name. This is to avoid making the child a party to divorce/separation proceedings between the parents.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

The courts with jurisdiction in maintenance cases are the family courts (*Familiengerichte*), which are divisions of the local courts (*Amtsgerichte*). Which court has jurisdiction in the particular place is determined by Section 232 of the Act on Procedure in Family Matters and Matters of Non-contentious Jurisdiction.
As long as there are matrimonial proceedings pending, the court with geographical jurisdiction is, as a rule, the court that is or was the court of first instance for the divorce proceedings. Otherwise, geographical jurisdiction is often determined according to the usual place of residence of the defendant. A different situation applies in proceedings that concern maintenance obligations towards a minor or towards a child treated as a minor. Here the court with jurisdiction is the court of the usual place of residence of the child, or of a parent who is authorised to act on behalf of the child. However, this does not apply if the child or a parent is usually resident outside Germany.
A **child** who wishes to bring an application for maintenance against both parents may do so before the court that would be competent to deal with an application against one of the parents only.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

In principle, parties to maintenance cases have to be represented before the court by a lawyer. However, representation by a lawyer is not necessary when applying for an interim order (*einstweilige Anordnung*). Nor does a child have to have a lawyer if the Youth Welfare Office is providing assistance and represents him or her for the purpose of asserting a maintenance claim.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Legal costs charged in respect of court maintenance proceedings take the form of fees or expenses. The amount of these costs is based on the value of the claim, the course of proceedings and the specific circumstances of the case.
The costs are payable in the first place by the party ordered to pay them by the court in its judgment. In principle that will be the unsuccessful party.
Applicants who owing to their personal and economic circumstances are unable to meet court costs in full, or who can pay only in instalments, are entitled to claim legal aid (*Verfahrenskostenhilfe*) to help cover the costs of the court maintenance proceedings. However, the intended legal action or defence must afford a reasonable chance of success and must not appear frivolous. Depending on the income and assets of the applicant, legal aid is provided to cover the court costs and the costs of the party's own lawyer in full or in part, but not the costs of the opposing lawyer in case of failure.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

Maintenance must be paid regularly. The level of the payment is determined by the requirements and needs of the party entitled to maintenance and the ability to pay of the party liable for maintenance. The higher regional courts (*Oberlandesgerichte*) have developed tables and guidelines in this respect which assist in determining a flat rate for the items to be taken into account. The Düsseldorf table is regularly used as a basis for calculating the level of child maintenance.
If there is a change in the actual circumstances on which court orders are based, these orders can be modified at the request of the party entitled to maintenance or the party liable for maintenance. In the case of a minor, child maintenance can also be index-linked in accordance with the first sentence of Section 1612a(1) of the Civil Code, in which case it is stated as a percentage of the minimum level of maintenance in force at any given time. The minimum level of maintenance is regulated by 1612a(1), sentences 2 and 3, of the Civil Code, and increases on a three-bracket scale as the child gets older. If a court order contains an index-linked maintenance payment, the order does not have to be modified whenever the child reaches a new age bracket.

**9 How and to whom will the maintenance be paid?**

In principle, maintenance must be paid monthly in advance to the party entitled to maintenance or, in the case of minors, to the parent looking after them or to the party otherwise entitled to receive payment.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

Established maintenance claims can be enforced by way of compulsory enforcement (*Zwangsvollstreckung*). Compulsory enforcement is applied in accordance with the ordinary rules.

However, the obligation imposed on the party liable for maintenance is reinforced by the fact that a breach is punishable under criminal law.

A person who is in breach of a maintenance obligation can be sentenced to up to three years' imprisonment or ordered to pay a fine. If a custodial sentence is unavoidable, the court can suspend the sentence and order the convicted party to fulfil his or her maintenance obligations. The court will then revoke the suspension of the sentence if the convicted party commits a gross or persistent breach of the order, and thus gives grounds to fear that he or she may commit further criminal offences and in particular a breach of maintenance obligations. In the case of first-time offenders, by contrast, the public prosecutor's office may provisionally refrain from bringing a charge, or the court may provisionally halt the criminal proceedings, provided that the accused is at the same time instructed to comply with maintenance obligations of a stated amount.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Movable property can be attached (*Pfändung*) by the bailiff (*Gerichtsvollzieher*) (Section 808(1) of the Code of Civil Procedure). The cases in which this form of attachment is allowed are restricted by Sections 811–812 of the Code of Civil Procedure. The items listed in Section 811 of the Code are exempt. This does not apply to goods that have been purchased subject to reservation of ownership pending payment (*Eigentumsvorbehalt*) as provided in Section 811(2) of the Code. Sections 811a and 811b of the Code allow items of value that are classed as exempt under Section 811 to be replaced by items of lower value that perform the same function.

The debtor's residence may be searched without his or her consent only on the basis of a search warrant issued by a judge (Section 758a of the Code of Civil Procedure).The attachment of claims is handled by the court in charge of enforcement proceedings.

The attachment of earned income is subject to the exemptions set out in Sections 850 *et seq.* of the Code of Civil Procedure. How much of the debtor's earned income is exempt is determined not just by the debtor's income level, but also by how many people are legally entitled to receive maintenance from the debtor. As an aid to calculation, a table of exemption limits has been drawn up and included as an annex to Section 850c of the Code, which is used for determining the exemption limits. This table is reviewed at regular intervals and, where necessary, the level is adjusted.

If enforcement is carried out on the basis of a maintenance claim or a claim arising from a wrongful act (*unerlaubte Handlung*) intentionally committed, Sections 850d and 850f of the Code of Civil Procedure allow the court in charge of enforcement proceedings, on application by the creditor, to set a different level of exemption from attachment. The debtor may likewise apply to have a different level set if he or she has special personal needs in accordance with Section 850f(1) of the Code of Civil Procedure.

An account held by the debtor can be exempted from attachment in accordance with Section 850k of the Code of Civil Procedure. Such an account is known as an attachmentexempt account, or 'P account' (*Pfändungsschutzkonto*, or *P-Konto*). It is intended to ensure a reasonable standard of living for the debtor and his or her dependants. In the first instance, the P account automatically protects balances up to the level of the basic exemption, which currently stands at EUR 1 178.95 per calendar month. This basic exemption can be increased under certain circumstances, e.g. if the debtor has further maintenance obligations. See the details on amounts exempted from attachment here: http://www.bmjv.de/DE/Themen/FinanzenUndAnlegerschutz/ZwangsvollstreckungPfaendungsschutz/Pfaendungsschutzkonto.html. Child benefit and certain social security payments enjoy additional protection. To obtain this kind of protection, all the debtor generally has to do is provide the bank with evidence. In specific cases, when the debtor has special needs owing to illness, the amount of the account balance that is to be exempted from attachment can be adjusted individually by the court in charge of enforcement proceedings.

The regular limitation period of three years applies to maintenance claims (Section 195 of the Civil Code), with the period beginning at the end of the year in which the claim arose and the entitled party was made aware of it (Section 199(1) of the Civil Code). A separate limitation period of 30 years applies only to arrears in established maintenance (Section 197(1) point 3 of the Civil Code): the period begins to run as of the date of the binding decision of the court or the establishment of the enforceable title, or as stated for the records (Section 201(1) of the Civil Code).

The limitation of maintenance claims can be suspended. Suspension means that the period when the limitation is suspended is not included in the limitation period (Section 209 of the Civil Code). This is the case for child maintenance until the child reaches the age of 21 (Section 207(1), sentence 2, point 2(a) of the Civil Code).

If a judicial act of execution is undertaken or applied for, the regular three-year limitation period recommences (Section 212(1), point 2 of the Civil Code). This prevents the limitation of established future maintenance claims.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

The maintenance order is an ordinary enforceable title (*Vollstreckungstitel*) for a monetary claim, which means that, in principle, the party entitled to maintenance must abide by the ordinary rules of enforcement and enforce the claim themselves.

However, the Youth Welfare Office can help with collection if it is assisting the child as per Section 1712 of the Civil Code. It can assist a child on application by a parent who has sole responsibility for the child or, if the parents have joint responsibility, on application by a parent who has care of the child.

A distinction must be drawn between this scenario and another kind of case: a party entitled to maintenance may receive certain social security payments that meet a need that would otherwise be covered by the maintenance payment. If the recipient of such social security payments has an outstanding maintenance claim against a party who is liable for maintenance, the claim for maintenance is as a rule transferred to the responsible public authority, which can then assert the maintenance claim in its own name.

In particular cases, where a child is brought up by a single parent and the other parent does not pay any cash maintenance, entitlement for payments arises under the Maintenance Advances Act (*Unterhaltsvorschussgesetz* – UVG). The Maintenance Advances Office (*Unterhaltsvorschusskasse*) then collects the maintenance claim that has been passed on to it.

Additionally, if no maintenance is paid by the party liable for maintenance, and social assistance (*Sozialhilfe*) has to be paid (assuming that the other requirements for social assistance are met), maintenance claims are passed on to the social assistance provider (in the same way as the advance payments mentioned above), and the social assistance provider can then enforce them. In the case of the basic job-seekers' benefit (*Grundsicherung für Arbeitssuchende*), the transfer takes place only upon written notice from the payment provider to the party liable for maintenance.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Payments under the Maintenance Advances Act and the payments of social assistance and basic job-seekers' benefit referred to in Question 12 are independent social security payments with a defined scope, and are not maintenance payments in the strict sense. They are paid directly to the claimant by the competent public authorities. They do not depend on whether the maintenance claim can or cannot be collected. The public authorities to which the maintenance claim has been passed on can enforce the claim in their own name.

Unlike payments under the Maintenance Advances Act and payments of social assistance and basic job-seekers' benefit, the assistance with claims given by the Youth Welfare Office does not create a separate entitlement to payment by the responsible public authority. In this case, the role of the public authority is restricted to helping the entitled party to assert and enforce the claim for maintenance.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

If a party entitled to maintenance wishes to enforce a maintenance claim against a liable party who is resident abroad, he or she can seek assistance from the Federal Office of Justice (*Bundesamt für Justiz*) in Bonn. The Federal Republic of Germany has appointed the Federal Office of Justice to serve as the Central Authority for cross-border maintenance proceedings.

**14.2 If so, how can that authority or private organisation be contacted?**

Applications that are made under Article 55 of the EU Maintenance Regulation, Article 9 of the 2007 Hague Convention on Maintenance or Article 2(1) and 2 (2) of the 1956 UN Convention by an entitled party who is resident in Germany must be submitted to the requested Central Authority by sending them to the Federal Office of Justice in Bonn. For more information, see: https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/AU/AU_node.html

The contact details of the Central Authority are:

Bundesamt für Justiz
Referat II 4
53094 Bonn
Germany
E-mail: auslandsunterhalt@bfj.bund.de
Tel.: +49(0)228 99410 6434
Fax: +49(0)228 99410 5202

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

Entitled parties who have residence abroad may apply to the Central Authority of their State of residence under Article 55 of the EU Maintenance Regulation, Article 9 of the 2007 Hague Convention on Maintenance or Article 2(1) and 2(2) of the 1956 UN Convention.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

These applications must be submitted via the Central Authority in the country of residence. From there, they are forwarded to the Central Authority of the Federal Republic of Germany (see 14.2).

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Not applicable.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

The fees for maintenance proceedings are as a rule payable in advance. Within the area covered by the Maintenance Regulation, legal aid is granted in accordance with Articles 44 to 47 of the Regulation. The obligation to pay in advance does not apply under certain circumstances, particularly if legal aid is granted.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Germany has provided its Central Authority – the Federal Office of Justice (*Bundesamt für Justiz*) – with the necessary powers to ensure the effectiveness of the measures described in Article 51.

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## Family maintenance - Estonia

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Under the Estonian Constitution (*põhiseadus*), a maintenance obligation is a family's duty to provide for its members who need assistance.

A maintenance allowance is an amount to be paid for maintenance, which is generally remitted periodically in the form of money. At the request of an entitled person, a court may in some cases order a maintenance obligation to be paid as a one-time sum. A person obliged to pay a maintenance allowance to a minor child may, if there is a valid reason, demand to be allowed to perform the maintenance obligation in a non-monetary manner.

Generally, the obligation to pay a maintenance obligation to a person needing assistance rests on a person's ascendants and descendants of the first degree – in other words, an adult child and parent are mutually bound to provide for each other. A person's ascendants of the second degree have a maintenance obligation towards their minor descendants. Spouses are also obliged to mutually maintain their family by means of their work and property, which includes activities aimed at covering the costs of a joint household and at satisfying the usual and extraordinary needs of either spouse and their children. The obligation to provide a maintenance allowance for a person who needs assistance may also extend to a divorced spouse or a person to whom the person is not married but with whom he or she has a child.

Maintenance is paid in the form of an allowance by a parent of a minor child, particularly if the parent does not live with the child or is not involved in raising the child. The divorced spouse of a person who needs assistance is obliged to provide maintenance primarily if, after the divorce and owing to the responsibility of caring for a child, the person is not capable of providing for himself or herself or if he or she needs assistance due to age or a health condition. A person who has a child with a person who needs assistance is obliged to provide maintenance for 8 weeks before and 12 weeks after the birth of the child and also later, if the person needs assistance as a consequence of a health problem caused by raising the child, pregnancy or childbirth.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

The age of majority is 18, and a person under the age of 18 is a minor. A minor child is entitled to benefit from a maintenance allowance, and it is primarily the child's parents who bear equal responsibility for supporting their child. A child who has turned 18 and is continuing to study under a basic or secondary school curriculum at a basic school, upper secondary school or vocational educational institution or completing a higher education degree at a university is also entitled to benefit from a maintenance obligation, but only until he or she turns 21. The basis for calculating the maintenance allowance for minors differs from that for adult children. When calculating the maintenance allowance for adult children, the extent of the maintenance is determined on the basis of the entitled person's needs and usual way of life, but it is assumed that adults are capable of earning at least part of their maintenance themselves. A person becomes entitled to claim maintenance only if, having reached the age of majority, they do not have the means to support themselves and, on account of studies or any other valid reason, they cannot be expected to secure an income to meet their needs.

Adult children must independently apply to the courts once again if they wish the allowance to continue to be paid after they have reached the age of majority and if the obligation to pay the allowance has been terminated on the basis of a prior court judgment.

Other ascendants or descendants who are not capable of supporting themselves are entitled to receive maintenance if it is determined that they need assistance.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

A parent of a minor child can be required to perform a maintenance obligation. If the parent does not voluntarily pay maintenance, an application can be lodged with a court for a maintenance allowance to be paid. To apply for maintenance, either a petition for application of the expedited procedure in matters of a payment order regarding the maintenance allowance for the child (*maksekäsu kiirmenetluse avaldus lapse elatisnõudes*) or a statement of claim (*hagiavaldus*) (maintenance allowance action (*elatishagi*)) should be submitted to the court. No state fee is charged for these when claiming a maintenance allowance for a minor child.

The expedited procedure in matters pertaining to a payment order is a simplified procedure where payment of a maintenance allowance can only be ordered if the allowance is claimed for a minor child, the name of the parent obliged to pay maintenance appears on the child's birth certificate, the allowance does not exceed 1.5 times the minimum maintenance rate (see question 8) per month and the other parent does not challenge the payment of the maintenance allowance. If the conditions for submitting the payment order are not met, a statement of claim must be filed with the county court (*maakohus*) of the residence of the child to obtain a maintenance allowance.

More details about the expedited procedure in matters of a payment order in a claim for a maintenance allowance for a minor child are available here. The form for a statement of claim for payment of child maintenance is available here.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

Minor children are entitled to receive maintenance. Insofar as minors have limited active capacity, the legal representative of the child – the parent with legal custody – is the one who files the statement of claim with the court on behalf of the child. If the child has been appointed a legal guardian, the action is to be filed by the child's guardian in the capacity of the child's legal representative.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

Petitioning a court to compel a parent to perform a maintenance obligation with regard to a minor child is dealt with as a maintenance matter. In a maintenance matter, the statement of claim must be submitted to the county court of the residence of the child. If the child does not reside in Estonia, the action is filed according to the respondent's residence. If the respondent does not reside in Estonia, the action is filed according to the claimant's residence. Maintenance may also be requested under the expedited procedure in matters pertaining to a payment order (see the reply to question 3).

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

To seek child maintenance in a court, it is necessary to file an action for which professional legal aid or the services of an intermediary are not necessarily required. The court orders the payment of maintenance as of the date on which the action was filed, but the court may also, on the basis of the action, order that maintenance be paid retroactively up to one year before the action was filed.

The form for a statement of claim for payment of child maintenance is available here.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

No state fee is charged for an action filed to enforce a maintenance obligation with respect to a minor child or for review of a petition for application of the expedited procedure in matters of a payment order in a claim for child maintenance.

It is possible to seek state legal aid or procedural aid to cover procedural costs.

In the case of state legal aid, a person is appointed a lawyer by the Estonian Bar Association (*Eesti Advokatuur*). The role of the lawyer is to represent and provide advice to the person in the proceedings. State legal aid is available to persons who due to their financial status are unable to pay for expert legal services at the time that they need the legal aid or are able to do so only in part or in instalments, or whose financial status would make it impossible to subsist after paying for the legal services. Receiving state legal aid does not release the person from the obligation to bear other procedural expenses.

More detailed information regarding state legal aid is available here.

Applications for state procedural aid to cover procedural costs may be made by persons who are unable to pay those costs due to their financial status or who are only able to pay them in part or in instalments. There must also be sufficient reason to presume that the planned participation in the proceedings will be successful.

The application form for procedural aid for a natural person and the notice regarding the personal and financial status of the applicant and family members is available here.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

A court may order that a fixed or variable amount be paid as a maintenance allowance to a minor child, specifying the basis for calculating the amount of maintenance. Courts generally order that the maintenance be paid as monthly payments.
Up until the end of 2021, the minimum maintenance was dependent on the minimum wage. The monthly maintenance for one child could not be less than half of the minimum monthly wage set by the Government of the Republic (the minimum allowance was thus EUR 250 per child in 2018, EUR 270 in 2019, and EUR 292 in 2020 and 2021).
As of 1 January 2022, the amount of the minimum maintenance no longer depends on the minimum wage in force. The amount of maintenance is determined by the court according to the needs of the child, the financial capacity of the parents, any benefits received, and the number of minor children who are part of the in the family. The amount used as the basis is one half of a child's average monthly maintenance cost (the base amount of the maintenance is EUR 209.20, which is adjusted on 1 April each year in the light of the change in the consumer price index over the previous year).
The amount of maintenance is determined taking into account the following circumstances: **Income of the obligated parent.** As a rule, 3% of the average monthly gross wage in Estonia for the preceding calendar year is added to the base amount. The amount to be added is recalculated on 1 April each year.
**Number of children receiving maintenance in the same family.** Taking into account the fact that raising several children at a time can result in modest cost savings (re-use of furniture, clothes, toys, etc.), the amount of maintenance, starting from the second child, is 15% lower than the amount of maintenance for the first child. The amount of maintenance is not reduced in the case of multiple-birth children or in the case of children born more than three years apart.
**Family allowances.** Child allowance and, in accordance with the version of the Family Law Act (*perekonnaseadus*) which entered into force on 1 February 2023, half of the allowance for families with many children are taken into account when determining the amount of maintenance. If these allowances are received by the person claiming maintenance, one half of the allowance is deducted from the amount of maintenance for each child. If these allowances are received by the person paying maintenance, however, this amount is added to the maintenance. When issuing the maintenance order, the allowance for families with many children is also calculated in accordance with the amendment, even if it is not paid solely for common children of the same spouses. Therefore, in the case of a blended family with two children from a previous relationship and a parent has had more children from the new relationship, as a result of which the family becomes entitled to receive an allowance for families with many children, half of that allowance is taken into account when calculating the maintenance allowance. This is split equally between the parent claiming maintenance and the parent paying the maintenance and further divided by the total number of children in the family for which the family is paid the allowance for families with many children.
**Shared residence of the child.** If a child stays with the parent paying maintenance for at least seven twenty-four hour periods per month on average over a year, the amount of maintenance is reduced in proportion to the time spent with the obligated parent. Thus, if the child stays with each parent for an equal period of time, maintenance can be claimed only on the grounds of the child's greater needs, a significant difference in the parents' income or an unequal distribution of child-related costs between the parents.
More detailed information and a maintenance calculator are available here.
Amounts set by court decisions made before 1 January 2022 do not decrease automatically. If, pursuant to a court decision, a parent is obliged to pay maintenance to a minor child at the current minimum rate or at one half the minimum monthly wage, that amount will be 'frozen' at the level of 2021 (i.e. EUR 292 per month) and, as a consequence, the amount of maintenance will no longer increase in the event of a further increase in the minimum wage.
If, pursuant to a court decision handed down prior to 1 February 2023, a parent is obliged to pay a variable amount of maintenance to a minor child and the amount of maintenance depends on fluctuations in the amount of the allowance for families with many children, the amount of maintenance determined on the basis of the court decision is calculated on the basis of Section 101(5) of the version of the Family Law Act in force as of 1 February 2023.
A court may increase and, if there is a valid reason to do so, also reduce the amount of the minimum maintenance. The minimum maintenance calculated by means of a formula laid down in law may be increased on the basis of:
the actual needs of the child;
the income of each parent;
the actual distribution of child-related costs between the parents.
If the obligated parent's income is higher than the average, the base amount of maintenance may be increased by, for example, 3% of the actual income of the obligated parent instead of the average monthly gross wage. Maintenance can be reduced only for a valid reason. Valid reasons may include a parent's incapacity for work or a situation where a parent has another child who would be financially less secure than the child receiving maintenance if minimum maintenance were ordered.
If a change is made to the amount of maintenance, this generally takes effect only as of the decision being taken – i.e. outstanding maintenance arrears cannot be changed.
The obliged person may, if there is a valid reason, demand to be allowed to provide maintenance in some other manner. Parents may by mutual agreement come to a detailed arrangement as to how the maintenance obligation with respect to a child is to be performed, and determine how and at what intervals maintenance is to be provided.

**9 How and to whom will the maintenance be paid?**

In general, maintenance is paid as a periodic sum of money. The person obliged to perform a maintenance obligation in respect of a minor child may, if there is a valid reason, demand to be allowed to provide maintenance in some other manner. Maintenance is paid in the form of a maintenance allowance by a parent of a minor child, particularly if the parent does not live with the child or is not involved in raising the child. Maintenance is paid in advance for each calendar month. Although the recipient of the maintenance is the child, the maintenance must generally be paid to the other parent. Maintenance may be paid directly to the child if the parents have so agreed or there is a court decision to this effect.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If a court judgment ordering maintenance has entered into force or is subject to immediate execution but the other parent fails to comply, a bailiff should be contacted. If the debtor does not make the payments indicated in the judgment at the required time, the bailiff will, on the basis of petition by the person who took measures to secure the action, arrange for the debtor's assets to be seized. Seizure of the debtor's assets requires that the court judgment be submitted to the bailiff accompanied with an application for enforcement. Information about the debtor and if possible his or her assets (residence, contact details, known information regarding assets) should be indicated in the application for enforcement. If the petitioner wishes that the bailiff use all opportunities set out in legislation for collecting the debt, it should be noted in the application for enforcement that the petitioner is making a claim for payment on the debtor's registered immovable property, movable property and rights of claim. In enforcement proceedings, child maintenance has priority over other claims, and in order to satisfy a claim for maintenance it is possible to seize assets in greater amounts and indefinitely suspend by a court ruling the following rights and the validity of the following authorisations: hunting rights, the right to drive power-driven vehicles, weapons permits and acquisition permits for weapons, the right to drive recreational craft and personal water craft, fishing cards.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Persons are released from a maintenance obligation to the extent they are unable, in light of their other obligations and their property status, to provide maintenance to another person without harming their own usual maintenance. In spite of the above, parents are not released from the maintenance obligation in respect of their own minor children. A court may also release an obliged person (debtor) from a maintenance obligation, limit the time period for performing the obligation or reduce the amount of maintenance if it is extremely unfair to demand that the obligation be performed, for example if the person entitled to receive maintenance has developed a need for assistance due to their own ill-advised actions.
Compensation for damage due to non-payment of maintenance and failure to perform an obligation can be demanded retroactively for up to a maximum of one year before a maintenance suit is filed in court. The limitation period for payment of maintenance as a maintenance obligation is ten years for each individual obligation. The limitation period begins at the end of the calendar year in which the claim corresponding to the obligation becomes collectible. A maintenance obligation is a personal obligation that expires on the death of the entitled or obliged person; exceptions apply with regard to advances and offset amounts.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

In the case of cross-border maintenance disputes, the central authority, i.e. the International Judicial Cooperation Division (*rahvusvahelise justiitskoostöö talitus*) of the Criminal Policy Department (*kriminaalpoliitika osakond*) in the Ministry of Justice (*Justiitsministeerium*), can provide assistance.
State legal aid can be applied for when filing a maintenance claim with a court. There are no separate organisations or authorities that provide assistance in the case of domestic maintenance claims.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

As of 1 January 2017, a parent raising a child has the right to apply for a state maintenance allowance for the duration of judicial proceedings and enforcement procedures from the Social Insurance Board (*Sotsiaalkindlustusamet*). This maintenance allowance is temporary aid from the state for a parent who is raising and providing for a child alone. The state pays maintenance on behalf of the parent who is not paying maintenance, recovering the money from the non-paying parent at a later date. The condition for receiving the state maintenance allowance is that the person must petition a court for payment of maintenance either under the expedited procedure in matters of a payment order or in an action.
The maintenance allowance guarantees a child up to EUR 100 per month.
More information on applying for the allowance is available here.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

In order to obtain maintenance under Council Regulation (EC) No 4/2009, assistance can be obtained from the International Judicial Cooperation Division of the Ministry of Justice.
To apply for maintenance in another country, an application for initiating a maintenance matter should be submitted to the International Judicial Cooperation Division at the Estonian Ministry of Justice and to the competent authority of the other country. A copy of the child(ren)'s birth certificate or court judgment establishing paternity should be appended. If paternity has not been established, this should be noted in the application sent to the other country.
The application form is available here.

**14.2 If so, how can that authority or private organisation be contacted?**

The International Judicial Cooperation Division at the Estonian Ministry of Justice can be contacted by telephone at +372 6 208 183 and +372 7153443 or by e-mail at central.authority@just.ee and keskasutus@just.ee.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

A claim from an applicant residing in another country will receive best consideration by contacting the appropriate authority in the country of residence, which in turn will contact the central authority at the Estonian Ministry of Justice.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

See the reply to question 14.1.

**16 Is this Member State bound by the 2007 Hague Protocol?**

The Hague Protocol of 2007 has been ratified by the European Union, of which Estonia has been a Member State since 1 May 2004.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

See the reply to question 16.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

In cross-border cases within the European Union involving applications for maintenance, state legal aid and state procedural aid is available under the Regulation. This ensures that the person is represented in the proceedings by someone with appropriate legal expertise and that the person has access to justice by way of covering procedural costs. The rules governing state legal aid and procedural aid note that national law is applied unless stipulated otherwise in Council Regulation (EC) No 4/2009.
In principle, the same guarantees that apply to persons residing in Estonia also apply to persons living in other EU Member States. In the case of cross-border maintenance cases, legal aid and advice as well as state legal aid and procedural aid are available from the central authority, i.e. the International Judicial Cooperation Division of the Ministry of Justice, in accordance with Council Regulation (EC) No 4/2009 and, as regards the parts not covered by the Regulation, on the basis of national law.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

A central authority has been established for cross-border judicial cooperation – the International Judicial Cooperation Division of the Ministry of Justice. Therefore to obtain maintenance under Council Regulation (EC) No 4/2009, assistance can be obtained from the International Judicial Cooperation Division of the Ministry of Justice, which conducts proceedings concerning international applications for legal aid.

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# Family maintenance - Ireland

**1 What do the concepts “maintenance” and “maintenance obligation” cover according to the law of Ireland? Which persons have to pay a “maintenance allowance” to another person?**

An order for maintenance between spouses requires either of the spouses concerned to make to the other spouse such periodic payments or lump sum payments for his or her support and, where appropriate, to make to such person as may be specified in the order such periodic payments for the benefit or such dependent members of the family, if any.

An order for maintenance of a dependent child requires either of the parents concerned to make to the other parent, or to another person who has care and custody of the child, such periodic payments or lump sum payments as may be specified in the order for the support of the child.

A maintenance obligation is a requirement to provide financial support for a person and, where such an obligation is enforced through the courts, to discharge the obligations of any court order pertaining to maintenance.

Maintenance is payable by the following categories of persons:

Parents in respect of their children: Yes

Children to their parents: Generally No

A divorced spouse to the other spouse: Yes

Other:

Civil partners and Co-habitants for the purposes of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

Unmarried parent to the carer of their child

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

A dependant child under the age of eighteen years, a dependant child under twenty-three in full time education or a child of any age who is dependant due to disability.

Parents have an obligation to support their children financially so that their day to day and occasional financial needs can be met.

Children generally cannot be held to pay maintenance to their parents save in the rare and extraordinary circumstance whereby property rights held upon trust are varied upon divorce and transferred to the possession of children.

A divorced spouse can be held to provide maintenance to the other spouse where the applicant spouse has demonstrated that the other has failed to adequately provide for them in view of the circumstances.

A civil partner or cohabitant for the purposes of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 can be held to provide maintenance to the other civil partner or cohabitant where the applicant civil partner or cohabitant has demonstrated that the other has failed to adequately provide for them in view of the circumstances.

Parents, whether married or not, can apply to the court for maintenance from the other parent in respect of their children. So too can a legal guardian, health board or any person holding legal status in relation to a dependant child.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

Normally application is made to the Court by the dependant by way of civil legal action against the other person. In relation to child maintenance, the application is usually made by the parent or other person who has care and custody of the child.

Information on procedures applying to maintenance applications generally is available on the Family Law section of the Courts Service web site (www.courts.ie).

**4 Who is considered to be the applicant in a maintenance case? Can a request be made on behalf of a relative, (if yes, what grade), or a child?**

Usually the applicant in a maintenance case is the parent who is caring for the child/children. Applicants can include ex-spouses as well as children in their own right . Parties require sufficient interest in a case to give them standing, or locus standi, to make a request to obtain maintenance. In the case of a relative or a close relation it would be necessary that the applying person would have certain legal powers to manage the affairs of the relative or close friend such as power of attorney. Parents or legal guardians are able to apply for maintenance on behalf of a child under the age of majority.

**5 If I plan to bring the case to court, how does I know which court has jurisdiction?**

The District Court has jurisdiction to order maintenance for a child to the maximum amount of €150 per week from either parent and to order maintenance to a spouse/civil partner to the maximum amount of €500 per week. If greater amounts are sought it is necessary to apply to the Circuit Court or the High Court. Where matrimonial proceedings have already been commenced in the Circuit Court or the High Court, it is necessary to make applications there regardless of the amount sought.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, specific organisation or government department (central or local) etc.)? If not, which procedures?**

No. An application can be made in person should the applicant choose not to instruct a solicitor. Civil Legal Aid is available to those family law litigants who require it according to their means.

**7 Does I have to pay fees to bring a case to court? If so, how much are they likely to be? If the financial means of the plaintiff are insufficient, can he/she obtain legal aid to cover the costs of the procedure?**

All Family Law proceedings in Ireland are exempt from court fees. The cost of obtaining legal advice and representation can be varied; however, civil legal aid is available to those on a means-dependant basis.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised if living costs or family circumstances change? If yes, how? Can maintenance be claimed and backdated to before the date of application?**

The District Court has jurisdiction to order maintenance for a child to the maximum amount of €150 per week from either parent and to order maintenance to a spouse/civil partner to the maximum amount of €500 per week. If greater amounts are sought, it is necessary to apply to the Circuit Court or the High Court. When determining maintenance, the court will look to the reasonable needs of the maintenance creditor (the person entitled to the maintenance) against the ability of the maintenance debtor (the person directed to pay the maintenance) to pay. Parties are able to make an application to the court so as to revise any maintenance order in view of any changed financial circumstances of the parties.

A Maintenance Order shall commence on the date that is specified in the order being a date which may be before or after the date on which the order is made but which shall not be earlier that the date of the application for the order

In Divorce and Judicial Proceedings in the Circuit or High Court maintenance can only be backdated to the date of the application at the earliest

**9 How and to whom will the maintenance be paid?**

Maintenance is usually by direct payment to the maintenance creditor. However, creditors have a right to have maintenance paid through the court office. Where the court considers it necessary, the maintenance debtor's wages or salary can be attached where their employer can be directed to deduct payments for transmission to the creditor.

Maintenance is paid to the person entitled to maintenance and to those who administer the maintenance for their benefit such as a parent or legal guardian.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

Where a maintenance debtor does not pay the maintenance creditor can initiate proceedings in the court where the maintenance order was made or in the District Court, depending upon the remedy sought.

The court can make an order attaching the earnings of the maintenance debtor, as discussed in point 1 above.

Should this remedy fail, the court can direct that the maintenance debtor pay the sum owed to the maintenance creditor. Where the maintenance debtor does not comply, the court may order that moneys due to the defaulter from another person be paid instead to the maintenance creditor. It may also order the sale of goods belonging to the debtor to satisfy sums outstanding.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system?**

The District Court is the venue for enforcement of orders made in other Member States. It has powers in respect of contempt (section 9A and 9B of the 1976 Act) but only in respect of orders actually made by the District Court. It does not have power to commit for contempt an order made elsewhere. The District Court is effectively restricted to making an Attachment of Earnings Order (where appropriate) orders for distress or garnishee orders (rarely appropriate)

**12 Is there an organisation or an authority which can help me to recover maintenance?**

It is incumbent upon each maintenance creditor to make application to the court for assistance in the recovery of maintenance. While other remedies are available, such as through mediation, the courts have the appropriate and lawful jurisdiction to remedy non-payment of maintenance.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

No. The debtor only is liable for maintenance, to be paid directly by him or her or deducted at source from his/her salary.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this member state?**

Regulation 4/2009, commonly referred to as the Maintenance Regulation, covers cross-border maintenance applications arising from family relationships. It establishes common rules for the entire European Union and aims to ensure the recovery of maintenance claims even where the debtor or creditor is in another EU country.

The UN Convention on the Recovery Abroad of Maintenance Payments (the New York Convention) was brought into effect in Ireland in November 1995 by the Maintenance Act 1994. This Convention is designed to facilitate the recovery of maintenance in contracting states by a person living in one jurisdiction against a person living in another.

Both instruments establish a network of Central Authorities in each contracting state and applicants/creditors/petitioners can forward their applications to a Central Authority who will forward it to the relevant competent Court and, in some instances, will organise legal assistance. The contact details for the Irish Central Authority for the Recovery of Maintenance from Abroad are as follows:

Department of Justice,
51 St Stephen's Green,
Dublin 2.
Phone number +353 (1) 602 8202
Email mainrecov@justice.ie
No Fax available

A petitioner can obtain the assistance of the District Court Clerk in respect of District Court Orders. Petitioners can also seek the assistance of legal representation. They may be eligible for legal aid and should contact their local law centre in this regard. Finally the petitioner can seek the assistance of FLAC (Free Legal Advice Centre) an independent, voluntary organisation that operates a network of legal advice clinics throughout the country. These clinics are confidential and free of charge.

In cross-border cases where the maintenance debtor is living in another jurisdiction, the petitioner can make an application via the Central Authority for Maintenance Recovery located in the Department of Justice and Equality.

**14.2 If so, how can that authority or private organisation be contacted?**

The relevant court office or organisation can be contacted by telephone, letter, email or attendance in person. Petitioners are advised to visit the website of each organisation for further and localised information.

Contact details for court offices may be found on the Courts Service website (www.courts.ie).

Please see Q. 14.1 and the website for the Department of Justice and Equality (www.justice.ie) for contact details of the Irish Central Authority for the Recovery of Maintenance from Abroad.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

See above; No. 14.1.

**15.2 If so, how can that authority or private organisation be contacted?**

See above; No. 14.2.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes

**17 If this Member State is not bound by the 2007 Protocol, which law will be applicable to the maintenance claim according to its private international law rules?**

Not applicable.

**18 What are the rules on access to justice in cross border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

The applicant/petitioner does not have to pay fees to bring a case to court. Applicants benefit from free legal aid in relation to these matters - once an application is received by the Irish Central Authority, if required, the application will be forwarded to the Legal Aid Board for their attention.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Article 51 refers to what actions the Central Authority takes in relation to applications under the Maintenance Regulation. In relation to seeking declarations of enforceability, the Irish Central Authority now requests these from the Office of the Master of the High Court. The Irish Central Authority forward applications for enforcement directly to the District Courts. In relation to initiating proceedings the Central Authority will arrange for legal representation for the Applicant through the Legal Aid Board.

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## Family maintenance - Greece

**1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

The term ‘maintenance’ refers to the direct human needs for survival, mainly food. In fact, however, the term maintenance covers all living requirements, whether they relate to the upkeep, or to the education, culture or leisure activities of a person.

Maintenance obligations involve the payment of benefits - in principle cash - which meet the living requirements of the beneficiary.

The following persons are required to provide maintenance by order of kinship:

[a] the spouse, even if he/she is divorced [if there is a maintenance obligation after divorce];

[b] descendants over ascendants in the order of intestate succession;

[b] ascendants [parents, grandparents: in the case of absence or incapacity of parents] over their unmarried children (biological or adopted), in principle, while they are minors;

[b] siblings against siblings, and

**special cases of maintenance are:**

[c] maintenance paid in case of separation and after divorce or marriage annulment and

[d] maintenance paid to an unmarried mother for a child born out of wedlock prior to recognition.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

The child is entitled in principle to receive maintenance from its ascendants [parents or grandparents] until adulthood, i.e. until he/she attains the age of 18 years.

Children are also entitled to receive maintenance in adulthood, while they are studying or attending a higher education or vocational training course, and they are unable to work due to their studies and have no personal assets from which they can meet their maintenance requirements.

A person is entitled to maintenance only if he/she is unable to support himself/herself by means of his/her own assets or through work appropriate to his/her age, state of health and living conditions generally, having regard, among other things, to any educational needs he/she may have; minors, even if they have assets of their own, are entitled to maintenance from their parents in so far as the income from their own assets or work is not sufficient to maintain them.

However, a person is not obliged to provide maintenance if, in view of his/her other obligations, he/she is not in a position to do so without jeopardising his /her own maintenance; this rule does not apply to the maintenance of a minor by a parent, unless the minor is entitled to be maintained by some other person, or can be supported by his/her own assets.

**In the case of former spouses:**

A former spouse who cannot maintain himself or herself by his or her own income or assets is entitled to claim maintenance from the other: (1) if, at the time the divorce is pronounced, the age or state of health of the spouse making the claim is such that he or she cannot be required to take up or continue to carry on a suitable occupation in order to support himself or herself, (2) if the spouse making the claim has care of a minor, and is thereby prevented from carrying on a suitable occupation, (3) if the spouse making the claim cannot find appropriate regular employment, or needs vocational training; in either of these cases, the entitlement lasts no more than three years from the time the divorce is pronounced, or (4) in any other case where the award of maintenance at the time the divorce is pronounced is necessary on equitable grounds.

However, maintenance may be denied or restricted for important reasons, especially if the marriage has lasted a short time, or if the spouse who might be entitled to maintenance is to blame for the divorce or has voluntarily brought about his or her own poverty.

Each of the former spouses is required to provide the other with accurate information regarding assets and income in so far as they may be relevant to the amount of maintenance. Upon application by either of the former spouses, transmitted through the competent public prosecutor, any employer, administrative department or tax collector must supply any relevant information they may have on the assets of the other spouse and in particular his or her income.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

Normally, a person entitled to receive maintenance must apply to the court to seek maintenance from the person liable.

If the New York Convention on the recovery abroad of maintenance (Legislative Decree 4421/1964) is applicable, the delegation responsible for transmitting a maintenance claim from a person entitled who is resident in a State party to the Convention shall request the delegation responsible for receiving such claim in the respective State party to the Convention where the debtor resides, specifically the Ministry of Justice in Greece, to take all the measures required for recovery of maintenance by the person entitled. In practice, the Ministry of Justice entrusts an attorney to provide for the recognition of the right or the enforcement of a judgment rendered by a foreign court in favour of the alien beneficiary, who may exercise all relevant legal remedies before the Greek courts.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

For minors who cannot under the law [Article 63 CCP] present an application themselves in court for recovery of maintenance against the person liable, such action may be brought by the person that has been given parental responsibility [a natural person: a parent or another person or a legal entity, for instance, an institution].

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

The court with jurisdiction in actions for maintenance brought by a person entitled against a person liable is the Single-Member Court of First Instance [Articles 17(2) and 681B of the Code of Civil Procedure].

The court with territorial jurisdiction is the court of the place of domicile or residence of the party entitled to maintenance [Article 39A CCP] or of the defendant maintenance debtor, if the application is combined with matrimonial disputes or disputes between parents and children, or the court of the last joint habitual residence of the spouses.

If there is urgency or imminent danger, the person entitled to maintenance may ask the Single-Member Court of First Instance that has territorial jurisdiction to grant an injunction awarding him or her maintenance on a temporary basis, until a final judgment is rendered on the entitlement in an ordinary proceeding.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

It is necessary to appoint a lawyer with power of attorney to bring an action for maintenance.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

In an application for maintenance, the defendant must make a down payment for the plaintiff's court expenses, which may not exceed EUR 300 [Article 173 (4) CCP]. In proceedings of this kind, if the defendant does not produce proof of payment to the court clerk before the hearing of the case, the defendant will be deemed to have failed to appear, which means that a default judgment may be delivered against him or her [Article 175 CCP].

The plaintiff may request legal aid under Law 3226/2004, if his or her income is very low, by submitting evidence to that effect with an application for a separate injunction before the Single-Member Court of First Instance.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

The court sets maintenance for two years, taking account of the requirements of proper living conditions and the education of the person entitled, and the financial capacity of the person liable. After two years, either party, i.e. the person entitled or the person liable, may apply to have a new level of maintenance set and, in the event of a change in the circumstances that the court had taken into consideration, either party may apply to have the judgment reviewed and the level of maintenance altered.

**9 How and to whom will the maintenance be paid?**

In principle, maintenance is paid in advance to the person entitled on a monthly basis.

The amount of maintenance is not allowed to be paid as a lump sum, except in cases of maintenance after divorce [Article 1443(b) of the Civil Code].

If the person entitled is a minor, or is under court assistance, maintenance is paid to his or her parent or representative or, respectively, to his or her court-appointed provider who obviously will perform the relevant actions on behalf of the person entitled.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If the maintenance debtor refuses to pay maintenance, the person entitled will try to enforce the claim against the assets of the person liable, if he/she has any.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Entitlement to maintenance comes to an end if the conditions on which it was granted cease to exist, or if the person entitled or the person liable dies; the claim of the person entitled against the person liable is subject to a five-year prescription, starting from the time that the claim was lodged.

Claims from persons [i.e. an institution] who paid maintenance to a person entitled against the person originally liable are subject to a five-year prescription [Article 250(17) of the Civil Code].

An unmarried mother is entitled to claim the childbirth costs and maintenance from the child's father for a limited period [two months before birth and four months, but no more than one year [in exceptional cases], after birth, if paternity is established by court order and the mother is in poverty. An unmarried mother's claim is prescribed three years after birth, and is also brought against the father's heirs.

Seizure of up to 1/2 of the payable salary of a person liable for a maintenance claim is allowed and is also applicable on deposits with credit institutions [Article 982(2)(d) and (3) CCP].

**12 Is there an organisation or an authority which can help me to recover maintenance?**

No, except in the case of foreign beneficiaries who may have recourse to the Ministry of Justice to help them in exercising their relevant rights [see reply to question 3. above].

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Not in Greece.

[Except where an institution or a public or private legal entity has care of a minor; in this case, the maintenance obligation rests upon it, in general, and it is therefore subrogated ex officio [Article 1490 of the Civil Code] to the rights of the person entitled to maintenance. However, under no circumstances may a maintenance claim, even if recognised by a court, be required to be paid in advance to a minor entitled to maintenance owed to him or her by another person liable.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Under the provisions of Articles 51 and 56 of the above Regulation, the central authority of the Member State of a person who is applying for maintenance: a) shall cooperate with the central authority of the Member State of the person liable in forwarding and receiving the relevant applications; (b) shall initiate or facilitate the initiation of proceedings in relation to those applications. For such applications, the central authorities shall take all appropriate measures to: (a)

provide or facilitate the provision of legal aid, when circumstances require so; (b) facilitate the identification of the person liable or the person entitled, in particular by application of Articles 61, 62 and 63 of the Regulation; (c) facilitate access to relevant information concerning the income and, if necessary, the financial situation of the person liable or the person entitled, including the identification of their assets, especially pursuant to Articles 61, 62 and 63; (d) encourage amicable settlements with the aim of voluntary payment of maintenance, as appropriate, through mediation, conciliation or similar procedures; (e) facilitate further implementation of decisions on maintenance obligations, including default interest; (f) facilitate the collection and rapid transfer of maintenance payments; (g) facilitate access to documents or other evidence, without prejudice to Regulation (EC) No 1206/2001; (h) provide assistance in establishing parentage, where necessary, for the recovery of maintenance; (i) 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) facilitate the communication or service of documents subject to Regulation (EC) No 1393/2007.

**14.2 If so, how can that authority or private organisation be contacted?**

You may contact the Central Service of the Ministry of Justice located at 96 Mesogeion Ave., Athens - Greece, PC 11527, tel. +30. 210.7767322 civilunit@justice.gov.gr

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

**16 Is this Member State bound by the 2007 Hague Protocol?**

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Greece is bound by the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations. According to the Protocol, maintenance obligations are governed by the law of the Member State of the habitual residence of the person entitled to maintenance, so if the person entitled to maintenance resides in Greece, Greek law is applicable.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

Chapter V of Council Regulation EC No 4/2009 provides the right to legal aid, including legal advice with a view to reaching a settlement prior to bringing judicial proceedings, legal assistance in bringing a case before a judicial or other authority and representation in court, exemption from or assistance with the costs of proceedings and the fees to persons mandated to perform acts during the proceedings. 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, this includes 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 seized, interpretation, 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, 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.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The Central Authority shall have, *inter alia,* regular contact with the competent authorities in order: (a) to facilitate the identification of the maintenance debtor or creditor; (b) to obtain relevant information concerning the income and, if necessary, other financial circumstances of the maintenance debtor or creditor, including the location of assets, and (c) to encourage voluntary payment of maintenance.

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## Family maintenance - Spain

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Maintenance is understood to mean everything necessary in terms of food, accommodation, clothing, and medical care.

Maintenance also includes the education and training of the maintenance creditor while he or she is a minor and even thereafter if he or she is still in education for reasons not attributable to him or her. In the event of marriage breakdown, during the process of legal separation or divorce, maintenance may be claimed for children living in the home who are not financially independent.

Pregnancy and childbirth expenses shall be included in the maintenance, unless they are otherwise covered.

There is a mutual obligation to provide maintenance to the full extent between:

1. - Spouses;
2. - Ascendants and descendants.

Siblings should only receive necessary living assistance, where needed for any reason not attributable to the maintenance creditor, including, where necessary, assistance required for their education.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

For children, until they reach the age of majority, which in Spain is at 18 years, except where the minor has sufficient income of his or her own. Beyond the age of majority, the obligation continues with respect to children for as long as they are not financially independent, have not completed their education or are out of work through no fault of their own. For minors, it will also be necessary to take into account the articles in the Civil Code (*Código Civil*) on the joint effects of marriage annulment, legal separation and divorce (Articles 90 *et seq.*).
While children are minors, the maintenance allowance is a priority and an unavoidable obligation.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

Applications should be submitted to the courts of law, the Courts of First Instance (*Juzgados de Primera Instancia*) having jurisdiction.

**What are the key elements in the procedure?**

Applications are processed through an oral hearing (*juicio verbal*). If maintenance is claimed as a complementary measure to legal separation or divorce, or parent-child measures in the event of a break-up of the couple, it is processed jointly with said proceedings, through an oral hearing with some special features.
When a state of emergency was declared in Spain (by means of Royal Decree 463/20 of 14 March 2020 on managing the health crisis caused by COVID-19), and in particular with the adoption of Royal Decree 16/20 of 18 April 2020 on procedural and organisational measures in the justice system to address COVID-19, special summary proceedings were put in place to deal with family matters during the state of emergency (see Articles 3, 4 and 5). This special procedure applies to cases where it is necessary to request a review of permanent measures adopted pursuant to Article 774 of Law 1/2000 of 7 January 2000 on Civil Procedure (*Ley de Enjuiciamiento Civil*) concerning household expenses, financial allowances between spouses and recognised maintenance obligations towards children, where said review is requested on the grounds that the economic situation of the spouses and parents has changed significantly as a result of the health crisis caused by COVID-19. It also applies to disputes concerning requests to establish or review an obligation to make maintenance payments where said request is made on the grounds that the economic situation of the family member required to make maintenance payments has changed significantly as a result of the health crisis caused by COVID-19.
For all matters not covered in this Article, the provisions of Law 1/2000 of 7 January 2000 on Civil Procedure will apply to the arrangements for the oral hearing in the absence of special provisions.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

The claim must be submitted personally by the party concerned, except where the latter is a minor, in which case the application must be made by the person legally responsible for the minor, the public prosecutor's office (*el Fiscal*) or the child protection agency. However, the claim may be filed using representation, provided that the representative has been granted power of attorney in the presence of a notary, a court clerk or the consul at any Spanish diplomatic mission abroad.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

The general rule is that jurisdiction lies with the courts in the maintenance debtor's place of residence. If there is more than one joint debtor (mother and father), jurisdiction lies with the courts in the place of residence of either or any of them. If the debtor is not resident in Spain, the courts in his or her last place of residence in Spain have jurisdiction. In all other circumstances, the courts in the place of residence of the maintenance creditor have jurisdiction.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

Claimants must be defended by a lawyer (*abogado*) and represented by a legal representative or solicitor (*procurador*).

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

In Spain there are no fees involved in claims solely intended to obtain maintenance payments, except for the fees charged by lawyers, legal representatives and experts, if used.
The fees charged by lawyers and legal representatives are based on the amount of the claim. Financial assistance is available to cover court costs where the claimant or the person from whom maintenance is being claimed lack the financial means, and they may be entitled to legal assistance free of charge in accordance with the scales laid down in Article 3 of Law 1/1996 of 10 January 1996 on Free Legal Assistance. Assistance consists of the provision of services by a court-appointed lawyer or legal representative to conduct the legal claim, and any court costs such as payments to expert witnesses or the costs of publishing decrees are also paid for by the State.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

In most cases regular payments are determined which, according to law, are required to be paid monthly in advance. It is highly unusual for arrangements to be made for a single lump sum payment; this only occurs where maintenance arrears need to be paid off, when the debtor is an individual without fixed assets and this is the best way of protecting future payments, or by agreement between the parties. In calculating the actual amounts of the payments to be made, the court uses an abstract legal rule based on proportionality in three aspects: the needs of the maintenance creditor; the financial means of the maintenance debtor; and the financial means of other persons also under an obligation to contribute to maintenance (co-debtors) to the same degree as the principal maintenance debtor. The court decision setting the level of maintenance must lay down the basis upon which future updates will be made. This updating is carried out automatically, triggered by the passage of time, and it is the person responsible for making the payment who must implement the updated amount. If the maintenance debtor fails to update the maintenance payments, the court will do it, following a request by the maintenance creditor.
The amount of the maintenance payments may be adjusted (again following an application by the party concerned) if there is any substantial change to the facts originally used to set the payments: the amounts must be increased when there is an improvement in the financial position of the maintenance debtor or a deterioration in that of the maintenance creditor and a larger contribution is required (for example, when an illness worsens); the amounts must be decreased when there is a deterioration in the maintenance debtor's position or an improvement in the maintenance creditor's means. Finally, maintenance may no longer be due when the grounds for it have ceased to exist.
The General Council of the Judiciary (*Consejo General del Poder Judicial*, CGPJ) has drawn up tables for the calculation of maintenance allowances. These were last updated in May 2019. These are guidelines, based on the needs of the children, taking into account the income of the parents and the number of children in the family. The cost of housing and schooling have been excluded from the calculation and therefore the final allowance must be adjusted taking into account these costs in each case. The tables can be viewed here:
http://www.poderjudicial.es/cgpj/es/Servicios/Utilidades/Calculo-de-pensiones-alimenticias/

**9 How and to whom will the maintenance be paid?**

The usual form of payment is in money. However, there are two exceptions: the debtor may opt to fulfil his obligation by providing food and shelter to the maintenance creditor in his own home; recourse to this option is highly restricted by case-law where there is no guarantee of good relations; payment by handing over goods or rights is the exception and is only appropriate in order to pay off arrears, where there is a risk of the goods disappearing or where the maintenance debtor has no assets. Maintenance is paid directly to the creditor. The most usual method is by bank transfer. Where the maintenance creditor is a minor or does not have legal capacity, the payment is made to his legal representative.

In proceedings relating to marriage breakdown or parent-child relationships, the courts allow as forms of payment of maintenance, direct payment to the creditor for certain expenses pertaining to a minor child (e.g. schooling, medical insurance, etc.).

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

In such an event, the maintenance creditor may put forward a request for enforcement of the legal decision that declared that a right to maintenance payments existed. In Spain there are the following means of enforcement: attachment of earnings (apart from a minimum subsistence amount as directed by the court); withholding of tax refunds; seizure of bank accounts; withholding of social security benefits; seizure of goods and public sale thereof; in certain cases where the maintenance payments are not made, this may constitute a criminal offence and the offender may be liable to imprisonment.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

For maintenance payment debts, there are no quantitative limits on the seizure of the debtor's accounts or his goods, in contrast to the situation for other debts. Proceedings to enforce compliance with the following obligations may not be taken after five years have passed.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

In cases of claims for maintenance payments to minors or persons lacking legal capacity, the Public Prosecutor's Office may offer its representation.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

The 'Maintenance Payment Guarantee Fund', created by Law 42/2006 of 28 December 2006, and regulated by Royal Decree 1618/2007 of 7 December 2007, is a fund without legal personality which has the purpose of guaranteeing that minor children receive unpaid recognised maintenance payments, due under a court-approved agreement or a court decision in proceedings for legal separation, divorce, declaration of marriage annulment, filiation or maintenance, by means of the payment of an amount that will be considered to be an advance.

To be eligible for an advance from this Fund, it is essential that the decision recognising the maintenance was handed down by a Spanish court.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Yes, under European Union rules and international conventions on the payment of maintenance that Spain has ratified, a maintenance creditor may request the assistance of Spain's central authority, based within the Ministry of Justice.

**14.2 If so, how can that authority or private organisation be contacted?**

Through any means of contact, with the Department of International Legal Cooperation (*Subdirección General de Cooperación Jurídica Internacional*), within the Ministry of Justice. Calle San Bernardo No 62, 28071 Madrid. Tel.: +34 91 3902228/2295/4437. Fax: +34 91 3904457.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

A creditor resident in another Member State may contact the central authority of that state, providing evidence that he has been granted a right to maintenance payments, and request that the central authority contact the Spanish central authority and that the latter initiate enforcement proceedings in Spain. This shall be in accordance with European Union rules and international conventions on the payment of maintenance that Spain has ratified.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

Under the conditions laid down by the authorities in the relevant state.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes, the European Union (and therefore Spain) ratified the protocol on 8 April 2010.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

Under 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, parties who are involved in a dispute covered by that regulation shall have effective access to justice in another Member State, including enforcement and appeal or review procedures, in accordance with the conditions laid down in the relevant chapter. In addition, the requested Member State shall provide free legal aid in respect of all applications by a creditor under Article 56 concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

It has added to Law 1/1996 of 10 January 1996 on free legal assistance a Chapter VIII entitled 'Free legal assistance in cross-border European Union disputes', governing that right in relation to natural persons, whether they are European Union citizens or nationals of third countries who are legally resident in one of the Member States.

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## Family maintenance - France

**1 What do the concepts "maintenance" and "maintenance obligation" cover according to the law of Ireland? Which persons have to pay a "maintenance allowance" to another person?**

In French law a maintenance obligation means the obligation imposed by law, on those who have the means to do so, to meet the needs of another person to which they are bound by a family relationship or by marriage. There are therefore various people who can benefit from maintenance, including:
a spouse from their spouse (Articles 212 and 214 of the civil code (*code civil*)),
children from their parents (Articles 203, 371-2 and 373-2-2 of the civil code),
fathers, mothers and other ascendants from their children (Article 205 of the civil code),
fathers-in-law and mothers-in-law from their sons-in-law and daughters-in-law (Article 206 of the civil code),
a surviving spouse in need (Article 767 of the civil code).

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

With regard to maintenance for children, there is no legal age limit: the parental obligation of upkeep and education does not end automatically when the child legally becomes an adult (Article 371-2 of the civil code). A distinction must be made between two periods:
while the child is a minor or, if they are an adult, until they are financially independent, parents have an obligation of upkeep and education towards their child to provide them with the necessary conditions for their development and education;
once the obligation of upkeep and education has ceased, the general rules for maintenance obligations apply, which require the claimant to provide evidence of their needs (Articles 205 and 207 of the civil code).
The contribution may be paid in whole or in part directly to the child once they have become an adult.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

If maintenance is not paid voluntarily, the maintenance creditor, their representative or the person who is their main carer must bring a legal action to set the amount to be paid and have the debtor ordered to pay that amount.
A claim for maintenance may be the main subject of the action, or be made as part of, for example, divorce proceedings or proceedings to establish how parental authority is to be exercised.
With regard to claims for maintenance between adults, the person claiming maintenance must prove that they are in need and unable to meet their own needs. If, however, the creditor himself has seriously neglected his obligations towards the debtor, the judge may discharge the debtor from the responsibility of paying all or part of the maintenance debt (Article 207 of the civil code).

**4 Who is considered to be the applicant in a maintenance case? Can a request be made on behalf of a relative, (if yes, what grade), or a child?**

Under French law, minors are not considered to be the maintenance creditors: only the parent/relative or the third party caring for the child has that capacity and may act against the other parent or parents in order to have a contribution set to the education and upkeep of the child.
Social care services may act on behalf of the maintenance creditor if they are not competent to do so based on Article 205 of the civil code (Article L132-7 of the social action and families code (*code de l'action sociale et des familles*)).
Hospitals and public health establishments/care establishments have direct recourse against those who owe maintenance to someone who is hospitalised (Article L6145-11 of the public health code (*code de la santé publique*)).
A person who is under guardianship must be represented by their guardian (Article 475 of the civil code).

**5 If I plan to bring the case to court, how does I know which court has jurisdiction?**

The action must be brought before a **family affairs judge** (*juge aux affaires familiales*) at a regional court (*tribunal de grande instance*) (Article L. 213-3 of the judicial organisation code (*code de l'organisation judiciaire*)).
Subject to the application of the provisions of 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, Article 1070 of the code of civil procedure (*code de procédure civile* ) states that the family affairs judge with jurisdiction is:
the judge in the place where the family residence is located;
if the parents live separately, the judge in the place of residence of the parent with which the minor children habitually live in the case of joint parental authority, or of the place of residence of the parent who has sole parental authority; in other cases, the judge of the place of residence of the person who did not bring the proceedings.
In the case of a joint claim, jurisdiction lies, according to the choice made by the parties, with the judge of the place of residence of one of the parties.
However, if the dispute solely concerns maintenance, contribution to the upkeep and education of a child, contribution to the costs of the marriage or compensatory allowance, the jurisdiction may lie with the judge of the place of residence of the creditor spouse or the parent who is the main carer for the children, even if they are adults.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, specific organisation or government department (central or local) etc.)? If not, which procedures?**

The procedure is oral and does not require representation: claimants may appear in person before the judge with the necessary evidence.
The proceedings may be brought by summons (via a bailiff) or simply by a request addressed to the court.
When maintenance is being claimed as part of divorce proceedings in court, the claimant must be represented by a lawyer with rights of audience (*avocat*).

**7 Does I have to pay fees to bring a case to court? If so, how much are they likely to be? If the financial means of the plaintiff are insufficient, can he/she obtain legal aid to cover the costs of the procedure?**

There are no legal costs at first instance. At appeal, a charge of EUR 225 is due.
Claimants may receive legal aid under certain financial circumstances.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised if living costs or family circumstances change? If yes, how? Can maintenance be claimed and backdated to before the date of application?**

A contribution to the upkeep and education of a child may take the following forms:
a monthly payment to the creditor parent (most common);
direct payment of the costs incurred on behalf of the child;
right of use and habitation of a property belonging to the debtor, or abandonment of goods in usufruct, or allocation to the creditor of goods producing an income.
The contribution is calculated according to the **means of each of the parents** and the **needs of the child**. Since 2010 the Ministry of Justice (*Ministère de la justice*) has published a reference table, **purely as an indication**, drawn up based on the income of the debtor and the creditor, the number of children in their care and the scope of visiting rights and accommodation. The judge systematically provides an **indexation** of the contribution (based on the general price index for consumption by urban households).
Other maintenance allowances:
When setting the amount of a **contribution by a spouse to the costs of the marriage**, the judge must take into consideration all of the costs incurred by the person concerned corresponding to useful or necessary expenses. This takes the form of a financial payment, taking responsibility for a loan or even the occupation of the marital home.

In the case of a **maintenance allowance allocated to a spouse in divorce proceedings based on the duty of support**, it may be decided that all or part of the monthly payments for a loan will be taken on; the payment of a monthly amount is, however, favoured by the courts. This allowance is set based on the **standard of living to which the claimant spouse can lay claim given the capacity of their spouse**.
**Maintenance grants awarded to ascendants and parents-in-law** are only granted in **proportion to the need of the claimant, and to the wealth of the person who owes it**. The judge may, including on their own initiative, and according to the circumstances in the case, attach a variation clause in such maintenance that is permitted by the laws in force (Article 208 of the civil code).
With regard to maintenance, it is always possible to review the allowance, provided that the claimant provides evidence of a new element affecting the creditor and/or debtor's means and/or the needs of the child/creditor.

**9 How and to whom will the maintenance be paid?**

The civil code does not favour any method of payment. Methods of payment may be determined by an agreement between the parties. In the absence of such an agreement, the judge determines the methods of payment in the decision.
Maintenance allowance is paid directly to the creditor or to the social care service, hospital or public care establishments or healthcare establishments that have brought an action on behalf of the creditor.
It should be noted that in the case of a contribution to the upkeep of a child, the maintenance allowance may be replaced, in full or in part, by the payment of a sum of money to an accredited body responsible for providing the child with an indexed income in return (Article 373-2-3 of the civil code). The judge may also decide that the maintenance allowance will be paid directly to the adult child.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If the creditor has an enforcement order, they may directly instruct a bailiff to implement an enforcement measure on the debtor's assets (except for the attachment of a property or a salary, for which a prior court decision is required). Bailiffs have broad investigative powers to use with the authorities in order to find the necessary information to locate the debtor or their goods.
The main enforcement procedures that a maintenance creditor may use are as follows:
**direct payment procedure** (Articles L 213-1 and R 213-1 et seq. of the code of civil enforcement procedures (*code des procédures civiles d'exécution*))**:** this allows the recovery of the last six months of allowance arrears and of the current allowance. The bailiff notifies the third party (employer, bank or any third party debtor of the maintenance debtor) of their obligation to pay the allowance directly to the bailiff;
**attachment of earnings** (Articles L 3252-1 and R 3252-1 et seq. of the employment code (*code du travail*)): attachment must be authorised by a district court judge (*juge d'instance*);
**garnishment** (Articles L 211-1, L 162-1, R 211-1 and R 162-1 et seq. of the code of civil enforcement procedures) allows the attachment of debts owed to the debtor (most commonly the attachment of a bank account);
**attachment for sale** (Articles L 221-1 and R 221-1 et seq. of the code of civil enforcement procedures): attachment of movable goods (television, car, etc.);
**attachment of immovable property** (Articles L 311-1 and R 311-1 et seq. of the code of civil enforcement procedures)**:** this concerns immovable property owned by the debtor. The sale of the property must be authorised by the enforcing judge (*juge de l'exécution*).
The bailiffs' costs are borne solely by the maintenance debtor.
In criminal proceedings, the debtor may be convicted of **desertion of the family**. This offence is punishable by two years' imprisonment and a fine of EUR 15 000 (Article 227-3 of the criminal code (*code penal*)).

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system?**

For maintenance, the limitation period is 5 years from each payment due (Article 2224 of the civil code).
The direct payment procedure may not be applied for arrears of more than 6 months. That does not rule out using other enforcement methods to obtain recovery of the previous arrears.
Enforcement procedures must be limited to what appears to be necessary for the recovery of the debt owed and there must not be any abuse in the choice of these measures.
Some assets are declared to be ineligible for attachment by law: maintenance allowances, movable property that is necessary for the debtor's life and work, items that are essential to disabled people, certain benefits and family allowances. From a bank account, only amounts beyond the minimum income (active solidarity income (*le revenu de solidarité active*)) for a single person may be attached. In the case of attachment of salary, the amount that may be attached is determined according to the salary and the people who are dependent on the debtor.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

Organisations that are responsible for paying family allowances may take on the rights of a maintenance creditor under certain conditions. In this case, they may pursue civil enforcement procedures in the name and on behalf of the latter. Also, if private enforcement proceedings do not work, it is possible to apply to the public prosecutor (*procureur de la République*) to activate public recovery procedures through the public accountant (*comptable public*).

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Organisations that are responsible for paying family allowances may, under certain conditions, pay the maintenance creditor a family support allowance as an advance on the maintenance due.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this member state?**

If the debtor has their residence in another country and the creditor is in France, the creditor may contact the Maintenance Debt Recovery Office (*Bureau de Recouvrement des Créances Alimentaires (RCA)*) of the Ministry for Foreign Affairs and International Development (*Ministère des Affaires Étrangères et du Développement International*). The office will contact the central authority of the State where the debtor resides in order to recover the debt.
The creditor may also contact the Family Allowance Fund (*Caisse d'Allocations Familiales (CAF)*), which can provide financial support if the debtor fails to pay, even if the debtor is abroad.

**14.2 If so, how can that authority or private organisation be contacted?**

The French central authority may be contacted by letter, telephone or e-mail:
Ministère de l'Europe et des affaires étrangères
Bureau de recouvrement des créances alimentaires
27, rue de la Convention
CS 91533
75732 Paris Cedex 15
Tel.: + 33 (0) 1 43 17 90 01
Fax.: +33 (0)1 43 17 81 97

Email: obligation.alimentaire@diplomatie.gouv.fr

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

If the debtor is resident in France and the creditor is abroad, the creditor **must contact the central authority of the State in which they reside**. The central authority making the claim will then contact the French central authority (Maintenance Debt Recovery Office of the Ministry for Foreign Affairs), which will take the necessary measures to recover the debt.

If a creditor has an enforcement decision they may also directly instruct a bailiff to recover the debt (without going through the central authorities). In this case, they may not benefit from the assistance of the central authority.

It should be noted that in the absence of a court decision establishing the principle of a maintenance allowance, the central authority of a Member State making a claim may send a request to obtain a decision from the Maintenance Debt Recovery Office in order for the principle of a maintenance allowance to be established by a French court decision (Annex VII of Regulation (EU) No 4/2009).

**15.2 If so, how can that authority or private organisation be contacted?**

The French central authority may be contacted by letter, telephone or e-mail:

Ministère de l'Europe et des affaires étrangères
Bureau de recouvrement des créances alimentaires
27, rue de la Convention
CS 91533
75732 Paris Cedex 15
Tel.: + 33 (0) 1 43 17 90 01
Fax.: +33 (0) 1 43 17 81 97
Email: obligation.alimentaire@diplomatie.gouv.fr

If a creditor decides to contact a bailiff directly, they can find the details of competent professionals under the heading 'Find a bailiff' (*'Trouver un huissier'*) or on the website of the National Chamber of Bailiffs (*Chambre nationale des huissiers de justice*).

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes

**17 If this Member State is not bound by the 2007 Protocol, which law will be applicable to the maintenance claim according to its private international law rules?**

Not applicable.

**18 What are the rules on access to justice in cross border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

Legal aid may be total or partial. It is granted:

automatically for children under the age of 21 under Article 46 of Regulation (EC) No 4/2009;

in other cases, if the claimant fulfils the means conditions established by law (Law No 91-647 of 10 July 1991 on legal aid and Decree No 91-1266 of 19 December 1991).

In France, legal aid includes the fees of the lawyer appointed by the legal aid decision for the court proceedings and the fees of the bailiff appointed by the same decision for the debt recovery proceedings.

Claims for legal aid relating to maintenance obligations follow the same process as for other cross-border disputes in accordance with **Council Directive 2003/8/EC of 27 January 2003**.

The claim for legal aid is sent by the creditor, in French, to the Department for Access to Law and Justice and Victim Support (*Service de l'accès au droit et à la Justice et de l'aide aux victimes (SADJAV)*), whose address is as follows:

Ministère de la Justice
Service de l'accès au droit et à la Justice et de l'aide aux victimes
Bureau de l'aide juridictionnelle
13, place Vendôme
75042 PARIS cedex 01
Tel.: 01 44 77 71 86
Fax.: 01 44 77 70 50

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The Maintenance Debt Recovery Office acknowledges receipt of the claim submitted by the foreign central authority and of the evidence supplied. It checks whether the file is complete and checks the accuracy and usability of the documents, in particular legal documents. In order to anticipate any enforcement problems, the Office asks the sending authority for clarifications and/or other extracts or translations of extracts where necessary. The Office facilitates the initiation of proceedings relating to the claims laid down in Article 56 by sending them to the judicial authorities with jurisdiction in that area.

The Office helps to locate the debtor and facilitates the search for information regarding their means by bringing the matter before the Public Prosecutor and departments of the Directorate General for Public Finances (*Direction Générale des Finances Publiques*) in accordance with Articles 61, 62 and 63 of Regulation (EC) No 4/2009.

The central authority also facilitates amicable settlements by making direct contact with the debtor and sending their proposals for voluntary payment to the creditor via the central authority of the State of residence of the creditor.

In the event that amicable recovery fails, a judicial recovery procedure is still possible, provided that the foreign decision is enforceable in France. The Office is in contact with the bailiffs tasked with recovering the debt to ensure that the enforcement procedures are progressing well.

The Office systematically asks for a bank transfer to be set up.

In cases where parentage needs to be established in order to recover maintenance, the Office shall inform the creditor of the competent authority for carrying out that procedure.

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# Family maintenance - Croatia

## 1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

Maintenance is the duty and right of parents and children, spouses and extramarital partners, lineal relatives, and stepchildren and step-parents where provided for by the Family Act (*Obiteljski zakon*). These persons contribute to their mutual maintenance according to their own capacities and the needs of the person maintained, in line with this Act.

It is first of all up to the parents to support a child who is a minor. Parents who are capable of work cannot avoid their duty of care to their minor child. If a parent does not support a minor child, the grandparents on that parent's side must support the child. A step-parent must support a minor stepchild if the stepchild cannot obtain maintenance from their parent.

Parents must support an adult child who attends a secondary school or who attends university or vocational studies in accordance with special regulations, or who attends elementary or secondary adult education, and who regularly and duly fulfils their obligations, up to a maximum age of 26.

Parents must support an adult child who has completed such education but is unable to find employment for one year after the completion of the education, provided the child has not turned 26. The duty to support an adult child ceases before the expiry of one year from completion of education at the moment the child turns 26.

Parents must support an adult child who is unfit for work due to severe and permanent illness, or disability, for as long as such incapacity exists.

An adult child must support a parent who is unfit for work and does not have sufficient means for living or is unable to obtain such means from their own assets. An adult stepchild must support their step-parent if the step-parent is unfit for work, and does not have sufficient means for living or is unable to obtain such means from their own assets, and if they have supported or looked after the stepchild over a long period of time An adult grandchild must support their grandparent if the grandparent is unfit for work, and does not have sufficient means for living or is unable to obtain such means from their own assets, and if they have supported or looked after the grandchild over a long period of time.

A spouse who lacks sufficient means for living or is unable to obtain such means from their assets, while being unfit for work or unable to find employment, is entitled to maintenance by the other spouse if that spouse has enough means and possibilities to provide such maintenance. The rules concerning maintenance of spouses apply accordingly to maintenance of extramarital partners for the duration of an extramarital union.

## 2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

It is first of all up to the parents to support a child who is a minor. If a parent does not support a minor child, the grandparents on that parent's side must support the child. A step-parent must support a minor stepchild if the stepchild cannot obtain maintenance from their parent.

Parents must support an adult child who attends a secondary school or who attends university or vocational studies in accordance with special regulations, or who attends elementary or secondary adult education, and who regularly and duly fulfils their obligations, up to a maximum age of 26.

Parents must support an adult child who has completed such education, but is unable to find employment for one year after the completion of the education, provided the child has not turned 26. The duty to support an adult child ceases before the expiry of one year from completion of education at the moment the child turns 26.

Parents must support an adult child who is unfit for work due to severe and permanent illness, or disability, for as long as such incapacity exists.

An adult is a person who has reached the age of 18.

## 3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

The Croatian Social Welfare Institute (*Hrvatski zavod za socijalni rad*) should be contacted.

Maintenance may be regulated by the mandatory counselling procedure. Mandatory counselling is carried out before divorce proceedings are instituted where there is a joint minor child, and before other judicial proceedings relating to parental care and personal relations with the child are instituted. The provisions of the Family Act on mandatory counselling prior to the start of divorce proceedings if there is a joint minor child also apply to mandatory counselling before the start of proceedings on parental care and personal relations with the child if the child's parents separate. Mandatory counselling is initiated when one party files a request with the Croatian Social Welfare Institute. If the parents have not made an arrangement regarding a plan on joint parental care, the Croatian Social Welfare Institute will advise them to try to make an arrangement within the scope of family mediation, in accordance with the provisions of the Family Act.

Maintenance may be settled via family mediation, in which parties attempt to resolve family issues by agreement with the assistance of family mediators. Family members take part in family mediation voluntarily, and only the first family mediation meeting must be attended before starting divorce proceedings. The main purpose of family mediation is to decide on joint parental care and other arrangements concerning the child. The plan for joint parental care or other arrangements made during family mediation become enforceable if approved by court in extra-judicial proceedings at the request of the parties. Family mediation can be carried out independently of judicial proceedings, before starting judicial proceedings, during them or after their completion.

The amount of maintenance which the parent with whom the child does not live must pay can be also regulated by the Plan on Joint Parental Care, which the parents can prepare by themselves during mandatory counselling, as well as during family mediation. If a plan on joint parental care is submitted to the court in extra-judicial proceedings for verification it then becomes enforceable, in accordance with the Family Act.

A child can lodge a claim for maintenance in simplified extra-judicial proceedings for determination of maintenance. The parties in these proceedings are the child and the parent not living with that child. The child in the maintenance proceedings is represented by the parent with whom the child lives. Jurisdiction for ruling in simplified proceedings on maintenance lies, in addition to the court of general territorial jurisdiction, with the court at the place where the child has their domicile or residence.
Judicial decisions on maintenance claims are made in marital disputes, cases to determine maternity or paternity, and parental care cases, in accordance with the Family Act.
In case of divorce, the spouses may make a maintenance agreement setting the amount of maintenance, how to fulfil this obligation, and the duration of the maintenance obligation. The spouses may conclude the maintenance agreement in a writing and bring it before court for approval in extra-judicial proceedings, which makes it an enforceable agreement.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

The parties to child maintenance proceedings are the child and the person required to support the child under the Family Act. The child is represented by the parent with whom the child lives. If the parent with whom the child lives agrees, the Croatian Social Welfare Institute represents the child in the maintenance proceedings.
In addition to the Croatian Social Welfare Institute, the parent with whom the child lives remains authorised to act in proceedings. In the case of conflict of actions undertaken by the social welfare centre and those of the parent with whom the child lives, the court will take into consideration all the circumstances, and particularly the child's well-being, and assess whether to take into account the action of the Croatian Social Welfare Institute or the child's parent.
The Croatian Social Welfare Institute must act on behalf of the child and institute and conduct the proceedings on maintenance or to increase the maintenance amount if the parent with whom the child lives has not exercised that right for unjustified reasons for over three months after the child acquired the right. The Croatian Social Welfare Institute represents the child in maintenance proceedings if the child is in the care of another natural or legal person. In such cases, the child's parents are not authorised to act in proceedings on behalf of the child alongside the Croatian Social Welfare Institute and their authority to represent the child ceases when the Croatian Social Welfare Institute files an action on the child’s behalf.
In accordance with the provisions of the Civil Procedure Act (*Zakon o parničnom postupku*), only a lawyer may represent a party as their attorney, unless stipulated otherwise by law. A party may be represented by a lineal blood relative, a brother, sister or spouse acting as an attorney in fact – if they have full capacity and are not illegally practising law.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

In case of disputes over statutory maintenance, in which the applicant is a person seeking such maintenance, jurisdiction – in addition to the court of general territorial jurisdiction – also lies with the court on whose territory the applicant has domicile or residence. If, in disputes over statutory maintenance with an international element, a court in Croatia has jurisdiction because the applicant has domicile or habitual residence in Croatia, territorial jurisdiction lies with the court on whose territory the applicant has domicile or habitual residence. If a court in Croatia has jurisdiction because the respondent has property in Croatia from which maintenance may be collected, territorial jurisdiction lies with the court on whose territory this property is located.
Jurisdiction to approve a plan on joint parental care lies with the court that has general territorial jurisdiction over the case involving the child.
Jurisdiction to approve a child maintenance agreement lies with the court that has general territorial jurisdiction over the case involving the child.
Jurisdiction to approve a spousal maintenance agreement lies with the court on whose territory spouses have common domicile. If the spouses do not have common domicile, jurisdiction lies with the court on whose territory the spouses had their last common domicile. If a court in Croatia has jurisdiction to approve a spousal maintenance agreement because the spouses had their last common domicile in Croatia, jurisdiction lies with the court on whose territory the spouses had their last common domicile or habitual residence.
Jurisdiction for ruling in simplified proceedings on maintenance lies, in addition to the court of general territorial jurisdiction, with the court at the place where the child has their domicile or residence.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

Under Article 89a of the Civil Procedure Act, parties may undertake action in the course of the proceedings personally or through their attorney, but the court may invite a party represented by an attorney to appear before court in person to make a declaration on the facts to be established in litigation. Only a lawyer may represent a party as their attorney, unless stipulated otherwise by law. Under the third paragraph of Article 89a, a party may be represented by a lineal blood relative, a brother, sister or spouse acting as an attorney in fact – if they have full capacity and are not illegally practising law.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Under Article 1 of the Court Fees Act (*Zakon o sudskim pristojbama*), court fees must be paid for any proceedings conducted in court. The amount of the fee is determined by the Tariff of Court Fees (*Tarifa sudskih pristojbi*).
Article 16 of the Court Fees Act stipulates that children, as parties in proceedings brought for maintenance or in proceedings related to claims stemming from that right, are exempt from court fees.
Under Article 172 of the Civil Procedure Act, the manner in which the right to the exemption from the payment of court costs and the right to professional legal aid are exercised and the conditions under which it is done are set out in a separate legal act regulating free legal aid. Under Article 176, if a party has exercised the right to the exemption from court costs on the basis of the separate regulation on legal aid and if, in the course of the proceedings, the court determines that the party is able to pay the court costs or fees, the court will immediately notify the competent public authority.
The Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*) defines the purpose, beneficiaries and kinds of free legal aid, legal aid providers, the conditions and the procedure for the provision of legal aid, trans-border legal aid, financing of legal aid and supervision of the implementation of the Act The Free Legal Aid Act does not apply if legal aid has been provided in line with special regulations.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

Child maintenance is always set as a specific sum of money.
The parent with whom the child lives participates in their share of the child maintenance obligation by providing daily care to the child, whereas the parent not living with the child fulfils the child maintenance obligation by covering child's material needs in the form of financial support.
The total material needs of the child determined by the court in the course of litigation relate to the costs for housing, food, clothing, hygiene, upkeep, education, healthcare, and other similar costs concerning the child. The total material needs of the child are set in accordance with the living standard of the parent who is obligated to pay for maintenance.
The child may have increased material needs if in need of constant intensified care due to the child's medical condition, which must be taken into consideration when setting the maintenance amount in civil proceedings.

The total abilities of the parent who is the maintenance debtor, which the court determines in civil proceedings, relate to the income and financial standing of the parent obligated to pay maintenance at the moment the maintenance amount is set.
Once a year and until 1 April of the current year at the latest, the Minister in charge of social welfare determines the minimum pecuniary amounts representing the minimum amount of the total material needs required for the monthly minor child maintenance in the Republic of Croatia, to be paid by the parent not living with the child.
The minimum amounts are set as a percentage of the average net monthly salary per person employed by legal persons in the Republic of Croatia for the previous year, as follows:
1. for a child of up to 6 years of age, 17% of the average salary;
2. for a child between 7 and 12 years of age, 20% of the average salary; and
3. for a child between 13 and 18 years of age, 22% of the average salary.
By way of exception, a lower amount may also be set for the child maintenance needs, however not lower than half of the statutory minimum:
1. if the maintenance debtor must support two or more children, or
2. if the child contributes to their maintenance by earning their own income.
Once a year and until 1 April of the current year at the latest, the Minister in charge of social welfare will establish tables concerning the average needs of a minor child in line with the child's age, income of the parent obligated to pay maintenance as specified in paygrades, and the average costs of living in the Republic of Croatia.
The maintenance creditor and the maintenance debtor may petition the court to increase or reduce the amount of maintenance, decide to terminate maintenance or change the manner of maintenance established by a prior enforceable title, if the circumstances have changed.
Maintenance claims are not subject to indexation in the Republic of Croatia.

**9 How and to whom will the maintenance be paid?**

Maintenance will be paid to the person in the manner established in the court decision.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If the maintenance debtor fails to pay maintenance voluntarily, enforcement proceedings are instituted and conducted.
Enforcement by attachment of salary and other regular income and monetary funds on the account, for the purpose of collecting the child maintenance claim, will be carried out before the enforcement of any other claims irrespective of the time when they are incurred.
The maintenance debtor may have their consent entered in the minutes of the hearing before court or in a special notarized document stating that their salary, pension or similar pecuniary income may be seized entirely or partially for the collection of a claim made by the maintenance creditor, and that the payments are made directly to the maintenance creditor as set out in that document. Such a document is issued in one copy and has legal effect of a definitive writ of execution.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

The parent not living with the minor child and who has not paid maintenance for their minor child must pay compensation to the child for the maintenance withheld, which is calculated from the day the right to maintenance was established until the day when the action was brought. The child's claim against a parent who has failed to maintain the child is subject to a statute of limitations of 5 years from the day on which such obligation was incurred.
Under Article 226 of the Civil Obligations Act (*Zakon o obveznim odnosima*), claims for periodic payments due annually or at shorter intervals, irrespective of whether they are additional claims such as interest, or claims in which the right itself has expired, such as maintenance claims, are subject to a statute of limitations of 3 years from the date on which each payment is due.
Under Article 233 of the Civil Obligations Act, claims established by a final court decision, a decision of another competent public authority, a settlement reached in court or before another competent authority or by a notarial act are subject to a statute of limitations of 10 years, including those in respect of which a shorter statute of limitations is stipulated by law.
Under Article 235 of the Civil Obligations Act, the statute of limitations does not start to apply between parents and children until the expiry of parental rights.
Under Article 172 of the Enforcement Act (*Ovršni zakon*), the following assets may not be subject to enforcement: income received as statutory maintenance, compensation for impaired health or reduced or lost work capacity and compensation for maintenance lost due to the death of the maintenance creditor; income from physical disability benefits granted in accordance with the disability insurance regulations; income from social welfare benefits; income from temporary unemployment benefits; income from child benefit, unless stipulated otherwise by a special regulation; income from scholarships and student support; remuneration paid to convicts for work performed, with the exception of claims for statutory maintenance and claims for the compensation of damage caused by a criminal offence committed by the convict; income deriving from citations and rewards; maternity and parental support payments, unless otherwise stipulated by a special legal act; other income exempted from enforcement under special regulations.
Article 173 of the Enforcement Act limits enforcement as follows:
(1) If the salary of the enforcement debtor is subject to enforcement, an amount set at two thirds of the average net salary in the Republic of Croatia is exempt from enforcement. If enforcement is carried out to collect on a statutory maintenance claim, or a claim to compensate for the damage caused by impaired health or a reduction or loss of work capacity and to compensate for the loss of maintenance due to the death of the person who has provided maintenance, the amount is set at half the average net salary in Croatia, except when enforcement is carried out in order to forcibly collect money due as child maintenance. In such cases, the amount exempt from enforcement is a quarter of the average net salary (for employees of legal persons in Croatia in the previous year).
If the enforcement debtor has a salary that is lower than the average net salary for Croatia, the amount of two thirds of salary is exempt from enforcement. If enforcement is carried out in order to collect on a statutory maintenance claim, or a claim to compensate for the damage caused by impaired health or a reduction or loss of work capacity and to compensate for the loss of maintenance due to the death of the person who provided maintenance, the amount is set at half the debtor's net salary.
(3) The term ‘average net salary’ within the meaning of paragraph 1 of this Article is the average amount paid as a monthly net salary per person employed by legal persons in Croatia in the period between January and August of the current year, which shall be determined by the Croatian Bureau of Statistics (*Državni zavod za statistiku*) and published in Narodne novine (NN; Official Gazette of the Republic of Croatia) not later than on 31 December of the current year. The amount set in this manner shall be applicable in the following year.
(4) The provisions in paragraphs 1 and 2 of this Article also apply to enforcement when any compensation paid in lieu of salary, compensation for reduced working time, compensation for reduced salary, pension, military service personnel pay and pay received by persons in the reserve force while they are in military service and any other regular pecuniary income paid to civilian and military personnel are subject to attachment, with the exception of the income referred to in paragraphs 5 and 6 of this Article.

(5) Enforcement by attachment of income received by disabled persons as a monetary benefit for physical disability and as care allowance may be carried out only to collect on a statutory maintenance claim, or a claim to compensate for the damage caused by impaired health or a reduction or loss of work capacity and to compensate for the loss of maintenance due to the death of the person who has provided maintenance, in which case the amount shall be set at half of such income.
(6) Enforcement by attachment of income received under a lifelong support contract and a lifelong annuity payment contract, as well as income received under a life insurance contract may only be carried out on the portion of income which exceeds the principal amount used to calculate the amount of the support for maintenance.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

The Croatian Social Welfare Institute must keep records of all the decisions and court settlements concerning maintenance for a minor child.
When the Croatian Social Welfare Institute receives a final court decision or a court settlement concerning child maintenance, it must send a written notice on the rights and obligations to the parent with whom the child lives and to the parent who must pay maintenance or to another person referred to in Article 288 of the Family Act who must pay maintenance under the court decision or the court settlement.
In this notice the Croatian Social Welfare Institute notifies the parent with whom the child lives of the following:
1. warns the parent that they must inform the Croatian Social Welfare Institute if the maintenance debtor fails to fulfil their obligation regularly and in full; and
2. sets out the conditions under which the child is entitled to interim maintenance in line with special regulations governing interim maintenance.
In the notice, the Croatian Social Welfare Institute warns the parent who must pay maintenance or another person referred to in Article 288 of the Family Act who must pay maintenance under the court decision or the court settlement of the following:
1. that it will file a criminal complaint against a maintenance debtor who fails to fulfil their maintenance obligation within fifteen days from the day it learns that the maintenance obligation is not fulfilled regularly and in full; and
2. that the Republic of Croatia is entitled to recover the amounts for interim maintenance paid in line with a special regulation governing interim maintenance.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

When the Croatian Social Welfare Institute receives a final court decision or a court settlement concerning child maintenance, it must inform the parent with whom the child lives on the conditions under which the child is entitled to interim maintenance in line with a special regulation governing interim maintenance.
Under the conditions stipulated in the Interim Maintenance Act (*Zakon o privremenom uzdržavanju*), NN No 92/14), a child who is a Croatian citizen and has a domicile in Croatia is entitled to interim maintenance. According to that Act, a child means a person who has not yet reached the age of 18 and who has to be maintained by a parent based on an enforceable order.
The child is entitled to interim maintenance if the parent not living with the child fails, in part or in full, to fulfil their maintenance obligation, and if it appears probable that the grandparents on that parent's side do not contribute to child's maintenance at least in the amount set out in the Act as the interim maintenance amount.
The right to interim maintenance extends until the maintenance debtor resumes the payment of maintenance at least in the amount set out in the Act as the interim maintenance amount.
The child is entitled to interim maintenance for a maximum of 3 years in total.
Interim maintenance is set at 50% of the statutory maintenance minimum. Interim maintenance cannot be more than the maintenance amount determined by the enforceable order.
By paying the interim maintenance amount, the Republic of Croatia takes the legal position of the child, and the rights to claim maintenance in the amount of paid interim maintenance, in addition to any other incidental rights, are transferred to it. In proceedings for the collection of the claim referred to in Article 25 of that Act, the Republic of Croatia is represented by the relevant prosecutor's office.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Yes. Pursuant to the Act implementing Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (*Zakon o provedbi Uredbe Vijeća (EZ) br. 4/2009 u području nadležnosti, mjerodavnog prava, priznanja i izvršenja odluka te suradnju u stvarima koje se odnose na obveze uzdržavanja*), the Central Authority responsible for implementation of Council Regulation (EC) No 4/2009 is the ministry responsible for social welfare.
The bodies responsible under Council Regulation (EC) No 4/2009 are courts and antenna offices of the Croatian Social Welfare Institute, in line with the stipulated remit and jurisdiction of those bodies.
If a party seeking to collect maintenance habitually resides in Croatia, and the debtor has their habitual residence in another Member State, the party may call upon the assistance of the Ministry of Labour, Pension System, Family and Social Policy (*Ministarstvo rada, mirovinskoga sustava, obitelji i socijalne politike*), which is established as the Central Authority of the Republic of Croatia for the implementation of Council Regulation (EC) 4/2009.

**14.2 If so, how can that authority or private organisation be contacted?**

They can contact the Central Authority and/or the bodies competent to act within the scope of Council Regulation (EC) No 4/2009.
Contact details of the Central Authority:
Ministry of Labour, Pension System, Family and Social Policy (*Ministarstvo rada, mirovinskoga sustava, obitelji i socijalne politike*)
Ulica Grada Vukovara 78
10110 Zagreb
Website: https://mrosp.gov.hr/
Email: pisarnica@mrosp.hr
Tel.: +385 1 555 7015
Fax: + 385 1 555 7222

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

No. The Central Authority of the State in which the applicant habitually resides should be contacted, following which the Central Authority in question will forward the application to the Central Authority of the Republic of Croatia in accordance with Article 55 of Council Regulation (EC) No 4/2009.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

The Central Authority of the State where the applicant habitually resides sends the application to the Ministry of Labour, Pension System, Family and Social Policy, which is the Central Authority of the Republic of Croatia for the implementation of Council Regulation (EC) No 4/2009.
Contact details of the Central Authority:
Ministry of Labour, Pension System, Family and Social Policy (*Ministarstvo rada, mirovinskoga sustava, obitelji i socijalne politike*)
Ulica Grada Vukovara 78

10110 Zagreb
Website: https://mrosp.gov.hr/
Email: pisarnica@mrosp.hr
Tel.: +385 1 555 7015
Fax: + 385 1 555 7222

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Not applicable.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

The applicant contacts the Central Authority of the Member State, and legal aid is provided on the territory covered by Council Regulation (EC) No 4/2009 in accordance with Articles 44 to 47, and, where necessary, the provisions of the Free Legal Aid Act apply.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The Act implementing Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations has been adopted (NN No 127/2013), and the Ministry of Labour, Pension System, Family and Social Policy has been established as the Central Authority for the implementation of Council Regulation No 4/2009.

For further information consult:

1. Family Act (*Obiteljski zakon*), NN Nos 103/15, 98/19, 47/20
2. Enforcement Act (*Ovršni zakon*), NN Nos 112/12, 25/13, 93/14, 55/16, 73/17, 131/20, 114/22
3. International Private Law Act (*Zakon o međunarodnom privatnom pravu*), NN No 101/17
4. Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*), NN Nos 143/13 and 98/19
5. Act Implementing Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (*Zakon o provedbi Uredbe Vijeća (EZ) br. 4/2009 u području nadležnosti, mjerodavnog prava, priznanja i izvršenja odluka te suradnji u stvarima koje se odnose na obveze uzdržavanja*), NN No 127/13
6. Civil Procedure Act (*Zakon o parničnom postupku*), NN Nos 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22, 114/22
7. Interim Maintenance Act (*Zakon o privremenom uzdržavanju*), NN No 92/14

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## Family maintenance - Italy

**1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

In the Italian legal system, there are different names, conditions and amounts for family assistance depending on the relationship between the person liable and the beneficiary. In general, ‘maintenance’ is defined as the obligations justified by the hardship of the person to whom it is owed.

A. ‘**Obbligazione alimentare**’ is the provision of material assistance to a person who is unable to support themselves. It is payable by certain persons identified by law, as part of their duty of family solidarity.

The rules for this type of maintenance are set out in Sections 433 *et seq.* of the Civil Code. It must be paid where:

a) a specific legal relationship exists between the person liable to pay maintenance and the beneficiary;

b) the beneficiary, unable to earn their own living, is in a situation of need.

With respect to point a), those liable to provide maintenance are, in order:

1) the spouse;

2) children, including adopted children, or in their absence, direct relatives in the descending line;

3) parents, or in their absence, direct relatives in the ascending line; adoptive parents;

4) sons-in-law and daughters-in-law;

5) fathers-in-law and mothers-in-law;

6) brothers and sisters or half-brothers and half-sisters, with the former having precedence over the latter.

The closest relative according to the above ranking is liable to provide maintenance;

should there be more than one person at the same level, liability is divided between them according to their financial circumstances.

With respect to point b), the amount payable is proportional to the need of the person claiming maintenance and the financial circumstances of whoever has to pay it. However, this type of maintenance should not exceed the amount necessary to cover the basic vital needs of the person in financial need, having regard to their social status.
B. '**Assegno di mantenimento**' is the provision of financial assistance by one spouse to another in the event of separation, and is designed to ensure that whoever receives it is able to maintain the living standard enjoyed during the marriage. '*Assegno di mantenimento*' is not conditional upon the beneficiary being in need and may be claimed even if the beneficiary is working. It may be waived and it may be replaced by a single payment.
As this type of maintenance aims to ensure that the spouse maintains a similar living standard to the one enjoyed prior to the separation, it is usually a higher amount than '*assegno alimentare*'. However, '*assegno di mantenimento*' is not payable to the spouse deemed responsible for the separation.
In the event of a divorce, the court may award '***assegno divorzile***' to the spouse who lacks sufficient means or in any case is unable to procure them for objective reasons, taking account of the earnings made by both spouses, the reasons behind the decision, and the personal and financial contributions made by each spouse in managing the family and their assets, these factors being evaluated on the basis of the length of the marriage. The right to *assegno divorzile* ends when the beneficiary remarries or starts a new family. However, by way of judgment No 18287 of 11 July 2018, the Joint Chambers of the Supreme Court of Cassation (*Suprema Corte di Cassazione*) ruled out the possibility of *assegno divorzile* being solely maintenance-based in nature, after finding that this form of allowance needed to serve not only a support function but also, to the same extent, a compensatory/equalising function.
Consequently, in order for this allowance to be granted, a composite criterion needs to be adopted which, in the light of the comparative assessment of the respective financial/property statuses, places particular importance on the contribution made by the former spouse seeking the unification of joint and personal assets, in relation to the length of the marriage, potential future earnings and the age of the assignee.
*Assegno di divorzio* may be payable by one spouse to the other, and also by one civil partner to the other: in the latter case, the parties will have needed to have entered into a civil partnership (Law No 76 of 2016) that governs the formation of families by persons of the same gender.
C. The term '**assegno di mantenimento**' also refers to the financial support that parents have to pay for their children when they separate, divorce or cease living together (Section 337-*ter* of the Civil Code). Children (whether born inside or outside marriage) have the right to be maintained by their parents in proportion to their respective means and in accordance with their ability to work professionally or at home. If two parents separate, divorce or cease living with each other, the court establishes that regular maintenance is to be paid and decides the amount in accordance with the child's needs, the standard of living enjoyed by the child while living with both parents, the amount of time spent with each parent, the financial resources of both parents and the financial value of the domestic and care duties carried out by each parent.
D. Section 1(65) of Law No 76 of 20 May 2016 (regulation on civil partnerships between persons of the same gender and cohabitation) stipulates that, in the event of two partners ceasing to live with each other, the court shall establish the right of one partner to receive maintenance payments from the other partner when he or she is in financial hardship and is unable to earn their own living. In those cases, maintenance is awarded for a period of time that is commensurate with the amount of time that the partners lived with each other, and in accordance with Article 438(2) of the Civil Code. In order to determine the order of people obliged to pay maintenance as set out in Section 433 of the Civil Code, the obligation of a cohabiting partner to pay maintenance takes precedence over that of brothers and sisters.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Until they reach majority, children have the right to be maintained by their parents (see the section above). If a child has reached majority but is not yet financially independent, the judge may order one or both of the parents to pay regular maintenance, usually direct to the child. Once a child who has reached majority has become financially independent, if they again experience financial hardship, the parents shall not once again be required to pay maintenance, but shall instead be liable only for the '*assegno alimentare*' (see letter A of section 1). If a child who has reached majority has a serious disability, the rules for children who are minors apply.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

To obtain '*alimenti*' a person must submit an application to the court where they live, enclosing any documentary evidence of their need.
Once the proceedings have begun, it is possible to ask the court to grant provisional maintenance before the final ruling is made.
Maintenance for children or a spouse may be applied for in separate proceedings or as part of proceedings involving two partners separating, divorcing or ceasing to live with each other. The maintenance may also be decided by the court in the first hearing of the proceedings.
In addition, the granting of maintenance for children, a spouse or a civil partner may constitute one of the issues forming the subject of an agreement reached following negotiations conducted in the presence of lawyers (Section 6 of Decree-Law No 132/2014): in such an agreement, the parties pledge to cooperate with each other in good faith and integrity in order to resolve amicably the dispute between them concerning their separation and custody over any children. The agreement reached following those negotiations conducted in the presence of lawyers must be sent, within ten days, to the Public Prosecutor at the competent court, who, if he or she deems the agreement to meet the best interests of the children, shall authorise it. The authorised agreement is equivalent to a judicial separation or divorce order.
By way of a circular dated 22 May 2018, the Ministry of Justice acknowledged as follows. If the agreement is concluded before a civil registrar, then the office of that registrar issues the certificate provided for by Section 39 of Regulation No 2201 of 2003. Conversely, as regards agreements reached following negotiations conducted in the presence of lawyers, it must be held that the certificate as set out in Section 39 cited above must be issued by the Public Prosecutor who authorised the agreement or who issued the authorisation, given that a lawyer cannot be classed as an 'authority' for the purposes of Regulation No 2201 of 2003, and also taking account of the fact that the agreement can only be made valid and effective, and therefore recognisable and enforceable abroad, by a definitive order issued by the Public Prosecutor. As a result, in the event that the Public Prosecutor has refused to authorise the agreement and the authorisation has been passed by the presiding judge of the court (pursuant to Section 6(2) of the Decree-Law), it will be down to the adjudicating judicial body to issue the certificate in question.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

If the person in question is unable to appear in court (if he or she is not yet of age, or is an adult classed as incompetent), the judicial request for maintenance should be submitted by his or her legal representative (parents in the case of minors, guardians in the case of adults), who may also be a support administrator appointed in accordance with Sections 404 *et seq.* of the Civil Code.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

In accordance with Regulation (EC) No 4/2009, in matters relating to maintenance obligations in Member States, jurisdiction lies with:
a) the court for the place where the defendant is habitually resident, or
b) the court for the place where the creditor is habitually resident, or
c) the court which, according to national law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or
d) the court which, according to national law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

The document instituting proceedings concerning maintenance must be presented through a lawyer, who represents the party in court.

The assistance of a lawyer is not necessary if the decision about maintenance is included in the agreement between two spouses who are separating by mutual agreement. In that case, the agreement is submitted to the court, which checks and approves it (Section 711 of the Code of Civil Procedure).

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

A person bringing a case to the civil courts must pay a registration fee (*contributo unificato di iscrizione a ruolo*). This fee varies depending on the type and value of the case.

The orders issued by the court are also subject to a registration fee.

However, neither of these registration fees is payable in cases concerning maintenance payments for children.

The parties must also pay the legal costs of the lawyers representing them in court. It is not possible to give an indication of the expected legal costs, since they vary depending on the level of complexity of the dispute.

Persons who lack sufficient resources may request the appointment of a lawyer to assist them free of charge, with the costs borne by the State (legal aid).

At the time of writing, in order for an applicant to be eligible for legal aid, he or she must have an annual taxable income, as shown on his or her most recent statement, of no greater than EUR 11 493.82 (Ministerial Decree of 16 January 2018, published in Official Gazette (*Gazzetta Ufficiale*) No 49 of 28 February 2018). This limit is updated periodically. If the person concerned lives with their spouse, civil partner or other family members, the total annual income will be calculated by adding together the incomes of all the family members, including the applicant.

If the person concerned lives with their spouse or other family members, the total annual income will be calculated by adding together the incomes of all the family members, including the applicant. In that case, the maximum income to qualify for legal aid is increased by EUR 1 032.91 for each family member with whom the applicant is living.

Applications for legal aid are made to the Bar Council (*Consiglio dell'Ordine degli Avvocati*) for the place where the court with jurisdiction in the case is located.

The application must state the grounds and the legal basis for the claim and must include documentary evidence. The Bar Council will not grant legal aid if the claims being brought to court are clearly unfounded.

If the Bar Council accepts the application, the person concerned may appoint a lawyer chosen from the list of authorised legal aid lawyers.

Some Bar Councils will themselves choose the lawyer to take the case.

An application for legal aid may be made at any stage and instance of the proceedings and is valid for all subsequent instances.

The income limit indicated above must not be exceeded during the entire duration of the proceedings.

If the application for legal aid is rejected, the person concerned may resubmit it to the court with jurisdiction in the case.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

The court order stating the amount of maintenance to be paid and ordering its payment is an executory ruling, and therefore constitutes an enforcement order.

A court order declaring entitlement to maintenance places a duty on the person liable to pay the beneficiary what they need to meet their basic vital needs (subsistence, accommodation and clothing costs and the costs of the minimum goods and services necessary to maintain a dignified life). When deciding how much maintenance should be paid, the court must also take account of the financial circumstances of the person liable for maintenance.

A court order stating the amount of maintenance to be paid to a separated spouse must also take account of their standard of living during the marriage.

A court order stating the amount of maintenance to be paid to children who are still minors, or to children who have reached majority but are not financially independent, must take account of their educational needs.

Maintenance is automatically adjusted in line with the ISTAT indices or any other parameters agreed by the parties or stated in the court order.

The amount of maintenance payable may be changed at a later date if the beneficiary or the person liable applies to the court with jurisdiction, which is usually the one that issued the original order.

**9 How and to whom will the maintenance be paid?**

The court lays down the payment arrangements.

In cases of legal separation, the court may order third parties required, including on a regular basis, to pay the person liable for maintenance (e.g. their employer) to pay some of the money direct to the separated spouse.

The maintenance must be paid to the person to whom it is owed.

Maintenance for children who are still minors is paid to the spouse who has custody of them.

Maintenance ordered by the court for children who have reached majority but are not financially independent is paid direct to those children, unless the court rules otherwise.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If the person ordered to pay maintenance does not pay it voluntarily, the usual means of enforcement of financial obligations are open to the beneficiary.

It is also possible to apply Section 614-*bis* of the Code of Civil Procedure, which provides incentives for the voluntary fulfilment of obligations to carry out a certain act: by way of a conviction order, the court may fix, at the request of a party (and provided that such a measure is not clearly unfair), a sum of money to be paid by the person liable for maintenance for every subsequent breach or failure to comply, or for every delay in implementing the order. The conviction order constitutes an enforcement order for the payment of the sums owed for every breach or failure to comply.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

The entitlement to maintenance is not in itself subject to a prescription period. Any individual instalments that fall due but are not paid are subject to a five-year prescription period (Section 2948(2) of the Civil Code). Moreover, prescription is suspended between spouses and between whoever has parental responsibility for the persons receiving maintenance.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

See the following section.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

A State Fund has recently been set up for paying maintenance to spouses in financial hardship who are unable to earn their own living and to any minor children living with them, and also to any severely disabled adult children, when the other spouse required to pay maintenance fails to do so.

In order to be paid this maintenance (by the Ministry of Justice (*Ministero della Giustizia*)), the party concerned must submit an application to the court where they live.

The payments from the Ministry of Justice are made in advance. The Ministry of Justice then recovers the sums owed from the defaulting spouse.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

A person entitled to maintenance payments from someone living in another Member State may obtain assistance from Italy's Central Authority. They must submit an application for recognition and a declaration of enforceability and enforcement of the decision recognising their entitlement to maintenance, in application of the system of cooperation established by Chapter VII of Regulation (EC) No 4/2009 through the Central Authority in the Member State in which the person liable habitually resides.

The Department for Juvenile Justice and Communities at the Ministry of Justice (*Ministero della Giustizia - Dipartimento per la Giustizia Minorile e di Comunità*) is the Central Authority for Italy designated in application of Article 49 of Regulation (EC) No 4/2009 to recover maintenance in cross-border disputes in the European judicial area.

**14.2 If so, how can that authority or private organisation be contacted?**

The contact details of Italy's Central Authority are as follows:

Ministero della Giustizia, Dipartimento per la Giustizia Minorile e di Comunità
Via Damiano Chiesa 24
00136 ROME
Tel. (+39) 06 68188 326-331-535
Fax (+39) 06 06.68808 323
E-mail: acitalia0409.dgmc@giustizia.it

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

If a creditor is living in another Member State and wants to enforce in Italy a decision recognising their entitlement to maintenance, they may seek assistance from the Central Authority of the Member State in which they are living, and through that authority submit an application in accordance with Article 56, using the system of cooperation established in Chapter VII of Regulation (EC) No 4/2009.

A creditor living in another Member State may not directly seek assistance from Italy's Central Authority.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

See the preceding section.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

As regards access to justice in cross-border cases, the scheme provided for in Chapter V of Regulation (EC) No 4/2009 is applied directly.

Thus, for cases concerning recognition or recognition and declaration of enforceability of a decision and concerning enforcement of a decision issued in the Member State or already recognised, if the applicant is a person under the age of 21, legal aid is automatically granted, regardless of income or whether the application appears to be well founded, as required by the general rules in force in Italy concerning access to legal aid.

For applications concerning maintenance for children aged 21 and over, and for applications that do not arise from parentage (so for applications submitted by a spouse or another person who is related to or has an affinity with the creditor), legal aid is granted if the normal conditions of income and the well-founded nature of the application are met, in accordance with Italian law (see section 7).

Using the system of cooperation set out in Chapter VII of Regulation (EC) No 4/2009, Italy's Central Authority sends the application for legal aid to the relevant Bar Council.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Italy's Central Authority uses the following methods to handle cooperation requests sent in application of Chapter VII:

it encourages amicable solutions by sending debtors an invitation to meet their maintenance obligation voluntarily;
it asks debtors to contact the Central Authority to agree the procedures for settling the case;
it locates the debtor by accessing the database of the national register of Italian municipalities (*Indice nazionale dei comuni italiani*) and that of the prisons administration (*Amministrazione penitenziaria*), or by contacting local population registry offices;
it collects information about the income and assets of the debtor, with the assistance of the tax police (*polizia tributaria*);
it facilitates the obtaining of documentary evidence as stated in Article 51(2)(g) of the Regulation, in cooperation with the judicial authorities;
it facilitates the provision of legal aid as explained in sections 7 and 18 above.

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## Family maintenance - Cyprus

**1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

They cover parents' common maintenance obligations towards their minor children, in accordance with their financial means, whether they are together or separated. Maintenance obligations are extended to the former spouse if he/she is not in a position to support himself/herself from his/her own financial resources.

Persons that have to pay maintenance allowance are parents to their children and/or former spouses to each other and adult children to their parents if the latter are unable to support themselves from their assets or income.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Maintenance obligations stop when the child attains majority, that is, when he/she reaches 18 years of age, unless the child is unable to support himself /herself after reaching adulthood. This applies in cases where the child suffers from a physical or mental illness or cannot work because they are studying at a higher education or vocational institution, or where a male child is carrying out his military service.

In accordance with Cypriot law and, specifically, Article 34 of the Law on the relations between parents and children,

Law 216/90, adult children also have maintenance obligations towards parents.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

You should apply to a court, and specifically, to the Family Court of the prefecture where you are resident.

The procedure begins with an initial application to recover maintenance, accompanied by a statement under oath by the applicant which is recorded in the court's register. The application is served to the respondent (maintenance debtor) who is given the right to be heard and to file an objection. If the two sides assent, a maintenance decree is issued by common agreement. Otherwise, the application is set for hearing and the court makes a decision based on the testimonies brought by the two sides.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

When the creditor is a minor (i.e. a child under 18 years old), the request is made by the creditor’s guardian (e.g. the mother), on behalf of and for the benefit of the creditor.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

Under Article 12 of the Family Courts Law 23/90 (as amended), when the creditor is a minor, the court having jurisdiction over the place of residence of the creditor or debtor has jurisdiction (Article 12(1)(b)). In all other cases (i.e. when the creditor is an adult), the court having jurisdiction over the place of residence or business of the applicant (creditor) or debtor has jurisdiction (Article 12(1)(a)).

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

Applicants can address the court either in person or through a lawyer.

With regard to the procedure, please refer to paragraph 3 above.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

The procedure entails the payment of fees in the form of lawyer's fees (if the applicant is represented by a lawyer) and actual court costs. The amount is set by Regulations published periodically by the Supreme Court of Cyprus. The exact cost depends on the duration and/or complexity of the proceedings. If the applicant has insufficient financial means, he/she can apply for free legal aid pursuant to Law 165(I)/2002, as amended.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

The type of maintenance granted by the court is from parent to child, child to parent and former spouse to former spouse. The amount of maintenance is calculated, taking the creditor's needs and the financial means of the debtor into consideration. Maintenance includes everything necessary for the creditor's subsistence and welfare and, additionally, his/her education costs, if relevant (Article 37 of Law 216/90).

The maintenance decree can be revised by the court following a request by the applicant (or his/her representative) if the creditor's living costs or family circumstances change, or if the maintenance debtor's conditions change (Article 38(1) of Law 216/90).

Apart from changes in circumstances or costs, the Law (Article 38(2) of Law 216/90) provides for a ten percent (10%) automatic increase in maintenance every twenty-four (24) months unless the Court decides otherwise.

**9 How and to whom will the maintenance be paid?**

Maintenance is paid monthly to the creditor or the creditor's guardian or their lawyer, by bank transfer, cheque or cash.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If the debtor under decree refuses to pay, the maintenance allowance is collected in a way similar to that of collecting penalty payments. The procedure includes the issuing of a writ of detention (Article 40 of Law 216/90).

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

In accordance with Article 9(3) of Law 232/91, the debtor is released from the obligation to pay the amount due by virtue of a maintenance decree for a period exceeding two years.

Any period of absence of the maintenance debtor from the Republic of Cyprus is excluded from the calculation of the above time period.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

There is no such authority or organisation on a national level.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Please see the answer above.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Yes, in that case the applicant/creditor can seek assistance from the Central Authority of the Republic, i.e. the Ministry of Justice and Public Order.

**14.2 If so, how can that authority or private organisation be contacted?**

The person concerned or his/her lawyer can contact the Central Authority by telephone, in writing (by letter, fax or e-mail) or in a face to face meeting.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

If the applicant/ creditor is in another country and the debtor is in Cyprus, the applicant can seek assistance from the Ministry of Justice and Public Order, being the Central Authority, via the relevant Central Authority in the country where he/she is, but not directly.

Alternatively, he/she can resort directly to the court via his/her lawyer.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

In the specific case, the Central Authority of Cyprus can be contacted by telephone or in writing (via a letter, fax or email) and provide assistance for forwarding a written request for maintenance to the competent national court.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes, Cyprus is bound by the 2007 Hague Protocol.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Not applicable.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

Upon implementation of the new Regulation on maintenance (Council Regulation (EC) No 4/2009) applications are now forwarded directly to the competent Court of the Republic through the Central Authority of the Republic.

Access to justice is also facilitated through the provision for legal aid both under the national legislation, i.e. Law 165(I)/2002, and within the context of the relevant EU Directive on legal aid in cross-border disputes.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

To ensure the correct implementation of Article 51, the Central Authority cooperates closely with other competent authorities of the State with a view, *inter alia* , to obtaining the information requested, such as the debtor's residential and business address, revenues, etc., detecting the debtor and serving court documents to the debtor by obtaining and providing to the court authorities a valid address for service.

Despite the provision for legal aid, those cited above, as well as the forwarding of requests under Regulation (EC) No 4/2009, are provided to the applicants via the Central Authority, thus, no legal aid issue arises.

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## Family maintenance - Latvia

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Latvian national legislation does not provide a comprehensive definition of maintenance; but there is a common understanding of specific issues concerning the maintenance of another person. For example, the maintenance of a child means the expenditures that each and every parent is obliged to provide for the child, regardless of the parent's financial situation. The minimum amount of child maintenance has been laid down by the Government (*Ministru kabinets*, 'Cabinet of Ministers'). The definition of child maintenance is set out in the Maintenance Guarantee Fund Law.

For many questions relating to maintenance obligations — which may be referred to by different names, such as 'maintenance' (*uzturlīdzekļi*) or 'resources to ensure the previous level of welfare' (*līdzekļi iepriekšējā labklājības līmeņa nodrošināšanai*) — the common understanding is based on case-law developed in court judgments. For example, it is generally accepted that between spouses maintenance means long-term financial aid provided by one spouse to another whose material circumstances have declined.

Persons liable to pay maintenance:

Parents are liable to their children

A child's parents are obliged to provide maintenance for the child until the child is able to support itself. The obligation to maintain the child consequently does not end with the child's coming of age. However, a court may assess whether a claim for maintenance should be granted if the child has come of age, and discontinues education or professional training, and is able to provide for himself or herself through his or her own work but fails to do so. It should be borne in mind that the obligation of parents to provide maintenance for their children has to be commensurate to the financial circumstances of the parent. Nevertheless, every parent has an obligation to provide the minimum amount of maintenance laid down by the Government, regardless of his or her financial situation. The obligation to support the child is binding regardless of whether the child resides with either or both of the parents or lives separately.

To provide maintenance for a child means to provide it with food, clothing, housing and health care, personal care, education and childrearing (ensuring both mental and physical development with due regard to the child's personality, skills and interests, and preparing the child for useful work in society).

Children are liable to their parents

The obligation of children to provide maintenance for their parents is incumbent upon all the children in equal measure. If the financial circumstances of the children are unequal, a court may define their obligations, commensurate to the financial situation of each child.

One spouse is liable to the other spouse

If the marriage is annulled, and only one of the former spouses was aware that the marriage was open to annulment at the time of its conclusion, the other spouse, who was not so aware, is entitled to claim from the first spouse resources commensurate to the first spouse's financial circumstances in order to ensure the other spouse's previous level of welfare. Upon or after a divorce, likewise, one former spouse may claim from the other former spouse resources commensurate to the other spouse's financial circumstances in order to ensure the claimant's previous level of welfare.

There is no obligation to provide a former spouse with the resources to ensure the previous level of welfare if:

the time that has passed since the divorce or the annulment of the marriage is equal to the duration of the former marriage or the duration of cohabitation in the marriage that has been annulled;
the former spouse has remarried;
the income of the former spouse covers that spouse's maintenance;
the former spouse forgoes maintenance through his or her own work;
the former spouse under an obligation to provide maintenance has not got sufficient means of subsistence or has become incapable of working;
the former spouse has committed a criminal offence against the other former spouse or against the life, health, freedom, property or honour of the other spouse's relatives in the ascending or descending line;
the former spouse has left the other former spouse in a helpless state even though it was possible for him or her to provide assistance;
the former spouse has intentionally initiated a false accusation for a criminal offence against any of the persons referred to in point 6;
the former spouse has been living immorally or wastefully;
either spouse dies or is deemed to have died;
there are other important reasons.

**Grandparents are liable to grandchildren**

If there are no parents, or they are unable to maintain the child, this obligation lies upon the grandparents in equal measure. If the financial circumstances of the grandparents are unequal, a court may define their obligations, commensurate to the financial situation of each grandparent.

**Grandchildren are liable to their grandparents**

The obligation to maintain grandparents, if necessary, likewise lies upon all the grandchildren in equal measure. If the financial circumstances of the grandchildren are unequal, a court may define their obligations to maintain their grandparents, commensurate to the financial situation of each grandchild.

**Maintenance obligations on the basis of a maintenance contract**

Parties may agree to provide maintenance on the basis of a maintenance contract. Pursuant to a maintenance contract, one party provides the other party with some material benefit, whether in cash or in kind, and in return the other party undertakes to maintain the first party during his or her lifetime, unless a different duration is agreed. Unless otherwise agreed, maintenance includes food, housing, clothing and care; if the recipient of maintenance is a minor, it also includes upbringing and education at a primary educational establishment.

**Maintenance obligation arising from personal injury**

If a person who has an obligation to provide maintenance for some other person dies as a result of a personal injury, the obligation passes to the person liable for the injured party's death. The amount of such compensation is at the discretion of the court, taking into account the age of the deceased person, his or her ability to support himself or herself before death and, finally, the needs of the person for whom maintenance is to be provided. If the person for whom maintenance is to be provided has sufficient means of subsistence there is no claim.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

A child's parents are obliged to provide maintenance for the child until the child is able to support itself. The obligation to maintain the child consequently does not end with the child's coming of age. However, a court may assess whether a claim for maintenance should be granted if the child has come of age, and discontinues education or professional training, and is able to provide for himself or herself through his or her own work but fails to do so.

Latvian legislation does not define what constitutes the resources that will ensure the other spouse's previous level of welfare. Neither does it define what is required by the obligation toward parents or grandparents.

Latvian legislation does define child maintenance, as providing the child with food, clothing, housing and health care, personal care, education and childrearing (ensuring both mental and physical development with due regard to the child's personality, skills and interests, and preparing the child for useful work in society). The extent of maintenance depends on the child's entitlement to appropriate living conditions and the child's actual needs.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

In order to secure any form of maintenance the claimant has to apply to a court in accordance with a procedure stipulated in the Civil Procedure Law. The claimant has to submit an application and other necessary documents to the court.

A child's parents may have entered into an agreement, in the form of a notarial act (*notariāls akts*), providing for monthly maintenance payments. Such an agreement is a civil transaction, which has legal consequences, in that it binds both parties to respect and comply with the provisions of a legally formulated contract. If one of the child's parents fails to comply with an agreement on fixed or periodic maintenance payments, the agreement may be submitted to the court bailiff (*tiesu izpildītājs*) for enforcement.

Latvia has established a Maintenance Guarantee Fund (*Uzturlīdzekļu garantiju fonds*) designed to provide maintenance for minor children from the central government budget. The holder of the assets is the Administration of the Maintenance Guarantee Fund (*Uzturlīdzekļu garantiju fonda administrācija*). The Administration of the Fund is directly subordinated to the Ministry of Justice.

Maintenance can be obtained from the Maintenance Guarantee Fund, provided that the recovery of maintenance is first attempted via court proceedings: if the claim cannot be enforced, the creditor may then apply to the Administration of the Fund.

The Administration of the Fund advances maintenance allowances only if the enforcement of a court decision ordering recovery of maintenance in accordance with the applicable civil procedure has been declared impossible, or if the debtor complies with a court decision ordering recovery, but fails to provide the minimum amount of maintenance laid down by the Government.

The Administration of the Fund has a duty to act as enforcer of a debt against the debtor, without any special court decision being needed, for the amount of any maintenance allowance disbursed by the Fund.

The procedure for obtaining a maintenance allowance from the Administration of the Maintenance Guarantee Fund is as follows:

The applicant – the child maintenance creditor - may apply directly to the Administration of the Fund, submitting an application and the following documents:
a copy of the court decision granting maintenance;
a certificate issued by a bailiff confirming that it has proved impossible to enforce a decision awarding maintenance against the debtor, or that the debtor has complied with the court decision requiring recovery of maintenance, but has failed to provide the minimum amount of maintenance laid down by the Government; such a certificate must be submitted to the Administration of the Fund within one month from the date of its issue;
if maintenance is claimed through an authorised representative, a document certifying the authorisation.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

Yes, an authorised representative may bring a claim on behalf of a relative or a close relation. In the case of minor children, the claim may be brought by their legal representatives, i.e. their parents or guardians.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

The rules on jurisdiction provide that the court with jurisdiction for the recovery of maintenance of whatever kind is the district or city court (*rajona (pilsētas) tiesa*).

In Latvia, the court has jurisdiction under the following:
Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ('the Maintenance Regulation');
bilateral and multilateral treaties binding on the Republic of Latvia;
the Civil Procedure Law, if the provisions of the Maintenance Regulation or the provisions of bilateral and multilateral treaties binding on the Republic of Latvia are not applicable.
The Civil Procedure Law provides that the following Latvian courts have jurisdiction in maintenance claims:
an action may be brought in the court of the place where the defendant has his or her place of residence;
if the defendant's place of residence is unknown, or the defendant has no permanent place of residence in Latvia, an action may be brought in the court of a place where he or she has immovable property, or the court of his or her last known place of residence;
an action regarding the recovery of maintenance for a child or a parent may also be brought in the court of the place of residence of the plaintiff;
an action for maintenance obligations arising from personal injury may also be brought in the place of residence of the plaintiff or the place where the injury was inflicted.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

In order to bring an action and lodge a claim with the court, the applicant does not have to use the services of a lawyer or any other intermediary. Neither does the applicant have to pursue any form of reconciliation prior to the examination of the case in court.
However, in preparing a case for trial, the judge must strive to reconcile the parties. The parties are therefore encouraged to come to a mutual agreement prior to the examination of the case in court.
It must also be emphasised that the parties may agree on maintenance claims without bringing the case to court.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

According to Article 43(1) of the Civil Procedure Law, the following persons are exempt from the payment of court costs to the State (State fee (*valsts nodeva* ), chancery fee (*kancelejas nodeva*) and procedural costs (*ar lietas izskatīšanu saistītie izdevumi*)):
plaintiffs in claims for the recovery of maintenance payments for a child or parent, and claims for the determination of paternity if the claim is brought together with a claim for the recovery of maintenance for a child;
applicants in matters relating to the recognition, or the recognition and enforcement, of a foreign decision on the recovery of maintenance payments for a child or parent;
plaintiffs, in regard to claims arising from personal injuries which result in mutilation or other damage to health or the death of a person;
defendants in matters relating to the reduction of maintenance awarded by a court to a child or a parent and the reduction of maintenance payments that the court awarded on a claim arising out of personal injuries that result in mutilation or other damage to health, or death;
Article 34(1) of Latvia's Law on Civil Procedure provides that a statement of claim (*prasības pieteikums*) may be an original claim or a counter-claim, an application submitted in a case already pending by a third party with an independent claim in respect of the subject-matter of the dispute, an application in a special adjudication procedure, or another application submitted to the court that is provided for in the relevant legislation; for any statement of claim a State fee is payable, as follows:
up to €2 134: 15% of the amount claimed, but not less than €70;
from €2 135 to €7 114: €320 plus 4% of the amount claimed in excess of €2 134;
from €7 115 to €28 457: €520 plus 3.2% of the amount claimed in excess of €7 114;
from €28 458 to €142 287: €1 200 plus 1.6% of the amount claimed in excess of €28 457;
from €142 288 to €711 435: €3 025 plus 1% of the amount claimed in excess of €142 287;
more than €711 435: €8 715 plus 0.6% of the amount claimed in excess of €711 435.
In maintenance recovery cases the amount claimed is deemed to be the total to be paid for one year.
In Latvia, legal aid to foreign claimants or applicants who are entitled to legal aid under the Maintenance Regulation is provided by the central authority established in accordance with the Regulation, which is the Administration of the Maintenance Guarantee Fund. The Administration of the Maintenance Guarantee Fund provides legal aid and representation before Latvian courts and enforcing bodies to domestic maintenance creditors and to foreign creditors entitled to legal aid under the Regulation.
In cases not provided for in the Maintenance Regulation, the Latvian State grants legal aid to a person whose special situation or whose assets and income prevent him or her from ensuring the protection of his or her rights. Legal aid is granted in accordance with the State Legal Aid Law.
Legal aid is available for the expenses of drawing up procedural documents, legal consultations during legal proceedings, and representation in court. In cross-border disputes, in addition to the aid mentioned above, a person also has the right to receive the services of an interpreter, the translation of certain in-court or out-of-court documents or documents submitted by the claimant which are necessary for adjudicating the case, and in certain cases even the payment of expenses for travel to court sittings. The State does not cover the court costs. Court costs include the State fee, the chancery fee and procedural costs, such as sums payable to the witnesses and experts, expenses related to the questioning of witnesses, expenses related to the delivery of a copy of the claimant's application and the writ of summons, etc. However, the court, after considering a person's material circumstances, may exempt him or her partly or fully from the payment of court costs to State revenue, or allow payment by instalments.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

When the court grants maintenance for a child, it may grant it in the form of a fixed sum, or in another form, e.g. food, clothing, housing etc., or both.
In assessing and granting a definite amount of maintenance, the court will first take into account the material situation of the parties, their living conditions, and their family circumstances, giving due consideration to the evidence they produce.
When adjudicating the recovery of maintenance for a child, the court will assess all the circumstances and evidence in the case and determine the amount of maintenance. The minimum amount of maintenance, which every parent is liable to provide, in accordance with the regulations laid down by the Government, for every child every month from the moment of its birth until it reaches the age of 7 years, is 25% of the minimum monthly remuneration laid down by the Government; for every child from the age of 7 years until it reaches the age of 18 years, it is 30% of the minimum monthly remuneration laid down by the Government.
Once maintenance has been granted, any change to the amount and the payment period, and any exemption from payment, require a fresh application by the party concerned. The court may then review the amount of maintenance payments, in fresh proceedings, on the basis of changes in the material situation and the family circumstances of the parties concerned, and adjust the payments upwards or downwards.

**9 How and to whom will the maintenance be paid?**

The maintenance debtor must pay maintenance to the maintenance creditor. If a claim on behalf of a minor child is brought by one of its parents or its guardian, maintenance is paid to him or her instead of the child. Traditionally, maintenance is paid on a periodic basis in definite amounts, for example in the form of salary deductions; less often it takes other forms.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If the debtor fails to pay maintenance on a voluntary basis, the person in favour of whom it has been granted has to obtain an enforcement order (*izpildu raksts*) from the court in which the case was adjudicated. That enforcement order, or an enforcement order drawn up in another Member State of the European Union, must be submitted for enforcement to a bailiff (*tiesu izpildītājs*) within 10 years after the court decision or the ruling of the judge has entered into force, except where other limitation periods apply (if periodic payments are recovered as a result of a court judgment, the enforcement order remains in effect for the whole period for which the periodic payments have been adjudged, and the limitation period runs from the final day for each payment.). The bailiff commences compulsory enforcement pursuant to an application in writing by the party seeking enforcement. The bailiff must accept the enforcement order if either the place of residence of the debtor or the location of his or her property or workplace falls within the bailiff's district (*iecirknis*). The bailiff may also accept other enforcement orders which are to be enforced within the area within the jurisdiction of the regional court (*apgabaltiesa*) to which the bailiff is attached, which is the area in which the bailiff has power to act.

Compulsory enforcement measures include: recovery directed against movable property belonging to the debtor, including property in the possession of other persons, and intangible property belonging to the debtor, by the sale thereof; recovery directed against money due to the debtor from other persons (remuneration for work, payments equivalent thereto, other income of the debtor, deposits in credit institutions); recovery directed against immovable property belonging to the debtor, by sale thereof; or other measures set out in the judgment.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system.**

According to Article 570 of the Civil Procedure Law, recovery may not be enforced against the debtor's property if the debtor is working, or receives a pension or a scholarship, and the amount to be recovered does not exceed that part of a monthly income against which recovery may be enforced pursuant to law. The Civil Procedure Law specifies categories of property against which recovery may not be directed, e.g. certain home appliances, household equipment, or the necessary clothing of the debtor and family members who are his or her dependants. Pursuant to Article 594 of the Civil Procedure Law, until the debt to be recovered is discharged, deductions are to be made in accordance with the enforcement documents from remuneration for work and payments equivalent thereto, paid to the debtor, subject to the following:

In maintenance recovery cases for the nutrition of minor children or for the benefit of the Administration of the Maintenance Guarantee Fund, a proportion of the work remuneration of the debtor and payments equivalent thereto equal to 50% percent of the minimum monthly wage must remain intact, and for each dependent minor child resources must be left intact equal to the amount of the State social security benefit.

In other maintenance recovery cases the sum deducted from the work remuneration of the debtor and payments equivalent thereto can amount to 50%, but the minimum monthly wage must be left intact, and for each dependent minor child resources must be left intact equal to the amount of the State social security benefit.

Pursuant to Article 632 of the Civil Procedure Law, a judgment creditor or a debtor may submit a substantiated complaint challenging the actions of a bailiff in enforcing a judgment, or the refusal of a bailiff to perform such actions, except in specific situations; the complaint must be lodged with the district or city court of the place where the bailiff's office is located within 10 days from the date when the actions challenged took place, or, if the complainant was not notified of the time and place of the actions to be taken, the date when the complainant learned of such actions. Pursuant to Article 634 of the Civil Procedure Law, if a judgment that has already been enforced is then set aside, and upon readjudication of the matter a judgment is rendered dismissing the claim, or a decision is taken to terminate court proceedings or to leave the matter unadjudicated, the enforcement of the judgment is reversed, and everything which has been recovered from the defendant for the benefit of the plaintiff pursuant to the judgment now set aside must be returned to the defendant.

Pursuant to Article 546 of the Civil Procedure Law, enforcement documents may be submitted for compulsory enforcement within 10 years from the date when an adjudication by a court or a judge enters into force, provided that no other limitation periods are laid down out by law. If periodic payments are recovered as a result of a court judgment, the enforcement document remains in effect for the whole period for which the periodic payments have been adjudged, and the limitation period runs from the final day for each payment.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

A person may apply to the Administration of the Maintenance Guarantee Fund in order to receive maintenance for a minor if the enforcement of a court decision ordering recovery of maintenance in accordance with the applicable civil procedure has been declared impossible, or if the debtor complies with a court decision ordering recovery, but fails to provide the minimum amount of maintenance.

Pursuant to the Maintenance Regulation, a person may apply to the Administration of the Maintenance Guarantee Fund to recover maintenance from a debtor who is no longer in Latvia. The Administration of the Maintenance Guarantee Fund fulfils the function of the central authority in Latvia for purposes of the Regulation.

Pursuant to the Maintenance Regulation, a person who has a legal right to maintenance may apply to the Administration of the Maintenance Guarantee Fund and submit an application addressed to another Member State of the European Union in order:

to secure a decision ordering the recovery of maintenance in the country where the defendant is resident;

to have the amount of the maintenance allowance adjusted (upwards or downwards);

to secure a decision ordering the recovery of maintenance and determination of the child's paternity in the country where the defendant is resident;

to secure recognition of a decision of a Latvian court ordering the recovery of maintenance, to have it declared enforceable, or to have it enforced.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

The Administration of the Maintenance Guarantee Fund can act in place of a child maintenance debtor if the enforcement of a court decision ordering recovery of maintenance in accordance with the applicable civil procedure has been declared impossible, or if the debtor complies with a court decision ordering recovery, but fails to provide the minimum amount of maintenance laid down by the Government. If the Administration of the Fund pays maintenance, it is entitled to take steps to recover the amounts paid, with statutory interest (see Section 3 above).

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

If the claimant and the child have a permanent residence in Latvia, but the maintenance debtor is resident in another country, the claimant may apply to the Administration of the Maintenance Guarantee Fund if the enforcement of a court decision ordering recovery of maintenance in accordance with the applicable civil procedure has been declared impossible, or if the debtor complies with a court decision ordering recovery, but fails to provide the minimum amount of maintenance.

If the debtor resides in a foreign country, and has no property in Latvia which could be subjected to enforcement, the claimant should submit the court decision to have it recognised and enforced in the respective foreign country before applying to the Administration of the Maintenance Guarantee Fund. If the enforcement of the decision in the respective foreign country proves impossible, the claimant may apply to the Administration of the Fund requesting it to take the place of the debtor regarding the enforceable maintenance.
The Administration of the Maintenance Guarantee Fund fulfils the function of the central authority under the Maintenance Regulation (see Section 3 and Section 13), and for help within the framework of the Regulation a person may turn to the Administration of the Fund.
If a Latvian court delivers a decision on the enforcement of maintenance, and a person residing in Latvia wishes to have that decision recognised and/or enforced in another Member State of the European Union, or to obtain a judicial decision against a debtor residing in another Member State of the European Union, the Administration of the Maintenance Guarantee Fund may help that person, under the Maintenance Regulation, to forward the decision of the Latvian court to the respective foreign country for recognition and/or enforcement and for a decision on the application.
The Administration of the Maintenance Guarantee Fund can act in place of the debtor and pay the maintenance allowance to a minor child, and can provide information on maintenance issues.
(see Section 3 and Section 13).

**14.2 If so, how can that authority or private organisation be contacted?**

Administration of the Maintenance Guarantee Fund (*Uzturlīdzekļu garantiju fonda administrācija*)
Address: Pulkveža Brieža iela 15, Riga,
LV-1010, Latvia
Telephone: +371 67830626
Fax: +371 67830636
E-mail: pasts@ugf.gov.lv

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

If the maintenance creditor is in another EU Member State, and the maintenance debtor is in Latvia, the creditor may apply under the Maintenance Regulation to the central authority of the country in which the creditor resides. The application may seek a decision ordering the recovery of maintenance in Latvia, where the debtor resides; or a decision ordering the recovery of maintenance concurrently with the determination of paternity in Latvia; or a decision declaring enforceable in Latvia a foreign decision ordering recovery, or a decision enforcing the foreign decision. Under the Regulation the central authority of the foreign country will carry out the necessary formalities and forward the creditor's application to the Latvian central authority established in accordance with the Regulation. The Latvian central authority — the Administration of the Maintenance Guarantee Fund — will help the foreign claimant to submit a foreign court decision for enforcement or for recognition and enforcement in Latvia, or will help the claimant to lodge an application for the recovery of maintenance at the Latvian court where the debtor resides, or an application for the recovery of maintenance concurrently with the determination of paternity in Latvia.
If the enforcement of a court decision ordering recovery of maintenance in accordance with the applicable civil procedure has been declared impossible, or if the debtor complies with a court decision ordering recovery, but fails to provide the minimum amount of maintenance, a person who permanently resides with his or her child in Latvia, both of them having declared residences in Latvia, may apply to the Administration of the Maintenance Guarantee Fund with a request to pay them maintenance.
Pursuant to the Maintenance Regulation, a person has to apply to the central authority of the country in which he or she resides. A person residing in Latvia may apply to the Administration of the Maintenance Guarantee Fund in order:
to secure a decision ordering the recovery of maintenance in another Member State of the European Union where the defendant is resident;
to secure a decision ordering the recovery of maintenance concurrently with the determination of paternity in another Member State of the European Union where the defendant is resident;
where a decision ordering the recovery of maintenance has already been given, to have that decision recognised, declared enforceable and enforced in another Member State of the European Union where the defendant is resident.
If the enforcement of a court decision ordering recovery of maintenance in accordance with the applicable civil procedure has been declared impossible, or if the debtor complies with a court decision ordering recovery, but fails to provide the minimum amount of maintenance, a person who permanently resides with his or her child in Latvia, both of them having declared residences in Latvia, may apply to the Administration of the Maintenance Guarantee Fund with a request to pay them maintenance.
Administration of the Maintenance Guarantee Fund (*Uzturlīdzekļu garantiju fonda administrācija*)
Address: Pulkveža Brieža iela 15, Riga,
LV-1010, Latvia
Telephone: +371 67830626
Fax: +371 67830636
E-mail: pasts@ugf.gov.lv
Pursuant to the Maintenance Regulation, the Administration of the Maintenance Guarantee Fund performs the functions of the central authority in Latvia.
The Administration of the Maintenance Guarantee Fund advances a maintenance allowance to the creditor, in the debtor's place, if the enforcement of a court decision ordering recovery of maintenance in accordance with the applicable civil procedure has been declared impossible, or if the debtor complies with a court decision ordering recovery, but fails to provide the minimum amount of maintenance.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Latvia is bound by the Hague Protocol of 2007.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Latvia is bound by the Hague Protocol of 2007.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

According to Article 43 of the Civil Procedure Law, the following persons are exempt from the payment of court costs to the State:
plaintiffs, in claims for the recovery of child or parent maintenance payments, and in claims for the determination of paternity if the action is brought concurrently with a claim for the recovery of child maintenance payments;
applicants in matters relating to the recognition, or the recognition and enforcement, of a foreign decision on the recovery of maintenance payments for a child or parent;

defendants, in matters regarding the reduction of child or parent maintenance payments adjudged by a court.
Where an application to recover the resources to ensure the previous level of welfare is brought by a former spouse, or by an applicant seeking the recognition or recognition and enforcement of a foreign court decision regarding the recovery of maintenance for a former spouse or another person, pursuant to the fourth part of Article 43, a court or a judge, taking into account an individual's financial situation, may fully or in part exempt the applicant from the payment of court costs to the State, or may postpone the payment of court costs to the State or divide the payment into instalments.
In Latvia, legal aid to foreign claimants or applicants who are entitled to legal aid under the Maintenance Regulation is provided by the central authority established in accordance with the Regulation, which is the Administration of the Maintenance Guarantee Fund. The Administration of the Maintenance Guarantee Fund provides legal aid and representation before Latvian courts and enforcing bodies to domestic maintenance creditors and to foreign creditors entitled to legal aid under the Regulation.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Latvia has amended several national laws and regulations to enable the central authority established in accordance with the Maintenance Regulation to fulfil the functions set out in Article 51. As amended, the laws and regulations of Latvia ensure the provision of legal aid to cross-border creditors or applicants entitled to legal aid as required by the Regulation, including the representation of the respective person in court and before enforcing bodies. To identify the place where the debtor or creditor resides in Latvia, or to obtain information on the debtor's or creditor's income and the location of any property belonging to them in Latvia, the Latvian central authority, i.e. the Administration of the Maintenance Guarantee Fund, has direct access to various registers in Latvia holding this information. The information which the central authority can acquire directly from the respective registers can enable it to obtain documents and evidence. To institute or facilitate proceedings, secure the necessary temporary measures and obtain evidence, the Administration of the Fund has the right to apply to courts in Latvia on behalf of the respective claimants or applicants. The Administration of the Fund, on behalf of the claimant, may bring a claim for determination of the child's parentage directly before the court if the claim is brought concurrently with a claim for the recovery of maintenance.

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## Family maintenance - Lithuania

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

**The obligation of parents to provide for their children.**

Parents are obliged to provide for their minor children. The manner and form of maintenance is determined by mutual agreement of the parents. The amount of maintenance must be commensurate with the needs of the minors and the financial situation of their parents; it must safeguard the conditions necessary for the child's development. Both parents must provide support for their minor children in accordance with their own financial situation (Article 3.192 of the Civil Code (*Civilinis kodeksas*)). Under certain circumstances specified by law, parents must provide for their adult children (up to 24 years of age), where they are able to do so (Article 3.192(1) of the Civil Code).

**The obligation of adult children to provide for their parents.**

Adult children are obliged to provide for parents who have lost earning capacity and are in need of support. Maintenance is be provided (awarded by court) in the form of a monthly payment of a fixed amount (Article 3.205 of the Civil Code).

**The mutual maintenance obligation between spouses.**

When issuing a separation order, the court may order the spouse at fault to pay maintenance to the other spouse in need of it unless maintenance matters have been settled by mutual agreement of the spouses. Maintenance may be ordered as a lump sum or monthly maintenance payments or property transfer (Article 3.78 of the Civil Code). In the event of a marriage being annulled, the spouse not at fault and in need of maintenance has a right to seek maintenance from the spouse at fault for a maximum of three years (Article 3.47 of the Civil Code).

**The mutual maintenance obligation between former spouses.**

When issuing the divorce order, the court awards maintenance in favour of the spouse in need of maintenance unless the matter of maintenance has been settled by the agreement between the spouses concerning the effects of divorce. A spouse has no right to maintenance if his or her assets or income are sufficient to fully support him or her. Maintenance is presumed to be necessary if the spouse is bringing up a minor from the marriage or is incapable of working because of his or her age or state of health. The spouse responsible for the divorce has no right to maintenance. When issuing the maintenance order and deciding on the amount of maintenance, the court takes into account the duration of the marriage, the need for maintenance, the assets owned by the former spouses, their state of health, age, work capacity, how likely the unemployed spouse is to find employment and other important factors. Maintenance may be ordered as a lump sum or monthly maintenance payments or property transfer (Article 3.72 of the Civil Code).

**Mutual maintenance obligations between other family members.**

Where possible, an adult sibling must provide for his or her minor sibling who is in need of support, has no parents or is unable to obtain maintenance from them (Article 3.236 of the Civil Code). Adult grandchildren in a position to do so must pay maintenance to their grandparents if they are unable to work and are in need of support. Grandparents in a position to do so must pay maintenance to their minor grandchildren who have no parents or cannot obtain maintenance from them (Article 3.237 of the Civil Code).

**Maintenance contract and life annuity contract**

Under a maintenance contract, one party, the payer of maintenance (debtor) undertakes, either gratuitously or in exchange for transfer of capital to his ownership, to make periodic payments to the other party, the beneficiary of maintenance, a sum of money determined in the maintenance contract or to maintain the beneficiary in any other way. The duty to pay maintenance may be established not only by contract but likewise by law, a court judgment or a will (Article 6.439 of the Civil Code). Under a life annuity contract, the annuitant, a natural person, transfers a house, apartment, plot of land or other immovable property belonging to him to the ownership of the annuity payer, while the latter is obliged to maintain the annuitant and/or another person (persons) specified by him for life (Articles 6.460 and 6.461 of the Civil Code).

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Parents are obliged to provide for their minor children. The procedure and form of maintenance is determined by mutual agreement of the parents. The amount of maintenance must be commensurate with the needs of the minor children and the financial situation of their parents; it must safeguard the conditions necessary for the child's development (Article 3.192 of the Civil Code). Thus, in principle parents are obliged to provide for their children until adulthood (18 years) in all cases.

The duty to provide for children until they reach the age of 24 depends on a number of circumstances. Where they are in a position to do so, parents must provide for their adult children up to 24 years of age who are enrolled in a secondary education programme or a formal vocational training programme to acquire an initial qualification or in a school of higher education under a full-time programme, if they require financial assistance based on the financial situation of the adult children, their income, the possibility of obtaining income on their own and other important factors. Parents are not required to provide for adult children studying for additional higher education or professional qualifications (Article 3.192(1) of the Civil Code). The requirements concerning the form and amount of maintenance of minor and adult children do not differ and depend on specific circumstances.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

If maintenance is not paid to a child, it is awarded by judicial procedure. If the parents (parent) fail(s) in the duty to maintain their minor children, the court may issue a maintenance order in an action brought by a parent or the child's guardian (custodian) or the State institution for the protection of the rights of the child. A maintenance order may also be issued by the court if, upon divorce or separation, the parents did not agree on the maintenance of their minor children (Article 3.194 of the Civil Code). If the parents (parent) of an adult child fail(s) to respect the child maintenance obligation, the child may file a court action for maintenance (Article 3.192(1) of the Civil Code). Spouses, former spouses and other family members may also be awarded maintenance under the judicial procedure.

Maintenance cases are heard by district courts in Lithuania. Applications are filed with the court based on the defendant's place of residence. Where the defendant's place of residence is unknown, it may be filed based on the location of the defendant's assets or based on the last known residence. Where the defendant' does not does not have a place of residence in the Republic of Lithuania, it may be filed based on the location of the defendant's assets or based on the defendant's last known place of residence in the Republic of Lithuania. A maintenance action may also be brought according to the applicant's place of residence (Articles 26, 29 and 30 of the Code of Civil Procedure).

The State provides maintenance to minors who have not received, for a period of more than one month, maintenance from their parents or adult close relatives who are in a position to provide for them (Article 3.204 of the Civil Code). Maintenance allowances are allocated and paid by the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour. When applying for the allowance, the applicant (the parent awarded custody of the child by the court or the guardian/curator) must submit the following documents: the application for the allowance, the court ruling or the court-certified contract for child maintenance, or certified copies, transcripts or extracts thereof, specifying the established amount of required child maintenance, and the documents showing that: the child is a Lithuanian national, a stateless person or an alien permanently resident in Lithuania; the child has not received child maintenance, or has received just a portion of the maintenance, for a period of more than one month; the applicant is a Lithuanian national, a stateless person or an alien permanently resident in Lithuania (where the institution is unable to obtain the said documents or data from State or institutional registers or State information systems). By paying the maintenance allowance in accordance with the stipulated procedure, the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour, acquires the right, as from the moment the allowance is paid, to recover from the debtor the amounts paid, plus interest charged on the amount owed in respect of each day's delay. A ruling on the recovery of the amounts of allowance paid and/or interest jointly constitute an enforcement instrument.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

Yes. An application on behalf of a minor may be lodged by his/her legal representatives (parents, adoptive parents, guardians, custodians). It may also be lodged by an individual eligible to act under authorisation as a natural person's representative in court (lawyer, legal assistant, etc.). Natural persons may also be represented in court under authorisation by persons having university education in law, provided that they represent their close relatives or spouse (co-habitant). Close relatives include lineal relatives up to and including the second degree (parents and children, grandparents and grandchildren) and collateral relatives of the second degree (siblings) (Article 3.135 of the Civil Code).

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

Maintenance cases are heard by district courts in Lithuania. Applications are filed with the court based on the defendant's place of residence. Where the defendant's place of residence is unknown, it may be filed based on the location of the defendant's assets or based on the last known residence. Where the defendant does not have a place of residence in the Republic of Lithuania, it may be filed based on the location of the defendant's assets or based on the last known residence in the Republic of Lithuania. A maintenance action may also be brought according to the applicant's place of residence (Article 26, 29 and 30 of the Code of Civil Procedure).

When bringing a court action, the applicant is not required to use the services of a lawyer or any other intermediary. See also questions 3 and 4.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

When bringing a court action, the applicant is not required to use the services of a lawyer or any other intermediary. See also questions 3 and 4.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Legal costs comprise stamp duty and the costs of hearing the case (Article 79 of the Code of Civil Procedure). The amounts of the court stamp duty charged for filing a court action are governed by Article 80 of the Code of Civil Procedure. In property disputes, the amount of the court stamp duty is calculated based on the value of the claim: for claims up to EUR 30 000 – 3%, but no less than EUR 20; for claims from EUR 30 000 to EUR 100 000 – EUR 900 plus 2 per cent of the amount of the claim in excess of EUR 30 000; for claims above EUR 100 000 – EUR 2 300 plus 1 per cent of the amount in excess of EUR 100 000. The total amount of the court stamp duty in property disputes may not exceed EUR 15 000 (Article 80 of the Code of Civil Procedure).

The amount of the claim in the case of an action for maintenance by means of periodic payment is established based on the total annual amount of payments (Article 85 of the Code of Civil Procedure). In actions for maintenance, applicants are exempt from the court stamp duty (Article 83 of the Code of Civil Procedure).

Where a person's financial resources are insufficient, he or she may qualify for Stateguaranteed legal aid under the procedure prescribed by the Law on State-guaranteed Legal Aid. Secondary State-guaranteed legal aid also covers reimbursement of the legal costs incurred in civil proceedings.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

**Mutual maintenance obligations between parents and children**

The court may issue a maintenance order obliging one or both parents who have failed to maintain their children to provide maintenance to their children in the following ways: (1) as a monthly payment; (2) as a lump sum; (3) as a transfer of property to the child. Pending the outcome of the case, the court may order provisional payment of maintenance. The amount of maintenance must be commensurate with the needs of the children and the financial situation of their parents; it must safeguard the conditions necessary for the child's development. Both parents must provide maintenance to their children in accordance with their own financial situation (Articles 3.192 and 3.196 of the Civil Code).

In an action brought by a child, the child's parent, the State institution for the protection of the child's rights or a public prosecutor, the court may reduce or increase the amount of maintenance if, after the award of the maintenance order, the financial situation of the parties has fundamentally changed. An increase in the amount of maintenance may be ordered if there are additional expenses related to child care (illness, injury, nursing or full-time care). If necessary, the court may issue an order to cover future expenses relating to the treatment of the child. At the request of the persons referred to above, the court may change the previously established form of providing maintenance (Article 3.201 of the Civil Code).

Adult child maintenance is paid (awarded) to the parents in the form of a fixed monthly payment. The amount of maintenance is determined by the court having regard to the financial situation of the children and of the parents as well as the other important circumstances of the case. In establishing the amount of the maintenance, the court must take into consideration the obligation to maintain all adult children of the parent, irrespective of whether the action for maintenance has been brought in respect of all the children or only one of them (Article 3.205 of the Civil Code).

In the event of maintenance being awarded in the form of periodic payments, the amount of maintenance is indexed annually under the procedure established by the Government in accordance with the rate of inflation (Article 3.208 of the Civil Code).

**Mutual maintenance obligation between spouses.**

When issuing the maintenance order and determining the amount, the court must take into consideration the duration of the marriage, the need for maintenance, the financial situation of both spouses, their state of health, age and earning capacity, the unemployed spouse's chances of finding employment and other important circumstances. Maintenance may be ordered as a fixed lump sum, monthly payments or property transfer. Where maintenance is awarded in the form of periodic payments, in the event of a fundamental change in the circumstances either spouse may request an increase, reduction or termination of the payments. Periodic payments are indexed on an annual basis under the procedure prescribed by the Government (Article 3.78 of the Civil Code).

**Mutual maintenance obligation between former spouses.**

When issuing a maintenance order and deciding on its amount, the court must take into account the duration of the marriage, the need for maintenance, the financial situation of both former spouses, their state of health, age, work capacity, the unemployed spouse's chances of finding a job and other important circumstances. Maintenance is reduced, made temporary or refused if at least one of the following circumstances exist:

(1) the marriage lasted less than a year; (2) the spouse entitled to maintenance has committed a crime against the other spouse or his/her close relatives; (3) the spouse entitled to maintenance brought about their precarious financial situation through their own culpable actions; (4) the spouse requesting maintenance did not contribute to their joint assets or wilfully acted against the interests of the other spouse or the family during the marriage. Maintenance may be ordered as a fixed lump sum, monthly payments or property transfer.

Where maintenance in the form of periodic payments has been awarded, in the event of a fundamental change in the circumstances either of the former spouses may request an increase, reduction or termination of the payments. Periodic payments are paid throughout the creditor's life and are inflation-indexed annually under the procedure laid down by the Government. Where the former spouse who has been awarded maintenance dies or remarries, the maintenance payment is terminated (Article 3.72 of the Civil Code).

**Mutual maintenance obligations between other family members.**

Where possible, an adult sibling must provide for a minor sibling who is in need of support, has no parents or is unable to obtain maintenance from them (Article 3.236 of the Civil Code). Where they are in a position to do so, adult grandchildren must provide for their grandparents where they are unable to work and in need of support. When in a position to do so, grandparents must provide for their minor grandchildren who have no parents or are unable to obtain maintenance from them (Article 3.237 of the Civil Code). The provisions of the Civil Code governing the mutual maintenance obligations between children and parents are applicable *mutatis mutandis*.

**9 How and to whom will the maintenance be paid?**

The maintenance debtor has to pay maintenance to the maintenance creditor. Where an application on behalf of the minor child is brought by a parent, maintenance is paid to the parent rather than to the child. If a child is placed under guardianship/into custody, maintenance is paid to the guardian/custodian who must use it exclusively in the interests of the child.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

Requests for enforcement of court decisions must be directed to a bailiff. The basis for enforcement action is the enforcement instrument as submitted. Enforcement instruments include, *inter alia*, enforcement orders issued on the basis of a court decision as well as judicial orders. Once the enforceable decision has become final, the court of first instance issues the enforcement order to the creditor based on a written request.

Avoidance of the child maintenance obligation is punishable under criminal law: Article 164 of the Criminal Code provides that a person who avoids the court-imposed obligation to maintain a child, to pay child maintenance or to provide other necessary financial support for a child is to be punished by community service, restriction of liberty, arrest, or a custodial sentence of up to two years. Failure to comply with a court decision of a different nature may also be subject to criminal liability: under Article 245 of the Criminal Code, a person who has not complied with a non-punitive court decision has committed a misdemeanour, punishable by community service, a fine, restriction of liberty or arrest.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

In the event of recovery from natural persons, recovery may not be enforced against any household, work or training materials or other property that is necessary for the livelihood of the debtor or his/her family or his/her professional employment or training. The list of the above property is set out in the Decision Enforcement Manual. Moreover, recovery may not be enforced in respect of a sum of money up to the minimum monthly wage set by the Government or in respect of any items needed by children and the disabled (Article 668 of the Code of Civil Procedure).

Deductions from the portion of the debtor's share of wages or equivalent payments and allowances up to the minimum monthly wage set by the Government are made based on enforcement instruments until the amounts to be recovered are fully covered: when enforcing maintenance by periodic payment or compensation for damage caused by mutilation or other health impairment or death of the breadwinner, the rate shall be 30 per cent, unless otherwise

stipulated by the enforcement order or required by the laws or by the court. Deductions from the part of wages and equivalent payments and allowances in excess of the minimum monthly wage set by the Government shall be equal to 50 percent unless otherwise required by the laws or by the court (Article 736 of the Code of Civil Procedure). Article 739 of the Code of Civil Procedure also defines the amounts of money that are not subject to recovery (for instance, maternity and paternity benefits, childcare benefits, etc.).
Recovery of money from the debtor's assets is not allowed if the debtor has submitted to the bailiff evidence showing that the recoverable amount and the costs of execution can be recovered in six months or, in the case of recovery from the debtor's only home where he/she resides, in 18 months by means of deductions of the amounts specified in Article 736 of the Code of Civil Procedure from the debtor's wages, pension, student grant or other income.
Enforcement orders based on court decisions may be submitted for execution within five years from the entry into force of the court decision. If the court decision requires recovery in periodic payments, the enforcement instruments remain valid throughout the period of recovery, the deadline set beginning on the day the deadline for each payment expires (Article 605 of the Code of Civil Procedure).

**12 Is there an organisation or an authority which can help me to recover maintenance?**

The State provides for minor children who have not received maintenance from their parents or close adult close relatives who are in a position to maintain the child (Article 3.204 of the Civil Code) for a period of more than one month. Maintenance allowances are allocated and paid by the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour. When applying for the allowance, the applicant (the parent assigned custody of the child by the court or the guardian/custodian) must file the following documents: the application for the allowance, the court ruling or the court-certified contract for child maintenance, or certified copies, transcripts of extracts thereof, specifying the established amount of required child maintenance, and the documents showing that: the child is a Lithuanian national, a stateless person or an alien permanently residing in Lithuania; the child has not received child maintenance funds at all, or has received just a portion of the maintenance, for a period of more than one month; the applicant is a Lithuanian national, a stateless person or an alien permanently residing in Lithuania (where the institution is unable to obtain the said documents or data from State or institutional registers or State information systems). By paying the maintenance allowance in accordance with the stipulated procedure, the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour, acquires the right, as from the moment the allowance is paid, to recover from the debtor the amounts paid, plus interest charged on the amount owed in respect of each day's delay. A ruling on the recovery of the amounts of allowance paid and/or interest jointly constitute an enforcement

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

See Question 12.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

**14.2 If so, how can that authority or private organisation be contacted?**

The State-guaranteed Legal Aid Service is the central authority authorised to perform the functions specified in 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 obligation (hereinafter referred to as 'the Maintenance Regulation').
Where applications concern the maintenance obligations of persons under 21 resulting from relations between parents and children, the functions of the central authority referred to in Article 51 of the Maintenance Regulation are performed by the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour.
Contact details of the State-guaranteed Legal Aid Service:
Address: Odminių g. 3, 01122 Vilnius, tel. +370 700 00 211, fax +370 700 35 006, e-mail: teisinepagalba@vgtpt.lt
Contact details of the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour:
Mažeikiai Branch of the Board of the State Social Insurance Fund, address: Vasario 16-osios g. 4, LT-89225 Mažeikiai, tel. +370 (443) 26659, fax +370 (443) 27341, e-mail: mazeikiai@sodra.lt

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

See Question 14.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

The 2007 Hague Protocol is applicable in Lithuania.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

When the Maintenance Regulation applies, legal aid is provided in accordance with Articles 44-47 of the Maintenance Regulation, Article 31-5 of the Law on the implementation of European Union and international legislation governing civil proceedings and the Law on State-guaranteed legal aid. Applications for State-guaranteed legal aid are forwarded directly to the competent authorities responsible for State-guaranteed legal aid (State-guaranteed Legal Aid Service and its local branches).

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

In order to implement the provisions of the Maintenance Regulation, amendments to the Lithuanian Law on the implementation of European Union and international legislation governing civil proceedings have been adopted. These define the institutions authorised to perform the functions of the Central Authority under the Maintenance Regulation and the procedure for providing legal aid, and authorise the institutions performing the role of the Central Authority to obtain, free of charge, from State and municipal institutions, other bodies, banks and other credit and financial institutions, and from State registers and other information systems, the data needed to perform the functions set out in the Maintenance Regulation.

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# Family maintenance - Luxembourg

## 1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

Maintenance obligations are imposed by law on those who have the means to support another person with whom they have a relationship by blood or marriage. As a result, various people can claim maintenance, including:

one spouse from the other spouse or a former spouse (Articles 212, 214 and 246 of the Civil Code (*Code civil*)) or one partner from the other partner, where they are bound by a partnership covered by the amended Law of 9 July 2004 on the legal effects of certain partnerships (*loi modifiée du 9 juillet 2004 relative aux effets légaux de certains partenariats*), or a former partner under certain conditions;

children from their parents (Articles 203, 3722, 3762, 3763 and 3764 of the Civil Code);

fathers, mothers and other ascendants from their children (Article 205 of the Civil Code);

fathers-in-law and mothers-in-law from their sons-in-law and daughters-in-law (Article 206 of the Civil Code).

The rule stating that ‘maintenance is not designed to cover past claims’ means that maintenance is intended to cover present and future needs, not to reimburse past expenses. This rule has the legal value of a simple presumption; in other words, the rule may be disregarded if the creditor provides proof either that he/she has had to incur debts in order to support himself/herself, or that he/she has not remained inactive or has been unable to act.

A maintenance claim cannot be offset, unless the claim against which it is to be offset is also a maintenance claim.

## 2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

Where joint parental responsibility is exercised, each parent, whether married or not, separated or divorced, is under an obligation to contribute to the support and upbringing of children in proportion to their means, those of the other parent and the needs of the child. In the event of divorce or separation, whether or not they jointly exercise parental responsibility, the parents must continue to contribute together to the costs of the child’s support and upbringing, unless a court rules otherwise. This contribution takes the form of a maintenance allowance and does not automatically stop when the child reaches adulthood. It can be paid directly to an adult child and can be revised according to the child’s needs and the changing means and expenses of each parent.

## 3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

The family court (*juge aux affaires familiales*) within the district courts (*tribunaux d’arrondissement*) has jurisdiction in particular over maintenance allowances, exercise of parental responsibility, and divorce and legal separation.

The applicant for maintenance must submit a claim to the family court. If the maintenance claim is connected with divorce or legal separation proceedings, the family court deciding on the application for divorce or legal separation also decides on the maintenance claim.

## 4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

In cases of guardianship (*tutelle*) or protective supervision (*curatelle*), the guardian (*tuteur*) or supervisor (*curateur*) can submit an application on behalf of a parent or minor child.

Parent(s) exercising parental responsibility over their minor child can make an application on behalf of that child.

A minor child does not have legal personality and does not have the capacity to make an application himself/herself, except where the minor is capable of forming his/her own views pursuant to Article 100750 of the New Code of Civil Procedure (*Nouveau Code de procédure civile*). In this context, the minor capable of forming his/her own views can, through an application made to the district court, ask the family court to amend the exercise of parental responsibility, the exercise of access rights or living arrangements. In this case, the court orders the appointment of a lawyer to represent the minor within 15 days.

## 5 If I plan to bring the case to court, how do I know which court has jurisdiction?

The district court with territorial jurisdiction is:

the court in the place where the family home is located;

if the parents live separately, the court in the place of residence of the parent with whom the minor children habitually reside where parental responsibility is exercised jointly, or the court in the place of residence of the parent who exercises this responsibility alone;

in other cases, the court in the place of residence of the person who has not brought the proceedings.

For joint applications, the parties choose the court in the place where one or other party lives.

However, where the dispute concerns only spousal maintenance, contribution to the support and upbringing of children, contribution to the costs of the marriage, or urgent and provisional measures where a registered partnership is terminated, jurisdiction can lie with the court in the place of residence of the spouse or former partner receiving maintenance or parent chiefly responsible for the care of children, even where these are adults.

Territorial jurisdiction is determined by the place of residence on the date of the application or, in divorce cases, on the date when the initial petition is filed.

If maintenance is claimed during divorce proceedings, jurisdiction lies with the court hearing the application for divorce.

## 6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?

An applicant can bring a case before the family court by submitting an application to the district court. This application must be filed with the registry of the district court, which serves it on the opposing party. The parties do not have to be represented by a lawyer, except where maintenance is claimed during divorce proceedings on grounds of irretrievable breakdown of the marital relationship or during legal separation proceedings. In such cases, a lawyer must be used.

In any event, the applicant must provide the court with all documents proving his/her need. These may be, for example, payslips, tax exemption certificates, certificate of unemployment or long-term sick leave, evidence of rent, loans, dependent children, and support and upbringing costs, etc.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

The costs that may be involved in legal proceedings include court costs and procedural costs that the losing party may be ordered to pay (in full or in part). Lawyers' fees may also have to be paid.

People whose income is regarded as insufficient under Luxembourg law can receive legal aid. To receive this aid, they must complete a questionnaire that can be obtained from the central social welfare office (*service central d'assistance sociale*) and send it to the president of the bar association (*Bâtonnier de l'Ordre des avocats*) which has territorial jurisdiction.

If legal aid is granted by the president of the bar association, it covers all costs arising from the court proceedings, procedures or actions for which it is granted. It covers, for example, stamp and registration duties, clerks' fees, lawyers' fees, court officers' duties and fees, notaries' expenses and fees, technicians' expenses and fees, witness taxes, fees of translators and interpreters, fees for *certificats de coutume* (a certificate or affidavit as to the applicable law), travel expenses, duties and fees for registration, mortgage and security formalities, and fees for publication in newspapers, if necessary.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

**Type of maintenance**

During the proceedings and following the granting of a divorce or legal separation, maintenance usually takes the form of a monthly payment. However, it can also take the form of a lump-sum provision consisting of either a sum of money or the surrender of goods in kind.

As regards the contribution to a child's support and upbringing, maintenance can take the form of either a monthly payment or, in full or in part, the direct payment of costs incurred for the child. Finally, it can take the form of a right of use and habitation.

If the person required to pay maintenance proves that he/she cannot afford to pay, the court can order him/her to take the person to whom he/she is required to pay maintenance into his/her home and to feed and maintain him/her.

**Calculation of maintenance**

There are no reference scales. The amount of maintenance is calculated according to the debtor's means and the creditor's needs.

**Indexation**

In order to adapt maintenance in line with changes in the cost of living, the court can, even of its own motion, decide that the maintenance will be index-linked based on a legally applicable variation clause.

**Revision**

In the event of a change in circumstances, maintenance can be revised upwards or downwards and even terminated. This does not apply where it was paid as a lump-sum provision as part of a divorce. If the parties fail to reach agreement, the court decides on the termination or reduction of maintenance.

The court may also change the amount of maintenance that was set by agreement between the parties. This right applies not only in the event of a change in the respective situations of the creditor and debtor, but also in the absence of any change, if the court deems that the amount is insufficient or excessive.

Maintenance granted to a spouse in a divorce on grounds of irretrievable breakdown of the marital relationship cannot be paid for longer than the duration of the marriage, except in exceptional circumstances.

**9 How and to whom will the maintenance be paid?**

During the proceedings and after the granting of a divorce or legal separation, maintenance is paid to the beneficiary spouse.

The contribution to a child's support and upbringing is paid either by one parent to the other or to the person to whom the child has been entrusted. If the child has reached adulthood, the court can decide, or the parents can agree, that this contribution will be paid, in full or in part, to the child.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

A creditor has several ways of forcing a recalcitrant debtor to pay maintenance.

**Civil law:**

A creditor has several options:

In the event of divorce, a creditor can bring the case before the family court by submitting an application to the district court for authorisation to receive, to the exclusion of his/her former spouse and without prejudice to the rights of third parties, any income of that former spouse, including retirement pensions and annuities, and any other amounts that may be payable by a third party according to the proportions and conditions set by the court. This decision is subject to revision in the event of a change in circumstances.

A creditor can apply for ordinary enforcement measures, such as third-party attachment (for example from a bank account), attachment of tangible movable goods (car, jewellery, etc.) and attachment of immovable property (house, land, etc.), based on a court decision or enforcement order.

**Criminal law:**

A creditor can lodge a criminal complaint for the following offences:

The offence of abandoning family is punishable by a custodial sentence of between one month and one year and a fine of between € 251 and € 2.500, or one of these penalties only (Article 391 *bis* of the Criminal Code (*Code pénal*)). This presupposes that the debtor is avoiding all or some of the maintenance obligations towards the creditor that are imposed on him/her by law, either by refusing to meet such obligations when able to do so or by being unable to meet them through his/her own fault.

This applies to the maintenance obligation of parents towards their children, the obligation between spouses and the obligation of adoptive parents towards adopted children.

Prosecution of the offence is preceded by the debtor being questioned by a police officer of the Grand Duchy of Luxembourg, which is recorded in a written statement. If the debtor has no known residence, questioning is not required.

The offence of fraudulent insolvency is punishable by a custodial sentence of between six months and three years and a fine of between € 500 and € 12.500, or one of these penalties only (Article 391 *ter* of the Criminal Code). This presupposes that, even before the court decision, the debtor organised or aggravated his/her insolvency, either by increasing his/her liabilities or reducing his/her assets, or by concealing some of his/her assets in order to avoid the enforcement of an order issued by a civil court in matters of maintenance.

For the purposes of applying Article 391 *ter* of the Criminal Code, court decisions and agreements approved by the court that impose an obligation to make payments, subsidies or contributions to the costs of the marriage, as well as maintenance provisions contained in agreements reached prior to a divorce by mutual consent, are regarded as equivalent.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Actions to collect arrears of perpetual and life annuities and maintenance are barred by limitation after five years.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

At the request of the creditor, the National Solidarity Fund (*Fonds national de solidarité*) can recover any maintenance that is payable to a spouse, ascendant or descendant. For the amounts that it must recover, the Fund is subrogated in the actions and guarantees of the creditor with regard to the recovery of his /her maintenance. Once the debtor has been notified of the amounts to be recovered, he/she must hand over these amounts to the President of the National Solidarity Fund.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

The National Solidarity Fund can, under certain conditions, pay the maintenance in the debtor's place. The request for payment must be submitted by the creditor or his/her legal representative to the President of the National Solidarity Fund.

This request is accepted by the President or his/her delegate if the creditor proves that:

he/she has his/her legal domicile in the country and he/she or his/her legal representative has lived there for five years;

his/her maintenance has been set by a court decision which is enforceable in the Grand Duchy of Luxembourg;

the maintenance could not be fully or partly recovered through a private enforcement measure that has been effectively carried out;

he/she is in a difficult financial situation.

Even if condition (c) is not met, the request is accepted if recourse to enforcement measures is expected to fail or if the debtor lives abroad. Any disputes fall within the jurisdiction of the justice of the peace (*juge de paix*) in the place of the creditor's domicile, before whom the case must be brought within 40 days of notification of the President's decision.

Creditors are automatically entitled to legal aid. From the acceptance of the request until payments by the Fund cease, the creditor cannot take any action against the debtor to recover any maintenance.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Under the New York Convention of 20 June 1956 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, an applicant resident in Luxembourg can, if the debtor lives abroad, apply to the Chief Public Prosecutor (*Procureur Général d'Etat*) to obtain maintenance.

The Chief Public Prosecutor, in his/her capacity as the central authority, will forward the application and accompanying documents to the central authority of the country in which the debtor lives so that said central authority can help the applicant to obtain payment of the maintenance due.

**14.2 If so, how can that authority or private organisation be contacted?**

The person entitled to maintenance submits the application to the transmitting authority, i.e. the Chief Public Prosecutor, using the various forms provided for under Regulation (EC) No 4/2009.

**Procureur Général d'Etat**

Cité Judiciaire

Bâtiment CR

L-2080 Luxembourg

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

An applicant living in a country other than Luxembourg must apply to the central authority of the country in which he/she lives. He/she cannot apply directly to a Luxembourg organisation or authority.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

Not applicable.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

In the event of applications under this EU regulation, legal aid is entirely free of charge for maintenance recipients aged under 21, irrespective of the provisions of national law.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

In order to enable the central authority to provide the assistance described in Article 51 of the Maintenance Regulation, Luxembourg passed a law on 3 August 2011 implementing this EU regulation, as well as a grand-ducal regulation implementing Articles 2 and 3 of said law of 3 August 2011 (Official gazette (*Mémorial*) A No 175 of 12 August 2011).

These legal provisions have given the Chief Public Prosecutor direct access to certain databases.

**Related links**

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# Family maintenance - Hungary

## 1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

The maintenance obligation generally makes direct relatives liable towards each other:
- the parent has a maintenance obligation towards the child, and the child has a maintenance obligation towards the parent;
- if a child entitled to maintenance has no parent obliged to pay maintenance, his or her maintenance will be passed on to more distant relatives;
- if a person entitled to maintenance has no children, more distant descendants will be liable for his or her maintenance (Section 4:196(1) to (4) of the Civil Code).

Minors having no direct relative who may be obliged to pay maintenance must be supported by their elder sibling, provided the elder sibling can fulfil the maintenance obligation without putting his or her ability to support him- or herself, his or her spouse or cohabiting partner and his or her dependent direct relatives at risk (Section 4:197 of the Civil Code).

Spouses living together are obliged to support in their household the dependent minors of the other spouse (stepchild) brought into the common household by the other spouse with the consent of the supporting spouse (Section 4:198(1) of the Civil Code).

Stepchildren have a maintenance obligation towards their stepparent dependent on maintenance if the stepparent provided for their maintenance for a prolonged period of time (Section 4:199(1) of the Civil Code).

Foster children have a maintenance obligation towards the person who took care of them in his or her household for a prolonged period of time without requesting financial compensation, and who is not the child’s biological, adoptive or stepparent (foster parent) (Section 4:199(2) of the Civil Code).

Maintenance allowance may be demanded by a spouse from the other spouse in the case of legal separation, or from the former spouse in the case of divorce, if the spouse is unable to support him- or herself through no fault of his or her own (Section 4:29(1) of the Civil Code).

In the case of legal separation, the former partner unable to support him- or herself through no fault of his or her own may demand maintenance allowance from the other former partner, provided the relationship lasted at least one year and resulted in a child being born (Section 4:86(1) of the Civil Code).

There are two forms of “maintenance”: in kind or in cash (maintenance allowance).

In the case of a minor, “maintenance obligation” means that the parent of the child is entitled and liable to care for his or her child in a family, to raise the child and provide the conditions required for the child’s physical, cognitive, emotional and moral development – especially housing, nutrition and clothing – as well as the child’s access to education and healthcare.

The parent looking after and living in the same household as the child meets the child’s needs in kind, while the parent living separately (or within the same household but not contributing to the child’s maintenance) provides for the child mainly by paying maintenance allowance.

## 2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

All minors (under the age of 18) are entitled to maintenance under the presumption of need established by law. Children below the age of 20 are also entitled to maintenance, provided they are in secondary education.

Children of working age (18 years or over) pursuing further education are entitled to maintenance irrespective of the presumption of need if they require maintenance to be able to pursue their studies within a reasonable period of time. The child must inform the parent of his or her intention to pursue his or her studies without delay (Section 4:220(1) of the Civil Code).

Studies include any course or training required to obtain a qualification in preparation for a career as well as studies in a bachelor’s or master’s programme of higher education or in higher vocational education, pursued on a continuous basis.

Where exceptionally justified, parents may be obliged to provide for the maintenance of a child aged 25 or over (Section 4:220(5) of the Civil Code).

However, parents do not have a maintenance obligation towards a child of adult age pursing his or her studies if the child is regarded as undeserving of maintenance, fails to fulfil his or her educational and exam obligations through a fault of his or her own, or if providing maintenance would put the parent’s ability to provide for his or her own maintenance, or that of the parent’s under-age child, at risk. An adult child is also regarded as undeserving of maintenance if, for no legitimate reason, he or she does not maintain relations with the parent obliged to support him or her (Section 4:220(3) and (4) of the Civil Code).

## 3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

In relation to the amount and form of maintenance, the agreement between the person entitled to maintenance and the person obliged to pay maintenance (in the case of the child maintenance allowance, the parents) is applicable. In the absence of an agreement, the person entitled to maintenance may request a court decision on maintenance. In the absence of an agreement between the parents, the court will decide on the child’s maintenance allowance.

For maintenance due to a minor, the guardianship authority, and for maintenance due to a parent – subject to his or her consent – the competent district authority, may bring a legal action. Relatives having a maintenance obligation who provide for the maintenance or take care of the person entitled to receive maintenance may bring a legal action in their own right against the other parties having a maintenance obligation.

The parent or other legal representative of the child entitled to receive maintenance allowance may request the advance payment of the maintenance allowance from the guardianship authority, provided the maintenance allowance could not be recovered for at least the previous six months.

The request must state that there are no grounds for refusal of the advance payment, as well as the reasons and facts justifying the request.

The following documents must be attached to the request: the appropriate income statements; the final court decision establishing the maintenance allowance for the child or the document proving enrolment in full-time secondary education, as applicable; and a report dated not more than six months earlier on the seizure of property, stating the suspension of enforcement proceedings, or the document proving that proceedings have been initiated to recover the maintenance allowance due.

The guardianship authority must ascertain that the maintenance allowance was temporarily – for at least six months prior to submission of the request – irrecoverable.

Advance payment of the maintenance allowance may be granted if the person entitled to receive maintenance has requested enforcement of the maintenance allowance established in the decision of the court, and enforcement from the wages, other regular income or other assets of the debtor has failed, or enforcement has been suspended, or if the partial amount paid or the sum recovered does not exceed 50 % of the amount of the maintenance allowance established by the court.

Should the need arise, the guardianship authority will request information on the outcome of the enforcement proceedings initiated by the applicant from the court or the independent court bailiff. If necessary in order to clarify the facts, the guardianship authority will request details on attachment from the employer.

In the notification on initiation of the proceedings, the guardianship authority will call on the debtor to pay the maintenance allowance without delay and to make a statement to that effect.

The guardianship authority will notify its decision to the employer of the debtor, to the enforcement court, the independent court bailiff, the prosecutor's office with jurisdiction over the address of the creditor and the debtor, the notary with jurisdiction over the address of the debtor, as tax authority, and the Budapest or county government office providing advance payment of the maintenance allowance.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

Yes, the parent or other legal representative of the child entitled to maintenance allowance may request advance payment of the maintenance allowance from the guardianship authority.

Relatives having a maintenance obligation who provide for the maintenance or take care of the person entitled to receive maintenance may bring a legal action in their own right against the other parties having a maintenance obligation.

For maintenance due to a minor, the guardianship authority, and for maintenance due to a parent – subject to his or her consent – the competent district authority may bring a legal action.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

Based on the general rules of jurisdiction, the court in the territory of which the defendant (debtor) lives has jurisdiction.

In the absence of an address in Hungary, jurisdiction will be governed by defendant's place of residence. If the defendant's place of residence is unknown or is abroad, his or her last domicile in Hungary will be taken into account. If such domicile cannot be established or if the defendant did not have one, jurisdiction will be established on the basis of the claimant's domicile or, failing that, his or her place of residence.

If the defendant's place of employment and domicile are not located in the same area, the court will, acting on a request by the defendant lodged no later than the first hearing in the case, refer the matter to the court with jurisdiction over the defendant's place of employment, in order to conduct the hearing and deliver a judgment (Section 29 of the Code of Civil Procedure).

A legal action to obtain maintenance may also be brought before the court with jurisdiction over the claimant's domicile (Section 34(1) of the Code of Civil Procedure).

The competent courts can be consulted here.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

The applicant does not have to go through an intermediary to bring the case to court. The applicant may bring a case directly to court (without the obligation to use a representative) (see Questions 3, 4 and 5).

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Irrespective of their income and financial situation, the parties – unless they are exempt from payment of the material costs of the proceedings by law, under a directly and generally applicable act of the European Union or an international agreement – will be entitled to deferral of the material costs of proceedings brought for statutory maintenance, including those involving the recovery of maintenance allowance from the body paying the remuneration of the debtor or from another person, cancelling or changing the amount of the maintenance allowance, terminating or limiting enforcement of the maintenance allowance and, in the case of a cross-border maintenance case, obtaining the personal data of the debtor.

In the case of a deferral of material costs:

(a) the State pays for the costs incurred in the proceedings (fees of witnesses and experts, the interpreter, the administrator and the advocate, the costs of the trial and inspection conducted at the scene, etc.), with the exception of costs not covered by the deferral and therefore payable in advance by the party;

(b) the party is granted a deferral of payment of the court fees.

Even in the absence of an international agreement or reciprocity, foreigners are also entitled to a deferral of material costs.

If, in the case of a deferral of material costs, the court orders the party to bear the costs of the proceedings, the party must bear all costs paid in advance by the State and all recorded fees to the State.

The fee for proceedings is 6 %, or a minimum of HUF 15 000 and a maximum of HUF 1 500 000. In the case of proceedings for maintenance claims, the base of the fee is the maintenance allowance still due, but no more than one year's maintenance allowance.

If the party does not have sufficient financial means to pay the costs of the proceedings, the party may lodge an application for exemption with the court.

To facilitate the enforcement of their rights, natural persons (including interveners) who are not in a position to bear the cost of the proceedings based on their income and financial situation will be fully or partially exempted, upon request, from payment of these costs.

If a party's income (wage, pension or other regular financial allowance) does not exceed the current minimum amount of retirement pension determined on the basis of the number of years spent in active employment, and the party has no assets – except for the usual household necessities, fixtures and furniture – the party must be granted an exemption from the payment of costs. Exemption from the payment of costs must be granted – without examination of their income and financial situation – to parties entitled to benefits granted to people of working age or living with a close relative in the same household who is entitled to benefits granted to people of working age.

Exemption from the payment of costs includes the following benefits:

(a) an exemption from the payment of court fees;

(b) an exemption from the payment of costs incurred in the procedure (fees of witnesses and experts, the interpreter, the administrator and the advocate, the costs of the trial and investigation conducted at the scene, etc.) in advance and – unless otherwise provided by the applicable law – their payment in general;

(c) an exemption from the obligation to lodge a deposit for the costs of the proceedings;

(d) a request for approval of representation by an advocate, if permitted by law.

Exemption from the payment of costs will be approved by the court, upon request, and the court will also decide on the withdrawal of such exemption.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

In the absence of an agreement between the parents, it is the court that decides on maintenance allowance.

When determining the amount of the maintenance allowance, the following must be taken into consideration:

(a) the justified needs of the child (regular expenditure required to meet the costs of the child's subsistence, medical care, upbringing and education);

(b) both parents' income and financial situation;

(c) the other children living in the same household with the parents (be it their own children, stepchildren or foster children), and the children towards whom the parents have a maintenance obligation;

(d) the child's own income, and

(e) the child-protection, family-support, social-insurance and welfare benefits provided for the child and the parent for raising the child (Section 4:218(2) of the Civil Code).

The maintenance allowance must be paid as a fixed amount. The court may decide that the amount of the allowance payable must be adjusted automatically each year, in accordance with the increase in the consumer price index published annually by the Hungarian Central Statistics Office, from 1 January of the following year (Section 4:207 of the Civil Code). The amount of the maintenance allowance payable per child is fixed in general at 15-25 % of the average income of the person obliged to pay maintenance. In general, when determining the average income of the person obliged to pay maintenance, the person's total annual income in the year preceding the institution of proceedings for maintenance must be taken into consideration (Section 4:218(4) of the Civil Code).
If a change in the parties' agreement or in the circumstances that formed the basis of the court judgment on the amount of the maintenance allowance would put at risk a vital legal interest of either of the parties if that party were to continue paying maintenance under the same conditions, such party may request a change in the amount or the terms of payment. A change in the agreed maintenance allowance may not be requested by a party who should have anticipated a change in his or her circumstances when entering into the agreement on maintenance or who is personally responsible for such change.

**9 How and to whom will the maintenance be paid?**

The person obliged to pay maintenance must pay the maintenance allowance to the person entitled to receive maintenance, periodically (e.g. monthly), in advance.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If the debtor fails to pay the maintenance allowance voluntarily, the creditor may bring his or her claim before the court, and the court may order its enforcement. A maintenance claim dating back more than six months can be enforced with retroactive effect if the creditor had good reason for being late with his or her application for enforcement. Maintenance claims dating back more than three years cannot be enforced in court (Section 4:208(3) of the Civil Code).
For maintenance due to a minor, the guardianship authority, and for maintenance due to a parent – subject to his or her consent – the competent district authority may bring a legal action (Section 4:208(1) of the Civil Code).
Relatives having a maintenance obligation who provide for the maintenance or take care of the person entitled to receive maintenance may bring a legal action in their own right against the other parties having a maintenance obligation (Section 4:208(2) of the Civil Code).
In its decision obliging the person in receipt of a wage to pay maintenance allowance, the court will, at the creditor's request, call on the employer directly to deduct the amount stated in the decision and to pay it to the creditor.
If there was no direct call issued by the court, but later, a party files an application for enforcement based on the judgment of the court or the agreement of the parties approved by a decision of the court, the court will order enforcement of the maintenance allowance by issuing an attachment order, provided the wages deducted cover the amount concerned.
The deducted amount cannot exceed 50 % of the employee's wages. From the unemployment allowance (unemployment benefit, pre-pension unemployment benefit, income supplement and jobseeker's allowance) a maximum of 33 % may be deducted as maintenance allowance.
If the debtor has no regular income or the amount to be deducted from his or her income does not cover the amount due, the court will order enforcement by issuing the document providing for enforcement. In this case, the enforcement covers not only wages, but also other assets as laid down in the Act on Enforcement.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Please visit the page containing information on Procedures for enforcing a judgment.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

See the answer to Question 10 above.
The parent or other legal representative of the child entitled to the maintenance allowance may request advance payment of the maintenance allowance from the guardianship authority, provided the maintenance allowance could not be recovered for at least the previous six months.
In the notification on initiation of the proceedings, the guardianship authority will call on the debtor to pay the maintenance allowance without delay and to make a statement to that effect.
The guardianship authority will notify its decision to the employer of the debtor, to the enforcement court, the independent court bailiff, the prosecutor's office with jurisdiction over the address of the creditor and the debtor, the notary with jurisdiction over the address of the debtor, as tax authority, and the Budapest and county government office providing advance payment of the maintenance allowance.
Failure to pay the maintenance allowance is a criminal offence. Anyone who fails to fulfil his or her statutory maintenance obligation established in the enforceable decision of an authority through a fault of his or her own will be sentenced to two years in prison.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Yes (see Question 3).

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

The Hungarian Ministry of Justice provides help at the request of applicants living in Hungary pursuant to Council Regulation (EC) No 4/2009 and international agreements, continuously liaising with the central authority responsible for maintenance matters in the other Member State concerned. The applicant may request that the decision on maintenance allowance payment handed down by the Hungarian court be enforced abroad and – in the absence of such a decision – that the obligation to pay maintenance allowance be established abroad, or that the amount of the maintenance allowance to be paid abroad be increased. The formal request is received not by the Ministry of Justice, but by the district court determined according to the applicant's domicile, place of residence or place of employment, or by the district court that handed down the first-instance decision for which enforcement is requested. No lawyer is required in order to lodge a request or for the proceedings abroad. Rather, the court will assist a party with no legal representative with lodging his or her request. The court will forward the request and the required attachments to the Ministry of Justice. The Ministry of Justice will send the translated request to the central authority responsible for maintenance matters in the other Member State. The central authority will take the measures required to initiate proceedings against the debtor. The Ministry of Justice will inform the applicant continuously of the development of proceedings, based on the information received from abroad.

**14.2 If so, how can that authority or private organisation be contacted?**

Ministry of Justice, Department of International Private Law (*Igazságügyi Minisztérium, Nemzetközi Magánjogi Főosztály*)
Address: 1051 Budapest, Nádor utca 22.
Postal address: 1357 Budapest, Pf. 2.
Phone number: +36 1 795-5397, +36 1 795-3188
Fax number: +36 (1) 550-3946
E-mail: nmfo@im.gov.hu
Web: http://igazsagugyiinformaciok.kormany.hu/nemzetkozi-gyermekelviteli-es-tartasdijjal-kapcsolatos-ugyek

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

No, the request must be lodged via the central authority responsible for maintenance matters in the Member State of residence of the applicant.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

The central authorities of the Member States can be found here.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

-

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

In relation to the requests received, the Ministry of Justice will contact the competent service providing legal aid in order to assign an advocate to the applicant living abroad. In the case referred to in Article 46 of Council Regulation (EC) No 4/2009, full exemption from costs is guaranteed, and the fees of the advocate will also be paid by the State. In the cases referred to in Article 47, the parties are entitled to deferral of the material costs under Hungarian law. Under this right, the State pays the costs incurred in the proceedings (e.g. court fees, the advocate's fee) in advance, irrespective of the financial standing of the party concerned, but if the party loses the case, the court may order it to pay those costs. If the applicant proves that due to his or her financial situation, he or she is entitled to full personal exemption from costs under Hungarian law, the applicant will not have to pay the costs even if he or she loses the case.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The application of the Maintenance Regulation in Hungary is governed by Act LXVII of 2011.

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## Family maintenance - Malta

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

In Malta the term 'maintenance' refers to the amount due to a creditor by a debtor in regards to maintenance arrangement arising from a family relationship. When relationships are formalised by marriage or civil union then one party in that relationship is bound to maintain the other party.

The term 'maintenance obligation' refers to the obligation to pay an amount of maintenance, which maintenance has to be given by the creditor to the debtor in the circumstances described. A maintenance obligation exists independent on whether the quantum of maintenance has been fixed and also independent from whether maintenance is being paid.

Article 3B of the Civil Code provides that spouses and former spouses are obliged to maintain each other and holds that parents are bound to maintain their children. Article 4 of the Civil Unions Act holds that parties in a civil union enjoy the same rights and obligations as those who are married and therefore they are bound to maintain each other even after their relationship ends, unless there is a just cause for not paying this maintenance. Children are, in exceptional circumstances, bound by Article 8 of the Civil Code to maintain their parents or other ascendant that are indigent.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Generally speaking a child will benefit from maintenance until the age of sixteen. However Article 3B(2) of the Civil Code qualifies that parents will also be bound to provide adequate maintenance for their children if they are still students and are participating in full-time education, training or learning until they reach the age of twenty-three. The same article also provides that parents have to maintain their children if they suffer from a physical or mental impairment, as defined in the Equal Opportunities (Persons with Disability).

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

In order to receive a decree establishing out the amount of maintenance that is to be paid and the frequency of such payment an application before the Civil Court (Family Section) must be filed.

In such case the procedure will start off by the court appointing a mediator who will then invite the parties (or their representatives) for a meeting at the law courts. During this meeting the mediator will assist the parties in reaching an amicable settlement. If the parties agree on the text of an agreement for maintenance the mediator will send a copy of the draft agreement to the judge presiding over the Family Court. The court will review the agreement and if it believes that none of the parties, including the person for whom maintenance is due, will be prejudiced by such agreement the court will decree in favour of that draft decision and the parties may proceed before the notary to sign such agreement.

When parties fail to agree on a draft agreement on maintenance during the mediation process, the mediator will report the matter back to the judge presiding over the Family Court so that court proceedings will commence. In such case the Family Court will hear the submissions made by the lawyers of both parties and will deliver a judgment on the matter.

Proceedings before the mediator are without cost and the parties need not be assisted by a lawyer, however it is always advisable to seek legal assistance before entering into such agreements. On the other hand, proceedings before the court involve lawyers and will incur legal fees, unless the parties apply and qualify for legal aid.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

Requests may be made by the creditor, a representative thereof, or the child's curator. Maintenance for a child can be requested by the person having the care and custody of the said child.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

Through Legal Notice 396 of 2003 (Subsidiary Legislation 12.19) the competent court to decide issues dealing with family matters is the Civil Court (Family Section). Thus, it is the Civil Court (Family Section) that will decide the amount of maintenance that is to be paid (unless an agreement before the mediator has been reached).

Should a debtor fail to pay maintenance the creditor may file a complaint with the police who may institute criminal proceedings accordingly against the debtor. Such proceedings would be instituted before the Court of Magistrates (Criminal Judicature).

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

In order to institute a case on maintenance from abroad through the application of Regulation (EC) 4/2009 one must contact the Malta Central Authority which will then initiate the process accordingly before the mediator and before the Civil Court (Family Section), if it deems it necessary.

The Malta Central Authority will also assist the creditor in filing the relative complaints with the police so that criminal proceedings will be instituted if the need arises.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

In accordance with Regulation (EC) 4/2009 proceedings relating to child support will be instituted without costs by the Central Authority.

In respect of maintenance relating to spousal support the Central Authority will assist the spouse in proceedings that are free of charge, such as mediation before the Family Court. Should mediation fail the creditor will be required to seek the assistance of a private lawyer who will assist the applicant before the Maltese courts. Fees relating to Courts and lawyers are provided in Schedule A of the Code of Organization and Civil Procedure (Chapter 12 of the Law of Malta). Should an applicant for spousal support qualify for legal aid, in accordance with Maltese law, the Central Authority will assist such person accordingly.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

The calculation of the amount of maintenance that may be awarded varies by the court as it depends on a number of criteria. Notwithstanding the fact that there is no formula for calculation of maintenance, the Civil Court (Family Section) takes into account the following factors:

i. standard of living of the debtor and that of the creditor and/or children;

ii. whether the child require any additional monies due to an impairment or a requirement they may have; and

iii. whether the debtor is exercising access to children.

A court's decision may be revisited however it is difficult to amend a decision regarding maintenance that is to be paid especially if the circumstances remain unchanged. Should there be a change in circumstances (e.g. minor will require more maintenance due to a long-term sickness or there is a significantly change in debtor's wage) the courts may change the terms of the maintenance.

The Family Court usually requires that the amount of maintenance is increased each year according to the national rate of inflation. Likewise a clause for increase in maintenance due to rate of inflation is usually inserted in the maintenance agreement reached upon during the mediation process.

**9 How and to whom will the maintenance be paid?**

Maintenance can be paid either directly by the debtor to the creditor by means of cash, cheque or bank transfer. The court may decide that the amount due in maintenance is to be deducted from the debtors income and the amount deducted is sent directly to the creditor. The latter option usually occurs when the debtor fails repeatedly to pay maintenance.

If the Malta Central Authority is instructed to initiate proceedings on behalf of the creditor, the said authority will take steps to encourage the debtor to send the money directly to the creditor. Should the debtor refuse to pay, the matter will be brought before the Court.

In such case the Malta Central Authority will ask the court to issue the necessary injunction so that the debtor's bank accounts are ceased and money is remitted to the creditor.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

The Central Authority will make use of all remedies available according to Maltese law. In particular the Malta Central Authority will first send a letter stating that court proceedings will be instituted against such person. Upon failing to adhere to such letter the Malta Central Authority will ask the creditor to make an affidavit and the matter will be referred to the Maltese police so that they proceed against the debtor in accordance with the provisions of the Criminal Code.

Where necessary the Malta Central Authority will assist the applicant so that lawyers, either from legal aid unit or from the Central Authority, will initiate civil proceedings against the debtor so that arrears are paid. In such case if the debtor has an income a request can be made to the Court so that part of the income is seized and transferred directly to the creditor. If the debtor has valuable assets yet has no income, the Court may liquidate the assets and direct the money to the Central Authority which in turn will send it to the creditor.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

The prescriptive period for criminal action following failure to pay maintenance is six (6) months. A criminal action would fail if the debtor failed to file a complaint with the police within 6 months from the day maintenance becomes due.

Article 2156 of the Civil Code states that actions for the payment of maintenance are barred by a 5 year period.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

The Central Authority in Malta will assist:

a. Creditors living out of Malta, when they need to sue a debtor in Malta, namely by searching for the debtor and facilitate proceedings against the debtor (such requests are treated as 'incoming cases');

b. Creditors living in Malta, when they need to sue a debtor who is living outside of Malta by sending an application to another Central Authority so they search and sue the debtor.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

No, this is not possible.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

If the creditor is residing in Malta and the debtor is residing in another Member State such creditor may request the Central Authority of Malta to work with the Central Authority in that other Member State so that the debtor is located, contacted and informed about the obligation to pay maintenance.
Should there be no decision regarding the amount of maintenance that is due the Malta Central Authority should liaise with the Central Authority in the other Member State and seek assistance so that the courts or administrative authorities of that Member State will deliver a decision establishing the amount of maintenance that is to be received from the debtor.
Following that the Malta Central Authority should liaise with the foreign Central Authority so as to receive information on the best ways possible to ensure that such maintenance decision is enforced, unless the debtor cooperates voluntarily.

**14.2 If so, how can that authority or private organisation be contacted?**

The Central Authority of Malta has its contact details published in the Judicial Atlas website of the EU.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

In cross-border cases relating to maintenance the Malta Central Authority will assist the creditor from abroad to secure the maintenance obligation. In such case the Malta Central Authority will represent the creditor before all other administrative authorities or before the law courts in accordance with the circumstances of the case. The Malta Central Authority would require the necessary forms to be filled in and may also require authorisation from the creditor before it initiates any legal proceedings.
Where the creditor is seeking to retrieve from the debtor maintenance in the form of spousal support, free legal aid to assist such creditor before the law courts would only be provided if such creditor would fit the same criteria for free legal aid provided to persons resident in Malta.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

The contact details of the Malta Central Authority may be found on the Judicial Atlas of the EU. The Central Authority will carry out the functions as described in further details in Question 21, functions (i) to (j) which namely are to locate the debtor, ensure that there is a decision enforceable against the debtor (and if not assist the creditor in obtaining one) and assist the debtor in the enforcing such decision.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes, Malta is bound by the 2007 Hague Protocol.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

N/a

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

The Central Authority will offer free guidance to persons who approaches the Central Authority on cross-border maintenance cases. Whenever the request is made by a person living abroad the Malta Central Authority will ensure that the person is being provided with the support that individual needs, according to the nature of the claim made. In particular, should the claim be made for personal support the Malta Central Authority will provide the applicant with advice and general guidance.
Should the claim for maintenance relate to children then the Malta Central Authority will ensure that legal proceedings against the debtor are instituted without any cost.
Where the Malta Central Authority is requested by a creditor living in Malta to assist in recovering maintenance from abroad the Malta Central Authority will assist that person in filing the case before the law courts and keeps in contact with the foreign Central Authority, on the outcome of the case and to discuss the possibility of recovery of such maintenance due.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Officers are assigned for each case in order to ensure that the Malta Central Authority transmits applications, receives applications, keeps in contact with the debtor and creditor's request and keeps the foreign Central Authority updated about the developments in each case. The case officer will be assisted by lawyers who have years of experience in family and administrative procedure.
In outgoing cases the case officer will correspond directly to the contact person in Malta and the Central Authority abroad. Usually communication is send via email and / or ordinary post. However in certain situations telephone calls are made to the foreign Central Authority or the person who is requesting the services of the Malta Central Authority. In incoming cases the Malta Central Authority endeavours to keep the client involved in all correspondence between the Central Authorities.
The following are some of the measures taken in the following circumstances:
(a) where the circumstances require, to provide or facilitate the provision of legal aid: where necessary and required the Central Authority may engage a lawyer so as to represent the client or it may direct that the client will be assisted by legal aid lawyers or other attorneys, according to the circumstances of the case;
(b) to help locate the debtor or the creditor, in particular pursuant to Articles 61, 62 and 63 of the Regulation: in such circumstances the Central Authority will first conduct preliminary searches in public databases for the registered addresses and contact information of that individual. Where more information is provided to the Malta Central Authority searches will be made accordingly and other government entities will be contacted to provide information on the debtor's assets;
(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 of the Regulation: the Central Authority will contact the national employment office and determine whether such person is currently employed or not. If a court case is instituted against the debtor the Central Authority will suggest that the lawyer who is representing the creditor to ask the court to summon other government departments such as the Inland Revenue, the Transport Authority and the local banks or any other relevant entity, so as to give evidence about the earnings and assets of the debtor;
(d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes: before initiating any form of legal proceedings the Malta Central Authority will contact the debtor and encourage an amicable agreement, explaining why this is always in one's best interest to do so. Where the chances of mediation are high the Malta Central Authority will refer the matter to professional mediators, however if there is no prospect that parties will resolve the dispute amicably then court proceedings are instituted;
(e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears: the Malta Central Authority may initiate proceedings or suggest that court proceedings are initiated against the individual debtor so as that the court liquidates any assets of the debtor or receives a court order to cease part of the wages;

(f) to facilitate the collection and expeditious transfer of maintenance payments: the Malta Central Authority will institute court proceedings asking the court to order the debtor to pay directly the creditor. Should the debtor fail to issue such payments the Malta Central Authority will, in the case of child support, require the law courts to issue the necessary injunction so that the assets of the debtor are seized and the proceeds thereof will be sent to the creditor. In the case of spousal support the Malta Central Authority will assist the applicant in achieving the said either through private lawyers or through the legal aid system;
(g) to facilitate the obtaining of documentary or other evidence, without prejudice to Regulation (EC) No 1206/2001: if the documents or information required is already in the public domain the Malta Central Authority will collect that information and provide it to the creditor. If the information is not in the public domain a special request will be made to the authority or entity that is holding such information. If such information cannot be made available the Central Authority may ask the Court to order that such information be made available, according to the circumstances of the case;
(h) to provide assistance in establishing parentage where necessary for the recovery of maintenance: the Malta Central Authority will guide the applicant through the legal process of establishing parentage and will provide the applicant with information about the private services required for such process, in particular those relating to DNA tests, where applicable;
Where necessary the Central Authority will assist the foreigner in obtaining a representative who could appear in Malta on his or her behalf in the relative public deed. Alternatively the issue of parentage may have to be decided by the law courts and therefore the Malta Central Authority will only ensure that the matter gets before a court so that the court will be able to decide on the matter;
(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: should the Malta Central Authority suspect that a debtor is taking measures so as to worsen his or her economic position the Malta Central Authority will ensure that the necessary court injunctions are requested so that the debtor is prohibited from dissipating the estate against the interest of the creditor;
(j) to facilitate the service of documents, without prejudice to Regulation (EC) No 1393/2007: where further information on the debtor is required and such information can lawfully be gathered and transmitted by any private person in Malta, the Maltese Central Authority will direct its staff to collect such information. Such information may be collected from public or private entities.
Whenever necessary the Malta Central Authority shall liaise with the transmitting and receiving agencies designated under the Regulation (EC) 1393/2007 in order to ensure that certain documents are duly served.

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## Family maintenance - Netherlands

### 1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

Maintenance is an obligation to contribute to the cost of living of the maintenance creditor. The obligation to pay maintenance arises from blood relationships and affinity, and a (previous) marital bond.

**Which persons have to pay a maintenance allowance to another person:**

- parents to their children
- children to their parents
- a divorced spouse to the other spouse (ex-registered partners)

The maintenance obligation that exists between spouses during marriage continues after the dissolution of the marriage. The court may, during the divorce judgment or during a later judgment, grant a maintenance allowance at the expense of one ex-spouse to the ex-spouse who does not have sufficient income to support his or her living costs (and is not, as far as can reasonably be expected, able to acquire it) at the latter’s request. In establishing this maintenance allowance, the judge takes into account the needs of the one ex-spouse and the means (financial resources) of the other ex-spouse. Non-financial factors may also play a role, such as the duration of the marriage or the duration of cohabitation. If the court does not specify a time limit for the maintenance obligation, the maintenance obligation terminates automatically after 12 years. An extension to this period may be granted by the court at the request of the ex-spouse requiring maintenance in cases where the latter is in particular financial difficulty. Following a short (not longer than 5 years), childless marriage, the duration of the maintenance obligation is, in principle, not longer than the duration of the marriage itself.
The above also applies with regard to maintenance between ex-registered partners.
The ex-spouses may come to agreements as regards maintenance between themselves out of court. These are usually laid down in the divorce covenant. In practice, this covenant will be confirmed by the court during the divorce judgment. Confirmation of this kind gives the maintenance creditor more legal certainty.
Other categories of maintenance obligation:

**Spouses/registered partners**

Spouses and registered partners must both, except in exceptional circumstances, contribute to household expenses. They may make other agreements in this regard in prenuptial or partnership agreements.

**Natural father/partner in the life of the mother**

There is an obligation on the part of the child's natural father to provide maintenance for the child fathered (not acknowledged) by him, as long as the child does not have a legal family relationship with this man or any another man (in other words, as long as there is no legal father). The same obligation applies for the partner in life of mothers who consented to an act which could have resulted in the procreation of the child.

**Joint custody**

The non-parent having custody of a child together with the parent has a maintenance obligation towards that child (Article 1:253w BW). The maintenance obligation continues until the child's twenty-first birthday when joint custody ends due to the child becoming of age.

**In which cases?**

Generally speaking, the obligation to pay maintenance exists only if the maintenance creditor is in need. A person is considered to be in need if he or she has insufficient income to provide for himself or herself and is not, as far as can reasonably be expected, able to acquire it himself or herself.

**Exception**

An exception to this rule is in the case of maintenance obligations of parents and natural fathers towards their minor children and towards young adult children (up to 21 years old). In these cases, the maintenance obligation applies even if the creditors are not in need.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

In the case of children below the age of 18 (minor children), the parents must pay the costs of care and upbringing. This concerns the cost of living and the other costs involved in bringing up the child, such as education and leisure activities. Parents are obliged to provide for the costs of care and upbringing according to their means. The obligation applies even if the child has his or her own means and/or income.

In the case of children of 18, 19 and 20 years old (the 'young adults'), the parents are responsible for paying the costs of living and education. The costs of living and education are taken to mean the same as the costs of care and upbringing during childhood. This maintenance obligation is independent of the need of the maintenance creditors.

The extended maintenance obligation also exists for this category of children even if they have their own income from employment or capital, or if they are married. Any income from the child himself or herself does, however, determine the extent of their need for a maintenance allowance.

In the case of children of 21 years and over, the parents only have a maintenance obligation if the child is in need and is not able to care for himself or herself. For example, if a child is physically or mentally handicapped.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

The sum that the maintenance debtor must pay can either be established by the parties themselves and laid down in an agreement or determined by a court ruling.

In the context of divorce proceedings, the court is often also requested to decide on the maintenance for the ex-spouse or child maintenance.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

No: the application has to be submitted by the maintenance creditor's lawyer. Maintenance creditors are not permitted to submit an application without a lawyer. A minor child is represented by his or her legal representative (usually a parent).

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

A distinction is made here between international jurisdiction (does the Dutch court have jurisdiction?) and internal jurisdiction (which Dutch court has jurisdiction?).

**International jurisdiction within the European Union**

As far as international jurisdiction of the Dutch court is concerned, in the context of the European Union the so-called 'Brussels I' Regulation (EEX) is applicable. This Regulation contains rules on the jurisdiction of the courts with regard to maintenance claims.

Pursuant to Article 2 of the Regulation, a maintenance debtor (respondent) residing in the Netherlands is, in principle, summoned to appear before the Dutch court by the maintenance creditor (applicant).

The 'Brussels I' Regulation also contains an alternative rule in respect of maintenance obligations. Article 5(2) specifies that a respondent residing within the territory of a Member State may be summoned to appear in another Member State:

before the court of the place where the person entitled to maintenance is domiciled or habitually resident,

or, if it is an additional requirement relating to a claim concerning the family law status of persons, i.e. the divorce court judge or, for example, the judge who decides on affiliation, before the court that has jurisdiction over this, unless that jurisdiction is based solely on the nationality of one of the parties.

Pursuant to the first indent, a maintenance creditor residing in the Netherlands may summons a maintenance debtor residing in France, for example, to appear before the Dutch court, which has international jurisdiction pursuant to Article 5(2). The court of the place of residence of the applicant has jurisdiction.

In addition, concerning maintenance obligations within the European Union, 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 has been in force since 18 June 2011.

The rules on jurisdiction in the Maintenance Regulation largely tally with those of the EEX Regulation. Under the general rule, the court of the place of habitual residence of the defendant or the maintenance creditor has jurisdiction for cases concerning maintenance. In contrast to the EEX Regulation, there is no requirement for the application of the Maintenance Regulation that the habitual place of residence of the defendant is located within the territory of a Member State.

**International jurisdiction outside the European Union**

As far as international jurisdiction of the Dutch court outside the context of the European Union is concerned, the following is applicable. If the respondent (be it the creditor or the debtor) lives outside the European Union, then the aforementioned 'Brussels I' Regulation is not applicable and the Dutch court derives its jurisdiction from the Code of Civil Procedure (*Wetboek van Burgerlijke rechtsvordering*). The Dutch divorce court is then authorised to make provisional arrangements with respect to the divorce or ancillary provisions such as a maintenance allowance or continued occupation of the matrimonial home. The Dutch court consequently has jurisdiction to decide on an independent application for maintenance allowance if either the applicant or one or more of the parties concerned stated in the application live(s) in the Netherlands or, if the case is otherwise sufficiently related to the legal sphere of the Netherlands, if they chose the Dutch court to have jurisdiction or if the party concerned appears in the course of the proceedings and does not put forward a plea of lack of jurisdiction.

**Internal jurisdiction**

As far as internal jurisdiction of the Dutch court is concerned, the rule as regards the type of court (law court, court of appeal, the Netherlands Supreme Court) is that the law court has jurisdiction in maintenance cases. Which law court has jurisdiction is determined by the Code of Civil Procedure. It is the law court of the place of residence of either the applicant (one of the applicants) or one of the parties concerned stated in the application that has jurisdiction or, in the absence of a place of residence of one of these parties, the court of the place of actual residence of one of them.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

A request to establish, change or terminate a maintenance allowance must be submitted by a lawyer. The lawyer represents the applicant during the sitting. Names and addresses of lawyers can be found on the national law society's website.

There is a Society of Family Lawyers and Divorce Mediators, the members of which specialise in divorce and maintenance, amongst other things. They also specialise in divorce mediation and all that this entails.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

A contribution towards the costs involved in the administration of justice must be paid for court proceedings. This is the court registry fee. In addition to this, lawyer's and bailiff's fees will also be incurred.

If the litigant is unable to pay the (full) costs of a lawyer, he or she may, under certain circumstances, qualify for legal aid. This is known as a 'legal aid case'. The government pays part of the costs and the litigant pays a 'personal contribution'. The extent of this 'personal contribution' depends on the income and financial means of the litigant. The Legal Aid Council grants legal aid. The litigant must submit an application for legal aid to the Council in the area of jurisdiction (=jurisdiction of a court of appeal) where the lawyer's office is situated. In practice, the application is often made by the lawyer, if he or she has already been approached prior to the application for legal aid.

Furthermore, a 'Declaration of Income and Assets' (to be obtained from the municipal authority of the place of residence) must be submitted. This declaration must be sent with the application to the Legal Aid Council, which investigates whether the litigant is eligible for legal aid. If this is indeed the case, proof of entitlement to legal aid is issued. The court registry fee is also reduced in such cases.

Entitlement to legal aid also applies in the case of cross-border disputes, i.e. if the applicant resides outside the Netherlands. This is provided for in the European Directive on Cross-border Legal Aid. Legal aid may be requested, invoking Articles 23A to 23K of the Legal Aid Act (*Wet op de rechtsbijstand*), via the Legal Aid Council in The Hague, using the standard form accompanying this Directive, which is identical in all Member States.

If necessary, the Legal Aid Council can provide assistance with choosing a lawyer. The Council's address is given in the response to question 14.2.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

In its decision, the court will take into account the needs of the person requesting or receiving the maintenance allowance and the means (financial resources) of the person who is required to pay or is paying the maintenance allowance. Needs and means are relative concepts. The court has a certain degree of liberty to make a decision according to the circumstances of the individual case. Guidelines have been developed by the judiciary (the so-called *Trema* standards), although these are not binding on the court.

The following incomes and expenditures are important in the court's decision:

income from employment
income from ancillary employment
study grants
benefits
pension
income from (sub)letting
interest and other incomes from assets
contributions to the households of others with whom a joint household is run
existing possibilities to increase income (earning capacity)
statements of assets
rent payments
mortgage repayments and interest as well as fixed charges. The part of the mortgage that has not yet been paid off must also be stated here.
insurance policies
necessary regular travel costs
financial obligations towards others
costs of special medical care for the maintenance creditor and/or his or her family members
expenses related to production of income
any statements of debts

**Statutory indexation**

Each year, the Minister for Justice fixes the percentage by which a maintenance contribution granted by the court or a contribution fixed by agreement is increased by law. In the calculation of this percentage increase, the Minister considers salary development in the business community and the government and the development of salaries in other sectors. This percentage is published in the *Staatscourant* [the Dutch Government Gazette].

There are a number of exceptions to this automatic adjustment of maintenance allowances. The parties as well as the court may rule out the statutory indexation or establish an alternative method of indexation.

**9 How and to whom will the maintenance be paid?**

Maintenance for ex-spouses is paid directly to the maintenance creditor. Maintenance payments fixed by the court for minor children are paid directly to the parent (or guardian) who is caring for the child.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If the maintenance obligation is determined by a court ruling and the maintenance debtor is in default of payment of child and/or partner maintenance, compliance can be enforced via the National Bureau for the Collection of Maintenance Payments (LBIO) in Rotterdam. Compliance can also be enforced by the bailiff. If there is no court ruling, the case must be brought before the court. A lawyer must be called in for this.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

In the case of attachment on benefits or wages, the attachment-exempt threshold must be taken into account. The limitation period of a maintenance allowance to be paid monthly is 5 years. If a judgment exists in which the payment arrears are recorded, i.e. if in fact a fixed amount has been stated, the limitation period amounts to twenty years. To prevent expiry of a claim, the limitation period must be suspended.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

In the case of arrears in child and/or partner maintenance payments, this authority is the National Bureau for the Collection of Maintenance Payments (LBIO).
The LBIO must be authorised to do so by the maintenance creditor. The LBIO may, if necessary, proceed to collection by means of levying execution. The LBIO may, for example, attach the salary, benefits or immovable or movable property of the maintenance debtor.
Calling upon the services of the LBIO is free of charge for the maintenance creditor if both parties are resident in the Netherlands. On receiving a request for collection, the attempt is first made to prevent collection involving costs through brief mediation and/or providing an explanation. This is successful in nearly three quarters of cases. However, where the LBIO takes over collection, the maintenance debtor pays the recovery costs to the LBIO. The LBIO imposes a surcharge for collection. This surcharge is 15 % of the monthly amounts owed and the maintenance in arrears. Any costs of execution are also recovered from the maintenance debtor.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Despite the fact that the LBIO is a government institution, no maintenance payments are advanced. The government can do this in the case of child maintenance or legal aid.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

The LBIO also has tasks in the field of the international collection of maintenance. These tasks arise from regulations and conventions to which the Netherlands is party.
The Netherlands is party to the UN Convention on the recovery abroad of maintenance, New York, 20 June 1956. This is a convention on mutual legal assistance, the aim of which is to facilitate the acquisition of maintenance in international cases. To this end, the Convention has established a system of sending and receiving institutions, which assist the maintenance creditor in enforcing maintenance claims. The LBIO is the sending and receiving institution for the Netherlands.
Anyone who resides in the Netherlands and encounters problems with the collection of maintenance from a maintenance debtor residing abroad (i.e. in a country that is party to the New York Convention) can invoke the New York Convention. The Convention relates to child maintenance as well as partner maintenance.
Since 1 August 2014, the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance has been in force between the European Union (apart from Denmark) and other contracting States. In addition to the EU Member States, the Convention is also in force in Albania, Bosnia-Herzegovina, Norway and the Ukraine. Regarding relations between EU Member States, the Maintenance Regulation (Regulation (EC) No 4/2009) takes precedence.
The Hague Maintenance Convention is applicable for children under 21 years of age. It can be extended to cover other family members if both contracting States involved adopt a declaration to this effect.
In order to engage the services of the LBIO, the application form 'collection of international maintenance allowance' must be submitted. This form can be downloaded from the LBIO website.
The activities conducted by the LBIO and the foreign institutions themselves in the context of the New York Convention and the Treaty with the United States are in principle free of charge. Costs may arise in connection with legal proceedings abroad or with the recovery of the maintenance allowance.

**14.2 If so, how can that authority or private organisation be contacted?**

In the case of child and partner maintenance:
Landelijk Bureau Inning Onderhoudsbijdragen (LBIO)
Postbus 8901
3009 AX Rotterdam
In the case of legal aid:
Raad voor Rechtsbijstand,
Postbus 450,
2501 CL The Hague
Telephone number +31703701414
In the case of legal aid in cross-border cases:
Raad voor Rechtsbijstand
Regiokantoor Den Haag
attn. Jan Ouwehand
Laan van Meerdervoort 51B
2517 AE The Hague
Tel: 0031(0)88 787 1320
e-mail: j.ouwehand@rvr.org

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

The LBIO also collects maintenance at the request of maintenance creditors residing abroad from maintenance debtors residing in the Netherlands. If a maintenance creditor who is located in another Member State wishes to claim maintenance from a maintenance debtor residing in the Netherlands, he or she can invoke the system of the Convention. He or she must then apply to the sending institution in his or her own country, which then contacts the receiving institution in the Netherlands (the LBIO). The receiving institution then takes the necessary measures to obtain the maintenance.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

For contact details, see response to question 14.2.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Not applicable.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

A contribution towards the costs involved in the administration of justice must be paid for court proceedings. This is the court registry fee. In addition to this, lawyer's and bailiff's fees will also be incurred. If the litigant is unable to pay the (full) costs of a lawyer, he or she may, under certain circumstances, qualify for legal aid. This is known as a 'legal aid case'. The government pays part of the costs and the litigant pays a 'personal contribution'. The extent of this 'personal contribution' depends on the income and financial means of the litigant.
The Legal Aid Council grants legal aid. The litigant must submit an application for legal aid to the Council in the area of jurisdiction (=jurisdiction of a court of appeal) where the lawyer's office is situated. In practice, the application is often made by the lawyer, if he or she has already been approached prior to the application for legal aid. Furthermore, a 'Declaration of Income and Assets' (to be obtained from the municipal authority of the place of residence) must be submitted. This declaration must be sent with the application to the Legal Aid Council, which investigates whether the litigant is eligible for legal aid. If this is indeed the case, proof of entitlement to legal aid is issued. The court registry fee is also reduced in such cases. Entitlement to legal aid also applies in the case of cross-border disputes, i.e. if the applicant resides outside the Netherlands. This is provided for in the European Directive on Cross-border Legal Aid. Legal aid may be requested, invoking Articles 23A to 23K of the Legal Aid Act, via the Legal Aid Council in The Hague using the standard form accompanying this Directive, which is identical in all Member States. If necessary, the Legal Aid Council can provide assistance with choosing a lawyer.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

No amendments have been made pursuant to Article 51 of the Regulation.

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## Family maintenance - Austria

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Maintenance serves to cover all appropriate, that is, necessary and customary, material needs, taking account of individual circumstances. In particular, it covers food, clothing, accommodation (including heating and electricity), medical care and hygiene, the payment of additional contributions to social insurance, leisure and recreational activities, culture and sports, communications and mass media (telephone, radio, TV, internet), and education and training. Maintenance does not include contributions to wealth accumulation or private pension schemes.
A maintenance obligation is the obligation to pay maintenance as appropriate. The amount of maintenance payable will depend on the specific needs of the person entitled to maintenance, as well as on the ability to pay of the person obliged to make maintenance payments.
Maintenance must be paid by
parents to their children and grandchildren,
children to their parents and grandparents,
spouses and registered partners to each other.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

There is no age limit. Children are entitled to maintenance until they are able to support themselves.
The main differences between a minor's and an adult's entitlement to maintenance have to do with legal enforcement.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

Maintenance claims must be asserted by judicial process.
In contentious civil proceedings, spouses and registered partners must assert their claims by way of legal action. The court - in practice, a judge - decides the case through a judgment following a procedure of taking of evidence. In addition, spouses and registered partners may also seek an interim injunction concerning the provisional payment of maintenance in connection with maintenance or divorce/dissolution proceedings. In these cases, the court decides following an attestation procedure.
Child maintenance must be claimed in non-contentious proceedings. This will also apply in the case of children above the age of majority. The guardianship court [Pflegschaftsgericht] - in practice, a Rechtspfleger [a higher official of the Austrian judicial organisation with the authority to deliver judgments] - rules by means of a decision following a procedure of taking of evidence. In addition, a child may apply for an interim injunction for provisional maintenance, in the context of maintenance proceedings: in such cases, the court decides following an attestation procedure. Minors may also request the provisional payment of maintenance irrespective of maintenance proceedings.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

The application for the establishment or enforcement of maintenance for minors can be made by the legal representative, that is, the person who has custody. With the consent of this person, the child and youth welfare service (Kinder- und Jugendhilfeträger) may also act as the child's representative.
In all other cases, claimants may only be represented by someone who has power of attorney or by special legal representation (Erwachsenenvertreter).

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

Jurisdiction in maintenance matters is defined by law.

Under Section 114 of the Court Jurisdiction Act [JN, Jurisdiktionsnorm], the guardianship court [Pflegschaftsgericht] also has jurisdiction over statutory maintenance claims of minor children; Legal maintenance claims of other relatives in the ascending or descending line fall within the competence of the court in whose area of jurisdiction the entitled person's general place of jurisdiction for disputes is located.
This will depend on the place where the person is domiciled or habitually resident.
Under Section 76a of the Court Jurisdiction Act [JN], the court responsible for issues concerning maintenance of spouses or registered partners is the court where divorce or dissolution proceedings are pending. If no such proceedings are pending, the competent court depends on the defendant's general place of jurisdiction (Sections 65-71 of the JN).

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

Child maintenance: the parties do not need to be represented in the first instance. However, if they wish to be represented, in cases involving money or a monetary value in excess of EUR 5 000, this can only be done by a lawyer (relative legal counsel requirement, Section 101(1) of the Austrian Act on Non-contentious Proceedings [Außerstreitgesetz, AußStrG]). In the case of appeal procedures, there is an absolute requirement to have legal counsel.
Maintenance of spouses or registered partners: the parties do not need to be represented in the first instance. However, if they wish to be represented, in cases involving money or a monetary value in excess of EUR 5 000, this can only be done by a lawyer (relative legal counsel requirement, Section 29(1) of the Austrian Code of Civil Procedure [Zivilprozessordnung, ZPO]). In the case of appeal procedures, there is an absolute requirement to have legal counsel.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

The fees payable for bringing a maintenance case to court vary depending on the value of the maintenance awarded. Hence, the basis of assessment for maintenance claims that have already been awarded in the past is the amount awarded. Where the case concerns future maintenance, the amount to be used as the basis of assessment is one times the annual maintenance amount. If the entitlement is granted for a period shorter than one year, the total amount is to be used as the basis of assessment (Note 1 to TP 7 Court Fees Act [Gerichtsgebührengesetz, GGG] for child maintenance proceedings; Section 15(5) GGG for maintenance proceedings for spouses or registered partners).
As regards the actual fee amount, a distinction is made between child maintenance in non-contentious proceedings and cases concerning maintenance for spouses or registered partners. For cases concerning child maintenance, applicants who are minors (under 18) do not have to pay fees.
In cases concerning **child maintenance,** applicants who are minors (under 18) do not have to pay fees.
For adult applicants, the flat-rate fee for decisions and settlements concerning maintenance claims is 0.5% of the value of the maintenance claim awarded (fee item 7 GGG). The fee is payable by the maintenance debtor (i.e. the person who owes maintenance payments). If, as a result of a new application, a maintenance amount is increased which had already been awarded by final judgment or by settlement, the difference between the awarded amount and the amount previously payable should be taken as the basis of assessment.
For example: a future monthly maintenance payment of EUR 250 is awarded.
The flat-rate fee is EUR 15.00 (EUR 250 * 12 * 0.05).
If an adult owing maintenance payments applies for a reduction of the maintenance amount, the (fixed) flat-rate fee is EUR 15.00. This fee will be waived if the applicant is wholly successful in his request for a reduction in the maintenance amount payable (note 3 to fee item 7 GGG). Fee item 1 GGG must be applied in proceedings concerning the maintenance of a spouse or registered partner.
Fee item 1 GGG must be applied in proceedings concerning the **maintenance of a spouse or registered partner**. The flat-rate fee will only be charged for the complaint - as the request instituting the proceedings - and this will be payable on a sliding scale depending on the basis of assessment. To illustrate this point, the fees applicable according to fee item 1 GGG (as at 4 May 2023) are shown below:
Value of the claim in dispute - applicable fee
Up to and including EUR 150 – EUR 25
Over EUR 150, up to and including EUR 300 – EUR 48
Over EUR 300, up to and including EUR 700 – EUR 68
Over EUR 700, up to and including EUR 2 000 – EUR 114
Over EUR 2 000, up to and including EUR 3 500 – EUR 182
Over EUR 3 500, up to and including EUR 7 000 – EUR 335
Over EUR 7 000, up to and including EUR 35 000 – EUR 792
Over EUR 35 000 up to and including EUR 70 000 – EUR 1 556
In civil proceedings, pursuant to Sections 63 to 73 of the Code of Civil Procedure (ZPO), legal aid must be granted on request if a party is unable to pay the costs for conducting the proceedings without risking what he or she needs for subsistence. Pursuant to Section 7(1) AußStrG, these provisions must be applied accordingly in non-contentious proceedings (such as in proceedings concerning child maintenance).
The necessary maintenance, in abstract terms, is set at a level between the statistical average income of an employee and the minimum subsistence level. This amount is deemed at risk if the party and his or her family entitled to maintenance would not even be able to lead a modest existence, taking into account any usable assets or the possibility of accumulating savings in the course of proceedings that continue over a longer period of time. Partial legal aid may also be granted.
Legal aid should only be provided where the intended legal action or defence does not appear to be obviously wilful or futile. The party's nationality is irrelevant in this respect.
Legal aid includes in particular a provisional exemption from the payment of court fees and fees for witnesses, experts and interpreters, as well as the payment of the parties' travel costs where they have to appear in person. If representation by a lawyer is required by law (i.e. in appeal proceedings) or if it is deemed necessary in the particular circumstances of a case, then an Austrian lawyer should be appointed provisionally at no cost to the party. The lawyer's work also includes pre-litigation advice regarding an out-of-court settlement.
Section 71 ZPO provides that parties granted legal aid must be obliged to repay part or all of the amounts from which they were provisionally exempted and that have not yet been repaid, as well as to pay the fees payable under the pay scale to their assigned lawyer, in so far and as soon as they are able to do so without risking the resources required for their subsistence. Once three years have passed since the end of the proceedings, the obligation to repay these amounts can no longer be imposed. The court may request the party to provide - within an appropriate period of time stipulated by the court - a new summary of assets, including reasonable documentary evidence, in order to verify that the preconditions for repayment are met.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

The court determines maintenance as a monetary benefit. The parent who runs the household where he or she cares for the child contributes to the child's maintenance in this way. The other parent is obliged to make payments.

The amount of maintenance to be paid for the child depends on the parents' ability to contribute and on the child's needs, and is determined case by case. Based on the percentage method developed in case-law to provide guidance, the person required to pay maintenance must pay a certain percentage of his or her monthly (net) income:
16% for children under 6 years of age;
18% for children aged between 6 and 10;
20% for children aged between 10 and 15; and
22% for children over 15.
If a person is obliged to pay maintenance for several children, this will be taken into account by reducing the percentages accordingly. The percentage points to be deducted in a case involving more than one child are 1% for each additional child under 10 years of age, 2% for each additional child over 10, and 0 to 3% for a spouse entitled to maintenance, depending on the spouse's own income.
Based on case-law, payments for maintenance claims have an upper limit (known as the 'Luxusgrenze' [luxury limit]), which is two to three times the average basic needs amount [Regelbedarf] also developed in case-law. This is adjusted annually and, as of 1 January 2023, it amounts to the following per month for children:
Basic needs amount
according to Danninger (in ÖA 1972, 17), calculated by the Landesgericht für Zivilrechtssachen Wien
(Amounts in EUR)

| Years | from 0 years on | from 3 years on | from 6 years on | from 10 years on | from 15 years on | from 19 years on<br>from 2022: from 20 years on |
|---|---|---|---|---|---|---|
| 1 January 2023 to 31 December 2023 | 320 | 320 | 410 | 500 | 630 | 720 |
| 1 January 2022 to 31 December 2022 | 290 | 290 | 370 | 450 | 570 | 650 |
| 1 July 2021 to 31 December 2021 | 219 | 282 | 362 | 414 | 488 | 611 |
| 1 July 2020 to 30 June 2021 | 213 | 274 | 352 | 402 | 474 | 594 |
| 1 July 2019 to 30 June 2020 | 212 | 272 | 350 | 399 | 471 | 590 |
| 1 July 2018 to 30 June 2019 | 208 | 267 | 344 | 392 | 463 | 580 |
| 1 July 2017 to 30 June 2018 | 204 | 262 | 337 | 385 | 454 | 569 |
| 1 July 2016 to 30 June 2017 | 200 | 257 | 331 | 378 | 446 | 558 |
| 1 July 2015 to 30 June 2016 | 199 | 255 | 329 | 376 | 443 | 555 |
| 1 July 2014 to 30 June 2015 | 197 | 253 | 326 | 372 | 439 | 550 |
| 1 July 2013 to 30 June 2014 | 194 | 249 | 320 | 366 | 431 | 540 |
| 1 July 2012 to 30 June 2013 | 190 | 243 | 313 | 358 | 421 | 528 |
| 1 July 2011 to 30 June 2012 | 186 | 238 | 306 | 351 | 412 | 517 |
| 1 July 2010 to 30 June 2011 | 180 | 230 | 296 | 340 | 399 | 501 |
| 1 July 2009 to 30 June 2010 | 177 | 226 | 291 | 334 | 392 | 492 |
| 1 July 2008 to 30 June 2009 | 176 | 225 | 290 | 333 | 391 | 491 |
| 1 July 2007 to 30 June 2008 | 171 | 217 | 281 | 322 | 378 | 475 |
| 1 July 2006 to 30 June 2007 | 167 | 213 | 275 | 315 | 370 | 465 |
| 1 July 2005 to 30 June 2006 | 164 | 209 | 270 | 309 | 363 | 457 |
| 1 July 2004 to 30 June 2005 | 160 | 204 | 264 | 302 | 355 | 447 |
| 1 July 2003 to 30 June 2004 | 157 | 200 | 258 | 296 | 348 | 438 |

The amounts from 1972 to 2002 are set out in this table: Regelbedarf 1972-2002
Maintenance for spouses or registered partners while they are still married or registered as partners will also depend on both the maintenance debtor's ability to pay and the entitled person's needs and must be established on a case-by-case basis. Based on the percentage method developed in case-law to provide guidance, the maintenance claim of the party with the lower income is calculated at a rate of 40% of the family income (net income of both spouses/partners) minus the claimant's own income. If one party has no income of their own and is only in charge of the household, he or she is entitled to a third (33%) of the breadwinner's net income. Other care responsibilities must be taken into account (by deduction of percentage amounts).

**9 How and to whom will the maintenance be paid?**

Maintenance must be paid in advance at the beginning of the relevant month (Section 1418 of the Civil Code (Allgemeines bürgerliches Gesetzbuch – ABGB); Section 70 of the Marriage Act (Ehegesetz); Section 22(1) of the Registered Partnership Act (Eingetragene Partnerschaft-Gesetz – EPG). Payments must be made to the entitled person or their representative (parent, special legal representative [Erwachsenenvertreter]).

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

After the amount of maintenance has been determined in the original proceedings, enforcement (compulsory execution) may be conducted against the debtor according to the general rules.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

The debtor (in enforcement proceedings: obliged party) must retain income corresponding to the minimum subsistence level (unattachable allowance). The minimum subsistence level, which depends on several factors, is redefined annually. Under Section 291b of the Austrian Enforcement Code [Exekutionsordnung, EO], the obliged party may retain only 75% of the minimum subsistence level in a case of enforcement based on a legal maintenance claim. From the difference between this reduced minimum subsistence level and the standard minimum subsistence level, any current legal maintenance claims must be satisfied first, irrespective of the order of priority of the pledge established for these claims, and payments must be in proportion to the current monthly maintenance payment. In this respect, maintenance creditors have priority over other creditors.
Any (outstanding) claims that have been awarded by enforceable judgment (Judikatschulden) have a limitation period of 30 years and can therefore be enforced by law within this period of time.
There are no special limitation periods in relation to the enforcement of maintenance claims.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

If written consent has been obtained from a minor's other legal representative, the child and youth welfare service can act as the child's representative to establish or enforce the minor's maintenance claims.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

The purpose of paying maintenance in advance is to ensure that minors receive maintenance payments if one parent fails to pay regularly or fails to meet his or her payment obligations altogether. The advance payment of maintenance will be granted by the government upon request. The request must be filed with the court in the name of the child by the parent who is authorised to represent the child.

Minors entitled to maintenance are those who

are habitually resident in Austria,

have Austrian citizenship or are citizens of another EU/EEA Member State or are stateless and

are not living in the same household as the maintenance debtor.

The advance payment of maintenance is granted from the beginning of the month when the request is filed for a maximum of five years; payments are made in advance by the Higher Regional Court on the first day of each month to the person entitled to maintenance.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

If the maintenance debtor lives abroad and if he or she has no enforceable assets in Austria, enforcement must take place abroad. Applications for this can be made via the Central Authority [Zentrale Behörde] (Section 8 of the 2014 Austrian Foreign Maintenance Act [Auslandsunterhaltsgesetz 2014]).

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

The child and youth welfare service (district authorities or magistrates) and the district courts will support maintenance creditors in asserting or enforcing their claims. The Central Authority will forward the applications to the foreign country.

**14.2 If so, how can that authority or private organisation be contacted?**

During the authorities' and courts' opening hours; the central authority also provides advice by telephone and e mail.

**15 If I am in another country and the debtor is in this Member State:**

As soon as the creditor's applications have been received by the competent court, he or she will generally be treated in the same way as if he or she lived in Austria.

Applications will be forwarded to the court by the Central Authority. The court will grant legal aid, where applicable, and will arrange for the Austrian Chamber of Lawyers to appoint a lawyer to assist with legal aid. Acting as the foreign creditor's representative who is familiar with Austrian law, this legal aid lawyer will be responsible for filing all further applications, transferring maintenance payments received and reporting on these activities (Section 9 of the 2014 Austrian Foreign Maintenance Act [Auslandsunterhaltsgesetz ]).

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

As the principle of cooperation between two central authorities applies, it is primarily the responsibility of the authorities in the Member State of residence to provide this support.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

Not applicable.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Not applicable.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

Until 1 August 2014, only the provisions of this Chapter were applicable; since then, access to justice in cross-border cases has also been effectively governed by Sections 10 et seq. of the 2014 Foreign Maintenance Act, Federal Law Gazette (BGBl.) I 34/2014.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Establishing simplified bureaucratic procedures through the 2014 Austrian Foreign Maintenance Act to enable Department I 10 of the Federal Ministry of Justice to process an increasing number of cases with the same amount of staff.

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## Family maintenance - Poland

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

In accordance with Article 128 of the Family and Guardianship Code, a ‘maintenance obligation’ is an obligation imposed on lineal relatives and siblings to provide means of subsistence (including clothes, food, accommodation, heating fuel and medicines) and, where necessary, the means of upbringing (including care for physical and mental development and provision of access to education and culture).
‘Maintenance’ is an allowance in cash or in kind. In the case of children it also covers personal involvement in their upbringing and work in a common household as part of a maintenance obligation.
A ‘maintenance claim’ is the right of a person to claim the fulfilment of a maintenance obligation towards him or her by another person.
As a rule, maintenance obligations arise from different kinds of family relationship.
Depending on the kind of family relationship, Polish law sets out the following types of maintenance obligations:
a maintenance obligation between relatives, including the specific form of such an obligation that is the obligation of parents towards a child: in the case of relatives, only persons in hardship are entitled to maintenance. Parents are obliged to pay maintenance to children who are not yet able to provide for themselves, unless income from the child’s property is sufficient to cover the costs of his or her maintenance and upbringing. Children over the age of 18 are no longer entitled to maintenance unless they wish to continue their education and their performance to date justifies this choice, or the maintenance obligation should be maintained due to the child’s health or personal situation. Furthermore, parents are not obliged to pay maintenance to children who are over the age of 18 and, while being able to work, embark on further study but then neglect it, do not make satisfactory progress, do not obtain pass marks and do not pass exams within prescribed deadlines and so fail to complete their studies within the timeframe specified for their programme of study.
If it is impossible or excessively difficult to obtain maintenance from the person under the primary obligation to pay it (a parent), it is possible to make a claim against persons under a secondary obligation (e.g. grandparents of a child who are the parents of an absent debtor). However, it should be pointed out that the mere non-payment of maintenance by a person obliged to do so is not sufficient to obtain maintenance payments from grandparents; in order to obtain maintenance from grandparents the person entitled to maintenance must be living in hardship and the grandparents must be financially able to pay maintenance. Maintenance orders against grandparents are usually for lower amounts than those imposed on the person with the primary obligation to pay maintenance.
an obligation arising from adoption: if the effect of adoption is solely to create a relationship between the person adopting and the adopted person, the maintenance obligation on the person adopting in relation to the adopted person takes precedence over a maintenance obligation on relatives in the ascending line and siblings of the adopted person towards that person, and any maintenance obligation on an adopted person towards his or her relatives in the ascending line and siblings comes last in line. Otherwise, the rules laid down in point 1 apply to the adopted person.
an obligation between persons related by affinity (stepmother, stepfather, stepchildren): only persons in hardship are entitled to maintenance, if, in the situation concerned, the imposition of a maintenance obligation is in line with the rules of social conduct. Under Polish legislation and jurisprudence, ‘hardship’ means an inability to satisfy one’s reasonable needs from one’s own resources and by one’s own efforts.
an obligation between spouses during a marriage: family members may claim the right to an ‘equal standard of living’ for all family members. In accordance with Article 27 of the Family and Guardianship Code, both spouses are required, according to their abilities and their earning and financial capacities, to help satisfy the needs of the family they have established through their relationship. This obligation may also be deemed to be met in full or in part in the form of personal efforts to bring up children and look after the common household.
an obligation between spouses after a marriage has ended: if one of the spouses has been found to be solely responsible for the break-down of the marriage and the divorce entails a substantial deterioration in the financial situation of the innocent spouse, the latter may demand that his or her reasonable needs be satisfied, even if that person is not in hardship. In other cases, a spouse in hardship may claim maintenance from his or her former spouse in proportion to his or her reasonable needs and the earning and financial capacities of the former spouse. The maintenance obligation towards a divorced spouse expires when that spouse remarries. However, where a divorced spouse who has not been found to be responsible for the break-down of the marriage is obliged to pay maintenance, the maintenance obligation also expires five years after the divorce decree, unless, at the request of the person entitled to maintenance, the court extends the five-year period due to exceptional circumstances.
an obligation of a father of a child born out of wedlock towards the child’s mother: a father who is not the mother’s husband must contribute according to his circumstances to the costs associated with the pregnancy and childbirth and the costs of three months’ maintenance of the mother during childbirth. Where there is compelling justification, the mother may request that the father contribute to her maintenance costs for a period longer than three months.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Parents are obliged to pay maintenance to children who are not yet able to provide for themselves. As children are obliged to continue education until the age of 18, they are usually entitled to maintenance until they reach the age of majority or until they complete their education. If the person entitled to maintenance is unable to support themselves (for instance because of sickness or disability), maintenance may be granted indefinitely.
It should be noted that a maintenance obligation does not expire automatically after the person entitled reaches the age of 18, nor does such expiry depend on a decision by a creditor or a parent liable for maintenance. In order for it to be determined that a maintenance obligation should expire, a court decision is required to assess whether a child reaching the age of majority is capable of supporting him or herself, etc. An application for termination of the maintenance obligation is submitted to the district court with jurisdiction over the place of residence of the creditor. This applies to maintenance ordered by a court and not to so-called voluntary maintenance, which is governed by private agreement between parties.
Allowances from the State maintenance fund are paid to persons entitled to receive them until they reach the age of 18. Such persons are entitled to these allowances until they reach the age of 25 if they continue their education at schools or higher education institutions, and for an indefinite period of time if they have been certified as severely disabled. A condition for allowances from the maintenance fund to be received is that the family income per person must not exceed PLN 900 per month. If this amount is exceeded as a result of the ‘*złotówka za złotówkę*’ [‘a zloty for a zloty’] principle, the person entitled to maintenance does not lose that entitlement to the allowance. The person entitled to maintenance receives an amount consisting of the difference between the amount of allowance from the maintenance fund payable to the person entitled to it and the amount by which the family income -(s calculated per person in the family) has been exceeded. If the amount of the benefit calculated in this way is lower than PLN 100, no support is granted.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

The following maintenance situations are possible:
1. the person required to pay maintenance fulfils the maintenance obligation voluntarily;
2. the parties reach an out-of-court settlement on a maintenance obligation;
3. if the person required to pay maintenance fails to fulfil his or her obligation, maintenance may be sought before the district court (*sąd rejonowy*) having jurisdiction over the place of residence of the person entitled to maintenance (Article 32 of the Code of Civil Procedure) or of the defendant (Article 27(1) of the Code of Civil Procedure), or such a request may be made during divorce or separation proceedings before a regional court (*sąd okręgowy*).
Any application is exempt from court fees. However, it should meet the requirements for a pleading, i.e. it should include the name of the court with which it is filed; the names and surnames of the parties, the PESEL [national personal ID] number, their statutory representatives and attorneys; the type of pleading; a clear description of the request; the value of the claim; a description of the facts justifying the request and, where necessary, justifying also the jurisdiction

of the court; the signature of the party or its statutory representative or attorney (the power of attorney must be enclosed); a list of annexes; the places of residence or the registered offices of the parties, their statutory representatives and attorneys; and a description of the claim. Subsequent pleadings must contain the case file reference. The application must also be accompanied by the child's birth certificate indicating that the person against whom maintenance is being claimed is the child's parent; an application for maintenance may alternatively be submitted together with an application for a determination of paternity.
4. it is also possible to reach a settlement before a notary public, in which case the district court simply issues an order granting enforcement of the settlement. The signing of a settlement agreement before a notary public is subject to a fee, as is a request for the issuing of an enforcement order.
5. a settlement may also be reached in court, in which case the defendant may be exempted from paying the court fee, or required to pay only half of it.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

The following persons may file an application for maintenance on behalf of a person entitled to receive it:
- an attorney (apart from a lawyer or a legal advisor, the following persons may serve as an attorney: the parents, spouse, siblings, relatives in the ascending line or persons linked to the person entitled to maintenance by adoption, as well as a person who manages the property of the person entitled to maintenance);
- a representative of a local government authority responsible for social assistance (under the Act of 12 March 2004 on social assistance (Journal of Laws [ *Dziennik Ustaw*] 2004, No 64, item 593), such representatives are: a manager of a municipal social assistance centre or a manager of a district family support centre);
- Article 61(1)(1) of the Code of Civil Procedure provides that non-governmental organisations may, within the framework of their statutory duties, initiate maintenance proceedings subject to the written consent of the natural person concerned;
- a public prosecutor where this is required in order to uphold the rule of law and public interest.

Statutory representatives act on behalf of minors entitled to maintenance. However, once a minor reaches the age of majority, they act independently.
A cohabitee or an acquaintance of the person entitled to maintenance cannot act on behalf of the person entitled to maintenance, unless he or she is one of the persons listed above.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

In accordance with the Code of Civil Procedure, district courts have subject matter jurisdiction in cases regarding maintenance. Territorial jurisdiction is determined according to the place of residence of the person entitled to maintenance or the place of residence of the defendant. Courts having jurisdiction over specific municipalities are specified in the Regulation of the Minister for Justice of 28 December 2018 on the determination of seats and jurisdiction of courts of appeal, regional courts and district courts and the scope of their competence (Journal of Laws 2018, item 2548).
Regional courts have jurisdiction in cases concerning the recognition in Poland of decisions of courts of EU Member States (paragraph 1 of Article 1151(1) of the Code of Civil Procedure) if a decision was issued before the State in which it was issued became bound by the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (OJ L 331, 16.12.2009, p. 17), i.e. before 18 June 2011.
In accordance with Article 1153(14) of the Code of Civil Procedure, the following titles are enforceable in Poland:
1) judgments handed down by the courts of EU Member States and settlements and official documents issued by those states and falling under Regulation No 1215/2012, if they are enforceable;
2) judgments handed down by the courts of EU Member States, settlements and official documents issued by those states certified as a European Enforcement Order;
3) European Payment Orders handed down by the courts of EU Member States and which have been declared enforceable in those states under Regulation No 1896/2006;
4) judgments handed down by the courts of EU Member States under the European Small Claims Procedure and certified in those states under Regulation No 861/2007;
5) decisions on maintenance matters handed down in EU Member States party to the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (OJ L 331, 16.12.2009, p. 17), as well as settlements and official documents on maintenance matters from those states and falling under Regulation No 4/2009;
6) judgments handed down in EU Member States comprising the protection measures falling under Regulation No 606/2013 if they are enforceable.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

Representation by a lawyer is not required in cases regarding maintenance. Parties may act on their own behalf or through professional representatives. See points 7 and 20 for detailed information on the possibility of having a lawyer appointed ex officio to act on behalf of the party entitled to maintenance.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

The party seeking maintenance and the defendant in a case concerning a reduction in maintenance are exempt from court costs (Article 96(1)(2) of the Act of 28 July 2005 on court costs in civil cases (Journal of Laws 2005, No 167, item 1398, as amended)). Such persons are exempt in full, which means that they do not incur any court costs, appeal costs or enforcement costs.
A person obliged to pay maintenance can also request an exemption from court costs when seeking a change to the amount of the award. In such situations a declaration of assets and income received must be submitted, and the court takes a decision after examining the matter.
In addition, the party benefitting from the exemption from court costs may apply for legal aid in the form of a lawyer appointed ex officio. If the application for a lawyer is accepted, the lawyer's fees are covered by the opponent of the party for whom the lawyer is appointed. If that latter person loses the case, the lawyer's fees are borne by the State Treasury.
The rights of Member State nationals in this regard are governed by the Act of 17 December 2004 on the right to assistance in civil proceedings conducted in the Member States of the European Union and on the right to assistance with a view to the amicable resolution of a dispute before the bringing of civil proceedings (Journal of Laws 2005, No 10, item 67).

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

The amount of maintenance depends on the earning and financial capacities of the person required to pay it and on the reasonable needs of the person entitled to maintenance. The needs of the person entitled to maintenance include everything required for his or her subsistence, in the sense of both material and non-material (cultural and spiritual) needs. The needs of minors also include the costs of their upbringing. When assessing the earning and financial capacities of persons required to pay maintenance, it is not the income which they actually earn but the income which they could earn if they made full use of their earning capacity that is taken into account. This means that even an unemployed person who does not earn a regular income can be ordered to pay maintenance and payment can be enforced.

Where there is a change in circumstances, a change to the court decision or the maintenance agreement may be requested. Either party to a maintenance relationship may request such a change. Depending on the factual circumstances, a party may request that the maintenance obligation be cancelled, or that the amount of maintenance be increased or reduced. The amount of the allowance may be changed if the reasonable needs of the person entitled to maintenance or the earning capacity of the person required to pay maintenance have increased or decreased.
There is no fixed amount of maintenance in Poland and maintenance is not calculated as a fixed percentage of the earnings of the person required to pay it. In 2014, the minimum wage was PLN 1 680 (approx. EUR 400) gross. In 2013, average remuneration was PLN 3 650 (approximately EUR 900) gross a month. In 2015 the minimum wage was PLN 1 750 gross, in 2016 it was PLN 1 850 gross, in 2019 it was PLN 2 250 gross, in 2020 it was PLN 2 600 gross; in 2021 it is PLN 2 800 gross, in 2022 it was PLN 3 010 gross, in the period from January to June 2023 it is PLN 3 490 gross and from July 2023 it will be PLN 3 600 gross.
In practice, in most cases the amount of maintenance awarded by courts ranges from PLN 300 to PLN 1 000 per month per child. The amount of maintenance is not subject to automatic indexing to the age of the child or to inflation.

**9 How and to whom will the maintenance be paid?**

A person named as the debtor in an enforcement order is required to pay maintenance. As a rule, maintenance awarded in Poland is payable in Polish zlotys to the statutory representative of a minor (in cash or by bank transfer) every month, usually by the tenth day of the month. In the event of a delay in payment, judgments provide for statutory interest (since 8 September 2022 the statutory interest rate has been 12.25% per year) on the outstanding amount (Article 481(2) of the Civil Code).
Thus, as a rule, a maintenance obligation is borne exclusively by the person required to pay maintenance. If that person does not pay voluntarily, the person entitled to maintenance may apply for the initiation of enforcement proceedings to the competent enforcement authority (usually a bailiff). Enforcement may also be initiated ex officio at the request of the court of first instance that issued the decision establishing the amount of maintenance. The person entitled to maintenance may also submit the enforcement order to the debtor’s workplace or to the institution paying the debtor’s pension and request that the maintenance due be deducted from the amounts paid to the debtor. Such a request is binding on the paying party.
Once the child has reached the age of majority, it becomes an independent creditor and maintenance has to be paid to it, unless, as an adult creditor, he or she agrees to the previous form of payment (e.g. by granting a power of attorney and submitting this to the enforcement body). There is no need to amend the maintenance decision or to indicate that the maintenance is to be paid to an adult.
When an application is made for enforcement against the maintenance debtor, any court bailiff can be chosen. In accordance with Article 921 of the Code of Civil Procedure, enforcement of immovable property is carried out by a bailiff at the court in whose district the immovable property is located. If the property is located within the jurisdiction of several courts, the creditor chooses between them. However, proceedings initiated at the request of one creditor may be joined to proceedings initiated at the request of other creditors. To that end, a bailiff who has initiated enforcement will notify the bailiff who may be responsible for enforcement of the commencement and subsequent completion of the enforcement.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If the person required to pay maintenance fails to fulfil the maintenance obligation voluntarily, he or she may be forced to do so (see point 9).
Furthermore, in the light of Article 209 of the Criminal Code (Journal of Laws 1997, No 88, item 553), any person evading compliance with a maintenance obligation established by a court decision, a settlement made before a court or other authority or under another agreement, is liable to a fine, non-custodial measures or imprisonment for up to one year, if the total amount of the arrears is equivalent to at least three regular maintenance payments or if there is delay of more than three months in the payment of a non-regular maintenance payment. If the offender causes an entitled person to be unable to satisfy his or her basic vital needs, the offender is liable to a fine, non-custodial measures, or imprisonment of up to two years.
The offence is prosecuted at the request of the victim, a welfare institution or a body that takes action against the maintenance debtor. If the victim has been awarded appropriate family benefits or allowances payable in the event of failure to enforce the payment of maintenance, prosecution is undertaken ex officio.
Article 5(3b)(2) of the Act of 7 September 2007 on assistance for persons entitled to maintenance (Journal of Laws 2007, No 192, item 1378) provides that the competent authority may apply for the suspension of the debtor’s driving licence.
If enforcement is unsuccessful, a bailiff may apply for the debtor to be entered into the register of insolvent debtors.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

In accordance with Article 1083(2) of the Code of Civil Procedure, outstanding maintenance payments may be covered in full through the attachment of a bank account.
In accordance with Article 833(1) of the Code of Civil Procedure, remuneration for employment is subject to enforcement to the extent specified in the Labour Code. As a rule, 60% of the salary may be attached. Up to three fifths of amounts awarded by the State Treasury for special purposes, especially grants and support, may also be attached (Article 831(1)(2) of the Code of Civil Procedure).
Additionally, pursuant to Article 829 of the Code of Civil Procedure, the following cannot be subject to enforcement:
1) household articles, bedding, underwear and everyday clothing strictly necessary for the debtor and dependent family members, as well as clothing strictly necessary in order to perform service or professional work;
2) such food and fuel supplies as are necessary to meet the basic needs of the debtor and their dependent family members for a period of one month;
3) one cow, two goats or three sheep required for the subsistence of the debtor and their dependants, with a sufficient supply of feed and bedding to survive until the next harvest;
4) such tools and other instruments as may be necessary for use personally by the debtor to carry out paid work, and such raw materials as may be required for the production process for a period of one week, excluding motor vehicles;
5) in the case of debtors undertaking periodic permanent employment, the amount of money corresponding to the non-enforceable portion of the wage for the period to the next due date; and in the case of debtors with no regular wage, the amount of money strictly necessary for the subsistence of the debtor and dependent family members for a period of two weeks;
6) items necessary for educational purposes, personal papers, decorations and items used for religious practices, as well as everyday items that can only be sold at a price significantly below their value, but with a high utility value for the debtor;
7) medicinal products within the meaning of the Pharmaceuticals Act of 6 September 2001 (Journal of Laws 2019, item 499, as amended) that are necessary for the functioning of a healthcare institution within the meaning of the legal provisions on healthcare for a period of three months and medicinal products necessary for its functioning within the meaning of the Medicinal Products Act of 20 May 2010 (Journal of Laws, No 107, item 679 and Journal of Laws of 2011, No 102, item 586 and No 113, item 637);
8) items or equipment necessary due to a disability on the part of the debtor or his or her family members.
Pursuant to Article 833(6) of the Code of Civil Procedure, maintenance allowances, compensation payable in the event of failure to enforce the payment of maintenance, family benefits, family, care or childbirth allowances, allowances for orphans who have lost both their parents, caregivers benefits, welfare

benefits, integration benefits, upbringing benefits or the one-off benefit referred to in Article 10 of the Act of 4 November 2016 on the '*Za życiem*' ['For Life'] support scheme for pregnant women and their families (Journal of Laws 2019, item 473) are also not subject to enforcement.
The Minister for Justice in consultation with the Minister for Agriculture and the Minister for Finance will specify, by way of a ministerial regulation, which items belonging to a farmer cannot be subject to enforcement. (Article 830 of the Code of Civil Procedure).
Furthermore, Article 831 of the Code of Civil Procedure provides that 75% of the amounts of, in particular, social assistance benefits within the meaning of the Act of 12 March 2004 on social assistance (Journal of Laws 2013, item 182 as amended) and receivables due to the debtor from the State budget or the National Health Fund (*Narodowy Fundusz Zdrowia*) for the provision of healthcare within the meaning of the Act of 27 August 2004 on healthcare benefits financed from public funds (Journal of Laws of 2008, No 164, item 1027, as amended), before such benefits have been granted, are not subject to enforcement, unless these are receivables due to the debtor's employees or service providers referred to in Article 5(41)(a) and (b) of the Healthcare Benefits Financed from Public Funds Act of 27 August 2004.
Article 137(1) of the Family and Guardianship Code provides that maintenance claims are subject to a limitation period of three years. It should be noted, however, that this limitation period concerns claims which have not been asserted.
Article 121(1) of the Civil Code stipulates that in the case of a child's claim against a parent, the limitation period does not begin during the period of parental responsibility. Any limitation period that has begun is suspended in respect of a child's claims.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

As mentioned in point 4, an application for maintenance may be filed on behalf of the entitled person, including by managers of social assistance centres, certain social organisations, representatives of local government authorities responsible for social assistance and, in some cases, also public prosecutors. These entities may also support the claimant by participating in maintenance proceedings which are already underway. Their role is then to support the person entitled to maintenance in proceedings before a court.
Regional courts that act as a central authority under international law help entitled persons to pursue maintenance claims abroad. International legal aid (such as exemption from court costs or the assignment of a legal representative) may also be applied for through the competent regional court. However, it should be borne in mind that whether such legal aid is free of charge or partially chargeable depends on the rules of the receiving State.
Persons residing abroad who wish to pursue maintenance claims from a debtor residing in Poland may receive assistance in making the application from the competent central authorities abroad (list available here: https://www.gov.pl/web/stopuprowadzeniomdzieci/lista-organow-centralnych), in accordance with the division of responsibilities in central authorities in Poland, they will forward the documentation for further action to the Ministry of Justice (Department of International Family Proceedings at the Department of Family and Minor Affairs).
It is also possible to submit an application directly to the competent district court or enforcement authority.
Information on how to obtain free legal aid is also available from this website: https://np.ms.gov.pl/
However, it should be pointed out that the Polish central authorities – both the Ministry of Justice and the district courts – do not represent the parties, nor can they provide legal advice in the place of professional representatives.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

The Act of 7 September 2007 on assistance for persons entitled to maintenance (Journal of Laws 2009, No 1, item 7, as amended) lays down the rules for State assistance for persons entitled to maintenance in cases where enforcement is unsuccessful.
Allowances from the maintenance fund may only be obtained if the family income per person does not exceed PLN 800 per month, or, from 1 July 2020, PLN 900 per month.
Since 1 July 2020, the 'zloty for a zloty' rule has also applied – if the family income per person exceeds the above amount of PLN 900, the support is reduced and is due in the amount representing the difference between the amount of the allowance from the maintenance fund due to the entitled person and the amount by which the family income per person is exceeded (Article 9(2a)). However, if the allowance calculated in this way is lower than PLN 100, a refusal decision is issued and the allowance is not paid (Article 9(2b)).
Applications are submitted in the municipal or city office having jurisdiction over the place of residence of the person entitled to maintenance. The disbursement of allowances from the fund may also be delegated to an organisational unit of the municipality, e.g. to a social welfare centre.
If, however, the person entitled to an advance on maintenance lives in an institution that provides full board (e.g. a social assistance centre, an educational care facility, a youth detention centre or a remand centre) or with a foster family, has married or has a child and is entitled to a family benefit, the advance will not be awarded to that person.
The Act applies only if the person entitled to maintenance resides in Poland during the period in which the benefit is due. For more information see here: https://www.gov.pl/web/rodzina/wiadczenia-z-funduszu-alimentacyjnego

**14 If I am in this Member State and the debtor has his/her residence in another country:**

If the debtor has his or her place of residence abroad and the person entitled to maintenance resides in Poland, the regional court having jurisdiction over the place of residence of the entitled person, in its role as the relevant central authority, helps that person to submit an application for maintenance. This help involves providing the entitled person with any information and assistance necessary in order to complete the required documents, and checking that the application is formally correct before submitting the application to the competent central authority abroad.

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Yes (competent central authority designated under Article 49 of Regulation (EC) No 4/2009)

**14.2 If so, how can that authority or private organisation be contacted?**

Part A of an application submitted under 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 is filled in by a regional court.

**List of Regional Courts acting as central authority (as at May 2022)**

| Court | Address | Phone: (+48) | Fax: (+48) | Email address |
|---|---|---|---|---|
| Białystok Regional Court | ul. Marii Skłodowskiej-Curie 1<br>15-950 Białystok | 85 745 92 20 | 85 7421517 | oz@bialystok.so.gov.pl |
| Bielsko-Biała Regional Court | ul. Cieszyńska 10<br>43-300 Bielsko-Biała | 33 499 04 88 | 33 4990488 | patrycja.pater-osuch@bielsko-biala.so.gov.pl |
| Bydgoszcz Regional Court | ul. Wały Jagiellońskie 2<br>85-128 Bydgoszcz | 52 325 31 55 | 52 3253255 | oz@bydgoszcz.so.gov.pl |
| Częstochowa Regional Court | ul. Dąbrowskiego 23/35<br>42-200 Częstochowa | 34 368 44 25 | 34 3684420 | prezes@czestochowa.so.gov.pl<br>anna.bocianowska@czestochowa.so.gov.pl |
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| Elbląg Regional Court | pl. Konstytucji 1<br>82-300 Elbląg | 55 611 24 09<br>55 611 24 08 | 55 6112215 | oddzial.administracyjny@elblag.so.gov.pl |
| Gdańsk Regional Court | ul. Nowe Ogrody 30/34<br>80-803 Gdańsk | 58 321 31 19 [maintenance]<br>58 321 31 41 [Head of Administrative Office] | 58 3213234 | section.oz@gdansk.so.gov.pl |
| Gliwice Regional Court | ul. Kościuszki 15<br>44-100 Gliwice | 32 338 00 52 | 32 3380204 | oz@gliwice.so.gov.pl |
| Gorzów Wielkopolski Regional Court | ul. Mieszka I 33<br>66-400 Gorzów Wielkopolski | 95 725 67 18<br>95 725 67 02 | 95 7202807<br>95 7256790 | marta.samolak@gorzow-wlkp.so.gov.pl<br>sekretariat@gorzow-wlkp.so.gov.pl |
| Jelenia Góra Regional Court | al. Wojska Polskiego 56<br>58-500 Jelenia Góra | 75 641 51 13 | 75 7525113 | oz@jelenia-gora.so.gov.pl<br>o.administracyjny@jelenia-gora.so.gov.pl |
| Kalisz Regional Court | al. Wolności 13<br>62-800 Kalisz | 62 765 77 64 | 62 7574936 | administracja@kalisz.so.gov.pl |
| Katowice Regional Court | ul. Francuska 38<br>40-028 Katowice | 32 607 01 83<br>32 783 68 06 | 32 6070184 | obrot_zagraniczny@katowice.so.gov.pl |
| Kielce Regional Court | ul. Seminaryjska 12 a<br>25-372 Kielce | 41 340 23 20<br>41 340 23 82<br>41 340 24 92 | 41 3402320 | oz@kielce.so.gov.pl |
| Konin Regional Court | ul. Energetyka 5<br>62-510 Konin | 63 246 45 57 | 63 2426569 | oz@konin.so.gov.pl<br>administracja@konin.so.gov.pl |
| Koszalin Regional Court | ul. Waryńskiego 7<br>75-541 Koszalin | 94 342 87 50 | 94 3428897 | administracja@koszalin.so.gov.pl |
| Kraków Regional Court | ul. Przy Rondzie 7<br>31-547 Kraków | 12 619 52 41<br>12 619 52 62<br>12 619 52 04 | 12 6195665 | oz@krakow.so.gov.pl |
| Krosno Regional Court | ul. Sienkiewicza 12<br>38-400 Krosno | 13 437 36 71<br>13 437 36 73 | 13 4320570 | obrot.zagr@krosno.so.gov.pl<br>administracja@krosno.so.gov.pl |
| Legnica Regional Court | ul. Złotoryjska 40<br>59-220 Legnica | 76 754 50 36 | 76 7545107<br>76 7545012 | oz@legnica.so.gov.pl |
| Lublin Regional Court | ul. Krakowskie Przedmieście 43<br>20-076 Lublin | 81 46010 04 | 81 4601013 | malgorzata.stec-szewczyk@lublin.so.gov.pl<br>obrotzagraniczny@lublin.so.gov.pl |
| Łomża Regional Court | ul. Dworna 16<br>18-400 Łomża | 86 216 62 81<br>86 215 42 54 | 86 2166753 | sekretariat@lomza.so.gov.pl |
| Łódź Regional Court | XI Wydział Wizytacyjny (Division 11 – Inspection)<br>Plac Dąbrowskiego 5<br>90-921 Łódź (pokój [room] 118) | 42 677 87 99 | 42 2126082 | oz@lodz.so.gov.pl |
| Nowy Sącz Regional Court | ul. Pijarska 3<br>33-300 Nowy Sącz | 18 448 21 45 | 18 4482185 | alimenty@nowysacz.so.gov.pl |
| Olsztyn Regional Court | ul. Dąbrowszczaków 44A 10-543 Olsztyn | 89 521 60 49 | 89 6123838 | oz@olsztyn.so.gov.pl |
| Opole Regional Court | pl. Daszyńskiego 1<br>45-064 Opole | 77 541 81 34 | 77 5418109 | obrot.zagr@opole.so.gov.pl |
| Ostrołęka Regional Court | ul. Gomulickiego 5<br>07-410 Ostrołęka | 29 765 01 30 | 29 7650181 | mailto:sekretariat@ostroleka.so.gov.pl sekretariat@ostroleka.so.gov.pl |
| Piotrków Trybunalski Regional Court | ul. Słowackiego 5<br>97-300 Piotrków Trybunalski | 44 649 41 59<br>44 649 41 21 | 44 6478919 | mailto:oz@piotrkow-tryb.so.gov.pl oz@piotrkow-tryb.so.gov.pl |
| Płock Regional Court | pl. Narutowicza 4<br>09-404 Płock | 24 269 73 20<br>24 269 73 64 | 24 2625253 | oz@plock.so.gov.pl<br>urszula.wyrwas@plock.so.gov.pl |
| Poznań Regional Court | ul. Stanisława Hejmowskiego 2<br>61-736 Poznań | 61 628 37 30<br>61 628 37 31<br>61 628 37 34 | 61 6283739 | opzagr@poznan.so.gov.pl |
| Przemyśl Regional Court | ul. Konarskiego 6<br>37 - 700 Przemyśl | 16 676 13 36 | 16 6761353 | m.telega@przemysl.so.gov.pl |
| Radom Regional Court | ul. Marszałka J. Piłsudskiego 10<br>26-600 Radom | 48 677 67 80<br>48 677 67 88 | 48 3680287 | mailto:wizytacje@radom.so.gov.pl wizytacje@radom.so.gov.pl |
| Rybnik Regional Court | ul. Józefa Piłsudskiego 33<br>44-200 Rybnik | 32 784 05 78 | 32 7840402 | oz@rybnik.so.gov.pl |

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|---|---|---|---|---|
| Rzeszów Regional Court | Plac Śreniawitów 3<br>35-959 Rzeszów | 17 875 63 94 | 17 8627265 | elzbieta.czudec@rzeszow.so.gov.pl |
| Siedlce Regional Court | ul. Sądowa 2<br>08-110 Siedlce | 25 640 78 46 | 25 6407812 | poczta@siedlce.so.gov.pl |
| Sieradz Regional Court | al. Zwycięstwa 1<br>98-200 Sieradz | 43 826 66 50<br>43 826 66 07 | 43 8271014 | sekretariat@sieradz.so.gov.pl<br>administracja@sieradz.so.gov.pl<br>marta.kazmierczak@sieradz.so.gov.pl |
| Słupsk Regional Court | ul. Zamenhofa 7<br>76-200 Słupsk | 59 846 95 43<br>59 846 95 13 | 59 8469424<br>59 8469429 | agnieszka.kozlowska@slupsk.so.gov.pl<br>referat.wiz@slupsk.so.gov.pl |
| Suwałki Regional Court | ul. Waryńskiego 45<br>16-400 Suwałki | 87 563 12 13<br>87 563 13 00 | 87 5631303 | sekretariat@suwalki.so.gov.pl<br>anna.klekotko@suwalki.so.gov.pl |
| Szczecin Regional Court | ul. Małopolska 17<br>70-227 Szczecin | 91 483 01 70<br>91 483 01 47 | 91 4830170 | obrot.zagraniczny@szczecin.so.gov.pl |
| Świdnica Regional Court | pl. Grunwaldzki 14<br>58-100 Świdnica | 74 851 82 87 | 74 8518270 | dorota.molag@swidnica.so.gov.pl<br>aneta.zajaczkowska@swidnica.so.gov.pl |
| Tarnobrzeg Regional Court | ul. Sienkiewicza 27<br>39-400 Tarnobrzeg | 15 688 25 00 | 15 6882678<br>15 8229756 | oz@tarnobrzeg.so.gov.pl<br>halina.rojek@tarnobrzeg.so.gov.pl<br>magdalena.kochowska-lezon@tarnobrzeg.so.gov.pl |
| Tarnów Regional Court | ul. J. Dąbrowskiego 27<br>33-100 Tarnów | 14 688 74 09 | 14 6887417 | sad_okregowy@tarnow.so.gov.pl |
| Toruń Regional Court | ul. Piekary 51<br>87-100 Toruń | 56 610 56 09 | 56 6555706 | oz@torun.so.gov.pl |
| Warsaw Regional Court | al. „Solidarności" 127<br>00-898 Warszawa | 22 440 11 54 [maintenance]<br>22 654 44 43 | 22 6544411 | paulina.luscinska-dziurda@warszawa.so.gov.pl<br>a.kowalczyk@warszawa.so.gov.pl |
| Warsaw-Praga Regional Court | ul. Poligonowa 3<br>04-051 Warszawa | 22 417 73 93 | | oz@warszawapraga.so.gov.pl<br>dariusz.olowski@warszawapraga.so.gov.pl |
| Włocławek Regional Court | ul. Wojska Polskiego 22<br>87-800 Włocławek | 54 412 03 65 | 54 4118575 | oz@wloclawek.so.gov.pl |
| Wrocław Regional Court | ul. Sądowa 1<br>50-046 Wrocław | 71 370 43 91 | 71 7482964 | oz@wroclaw.so.gov.pl |
| Zamość Regional Court | ul. Wyszyńskiego 11<br>22-400 Zamość | 84 631 69 27<br>84 631 69 28 | 84 6316993 | aneta.juszczak@zamosc.so.gov.pl<br>prezes@zamosc.so.gov.pl |
| Zielona Góra Regional Court | pl. Słowiański 1<br>65-069 Zielona Góra | 68 322 02 21 | 68 4567769 | oz@zielona-gora.so.gov.pl<br>zaneta.pejs@zielona-gora.so.gov.pl<br>katarzyna.andrzejuk@zielona-gora.so.gov.pl |

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

Article 55 of 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 does not require that applications be made through a central authority of the State in which applicants reside. Applications in compliance with the formal requirements laid down in Chapters IV and VI of the Regulation and in the Code of Civil Procedure may be sent directly to the competent Polish court.

Details of sending authorities are available at:

https://www.gov.pl/web/stopuprowadzeniomdzieci/lista-organow-centralnych

The sending authorities of foreign countries specified in the declarations annexed to the Regulation provide the person entitled to maintenance with all the necessary information, help him or her to complete the required documents, check whether that person's application is formally correct and send it abroad.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

If a court has awarded maintenance and the case falls within the scope of application of Regulation (EC) No 4/2009, a creditor residing abroad may use the procedure provided for in this Regulation and apply to the competent sending authority of the country in which he or she resides or submit an application for a declaration of enforceability of a foreign decision to the competent court (see point 5). Applications for enforcement can be submitted to the office of any court bailiff.

If Poland and the country in which the creditor resides are parties to a convention or a bilateral agreement concerning the recognition and enforcement of judgments in maintenance cases, such assistance is provided to the extent specified in that agreement. As a rule, bilateral agreements provide that applications are to be lodged with the Polish court directly or through a court in the country where the judgment has been issued. In the latter case, applications are forwarded through central authorities, typically the Ministry of Justice or the authorities notified for the purposes of the New York Convention:

http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XX/XX-1.en.pdf

Details of the courts can be found at

https://www.gov.pl/web/sprawiedliwosc/znajdz-wybrany-sad-powszechny

and the details of bailiffs at http://komornik.pl/

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes, since 18 June 2011.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Not relevant.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

The rules applicable in Poland comprise the Act of 17 December 2004 on the right to assistance in civil proceedings conducted in the Member States of the European Union (Journal of Laws 2005, No 10, item 67, as amended) and Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in

cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 26/41, 31.1.2003, p. 90), which supplement the provisions of the Code of Civil Procedure and the Act on court costs in civil cases. A party that expects to be awarded a specific form of assistance (e.g. the appointment of a lawyer, the translation of documents or the reimbursement of travel expenses) should communicate this clearly to the court in the EU application form: https://e-justice.europa.eu/content_legal_aid_forms-157

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

On 28 April 2011, the Polish legislator adopted the Act amending the Code of Civil Procedure and certain other acts (Act of 28 April 2011 amending the Code of Civil Procedure, the Act on the right to assistance in civil proceedings conducted in the Member States of the European Union and on the right to assistance with a view to the amicable resolution of a dispute before the bringing of civil proceedings and the Act on assistance for persons entitled to maintenance – Journal of Laws 2011, No 129, item 735), pursuant to which a Polish central authority may order the authority with jurisdiction over the debtor to conduct a maintenance inquiry.

If the defendant's or participant's place of residence is unknown, the Ministry of Justice sends queries to central and local registers and records (including the possible use of the PESEL.SAD database) in order to determine the competent court or bailiff, or to reply to a request for specific measures. No changes are currently planned to the statutory bases, financing and the team of the central authority in order to ensure that the tasks described in Article 51 are carried out.

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## Family maintenance - Portugal

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

'Maintenance' is understood to be everything which is essential for the subsistence, housing and clothing of a person. In the event of an underage child, maintenance also includes education and instruction.

According to the law, the following are required to pay maintenance in the order indicated:

spouse or former spouse;

descendants;

ascendants;

siblings;

uncles and aunts, during the minority of the person maintained;

stepfather and stepmother of stepchildren underage who are or were under their care at the time of the spouse's death.

In addition to the aforementioned cases in which the maintenance obligation is legally determined, maintenance obligations may also result from a bequest (maintenance bequest left in a will) or a contract.

In general, the substantive rules governing maintenance obligations are laid down in Articles 2003 to 2023 of the Civil Code

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

The minor may receive maintenance until they reach the age of majority. The age of majority is age 18. Between the ages of 16 and 18, children may be emancipated by marriage.

There are differences between the rules of substantive law applying to child and adult maintenance: adult maintenance only covers the costs of subsistence, housing and clothing while child maintenance covers, in addition to these costs, the costs of education and instruction.

If, after a child reaches majority or emancipation, they decide to continue their training or education, they may bring maintenance proceedings against their parents. In this case, maintenance covers the costs of their education and training, in addition to their subsistence, housing and clothing. The duration of these payments is determined by agreement or decision. This decision sets the appropriate duration for a reasonable period of training or education.

In the exceptional situation described above, in which an adult child is continuing their training, adult maintenance includes the costs of education and instruction. In particular, the law assumes that when maintenance is requested for an adult child, until the said child reaches 25 years of age, the maintenance payment set when the child was a minor is kept. In this case, it is up to the defendant parent to prove that the maintenance payment set when the child was a minor is no longer necessary or is excessive since the child has achieved majority.

In particular, the substantive rules on maintenance for children who are minors, adults or emancipated are laid down in Articles 1878 to 1880 and 1905 of the Civil Code

The rules of civil procedure which apply to the setting and enforcement of child and adult maintenance also differ in some cases.

Differences in the applicable procedural rules will be mentioned in the answers to questions 3 and 10.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

The response to this question varies depending on the situations outlined below.

**Setting child maintenance and maintenance between spouses where there is an initial agreement**

The person who is obliged to pay maintenance and/or the person who is entitled to receive it may agree on the setting of maintenance. In the case of child maintenance or maintenance between spouses, the parties may request that the agreement be approved before the court or before the Public Registrar ( *Conservador do Registo Civil*), depending on whether the following circumstances apply.
In the event of contested divorce, an agreement may nevertheless be reached regarding the maintenance of minor children. In such a case, approval of the agreement on maintenance for minor children must be sought from the court in the proceedings to regulate the exercise of parental responsibilities. The following subheading outlines the main elements of these proceedings.
In the event of divorce by mutual consent, the Public Registrar is requested to approve the agreement on maintenance between spouses and/or for minor children. The Registrar has sole jurisdiction for these proceedings, which may be brought in any Civil Registry. With regard to agreements on child maintenance, the Public Prosecutor at the court in the area of the Civil Registry where the proceedings were brought must give its prior opinion. If the agreement is approved, the divorce is decreed. If the agreement is not approved, the proceedings for divorce by mutual consent are referred to the court where the action for divorce by mutual consent will be heard. In this case, the court is responsible for assessing and approving agreements regarding child maintenance or maintenance between spouses.
The same rules apply in the event of legal separation, declaration of nullity or annulment of marriage.
Even if it is not a case of divorce or separation, if there is an agreement, the parents must refer the agreement governing parental responsibility or any changes thereto for approval to the Civil Registry in a similar manner to that set out above.

**Setting maintenance when there is no initial agreement**

**Maintenance from parents to minor children**

In the event of a divorce without the consent of the other spouse, the setting of child maintenance must be requested in the guardianship proceedings to regulate the exercise of parental responsibility that are pending before the court. The parents may thereupon request the approval of the agreement on parental responsibility. Where there is no such agreement or if it is not approved, the Public Prosecutor requests regulation of the exercising of parental responsibility. The procedure takes place before the court. The parents are summoned to a meeting to which the minor and other relatives may also be invited. In the event that an agreement cannot be reached at the meeting, the judge lays down provisional parental responsibility arrangements and the parties are sent for mediation or to a specialised technical hearing. If it still proves to be impossible to reach an agreement, the parents are notified to submit pleadings and evidence. This is followed by the evidentiary stage, the trial and judgment.
The same rules apply in the event of legal separation, declaration of nullity or annulment of marriage.

**Maintenance from parents or others obliged to pay child maintenance**

Child maintenance may also be set in guardianship proceedings on child maintenance, whenever, for example, proceedings need to be brought against persons obliged to pay such maintenance specifically for this purpose. These proceedings are also intended to adjust maintenance that was previously set. This takes place in court. It begins with an application accompanied by the following items: certificates proving the degree of kinship or affinity existing between the child and the defendant; an authenticated copy of the judgment which previously set maintenance, where applicable; and a list of witnesses. The defendant is summoned. A meeting is then called to try and reach an agreement between the parties. If no agreement is reached, this is followed by the defence, the hearing of witnesses, trial and judgment.

**Maintenance for an adult or emancipated child**

The proceedings for setting maintenance for an adult or emancipated child may be brought before any Civil Registry, upon submission of an application indicating the pleas of fact and law relied on. The application must be accompanied by documentary evidence and indicate all other evidence. The defendant is summoned. If they do not object, the application is upheld and maintenance is set by decision of the Registrar. If they do object, the Registrar attempts to bring about a reconciliation between the parties. If reconciliation proves impossible, the case is prepared by the Registrar and referred to the competent court for trial.
If a court case already exists during which maintenance was set for the minor child, the application to set maintenance for a child who has since reached adulthood or been emancipated, is joined to the pre-existing case and heard in this court and not in the Civil Registry.

**Between spouses and former spouses**

When there is no initial agreement, the proceedings for setting maintenance between spouses and former spouses is brought before the court. The proceedings takes the form of a declaratory action, with an identical procedure to that outlined below for adult maintenance.

**Adult maintenance**

Aside from the aforementioned cases, the procedure for setting adult maintenance is brought before the court (e.g. maintenance request made by the parent to the children). The procedure takes the form of a declaratory judgment. It begins with the initial application being submitted to court.
In this application, the filing party must designate the court in which the action is being brought, identify the parties, indicate their names, places of residence or registered offices and, where possible, their occupations and places of work, identify the form of proceedings, set out the facts and legal reasons forming the grounds for the action, make the request and declare the amount involved in the case. At the end of the application, the list of witnesses is submitted and the other evidence requested. Documents must be attached to the initial application proving prior payment of the initial court fee and the power of attorney, if represented by a lawyer. Alternatively, a document proving that legal aid has been granted may be attached.
If a lawyer is appointed, the initial application is submitted electronically via a form available on the Citius (mj.pt) web page in accordance with the procedures and instructions explained therein. If the party is not represented by a legal representative, they may submit the application at the court registry offices in one of the following ways: in person, by registered post, or by fax.
The defendant is summoned. If no agreement is reached during the case, the mandatory stages that follow are the defence, conclusive opening order ( *saneamento*), evidentiary stage, trial and judgment.
Depending on the cases referred to above, the procedural rules governing the fixing of maintenance:
As regards the Civil Registry, they are provided for in Articles 5 to 20 of Decree-Law No 272/2001 of 13 October and Articles 274-A to 274-C of the Civil Registration Code
As regards the courts, they are provided for in Articles 45 to 47 of Law No 141/2015 of 8 September 2015 (maintenance for children) and 548 and 550 *et seq.* (persons obliged to provide maintenance), 931 and 994 (maintenance payable to the spouse in the even to separation or divorce) and 989 (maintenance for adult or emancipated children) of the Code of Civil Procedure.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

In the case of child maintenance, the request may be made by the child's legal representative, by the Public Prosecutor, by the person to whom custody has been granted or by the director of the educational or care establishment to which the minor is entrusted. Anyone may notify the Public Prosecutor of the need to set child maintenance (Article 45 of Law 141/2015 of 8 September 2015).
In the case of maintenance due to adults lacking capacity, proceedings may be brought by their legal representatives (Article 16 of the Code of Civil Procedure.

Aside from these cases of incapacity, maintenance proceedings for adults or emancipated children must be brought by them, by a legal representative appointed by them or by an attorney to whom they have conferred power of attorney to bring the proceedings.
However, the law provides for the following particularity with respect to adult children: the parent who takes on the main responsibility of paying the expenses of adult or emancipated children who are unable to look after themselves may demand that the other parent contribute to the subsistence and education of the said adult children. This contribution may be made in whole or in part to the adult or emancipated children, when the judge so decides or if the parents agree (Article 989 of the Code of Civil Procedure).

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

**Child maintenance**

The District Court, Family and Juvenile Court (*Tribunal de Comarca, Juízo de Família e Menores*) has jurisdiction over matters involving protective proceedings to regulate the exercise of parental responsibility and set child maintenance. In the absence of a Family and Children's Court, the case will, in principle, be heard in the District Court (*Tribunal de Comarca)*, Local Instance (*Juízo Local)* or General Jurisdiction Court (*Juízo de Competência Genérica*).
To understand which of the aforementioned courts has territorial jurisdiction, the following rules apply. In principle, the court for the place in which the child is resident at the time the proceedings are started has jurisdiction.
If the residence of the child is unknown, the court of the place of residence of the holders of parental responsibility has jurisdiction.
If the holders of parental responsibility are resident in different places, the court with jurisdiction is the court of the place of residence of the person to whom custody of the child has been granted or, in the case of joint custody, of the person with whom the child lives.
If any of the proceedings relate to two or more children who are children of the same parents and resident in different districts, the court of the place of residence of the largest number of such children has jurisdiction. All things being equal, the court in which the maintenance was requested at the first instance has jurisdiction.
If, when the proceedings are started, the child does not live in Portugal, the court of the place of residence of the applicant or the defendant has jurisdiction; if they also live abroad and the Portuguese court has jurisdiction internationally, the case is heard by the District Court of Lisbon, Family and Juvenile Court (*Tribunal da Comarca de Lisboa, Juízo de Família e Menores*), as this court has territorial jurisdiction for the municipality of Lisbon.

**Maintenance for adult children**

Any Civil Registry is competent to bring maintenance proceedings for adult children. This does not apply only if a court case already exists in which child maintenance was set. In this case, the application to set maintenance for a child who has, in the meantime, reached majority or been emancipated, is joined to the pre-existing case and heard in this court.

**Maintenance for spouses or former spouses**

The proceedings for setting maintenance between spouses and former spouses are brought before the District Court, Family and Children's Court of the place where the defendant resides. In the absence of a Family and Children's Court, the case will, in principle, be heard in the District Court, Local Instance or General Jurisdiction Court.

**Adult maintenance**

Aside from the aforementioned cases, proceedings for setting adult maintenance are brought before the District Court: Central Instance, Civil Court (if the value of the action exceeds €50 000.00); the Local Court or General Jurisdiction Court, where one exists, (if the value of the action does not exceed €50 000.00). From a territorial point of view, the court of the place of residence of the defendant has jurisdiction.

**Maintenance enforcement**

The courts shown below have jurisdiction when it comes to bringing special maintenance enforcement proceedings in the event of late payment.
If proceedings in which maintenance was set were heard before the District Court, Family and Juvenile Court(*Tribunal de Comarca, Juízo de Família e Menores*), the special maintenance enforcement proceedings will be heard before this court, as part of the case concerned, to which the enforcement application must be joined.
If the proceedings in which maintenance was set were heard before the District Court, Central Instance, Civil Court (*Tribunal de Comarca, Juízo Central Cível*), the Enforcement Court (*Secção de Execução*) which would be competent if the proceedings were not within the jurisdiction of that court of Central Instance owing to their monetary value, has jurisdiction for the special maintenance enforcement.
Where there is no Enforcement Court, the Civil Court of Central Instance where the respective declaratory action was heard has jurisdiction for the special maintenance enforcement and, in this case, the enforcement takes place in this procedure.
If the proceedings in which maintenance was set took place at the District Court, Local Civil Instance or General Jurisdiction Court, the enforcement takes place in this procedure provided the Central Instance does not have an Enforcement Court. If there is an Enforcement Court (whose territorial jurisdiction covers the area in which the General Jurisdiction or Local Civil Court where the condemnatory action was heard is located), it will have jurisdiction for the special maintenance enforcement.
With regard to the enforcement of court judgments, even if the enforcement does not take place in the court in which the enforceable judgment was handed down, the enforcement application is submitted in the declaratory proceedings where that judgment was handed down. In this case, when the Enforcement Court has jurisdiction, the sentencing court will urgently forward a copy of the sentence, the application that gave rise to the enforcement and accompanying documents to the Enforcement Court.
The same rule applies in cases where there is no Enforcement Court and the Local Civil Court or General Jurisdiction Court have jurisdiction with regard to enforcement proceedings.
If the proceedings in which maintenance was set were not heard before the court but rather before the Civil Registry, territorial jurisdiction for the special maintenance enforcement is governed by the following principles:
the enforcement must be brought before the court where the maintenance debtor is resident; the maintenance creditor may, however, opt for the court of the place in which the obligation is to be fulfilled if they reside in the metropolitan area of Lisbon or Porto and the maintenance debtor resides in the same metropolitan area;
when the enforcement must be brought in the place where the maintenance debtor is resident, and they are not resident in Portugal but do have assets here, the court of the place where these assets are located has jurisdiction.
With regard to the subject-matter jurisdiction for maintenance enforcement based on the decision of the Registrar, the following rules apply:
The District Court, Family and Juvenile Court has jurisdiction to prepare and judge maintenance enforcement proceedings between spouses and former spouses, for children and for adult and emancipated children. As in this case, however, the respective declaratory action was not heard in the Family and Children's Court, but rather in the Civil Registry, the courts may decide that the District Court, Enforcement Court has jurisdiction.
If there is no Enforcement Court, the Local Civil Instance or General Jurisdiction Court has jurisdiction for special maintenance enforcement.

**Notice:**

*The aforementioned rules on jurisdiction are subject to fluctuations in the interpretation of the national courts.*

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

As a general rule, it is not necessary to appoint a lawyer for child maintenance proceedings, except at the appeal stage. Adult or emancipated applicants (e.g. the child's guardian) may appear on their own in court when the proceedings are being heard at first instance. However, a lawyer must be appointed for the child when the interests of the child conflict with those of their parents, the legal representative or the person who has de facto custody, and also when a child who is sufficiently mature requests the court to appoint one.

For other maintenance proceedings, the general principles set out below apply.

It is necessary to appoint a lawyer: in matters which fall within the jurisdiction of courts that are subject to thresholds and in which an ordinary appeal is allowed; in cases in which appeals are always allowed, regardless of the value; in appeals and cases brought in the higher courts.

Currently, in 2022, ordinary appeal is only admissible when the value of the case exceeds the limit of the court against which the appeal is brought and the decisions challenged are unfavourable to the appellant by an amount also exceeding half of the limit of that court. In the event of doubts concerning the value of the loss borne by the defeated party, only the value of the action will be taken into account. This legal principle has various exceptions laid down therein and in other specific legal provisions. In 2022, at the time of reviewing this factsheet, in civil matters, the limit of the courts is as follows: Court of Appeal (*Tribunal da Relação*) – €30 000.00; Court of First Instance (*Tribunal de Primeira Instância*) – €5 000.00.

Even where it is compulsory to be represented by counsel, trainee lawyers, solicitors and the parties themselves may make applications in which matters of law are not raised.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

The reply to this question varies depending on whether the proceedings to set maintenance are heard in court or the Civil Registry and whether the parties receive legal aid or not. Costs are due in the courts. Costs are due in the courts. Fees are due in the Civil Registry Office.

**The payment of costs is provided for in the Procedural Costs Regulation**

The payment of costs is provided for in the Procedural Costs Regulation

The costs include the court fee, charges and the costs of the party – Article 529 of the Code of Civil Procedure

**Exemptions**

Under Article 4(1)(i) and (l) of the Procedural Costs Regulation

Minors are exempt from costs when they are represented by the Public Prosecutor or by a court-appointed lawyer in cases heard in court and are exempt from fees in cases that take place at the Civil Registry Office.

Minors or their legal representatives are also exempt from costs in appeals against decisions relating to the application, adjustment or termination of maintenance, handed down in juvenile court proceedings. Juvenile court proceedings in which maintenance can be set are usually child maintenance proceedings and proceedings to regulate parental responsibility. These are special, non-contentious proceedings.

Under Article 15(1)(f) of the Procedural Costs Regulation:

Parties in juvenile court proceedings are exempt from the prior payment of court fees, including those proceedings in which maintenance is set. In these cases, instead of paying the court fee at the outset, the party is requested to pay the court fee within a ten-day period after a judgment has been handed down in the main proceedings. This is the case even if the judgment has not become final.

Aside from the cases mentioned above, in principle costs are due. This will only not be the case if the party receives legal aid and/or if Chapter V of Council Regulation (EC) No 4/2009 of 18 December 2009, which will be mentioned below, applies to the proceedings in question.

**Recovery of costs**

Apart from the exceptions noted above, an initial court fee is due in order to bring an action with the objective of setting maintenance. The initial court fee corresponds to an advance on the final costs.

The costs include the court fee, charges and the costs of the party.

**Court fees**

In order to determine the amount of court fee due, it is essential to know the value of the action, since the court fee is calculated on the basis of this amount, in accordance with one of the tables annexed to the Procedural Costs Regulation.

The value of the action for the purpose of applying the aforementioned tables results from Articles 296 to 310 of the Code of Civil Procedure

For example:

definitive maintenance proceedings have a value equal to five times the annuity requested in the application, i.e. the value of this action corresponds to the sum of the requested monthly payment multiplied by sixty;

precautionary provisional maintenance proceedings have a value corresponding to the requested monthly payment multiplied by twelve;

divorce proceedings and proceedings to regulate the exercise of parental responsibility, which are concerned with other intangible interests aside from maintenance, have at least a value of the limit of the Court of Appeal plus one cent (in 2022: €30 000.01 - Article 44 of Law 62/2013).

**Charges**

The following rules apply to the charges (Article 532 of the Code of Civil Procedure, which can be found at Law 41/2013 of 26 June 2013

With regard to expenses and charges arising from investigations (payment to experts, reporting, etc.), the rule is that each party pays the expenses and charges to which it has given rise.

If the investigation proves to be manifestly unnecessary or dilatory, the party that requested it bears the respective charge regardless of success or the order as to costs.

When all parties have an interest in the investigations or the expenditure, when they both gain equal advantage, or when it is not possible to determine who is the interested party, the charges are borne equally by the parties.

**Costs of the parties**

As regards the costs of the parties, Article 533 of the Code of Civil Procedure lays down as follows: the costs of the successful party are borne by the losing party on a sliding scale in proportion to their loss.

The costs of the parties include court fees paid in advance, the costs actually incurred by the party, the fees paid to the enforcement agent and their expenditure, the fees paid to the legal representative and their expenditure.

**Costs account**

Except in the cases noted above, in which the parties are exempt from the advance payment of court fees, in principle, the court registrar only prepares the costs account after the judgment has become final and unappealable, and in accordance with the respective order. The parties are notified of the account.

If there are no appeals or complaints regarding the account, or they have been resolved, this gives rise to payment of what is owed by the losing party and/or reimbursement to the successful party of the amount it advanced.

The costs of the parties are paid directly by the losing party to the party owed. If the losing party has legal aid, the payment of the sums in questions to the party owed is made by the State – Article 26 of the Procedural Costs Regulation.

**Legal aid in cases within the jurisdiction of the courts**

If the applicant does not have the means to pay for the proceedings, they may obtain legal assistance. According to national legislation, legal aid may only be granted to natural persons or not-for-profit legal persons.

The legal aid scheme is enshrined in Law 34/2004.

Legal aid for individuals may be granted in various forms: legal advice, exemption from court fees and charges, phased payment of court fees and charges, appointment and payment of the legal representative's fees, appointment and phased payment of the legal representative's fees, and assignment of an enforcement agent.

The Portuguese legal aid system, in all the terms laid down therein, applies to all courts and to any form of proceedings.

Applications for legal aid are submitted via a form. It must be delivered in person or sent by post to any public service of the Institute of Social Security IP (*Instituto da Segurança Social IP*). The forms and instructions regarding their completion are provided by that entity. The general response period is 30 days. Both the practical information and the forms are available at Proteção Jurídica - seg-social.pt

When bringing an action, the applicant must attach to the initial application documentary evidence of prior payment of the court fee due or of the granting of legal aid in terms of exemption from prior payment of the aforementioned fee. When legal aid is granted in the form of phased payment of court fees, evidence of this must be attached along with payment of the outstanding amount – Articles 14 to 15 of the Judicial Costs Regulation

**Fees in cases within the jurisdiction of the Civil Registry Office**

Minors are exempt from fees when they are represented by the Public Prosecutor or by a court-appointed lawyer in cases that are heard before the Civil Registry Office.

The fees due for cases within the jurisdiction of Civil Registry Offices are set out in the Fee Regulations for Registry Offices and Notaries.

For example, in 2022 the fees charged in cases within the jurisdiction of Civil Registry Offices, which can be consulted in Article 18 of the Fee Regulations for Registry Offices and Notaries, are as follows:

divorce proceedings or legal separation by mutual consent (without property settlement) including decisions approving agreements regarding maintenance between spouses or for minor children – €280;

proceeding for granting maintenance for adult or emancipated children – €120;

proceedings for amending maintenance agreements – €100.

These sums are valid for 2022, the time of updating of this factsheet, and are subject to review. It is therefore necessary to consult national legislation on a case-by-case basis.

**Legal aid in cases within the jurisdiction of the Civil Registry Office**

Legal aid only applies in two situations to cases heard before the Civil Registry Office: appointment of legal counsel and payment of their fees; appointment of legal counsel and payment by instalment of their fees.

Furthermore, in Civil Registry Offices, certain acts are free of charge for individual applicants who are able to prove their financial hardship.

Financial hardship may be proved by the following means: a document issued by the competent administrative authority; a statement issued by a public social welfare institution where the individual has been admitted.

In these cases, the following acts are free of charge: acts of civil registry or nationality; proceedings and declarations relating to them; documents required and procedures relating to their supply; certificates required for any purpose.

The same rule applies to the cases within the jurisdiction of the Civil Registry Office in which maintenance was set.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

As a rule, maintenance is set as monthly monetary payments, except where there is an agreement or legal provision to the contrary or where there are reasons to justify exceptional measures. If, for example, the person required to pay maintenance shows that they cannot pay it as an allowance but only in the form of their house and company, this may exceptionally be ordered.

**Calculation of maintenance**

The maintenance obligation and the calculation of maintenance are regulated by Articles 1871 to 1880, 1905, 2003 to 2023 of the Civil Code.

Maintenance must be proportional to the means of the maintenance debtor and the needs of the maintenance creditor. In setting maintenance, the possibility of the maintenance creditor supporting themselves is also examined.

The needs of the maintenance creditor depend on whether they are children, adult children continuing their training or education, or simply adults. These have already been mentioned in the reply to question 1.

With regard to the maintenance debtor's means that must be considered, it is important to note the specific criteria to be taken into account, depending on whether the maintenance is being set for children or former spouses.

*Maintenance set for children*

The duty of child maintenance is a fundamental duty of their parents. It is based directly on Article 36(5) of the Constitution of the Portuguese Republic. Maintenance due to children must be proportional to the means of the maintenance debtor.

In accordance with the leading case-law of the Portuguese Supreme Court of Justice (*Supremo Tribunal de Justiça*), in order to calculate the amount of maintenance due to a child, the court must consider not only the value of the income currently earned by the debtor, but also, in a comprehensive and overarching manner, their social status, their ability to work, the duty to actively strive for a profession that enables them to fulfil such duty, and the entire range of assets which they own.

*Maintenance set for former spouses*

In determining the amount of maintenance due to former spouses, the court must take into account the duration of the marriage, the contribution made towards the family finances, the age and state of health of the spouses, their professional qualifications and employment prospects, the time they will have to devote to bringing up their joint children, their earnings and income, remarriage or cohabitation and, in general, all circumstances affecting the needs of the spouse receiving the maintenance and the possibilities of the maintenance debtor.

According to the majority of national case-law, the creditor spouse has no right to demand that the standard of living they enjoyed during marriage be maintained.

*The time from when maintenance is due*

Maintenance set by judicial decision is due from the date on which the action was brought. Maintenance set by agreement of the parties and approved by decision of the court or the Registrar is due from the date on which the debtor is in default. The debtor is in default on the date set for payment or, failing that, when they are demanded to make payment. Without prejudice to the cases mentioned above, Portuguese law does not provide for setting maintenance retroactively.

**Adjustment of maintenance that has been set**

If there is a change in circumstances after maintenance has been set, maintenance may be adjusted or terminated.

If there is no pending special maintenance enforcement, the application to adjust or terminate maintenance is brought alongside the condemnatory action. If there is a pending special maintenance enforcement, the application to adjust or terminate maintenance is joined to the enforcement procedure.

The maintenance debtor may request that maintenance be reduced or terminated if, for example, there is a reduction in their financial means, an improvement in those of the maintenance creditor, the maintenance creditor reaches majority, or the maintenance creditor is able to contribute to their subsistence.

The maintenance creditor may request that maintenance be increased if, for example, their economic situation worsens, their family circumstances change, their needs increase, the cost of living increases and this increase can and should be supported by the maintenance debtor (because, for example, their salary has also increased).

*Automatic update*

In order to cope with the rising cost of living, the decision setting maintenance may determine that the awarded amount must undergo a regular automatic update (usually annual).

The update may be based on the increase in the rate of inflation published annually by the National Institute of Statistics (*Instituto Nacional de Estatística*) or on an increase in a certain interest rate indicated by the court. It may also consist, however, of a fixed annual increase of a certain amount as stipulated in the decision.

The judge is responsible for determining this automatic update and choosing the appropriate means of achieving it, according to their discretion. The automatic update may also be determined by an approved agreement between the parties.

**Provisional maintenance**

In addition to definitive maintenance, provisional maintenance may also be set.

If definitive maintenance has not yet been set, the court may, at the request of the maintenance creditor or *ex officio*, if the latter is a minor, grant provisional maintenance, which will be determined at the court's discretion. Provisional maintenance is never refunded. It is due while the main proceedings to set the amount of definitive maintenance are pending. Definitive maintenance is due once it has been set.

In the event that contested divorce proceedings are pending, the judge may set provisional maintenance for one of the spouses or the children while the proceedings are pending. While proceedings to regulate parental responsibility are pending, the judge may also set provisional maintenance for minor children. In the aforementioned cases, provisional maintenance may be set during a hearing within the proceedings themselves.

Alternatively, provisional maintenance may be set in interim proceedings that will be joined to the main proceedings in which definitive maintenance is set.

**9 How and to whom will the maintenance be paid?**

Maintenance will be paid under the terms and to the person indicated in the court decision or in the court-approved agreement of the parties.

As a rule, if the beneficiary is an adult with legal capacity, or an emancipated child, the maintenance will be paid to them directly.

If they are adults without legal capacity, the maintenance will be paid to the party that is under the legal obligation to exercise financial rights on their behalf (guardian, trustee or judicial property administrator); even an institution may receive the maintenance.

If the beneficiary is a minor, the maintenance will be paid to the person who has custody, who may be one of the parents, another family member, a third party (foster family) or the director of an institution to which the minor has been entrusted.

The law does not impose fixed methods of payment and the parties may agree on how payment is to be made. If there is no agreement, the courts decide on the most practical and least costly method either for the person paying or for the person receiving the maintenance.

Generally, the monthly maintenance payment is paid in cash and must be delivered to the creditor at the beginning of the month to which it relates.

The time and place of payment are set out in the agreement or decision setting the maintenance. If they have not been set out, the supplementary rules of the Civil Code apply in that regard. These rules state, in principle, that in the absence of stipulation:

maintenance paid in cash is to be paid at the place where the creditor is residing at the time the payment is due;

as the payments correspond to the months of the Gregorian calendar, the creditor may request payment at any time from the first day of the month in question.

The most common methods are bank transfer, deposit into an account opened at a bank, sending of a postal order or cheque, or the personal delivery of cash.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

In the event that the maintenance debtor defaults, the maintenance creditor may resort to civil and criminal enforcement measures.

**Civil enforcement measures**

**Pre-enforcement hearing**

In the case of child maintenance, set in maintenance enforcement proceedings or proceedings to regulate parental responsibility, the law makes a pre-enforcement hearing available to the maintenance creditor.

The beneficiary of child maintenance may call on a pre-enforcement hearing as laid down in Article 48 of the General Regime of the Civil Custody Procedure (*Regime Geral do Processo Tutelar Cível*), provided that the following conditions apply: There is non-compliance or late payment of the maintenance payment; the maintenance debtor receives regular income from employment, a pension, subsidies, commissions, percentages, fees, bonuses, contributions or similar income.

The application is joined to the proceedings to regulate the exercise of parental responsibility or the proceedings for setting child maintenance, which are heard before the court. The maintenance debtor is notified to pay maintenance within ten days of the date when it became payable. If the maintenance debtor fails to attach documentary evidence of payment, the maintenance payments will be deducted on a monthly basis from their wages, salary, pension, subsidies or other income of which they are in receipt. To this effect, the entity responsible for payment will be notified to process the monthly deduction and deposit it directly into the maintenance creditor's nominated bank account. The amounts deducted also cover maintenance payments becoming due.

Once they have been notified, all persons or entities who are responsible for processing or paying the aforementioned income thereby assume the role of approved depositaries of the amounts deducted as maintenance. As a result, if they fail to deduct the agreed amount, enforcement will be brought against them as part of the ongoing proceedings.

The amounts deducted do not cover maintenance accrued before the notification for the maintenance debtor to make payment. However, maintenance payments which are falling due are covered. In order to recover the maintenance accrued prior to the notification laid down in this hearing, the maintenance

creditor will need to bring enforcement proceedings. Thus, when maintenance is due to minors, nothing prevents the lender from simultaneously bringing both pre-enforcement hearings (for the payment amounts falling due) and special maintenance enforcement (for the payment of overdue amounts).
It is not necessary to use a pre-enforcement hearing before resorting to enforcement. It just offers an alternative to enforcement. Opposition is not permitted, but on the other hand, the maintenance creditor has more limited means at their disposal than in enforcement, as the maintenance creditor may only request deductions from salaries, wages, pensions, subsidies or similar periodic income (they may not request the seizure of property, deposits or credit rights).
If maintenance is due to minors, the maintenance creditor may, alternatively, just bring special maintenance proceedings, as laid down in the Code of Civil Procedure. Thus, in a single action, they may recover in full the amounts due or falling due. In an enforcement action, the maintenance creditor may make use of broader means of enforcement, such as seizure and pledge of income. The process involved in these proceedings will be explained below.

**Non-compliance hearing**

In the case of child maintenance set in proceedings to regulate parental responsibility, the law also makes a non-compliance hearing available to the maintenance creditor as provided for in Article 41 of the General Regime of the Civil Custody Procedure (*Regime Geral do Processo Tutelar*).
This hearing is for the creditor to request the court to order the necessary steps to enforce compliance and to sentence the defaulter to pay a fine. With the request joined to proceedings, the court summons the parents to a meeting or notifies the defendant to plead as they deem appropriate, within five days.
The parents may agree to amend the regime set. In the absence of an agreement, the judge will decide provisionally on the request and refer the parties for mediation or to a specialised technical hearing. If it still proves to be impossible to reach an agreement, the parents are notified to submit pleadings and request evidence. This is followed by the evidentiary stage, the trial and judgment.

**Special maintenance enforcement**

In any cases where there is a delay in the payment of maintenance, the maintenance creditor may bring special maintenance enforcement proceedings in accordance with Articles 933 to 937 of the Code of Civil Procedure. This option exists whether the maintenance is due to children or adults, and whether the maintenance is definitive or provisional.
In special maintenance enforcement, the applicant may request: the adjudication of a proportion of the amounts, salaries or pensions the other party receives; or an assignment of income belonging to the maintenance debtor.
The adjudication or pledge takes place independently of seizure and is intended to cover the payment of overdue amounts and amounts that will become due.
When the applicant requests the adjudication of amounts, salaries or pensions, the body responsible for paying these or for processing the respective payments will be notified that it is to pay the adjudicated part directly to the applicant. The amount adjudicated must be deposited monthly in the bank account of the applicant, who must give the account number in the initial application.
If the petitioner requests an assignment of income, he or she must indicate the property to which this applies and the enforcement agent will order that the property considered sufficient to meet the maintenance due and falling due be assigned. The defendant may be heard for this purpose.
If, once the assignment has been made, it transpires that the income assigned is insufficient, the petitioner may indicate other property. If, on the other hand, it transpires that the income is excessive, the petitioner is obliged to reimburse the excess to the defendant, as and when the excess is received. The defendant may also ask for the assignment to be limited to part of the property or to be transferred to other property.
The amounts awarded or the value of the assignment of income should be sufficient to cover overdue payments, the interest on arrears when the maintenance creditor requests as such, payments falling due and automatic updates, if these have been set.
The maintenance creditor may still request the seizure of the maintenance debtor's property. Seizure may involve movable property and immovable property, bank deposits, credit rights, commercial establishments or company shares.
If the seized property is sold to pay off a maintenance debt, the return of the excess to the maintenance debtor should not be ordered unless the payment of maintenance that will become due is ensured to the extent that the judge considers appropriate, unless a security or other suitable guarantee is provided.
The maintenance debtor should only be summoned after the seizure/adjudication/pledge of income has taken place. The maintenance debtor's opposition to the enforcement or seizure does not stay the enforcement.
In the case of a request to amend or terminate maintenance payments while special maintenance enforcement is pending, the request for amendment or termination is joined to the enforcement.

**European enforcement order**

In the event of non-compliance with a maintenance agreement arising from an authentic instrument made before administrative authorities, or an instrument authenticated by such authorities, in a Member State not bound by the Hague Protocol of 2007, the maintenance creditor may rely on Regulation (CE) No 805 /2004 of 21 April 2004, which provides for a European Enforcement Order (Article 4(3)(b) of the aforementioned Regulation and Article 68(2) of Regulation No 4/2009 of 18 December 2008).

**Criminal enforcement measures**

Article 250 of the Criminal Code provides for and punishes the crime of breaching maintenance obligations with imprisonment of between one month and two years or a fine of up to two hundred and forty days, depending on the cases laid down therein.
Criminal proceedings require a complaint to be lodged.
If the obligation is then fulfilled, the court may waive the sentence or declare that the sentence not yet served is cancelled, in full or in part.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

The rules applicable to the attachment of assets or rights and the respective limits and grounds for opposition are laid down in Articles 735 to 783 of the Code of Civil Procedure
In principle, all the debtor's seizable assets that is liable for the enforcement debt in accordance with substantive law may be subject to enforcement. Seizure is limited to the assets required to pay the enforcement debt and foreseeable enforcement costs.
In addition, the law lays down the limits on seizure and limitation periods of maintenance obligations mentioned below.

**Limits on seizure**

There are certain kinds of property that may not be seized under any circumstances (absolutely unseizable assets), others that may be seized only in certain circumstances (relatively unseizable assets) and others that may only be partially seized (partially seizable assets).

*Unattachable assets*

In addition to goods exempt from seizure under a special provision, the following enjoy absolute immunity from seizure:
inalienable objects or rights;
assets which are the public property of the State and of other public legal persons;
objects whose seizure would be immoral or would be financially unjustified because their market value is insignificant;
objects specifically intended for the exercise of public worship;
tombs;

instruments and objects which are essential for the disabled and for treating the sick.

*Assets relatively immune from seizure*

The following property is relatively unseizable:

Except where enforcement is for payment of a debt with a security *in rem*, the assets of the State and other public legal persons, entities holding public works or public service concessions of and of charities that are specially allocated to public purposes are exempt from seizure.

The maintenance debtor's working tools and objects essential for the exercise of their profession or professional training are also exempt from seizure, unless the maintenance debtor indicates that they may be seized, if the enforcement is for the payment of their purchase price or the cost of their repair, or if they are seized as tangible assets of a commercial establishment;

Also exempt from seizure are assets that are household essentials in the actual home of the party against whom enforcement is sought, except if the enforcement is for payment for the items themselves or cost of their repair.

Sums of money or bank deposits resulting from satisfaction of a claim immune from seizure are immune from seizure, on the same terms as the original claim.

When a maintenance claim is recovered, the aforementioned rules on absolute and relative seizability apply.

As a rule, when it comes to property partially seized during maintenance enforcement, the amount that can be seized is higher than in enforcement founded on other claims, as will be explained below.

*Partially seizable assets*

Two-thirds of the net salaries, wages, periodic amounts received as retirement pension or any other social benefits, insurance, accident indemnity, annuity, or payment of any kind that ensure the maintenance debtor's sustenance are unseizable.

This unseizability has a maximum limit equivalent to three national minimum wages at the time of each seizure and a minimum limit, when the maintenance debtor has no other income, equivalent to one national minimum wage. When the outstanding debts are for maintenance, an amount equivalent to a full non-contributory pension cannot be seized.

When seizing money or bank balances, the amount equivalent to the national minimum wage is unseizable or, in the case of maintenance obligations, the amount equivalent to a full non-contributory pension.

The unseizability laid down for salaries, wages or periodic payments cannot be combined with the unseizability laid down for money or bank balances.

If the aforementioned rules on seizability are not complied with, the maintenance debtor may object to the seizure.

**Periods of limitation**

The limitation period for maintenance claims is laid down in Articles 303, 310, 313, 314, 320 and 323 of the Civil Code.

The Portuguese Civil Code lays down a limitation period of five years for overdue maintenance payments (Article 310(f) of the Civil Code). So, five years after the due date of the maintenance payments, the right to these payments is prescribed due to non-use. The limitation period is interrupted by a summons for legal proceedings concerned with maintenance payments. For their part, the maintenance debtor may waive the limitation after expiry of the limitation period. Since it is a presumptive limitation period, it may be rebutted by express or tacit admission. The court may not of its own motion supply a limitation period; in order to be effective, it must be invoked.

In the case of child maintenance, the limitation period does not start or run while the child does not have a representative. Even if the child has a representative, the limitation period does not come to expire earlier than one year from the date on which the child reached the age of majority.

Portuguese civil procedural law does not lay down a limitation period after which the maintenance creditor can no longer bring maintenance enforcement proceedings. Prescribed maintenance payments may therefore be subject to enforcement. In this case, the court may not be aware, *ex officio*, of the prescription. In order to be effective, the prescription must be invoked by the maintenance debtor, who may object to enforcement on that basis.

**Objection to seizure**

Articles 784 and 785 of the Code of Civil Procedure lay down the following rules:

The general time limit for challenging seizure is ten days from the maintenance debtor being notified of the seizure. The general time limit for challenging enforcement is 20 days from the maintenance debtor being summoned.

In the case of special maintenance enforcement, the maintenance debtor is summoned in respect of the enforcement action only after the seizure, award or assignment of income has taken place. Along with the summons, they are notified of the seizure that has already taken place.

In the case of pre-enforcement hearings in juvenile court, the maintenance debtor is notified before the assignment of income is ordered but may not lodge a challenge. They may only provide documentary evidence of payment.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

In the case of child maintenance, the Public Prosecutor is entitled to bring the respective proceedings for the setting of maintenance. Anyone may notify the Public Prosecutor of the need to set or adjust child maintenance. For this purpose, the Public Prosecutor has a front desk service in every court.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Yes, in the case of child maintenance. It is known as the Guarantee Fund for Maintenance due to Minors (*Fundo de Garantia de Alimentos Devidos a Menores*, hereinafter referred to as 'the Fund'). The Fund is managed by the Social Security Financial Management Institute IP (*Instituto de Gestão Financeira da Segurança Social IP*).

The maintenance guarantee for children is regulated by Law 164/99

The Fund is responsible for ensuring the payment, up to a certain limit, of maintenance due to minors. The payment is made by order of the court with jurisdiction.

**Requirements**

The requirements to set the Fund's guarantee in motion are as follows:

the minor must be resident in Portugal;

maintenance payments must have been set by a court judgment (the Civil Registrar's decisions setting maintenance in the cases for which they are responsible produce the same effects as legal judgments);

the maintenance debtor must be in default;

the pre-enforcement hearing laid down in Article 48 of the General Regime of the Civil Custody Procedure must have previously been set in motion (under national law, subject to fluctuations, this requirement may also be fulfilled by an application giving rise to a hearing for non-compliance with maintenance, as laid down in Article 41 of the General Regime of the Civil Custody Procedure or special maintenance enforcement proceedings);

the child's gross income must not exceed the value of the social support index (*IAS - Indexante dos Apoios Sociais*);

the child must not benefit from the income of another person in whose care he/she has been placed that is higher than the IAS (this occurs when the per capita income of the minor's household does not exceed the IAS).

In 2022, at the time of updating of this factsheet, the IAS is €443.20. The IAS amount is, in principle, updated annually; the relevant national legislation should always be consulted for the applicable amount.

**Limits on payment**

If the above requirements are verified, the State guarantees monthly maintenance payments up to the limit shown below.

For each maintenance debtor, the monthly maintenance payments granted may not exceed 1 IAS, regardless of the number of minor children.

Within this limit, the value of the payments to be guaranteed by the Fund must be set by the court. In setting this value, the court takes into account the economic capacity of the household, the amount of the maintenance set and the specific needs of the child.

The Fund does not guarantee overdue payments. Payments guaranteed by the Fund are due from the first day of the month following that in which the court' s decision set the guaranteed value.

Payment is guaranteed until the maintenance debtor begins to effectively comply with their obligation.

Payments from the Fund cease when the child reaches 18.

Children admitted to public or private non-profit social support institutions, financed by the State, legal persons under public law, private law or public utility, educational guardianship centres and detention centres are not entitled to maintenance payments guaranteed by the Fund.

**Processing**

Applications for setting the amounts payable by the Fund must be submitted to the court during non-compliance proceedings. The Public Prosecutor or the maintenance creditor is responsible for submitting the application.

The judge orders an inquiry based on the child's needs and then makes a decision setting the payments to be made by the Fund within the limits indicated above.

In cases where maintenance is urgently due, the judge may set provisional maintenance to be guaranteed by the Fund until a final decision is reached.

The maintenance creditor must prove each year that they still meet the requirements to guarantee these payments from the Fund, otherwise they will come to an end.

The child's legal representative or the person in whose custody they have been placed has a duty to inform the court or the Fund of any changes in, or the ending of, the situation of non-compliance or the child's situation.

The Fund is subrogated to the rights of the child, up to the limit that it paid, for the purposes of claiming reimbursement from the maintenance debtor.

## 14 If I am in this Member State and the debtor has his/her residence in another country:

### 14.1 Can I obtain the assistance of an authority or private organisation in this Member State?

If the maintenance creditor is in Portugal and wishes to recover maintenance in another Member State of the European Union, they must submit the application to the Directorate-General of Justice Administration (*Direcção Geral da Administração da Justiça*), which is a public entity. National legislation does not provide for the intervention of a private organization for such purposes.

The Directorate-General of Justice Administration is the Portuguese Central Authority for the purposes of applying 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 (hereinafter also referred to as 'the Regulation').

This Regulation enables the cross-border recovery of maintenance. The Regulation applies to decisions handed down in Member States of the European Union (also known as 'Member State') and decisions handed down in non-Member States of the European Union (also referred to as 'third State'). It applies not only to decisions that set maintenance made after its entry into force, on 18 June 2011, but also to those made before this date. It covers the recovery of overdue and falling due payments, automatic updates set by the decision and interest on arrears. Under the Regulation, maintenance set by court order or by decision of another competent authority may be recovered.

The application for recovery of maintenance in another Member State is submitted to the Directorate-General of Justice Administration by completing and adjoining the appropriate forms annexed to the Regulation. The creditor must attach certain documents and information to the forms, which can be, as appropriate: a certificate of the judgment or decision setting the definitive maintenance along with notice that the decision/judgment has been rendered final and unappealable which must consist of the form contained in Annex I to the Regulation; document showing they received or are in a position to receive legal aid or free proceedings; bank details to deposit the amounts recovered; birth certificates of minor children; school attendance certificates for their adult children; the power of attorney granted to the central authority; a list of the amounts due.

The form or forms to be completed and the documents and information to be attached by the maintenance creditor are found in instructions that can be obtained from the Directorate-General of Justice Administration. The contact details of this authority are given in the answer to question 14.2.

The type of proceedings that can be requested of the Directorate-General of Justice Administration are explained in the reply to question 15.4.

### 14.2 If so, how can that authority or private organisation be contacted?

The contact details of the Portuguese Central Authority are:

**Directorate-General for Justice Administration (*Direção-Geral da Administração da Justiça*)**

D. João II, 1.08.01 D/E

1990-097 LISBON - PORTUGAL

Tel.: (+351) 21 790 65 00

E-mail address: correio.dsjcji@dgaj.mj.pt

Website: http://www.dgaj.mj.pt/

Languages: Portuguese, Spanish, French and English.

## 15 If I am in another country and the debtor is in this Member State:

### 15.1 Can I address a request directly to such an authority or private organisation in this Member State?

In its role as the Central Authority under the aforementioned Council Regulation (EC) No 4/2009 of 18 December 2008, the Directorate-General of Justice Administration will provide the necessary support as described in the reply to question 14.1.

If the maintenance creditor is in another Member State and wishes to request the application of one of the proceedings laid down in the Regulation, they must file the application with the central authority appointed by the Member State where they are based. This central authority, in turn, forwards the request to the Portuguese central authority who takes charge of passing it on to the competent national court, as appropriate.

### 15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?

If the applicant is in another Member State, they should be able to contact the Directorate-General of Justice Administration via the central authority of the Member State where the applicant is based.

The following assistance may be provided:

In order to recover maintenance set by a decision handed down in another Member State, the Regulation lays down three different sections of rules:

(i) rules applying to decisions handed down in a Member State bound by the 2007 Hague Protocol (as is the case with Portugal);

(ii) rules applying to decisions handed down in a Member State not bound by the 2007 Hague Protocol;
(iii) rules applying to decisions handed down in all Member States.
The decisions provided for (i):
are recognised in the requested Member State without any possibility of opposition;
benefit from the abolition of exequatur; are immediately enforceable in the requested Member State;
enable the maintenance creditor to bring precautionary measures laid down in the legislation of the requested Member State.
The decisions laid down in the section referred to in (ii):
are recognised in the requested Member State except if any of the grounds for refusal of recognition laid down in the Regulation are proven to exist;
if they are enforceable in the Member State of origin, the maintenance creditor may request that the court or competent authority of the requested Member State recognises its enforceability in accordance with the procedure laid down in the Regulation;
the recognition of enforceability may only refer to part of a decision.
The decisions laid down in the section referred to in (iii):
may be provisionally enforceable if the Member State of origin declares that an appeal against the decision will have a non-suspensive effect.
if the maintenance creditor invokes the decision in the requested Member State, they must prove its authenticity by completing the forms and requirements laid down in the Regulation;
if necessary, the maintenance creditor must attach a translation of the decision;
enforcement of the judgment takes place according to the law of the requested Member State;
under no circumstances may a judgment be reviewed as to its substance in the requested Member State;
the costs of applying the Regulation do not take precedence over the recovery of outstanding maintenance.
The Regulation sets out the procedures that are available to maintenance creditors in Article 56. In some cases, these procedures cover not only decisions of the Member States but also decisions of third States.
Specifically, the maintenance creditor may:
request from a Member State the recognition and declaration of enforceability of a decision handed down in another State;
bring an action to set maintenance in the requested Member State;
combine an application to establish parentage with this action;
bring an action to set maintenance in the requested Member State when it proves impossible to obtain recognition or enforcement of a judgment handed down in another State;
request modification of a decision handed down in the requested Member State;
request modification of a decision handed down in a State other than the requested Member State.
These procedures are governed by the law and rules of jurisdiction of the requested Member State, unless other arrangements are laid down in the Regulation. In such cases, the maintenance creditor is aided and represented by the central authority or other public authority, body or person appointed by the requested Member State.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes, Portugal is bound by the Hague Protocol of 2007. As such, the following rules of Council Regulation (EC) No 4/2009 of 18 December 2008 apply to maintenance judgments handed down in Portugal: Articles 8, 13 and 17 to 22.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

The answer to this question is nullified by the affirmative answer to the previous question.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

Portuguese national law – Law No 34/2004 – contains rules which provide legal aid comparable to that set out in Chapter V of Council Regulation (EC) No 4/2009 of 18 December of 2008.
With regard to natural persons, the following are entitled to legal aid, provided that they are able to prove their economic hardship:
Portuguese citizens and citizens of the European Union.
Foreigners and stateless persons with a valid residence permit in a Member State of the European Union.
Foreigners without a valid residence permit in a Member State of the European Union – if the laws of their countries of origin grant the same right to Portuguese citizens.
Persons who live or reside in a Member State of the European Union other than the Member State in which the proceedings are to be held (cross-border disputes).
National legislation provides for the application of the following criteria for assessing the economic hardship of natural persons:
applicants whose household has a relevant income for the purposes of legal aid equal to or less than three-quarters of the social support reference rate are not in a position to bear any amount relating to the costs of a process, and should also benefit from the assignment of an enforcement agent and free legal consultation;
applicants whose household has a relevant income for the purposes of legal aid of greater than three-quarters and equal to or less than two and a half times the social support reference rate are in a position to bear the costs of legal advice subject to prior payment of a fee, but are not in a position to promptly meet the costs of proceedings and, therefore, benefit from legal aid in the form of phased payment and the assignment of an enforcement agent;
applicants whose household has a relevant income for the purposes of legal aid of greater than two and half times the social support reference rate are not considered to be economically insufficient;
the relevant income for the purposes of legal aid is the amount resulting from the difference between the value of the full net household income and the value of the relevant deduction for legal aid (the criteria for calculating these values are set by law);
persons living in the same household as the applicant for legal aid are considered to belong to the same household;
if the applicant or any member of their household hold credits deposited in bank accounts and securities admitted to trading on a regulated market that amount to more than 24 times the social support reference rate, it is considered that the applicant is not in a situation of economically hardship, regardless of the value of the household's relevant income for the purposes of legal aid;
the applicant may request, exceptionally and for good reason, that the assessment of economic hardship takes into account only their income, assets and own ongoing expenses or those of some of the members of their household;
in the event of a dispute with one or more household members, the assessment of economic hardship takes into account only the income, assets and ongoing expenses of the applicant or the applicant and some members of their household, if the said applicant so requests;

if, in a certain case, the chief of the social security services responsible for the decision to grant legal aid understands that the application of the criteria laid down in the preceding paragraphs would lead to a manifest denial of access to the law and to the courts they may, by reasoned order, make a different decision to that which would have resulted from application of the aforementioned criteria.
Legal advice enables the party to consult a lawyer in order to obtain technical information on a specific dispute before bringing or contesting an action in court.
Legal aid, in turn, may be granted in the following terms:
exemption from court fees and other case-related expenses;
payment of court fees and other case-related expenses in instalments;
appointment of legal counsel and payment of their fees;
appointment of legal counsel and payment by instalment of their fees.
assignment of an enforcement agent to carry out enforcement measures (for example, seizure).
Legal aid covers the specific costs resulting from the cross-border nature of the dispute.
Thus, in the case of an application for legal aid submitted by a citizen from another Member State for an action in which the Portuguese courts have jurisdiction, legal aid comprises the costs of translation, interpretation and travel expenses of persons who are to appear in court when their presence is required and/or the court considers that they could not otherwise be heard.
In the case of an application for legal aid requested by a Portuguese citizen in order to bring an action for which the courts of another Member State have jurisdiction, legal aid covers the pre-litigation support, until the proceedings have been instituted in another Member State, and the costs of translating the applications and other documents.
If the recipient of legal aid loses the action, the system for reimbursing advance payments and expenses paid by the successful party is the same for all categories of individual beneficiaries indicated above, without discrimination between them.
However, rules exist in national law that provide less extensive legal aid than that provided for in Chapter V of the Regulation and therefore must be supplemented by this.
In Portugal, minors are exempt from fees when they are represented by the Public Prosecutor or by a court-appointed lawyer.
Minors or their legal representatives are also exempt from costs in appeals against decisions relating to the application, adjustment or termination of maintenance, handed down in juvenile court proceedings.
Parties in juvenile court proceedings and actions against the status of a person are exempt from prior payment of court fees. According to national legislation, majority is reached at the age of 18.
However, prior payment of court fees cannot be demanded in proceedings brought in Portuguese courts and to which the Regulation applies. This is the case whether these proceedings relate to children or to adults, whatever the form of the process and whether or not a maintenance request overlaps with a request on the status of persons (Article 44 of the Regulation).
In such proceedings, if the applicant does not qualify for legal aid or free proceedings, the court fee may be demanded at the end. Moreover, the proceedings laid down in Article 56 of the Regulation, where the obligation of parents to provide maintenance for a child under 21 years of age is concerned (Article 46 of the Regulation) must be completely free.
The aforementioned rules of the Regulation are directly applicable and extend, internally, the scope of legal aid afforded by national legislation.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

In accordance with the aforementioned Article 51 of Council Regulation (EC) No 4/2009 of 18 December 2008, the Directorate General of Justice Administration, as the Portuguese central authority, provides assistance in those proceedings laid down in the Regulation and will take all appropriate measures to that end.
In particular, the Executive Director shall be responsible for:
transmit and receive such applications;
initiating or facilitating the instigation of proceedings in the competent court;
where the circumstances require, to provide or facilitate the provision of legal aid;
helping to locate the debtor;
helping to obtain relevant information concerning the income and assets of the debtor;
encouraging amicable solutions with a view to obtaining voluntary payment of maintenance, by use of mediation, conciliation or similar processes;
to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
to facilitate the collection and expeditious transfer of maintenance payments;
facilitating the acquisition of documentary or other evidence;
to provide assistance in establishing parentage where necessary for the recovery of maintenance;
initiating or facilitating the instigation of proceedings to obtain any necessary provisional measures to secure the outcome of a pending maintenance application;
facilitating service of documents.
In order to achieve these goals, the Portuguese State, and in particular the Directorate-General of Justice Administration, as the central authority, adopted the following measures:
reinforcement of the number of legal and administrative staff to receive and transmit orders made under the Regulation;
a family mediator is now available;
setting up of an area on its website dedicated exclusively to international judicial cooperation in civil and commercial matters, where information can be found relating to maintenance obligations, instructions on the documents and forms necessary to bring proceedings laid down in the Regulation and to complete a standard form specifying the amount in arrears;
when requested, it forwards the application for legal aid to the competent authorities for the purpose;
forwards applications to the competent national courts;
translates the documents required for bringing claims when Portugal is the requested State;
requests information and evidence from the national police, administrative and tax authorities and Immigration and Border Control on the whereabouts and property of the maintenance debtor;
with regard to conciliation, when the maintenance debtor is summoned to appear or make contact with the central authority, they will be made aware of the application for setting, adjusting or recovering maintenance and presented with the possible scenarios, particularly those that are most beneficial for both parties, in order to encourage voluntary payment.

Warning
**The Contact Point, the courts or other entities and authorities are not bound by the information contained in this factsheet. It is also still necessary to read the legal texts in force. These are subject to regular updates and evolutionary interpretation of case-law.**

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# Family maintenance - Romania

## 1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

The legal obligation to provide maintenance is the requirement imposed by law on a person to provide another person with the necessary means of subsistence, including for the satisfaction of spiritual needs, and, in the case of parents’ maintenance obligations to minor children, the means required for their upbringing, education and vocational training.
The maintenance obligation exists between spouses, relatives in the direct line, brothers and sisters and certain other persons specified by law (Article 516 of the Romanian Civil Code).
The maintenance obligation exists between former spouses (Article 398 of the Civil Code). It should not be confused with provision of compensation or damages.
A spouse who has contributed to the maintenance of the child of the other spouse has an obligation to provide maintenance for the child for as long as that child is a minor, but only if the child’s natural parents are dead, missing or needy (Article 517(1) of the Civil Code). In turn, the child may be obliged to provide maintenance for the person who provided him or her with such maintenance for 10 years (Article 517(2) of the Civil Code).
The heirs of a person who was obliged to maintain a minor or who provided maintenance without having any legal obligation to do so are bound, depending on the value of the inherited assets, to continue to provide maintenance if the minor’s parents are dead, missing or needy, but only for as long as the person receiving the maintenance is a minor.

## 2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

The maintenance obligation between parents and children is regulated by Articles 499 and 525 of the Civil Code. Minors claiming maintenance from their parents are regarded as needy if they cannot support themselves on the basis of their work, even if they have assets. However, where the parents are not in a position to provide maintenance without endangering their own livelihood, the family court may agree to maintenance being provided through the sale of the child’s assets, except for those that are strictly essential.
Parents are obliged to maintain a child who has reached the age of majority (18 years) but is continuing his or her studies, until the end of those studies but not beyond the age of 26.

## 3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

The claimant creditor must apply to the court having jurisdiction in the place of his or her permanent address or that of the defendant debtor. The application claiming maintenance may be made either separately or in the course of proceedings for divorce, determining paternity, exercising parental authority over a minor child or determining a minor’s residence. The court may order, by order of the president of that court, interim measures valid only until a decision has been issued regarding the substantive proceedings. The proceedings at first instance comprise several stages. At the written stage, the claim, the defence and the counter-claim are submitted; precautionary measures such as seizure or attachment may be ordered; and the parties are summoned and the procedural documents sent to them. The oral stage comprises the hearing, where procedural objections may be raised and evidence taken. This is followed by the deliberation stage and the issuing of the court's decision.
In the case of divorce by mutual consent, which can be declared by a notary public, the spouses may agree on all the ancillary matters of the divorce, including the determination of each parent’s contribution to the cost of the children's upbringing, education, vocational training or studies

## 4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

In principle, the parties involved in maintenance allowance proceedings may be represented. However, where an application is filed for maintenance in conjunction with divorce proceedings, the spouses may be represented in the divorce petition only in certain cases specifically provided for by Article 920 of the Code of Civil Procedure.
Where a separate application is filed for the determination or an increase/reduction of the maintenance allowance, the parties may be represented in the conventional way by a lawyer or other representative; where representation is by a non-lawyer, the latter cannot deliver closing oral arguments in the trial.
The minor is represented by his or her legal representative (parent or, exceptionally, another person exercising parental authority). An application in respect of a child having reached the age of majority is lodged by that child on his or her own behalf.

## 5 If I plan to bring the case to court, how do I know which court has jurisdiction?

The court with territorial jurisdiction (for the place of residence of either the defendant debtor or the claimant creditor) can be determined by reference to the Romanian judicial atlas, which is published on the website of the Ministry of Justice on the courts portal: https://portal.just.ro/SitePages/acasa.aspx.

## 6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?

No, because it is not mandatory for the applicant to be represented or assisted by a lawyer.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Applications for the determination or modification of the maintenance allowance are subject to a fee of RON 20 in accordance with Article 15(e) of Government Emergency Order No 80/2013 on judicial stamp duties. Representation by a lawyer is not mandatory. If the party concerned has insufficient income, he or she may request legal aid to cover the lawyer's fees or other costs of the trial.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

Maintenance is granted according to the needs of the applicant and to the means of the person who is to pay it. In principle, maintenance is provided in kind so as to ensure the necessary means of subsistence. In the majority of cases, however, the courts in practice establish the maintenance allowance in cash terms, either as a fixed amount or as a percentage of the debtor's monthly income. (Article 530 of the Civil Code). By law, a maintenance allowance expressed as a fixed amount is adjusted for inflation on a quarterly basis.

Where maintenance is owed by a parent, it may amount to up to a quarter of that parent's net monthly income for one child, one third for two children and half for three or more children. By law, the amount of maintenance owed to children, combined with any maintenance owed to other persons, may not exceed half of the liable person's net monthly income (Article 529 of the Civil Code).

Where there is any change in the means of the person providing maintenance or the needs of the person receiving it, the family court may, in a new action, increase or reduce the maintenance allowance, or order that its payment be ended, as appropriate (Article 531 of the Civil Code).

**9 How and to whom will the maintenance be paid?**

The maintenance obligation is performed in kind, so as to ensure the necessary means of subsistence and, where appropriate, cover the costs of upbringing, education, vocational training or studies (Article 530 of the Civil Code). If the maintenance obligation is not fulfilled voluntarily, in kind, the family court orders that it be paid as a maintenance allowance in the form of cash. The maintenance allowance may be determined either as a fixed amount or as a percentage of the net monthly income of the person obliged to provide maintenance.

The maintenance allowance is paid in regular instalments on dates agreed between the parties or, in the absence of such agreement, on the dates determined by court decision. The parties may agree or, where there are sound reasons for its doing so, the family court may decide, that the maintenance allowance be paid in advance as a lump sum covering the maintenance needs of the person entitled to the maintenance for a longer period of time or for the entire period for which maintenance is due, provided that the debtor owing the maintenance has the necessary means to meet this obligation (Article 533 of the Civil Code).

A maintenance allowance established for a minor is paid to the minor's legal representative.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

Since in most cases the maintenance allowance is established in cash terms, the most frequent method of enforcement is attachment of earnings (monthly income). Forced sale of the debtor's movable and immovable property is a less frequent method of enforcement.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

As regards the recovery of maintenance, Article 728 of the Code of Civil Procedure provides that only up to half of the debtor's net monthly regular income may be subject to enforcement for amounts owed as maintenance. If there are several recovery procedures involving the same amount, the actually recoverable amount may not exceed half of the debtor's net monthly income, regardless of the nature of the claims.

Where a creditor simultaneously files applications for the seizure of several movable or immovable assets whose value clearly exceeds the claim to be paid, the court of enforcement may restrict enforcement to certain assets (Article 701 of the Code of Civil Procedure).

Enforced recovery shall end, for instance, when the obligation stipulated in the enforcement order has been met in full and the enforcement fees have been paid; where enforcement cannot be carried out or continued due to a lack of seizable assets or the impossibility of selling such assets; or where enforcement has been annulled (Article 702 of the Code of Civil Procedure).

**The right to obtain enforcement is subject to a period of three years**. An appeal against enforced recovery may be lodged with the court of enforcement. The competent court may suspend enforcement until a ruling is issued on the appeal (Article 719 et seq. of the Code of Civil Procedure).

Where an enforcement order or enforcement itself has been annulled, the party concerned is entitled to have enforcement reversed so as to restore the situation preceding it (Article 723 et seq. of the Code of Civil Procedure).

**12 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Not applicable.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Not applicable.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Under Council Regulation (EC) No 4/2009, the Hague Convention of 2007 or the New York Convention of 1956, an applicant may submit his or her application for maintenance through the Romanian Ministry of Justice if the debtor resides in an EU Member State that is a contracting party to the Hague Convention of 2007 or the New York Convention of 1956.

**14.2 If so, how can that authority or private organisation be contacted?**

Romanian Ministry of Justice

Strada Apolodor 17, Sector 5, Bucharest 050741

Directorate for International Law and Judicial Cooperation (Direcția Drept Internațional și Cooperare Judiciară)

fax +40372041079 sau +40372041084, email ddit@just.ro

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

No; the applicant must contact the transmitting Central Authority in his or her country, designated pursuant to Council Regulation (EC) No 4/2009, the 2007 Hague Convention or the 1956 New York Convention.

The transmitting Central Authority of the debtor's country may subsequently contact Romania's receiving Central Authority:

the Romanian Ministry of Justice, for applications filed under Council Regulation (EC) No 4/2009 and the Hague Convention of 2007, or

the Bucharest Bar Association (Baroul București), for applications filed under the New York Convention of 1956.

The application is then submitted to the competent court.

A debtor abroad can address a request directly, in person or through a lawyer, to the Romanian court having jurisdiction at the place where the defendant's or the debtor's domicile is located.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

A debtor applicant abroad can address a request directly, in person or through a lawyer, to the Romanian court having jurisdiction at the place where the defendant's or debtor's domicile is located. The contact details of the competent Romanian court can be found on the courts portal https://portal.just.ro/SitePages/acasa.aspx on the basis of the place where the defendant's or debtor's domicile is located.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes; pursuant to Article 2612 of the Romanian Civil Code, the law applicable to maintenance obligations is determined under European Union law, i.e. in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Not applicable.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

*Pursuant to Law No 36/2012 on certain measures necessary for applying certain regulations and decisions of the Council of the European Union and instruments of private international law in the field of maintenance obligations*, after receiving an application for maintenance or specific measures, the Ministry of Justice forwards it for settlement to the competent authority or body possessing the personal data, to the competent local bar association, to the Chamber of Judicial Enforcement Officers or, where applicable, to the competent court.

In the case of applications submitted through the Central Authority, pursuant to Article 46 of the Regulation, free and full legal aid may be granted to claimants of maintenance obligations who have not yet reached the age of 18 or who are continuing their studies, but not beyond the age of 21, and to claimants of maintenance obligations who are vulnerable persons.

The Ministry of Justice transmits applications received from abroad directly to the competent local bar association. The dean of the bar association issues as a matter of urgency a mandatory and ex officio decision designating a lawyer. The designated lawyer applies for the granting of legal aid, including in the form of payment of the judicial enforcement officer’s fee.

Subsequently, after obtaining an enforcement order, the designated lawyer requests the court to grant legal aid in the form of payment of the judicial enforcement officer’s fee. The lawyer submits the recovery request, the enforcement order and the decision of the dean of the bar association to the competent local judicial enforcement officer.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Romania has adopted *Law No 36/2012 on certain measures necessary for applying certain regulations and decisions of the Council of the European Union and instruments of private international law in the field of maintenance obligations.*

The Ministry of Justice has been designated as Romania's transmitting Central Authority, which transmits the applications provided for in Articles 53 and 56 of the Regulation. On receiving the requisite supporting documents from a creditor or debtor, the Ministry of Justice fills in Part A of the application and may assist the creditor or the debtor in completing Part B.

The Ministry of Justice is the requested Central Authority designated to receive applications for specific measures and for maintenance. On receiving applications, it sends them for settlement to the competent authority or body possessing the personal data, the competent local bar association, the Chamber of Judicial Enforcement Officers or, where applicable, the competent court.

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## Family maintenance - Slovenia

**1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Maintenance is an institution of family law based on one of the fundamental principles of family law, the principle of mutual assistance among family members, i.e. the principle of family solidarity. Maintenance allowances are generally paid voluntarily, primarily because of the personal ties between family members, but they may also be enforced through the courts.

In Slovenia, the term maintenance is used to refer to the maintenance of (former) spouses, children and parents. It means maintenance and support, as well as maintenance and support payments, which a court grants as a specific amount. It therefore covers everything that a person is legally obliged to devote to the living needs of their children or spouse. The term may also be used for the upkeep of parents who do not have sufficient funds to support themselves and whose children are therefore obliged to support them. The term can also refer to maintenance payments as monetary amounts allocated for maintenance.

Parents are obliged to support their **children**. (Article 183 of the Family Code (*Družinski zakonik*))

Adult children are obliged within their capacities to support their **parents** if the latter do not have sufficient means of support and are unable to acquire such means, but only for as long as the parents supported them. Adult children are not obliged to support a parent who failed to fulfil their maintenance obligations to that child without justification. (Article 185 of the Family Code)

Spouses or extramarital partners are obliged to support their spouse's or extramarital partner's children who live with them, unless that or another parent is capable of supporting the child.
This obligation ceases upon the cessation of the marriage or extramarital union with the mother or father of the child, unless the marriage or extramarital union ceases due to the death of the child's mother or father. In that event the surviving spouse or extramarital partner is obliged to support the child of their deceased spouse or extramarital partner only if they lived with the child at the time the marriage or extramarital union was terminated. (Article 187 of the Family Code)
A **spouse** who has no means of support and is unemployed through no fault of their own may demand support from their spouse to the extent they are capable of providing. (Article 62 of the Family Code)
An **unsupported spouse** who has no means of support and is unemployed through no fault of their own may demand maintenance from the other spouse in divorce proceedings, and also in a separate lawsuit, which they must file within one year of the date that the divorce becomes final. (Article 100 of the Family Code)

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Parents are obliged to support their children until **adulthood**, such that in accordance with their abilities they provide the living conditions necessary for the child's development.
Parents are also obliged to maintain a child who is enrolled in secondary school education after they reach adulthood, if they are engaged in regular education and are not employed, and if they are not registered as unemployed, i.e. until the first completion of secondary school studies or completion of the highest level of general or vocational education that can be obtained under the regulations on secondary education. The maintenance obligation ends when the child reaches the age of 26.
Parents are obliged to maintain a child who is enrolled in upper secondary vocational education if they are engaged in regular education and are not employed, and if they are not registered as unemployed, i.e. until the first completion of upper secondary vocational education in accordance with the provisions of the law governing upper secondary vocational education.
Parents are obliged to maintain a child who is enrolled in higher education if they are engaged in regular education and are not employed, and if they are not registered as unemployed, i.e. until the first completion of undergraduate studies or a Master's programme or integrated Master's programme in accordance with the provisions of the law governing higher education. If the study programme attended by the child lasts more than four years, the maintenance obligation is extended by the amount of time by which the study programme exceeds those four years.
The maintenance obligation ends when the child **reaches the age of 26**.
Parents are obliged to support children who have entered a marriage or are co-habiting in an extramarital union only if their spouse or extramarital partner is unable to support them.
Where parents do not maintain a child in their household, they must contribute a monthly maintenance payment to maintain the child. (Article 183 of the Family Code)

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

For a minor child, the Family Code provides that parents who do not live together or who intend to separate, and parents who live together, are to come to an agreement on the maintenance of the children they have together. If the parents fail to reach an agreement on the matter themselves, a social services centre *(center za socialno delo*) is to assist them in reaching an agreement. They may also request mediation. If the parents fail to reach an agreement on the maintenance of the children they have together, the matter is decided by a court. (Article 140 of the Family Code)
Proceedings for deciding on the maintenance of a child are commenced at the proposal of one or both parents, a child's guardian, a child who has reached the age of 15, provided the child is capable of understanding the meaning and legal consequences of their actions, or a social services centre. (Article 102 of the Non-Litigious Civil Procedure Act (*Zakon o nepravdnem postopku*)) When the parents agree on the maintenance of a child, they may also propose that a court settlement be signed. If the court establishes that the agreement is not in the child's interests, it rejects the proposal.
The Family Code provides that the recipient and the liable party may sign an agreement on the maintenance that the parents are obliged to pay an adult child in the form of an enforceable notarial record. (Article 192 of the Family Code) In the case of a judicial decision, the Non-Litigious Civil Procedure Act provides that the procedure for safeguarding the child's interests as laid down in the Non-Litigious Civil Procedure Act is to be applied to the procedure on the maintenance of an adult child for as long as a maintenance obligation exists under the Family Code.
A **spouse who has no means of support** and is unemployed through no fault of their own has the right to request maintenance from the other spouse in divorce proceedings, as well as by means of a special **action** that must be filed within one year of final termination of the marriage. (Article 100 of the Family Code)
Before filing an action or a proposal for divorce on the basis of an agreement, the spouses attend prior counselling at a social services centre, unless they have no children together over whom they exercise parental responsibility; one of the spouses is mentally incompetent; one of the spouses is of unknown residence or whereabouts; one or both of the spouses live abroad. If the spouses establish during the prior counselling that the marriage is no longer endurable for at least one of them, the official at the social services centre explains the mediation procedure and its purpose to them. With the consent of the spouses, the social services centre may arrange for prior counselling to be followed by a mediation procedure. The spouses may also take part in a mediation process provided by other providers. (Articles 200 and 202 of the Family Code)
The spouses may reach an agreement on maintenance in the event of divorce in the form of an enforceable notarial record drawn up upon marriage, during the marriage or upon divorce. A maintenance agreement of this type, particularly an agreement on termination of the right to maintenance, must not jeopardise the interests of the child. (Article 101 of the Family Code)
If maintenance is requested at the same time as divorce or the annulment of a marriage, the action is regarded as a proposal in non-litigious civil proceedings. In these cases, the Non-Litigious Civil Procedure Act is applied to the determination of maintenance, as stated in Article 217 of that act, or else maintenance is requested in a lawsuit filed in a civil procedure upon fulfilment of the conditions referred to above (Article 100 of the Family Code).
Regarding the content of a proposal in a matrimonial dispute (which includes a decision on maintenance, if requested at the same time as divorce or the annulment of a marriage), the Non-Litigious Civil Procedure Act provides that a proposal in a matrimonial dispute must also contain a specific request on which the court is to decide. A record from the social services centre on attendance at prior counselling must be enclosed with the proposal to terminate a marriage, if the Family Code provides that an applicant has to attend prior counselling before proceedings commence. (Article 82 of the Non-Litigious Civil Procedure Act)
In the case of a lawsuit filed in a civil procedure, that lawsuit must include a specific request setting out the main subject of the case and the ancillary claims, the facts supporting the plaintiff's request, evidence substantiating those facts, and other data that every application is obliged to contain (Article 180 of the Civil Procedure Act (*Zakon o pravdnem postopku*)). Applications must be comprehensible and must include everything required for the judicial hearing. In particular they must include: a reference to the court, the names and permanent or temporary residence or place of establishment of the parties, the names of the legal representatives or agents, if any, the subject of the dispute and the content of the statement. The applicant must sign the application, unless this

is impossible due to the form of the application. The applicant's original signature is deemed to be their handwritten signature or their electronic signature (which is equivalent to a handwritten signature). If an applicant does not know how to write or is unable to provide a signature, they furnish the application with a fingerprint instead of a signature. If the court doubts the authenticity of an application, it may issue a decision ordering that an application be furnished with a certified signature. No appeal may be made against this decision. If the statement includes any request, the party must state in the application the facts to which they refer, and evidence where required. (Article 105 of the Civil Procedure Act)

A district court (*okrožno sodišče*) decides in the first instance in non-litigious civil proceedings on maintenance between parents and children and on maintenance requested upon divorce or the annulment of a marriage, and in a civil procedure on maintenance between spouses upon divorce or the annulment of a marriage. (Article 10 of the Non-Litigious Civil Procedure Act, Article 32 of the Civil Procedure Act)

In non-litigious civil proceedings and a civil procedure, court fees are paid in accordance with the Court Fees Act (*Zakon o sodnih taksah*).

**Court fees** must be paid upon filing a lawsuit. Court fees must be paid no later than by a deadline determined by the court in the order for payment of the court fees. (Article 105a of the Civil Procedure Act)

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

Requests for maintenance are submitted by the child's **legal representative**. Minor children are represented by their parents. If the child has been placed in foster care, the request is submitted by the child's guardian.

Proceedings for deciding on the maintenance of a child are commenced at the proposal of one or both parents, a child's guardian, a child who has reached the age of 15, provided the child is capable of understanding the meaning and legal consequences of their actions, or a social services centre. The court may also commence proceedings to decide on child maintenance *ex officio.* (Article 102 of the Non-Litigious Civil Procedure Act)

The court is to enable children who have reached the age of 15 and are able to understand the meaning and legal consequences of their actions to carry out their procedural actions independently as participants in proceedings. The child's legal representative may carry out actions in proceedings only until the child states that they will carry out those actions themselves. Children under the age of 15 or whom the court rules are not able to understand the meaning and legal consequences of their actions are represented by a legal representative. If the interests of the child and their legal representative conflict, the court assigns the child a special ('collision') guardian (*kolizijski skrbnik*). (Article 45 of the Non-Litigious Civil Procedure Act)

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

A district court decides in the first instance in non-litigious civil proceedings on maintenance between parents and children and on maintenance requested upon divorce or the annulment of a marriage, and in a civil procedure on maintenance between spouses upon divorce or the annulment of a marriage. (Article 10 of the Non-Litigious Civil Procedure Act, Article 32 of the Civil Procedure Act)

General **territorial jurisdiction** in non-litigious civil proceedings: Territorial jurisdiction is held by the court covering the area in which the person against whom the proposal has been filed has permanent residence or their place of establishment. When a court commences a procedure *ex officio*, territorial jurisdiction is held by the court covering the area in which the person in relation to whom the procedure is being conducted has permanent residence. If the participant does not have permanent residence in Slovenia, territorial jurisdiction is determined in line with their place of temporary residence. If in addition to permanent residence the participant also has temporary residence elsewhere and it can be assumed, owing to the circumstances, that they will live there for an extended period of time, the court covering the area in which they have temporary residence also has territorial jurisdiction. (Article 11 of the Non-Litigious Civil Procedure Act)

Special territorial jurisdiction in non-litigious civil proceedings: In proceedings to regulate relations between parents and children (including decisions on maintenance), the court covering the area in which the child has permanent residence also has territorial jurisdiction. If in addition to permanent residence the child also has temporary residence elsewhere and it can be assumed, owing to the circumstances, that they will live there for an extended period of time, the court covering the area in which they have temporary residence also has jurisdiction. If in proceedings regarding legal maintenance with an international element a court in Slovenia has jurisdiction because the applicant is a child with permanent residence in Slovenia, the court covering the area in which the applicant has permanent residence has territorial jurisdiction. (Article 13 of the Non-Litigious Civil Procedure Act)

General territorial jurisdiction in a civil procedure: The court covering the area in which the defendant has their permanent residence has general territorial jurisdiction. If a court in Slovenia has jurisdiction because the defendant has temporary residence in Slovenia, the court covering the area in which the defendant has temporary residence has general territorial jurisdiction. If in addition to their permanent residence the defendant also has temporary residence elsewhere and it can be assumed, owing to the circumstances, that they will live there for an extended period of time, the court covering the area in which the defendant has temporary residence also has general territorial jurisdiction. (Article 47 of the Civil Procedure Act)

Special territorial jurisdiction in a civil procedure: The court covering the area in which the defendant has their permanent residence has general territorial jurisdiction. If in a dispute over legal maintenance a court in Slovenia has jurisdiction because the defendant has property in Slovenia from which maintenance could be paid, the court covering the area in which that property lies has territorial jurisdiction. (Article 50 of the Civil Procedure Act)

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

Parties may carry out legal actions in person or via a proxy. In proceedings before a district court, the proxy may only be a lawyer or other person who has passed the state bar examination. (Articles 86 and 87 of the Civil Procedure Act)

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Yes, **court fees** must be paid upon the filing of a proposal or lawsuit. (Article 39 of the Non-Litigious Civil Procedure Act, Article 105a of the Civil Procedure Act)

In disputes over the right to legal maintenance or claims for individual amounts of legal maintenance, the court fees payable are assessed on the basis of the value of the matter at issue, calculated such that **three months' contributions are added together**, unless maintenance for a shorter period of time is requested. (Article 23 of the Court Fees Act)

However, if maintenance is sought as part of child custody proceedings, the court fee to be paid is a fixed sum of EUR 45 (heading 1212 of the schedule of fees under the Court Fees Act).

Yes, legal aid is available in order to cover the costs of the proceedings. The president of the district court decides on the allocation of legal aid. (Article 2 of the Legal Aid Act (*Zakon o brezplačni pravni pomoči*))

Waiving, deferment or payment by instalments of court fees must be requested separately, such request being submitted to the court handling the main proceedings (Article 12 of the Court Fees Act).

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

Maintenance is determined with due regard for the needs of the claimant and the material and earning capacities of the liable party. When calculating the maintenance due to a child, the court must act in the child's interests, setting a level that is adequate to ensure the child's successful physical and mental

development. The maintenance must cover the child's living expenses, in particular the costs of accommodation, food, clothing, footwear, care and protection, education, schooling, recreation, amusement and other specific needs. (Articles 189 and 190 of the Family Code)
Maintenance is set as a monthly sum paid in advance, and may be claimed from the moment a maintenance suit or proposal is filed. (Article 196 of the Family Code)
The courts may, at the request or proposal of the recipient or liable party, increase, decrease or remove a maintenance requirement determined on the basis of an enforcement instrument if there is a change in the recipient's needs or the capacities of the liable party on the basis of which the maintenance was determined. If the parents agree on an increase or reduction in the child's maintenance determined by means of an enforcement instrument, they may request that a court settlement be signed. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. Any increase, reduction or removal of the maintenance to be paid by parents to an adult child or by an adult child to parents may be agreed between the recipient and the liable party in the form of an enforceable notarial record. (Article 197 of the Family Code)
The maintenance set by the enforcement instrument is adjusted once a year in line with the consumer price index in Slovenia. The adjustment is carried out in January using the cumulative rise in consumer prices from the month in which the maintenance was most recently determined or adjusted. The adjustment factor for maintenance is to be published in the Official Gazette of the Republic of Slovenia (*Uradni list Republike Slovenije*) by the minister responsible for families. The social services centre informs the recipient and liable party of each adjustment and the new amount of maintenance in writing. This notice from the social services centre, together with the court settlement, the final court decision or the enforceable notarial record, constitutes an enforcement instrument.
If the recipient is not in regular education after the age of 18 in the year in which the maintenance is adjusted, the social services centre is not required to notify the recipient and liable party of the adjustment in writing. After they reach the age of 18, the recipient must submit a certificate of enrolment to the social services centre within 30 days of acquiring pupil or student status, or inform the centre where they are involved in regular education. If the beneficiary fails to act in accordance with the preceding sentence, the social services centre does not adjust maintenance in that year. After a child reaches adulthood, the liable party may check with the social services centre to ascertain whether the child has pupil or student status. If the beneficiary does not have pupil or student status, the liable party is not obliged to pay maintenance, regardless of any notice of maintenance adjustment issued prior to the loss of pupil or student status. (Article 198 of the Family Code)

**9 How and to whom will the maintenance be paid?**

Child support is usually deposited on the bank account of the child's legal representative. Maintenance for adults is deposited on their bank accounts. How and to whom maintenance is paid is decided by the court.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

If a person liable to pay maintenance **fails to fulfil their obligation to pay maintenance voluntarily** in accordance with the enforcement instrument (judgment, court order, enforceable notarial record, together with a notice of adjustment of maintenance), the **recipient may submit an enforcement proposal to the court** in accordance with the provisions of the Enforcement and Securing of Claims Act (*Zakon o izvršbi in zavarovanju*) in order to achieve the fulfilment of obligations.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

The information is available via the e-justice portal: Procedure for enforcing court decisions

**12 Is there an organisation or an authority which can help me to recover maintenance?**

In procedures for acquiring/arranging maintenance, initial information about maintenance can be obtained from any social services centre.
District courts have subject-matter jurisdiction to determine maintenance. Parties to proceedings may apply for legal aid in the form of representation by counsel and an exemption from the payment of the costs of proceedings.
If the debtor fails to pay maintenance, a minor's legal representative or an adult maintenance recipient themselves may file an enforcement claim with the competent local court (*okrajno sodišče*). Assistance with completing the enforcement claim can be obtained from social services centres, local courts, lawyers and the Public Scholarship, Development, Disability and Maintenance Fund (*Javni štipendijski, razvojni, invalidski in preživninski sklad Republike Slovenije*).
The Slovenian Supreme Court (*Vrhovno sodišče*) has published the revised forms for making maintenance claims, along with instructions on how to complete them, in the *Sodnikov informator* journal. These serve to assist users to make enforcement claims, and are available on the website of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (*Ministrstvo za delo, družino, socialne zadeve in enake možnosti*):
https://www.gov.si/teme/zaupanje-otroka-v-varstvo-in-vzgojo-dolocitev-stikov-in-prezivnine/

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

If the debtor fails to pay maintenance, the child's legal representative or the adult maintenance recipient may claim a maintenance payment from the Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia, but only on the basis of a final and enforceable court decision or settlement setting out the maintenance amount, and on condition that the legal representative has either unsuccessfully attempted to enforce the payment of maintenance themselves or issued a duly completed claim for enforcing maintenance abroad.
The right to compensatory maintenance is held by children who are not yet 18 years of age, and by children between 18 and 26 years of age if they are engaged in regular education and are not employed or registered as unemployed and:
are citizens of Slovenia with permanent residence in Slovenia;
are foreign citizens with permanent residence in Slovenia, if so decreed in an international treaty or under conditions of reciprocity.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Yes. Help in enforcing maintenance decisions is provided by the Public Scholarship, Development, Disability and Maintenance Fund, designated as the central authority under 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. The Public Scholarship, Development, Disability and Maintenance Fund has also been designated as the central authority under the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, and as the transmitting and receiving agency under the United Nations Convention on the Recovery Abroad of Maintenance.

**14.2 If so, how can that authority or private organisation be contacted?**

The contact details are:
Javni štipendijski, razvojni, invalidski in preživninski sklad Republike Slovenije (Public Scholarship, Development, Disability and Maintenance Fund)
Dunajska cesta 20
1000 Ljubljana
Tel: + 386 1 4720 990

Fax: + 386 1 4345 899
Email: jpsklad@jps-rs.si
Website: http://www.srips-rs.si/

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

No. Under Article 55 of Regulation (EC) No 4/2009, applications for maintenance enforcement must be made through the central authority of the Member State where the applicant resides, after which that central authority forwards the application to the central authority of Slovenia, i.e. the Public Scholarship, Development, Disability and Maintenance Fund.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

The Regulation does not provide for direct contacts between an applicant residing abroad and the Public Scholarship, Development, Disability and Maintenance Fund as the central authority.

The central authority of the applicant's Member State of residence handles communication. The central authority of the applicant's Member State of residence provides every assistance in submitting a correctly and duly completed application for the enforcement of maintenance in Slovenia, and forwards the application, with any annexes, to the Public Scholarship, Development, Disability and Maintenance Fund, which reviews the application, requests any additional information or corrections if necessary, and represents the applicant in enforcement proceedings before courts and other bodies in Slovenia.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

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**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

Legal aid is available in order to cover the costs of the proceedings. The president of the district court decides on the allocation of legal aid. (Article 2 of the Legal Aid Act)

Legal aid can be approved for legal advice, legal counsel and other legal services determined by law, for all forms of judicial protection before all courts of general competence and specialised courts in Slovenia, before the Slovenian Constitutional Court (*Ustavno sodišče*), and before all bodies, institutions and persons in Slovenia competent for extra-judicial settlement of disputes, and as waiving of the payment of the costs of the judicial procedure. (Article 7 of the Legal Aid Act)

Beneficiaries under this Act are: 1. citizens of Slovenia; 2. foreign citizens with permanent or temporary residence permits in Slovenia, and persons without citizenship (stateless persons) lawfully residing in Slovenia; 3. other foreign citizens under conditions of reciprocity or under conditions and in cases defined in international treaties binding on Slovenia; 4. non-governmental organisations and associations that operate on a non-profit basis and in the public interest, and that are entered in the corresponding register in accordance with the applicable legislation, in disputes connected with the performance of activities in the public interest or with the intention for which they were established; 5. other persons for whom the law or an international treaty binding on Slovenia prescribes an entitlement to legal aid. (Article 10 of the Legal Aid Act)

A person entitled to legal aid may request legal aid at any stage of the proceedings. In deciding on requests for legal aid, the applicant's financial status is established, as are other conditions defined in this act. (Article 11 of the Legal Aid Act)

Under Article 46 of the Regulation, such a waiver applies in all cases where the beneficiary's claim arises from Article 56 of the Regulation and relates to maintenance that results from the relationship between parents and children and is due to persons under the age of 21.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

No measures have been adopted to implement Article 51 of Council Regulation (EC) No 4/2009.

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## Family maintenance - Slovakia

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Maintenance allowances and obligations flow directly from Act No 36/2005 governing the family and amending certain other laws ('the Family Act'). Under the Family Act, maintenance obligations take the following forms:

a) the maintenance obligation of parents towards their children;
b) the maintenance obligation of children towards their parents;
c) the maintenance obligation between other relatives;
d) the maintenance obligation between spouses;
e) alimony;

f) support paid to an unmarried mother to cover maintenance and certain expenses.
Theoretically, the concept of maintenance, in its broader sense, places family-law relations of an economic nature among areas specific to proprietary relations in family law. Their dependence on the existence of a personal family-law relationship is particularly evident here.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

The maintenance obligation of parents towards their children is a legal duty **that applies as long as the children are unable to support themselves**. The fact that a child has completed compulsory schooling does not necessarily mean that it has acquired the capacity to provide for its own needs. Whether or not parents have a continued maintenance obligation towards their children will depend on the child's abilities, opportunities and financial situation throughout the child's training for a future job, e.g. as a full-time university student. **Majority has no legal bearing on the duration of a maintenance obligation. The point in time when a child becomes legally 'able to support itself' varies from case to case,** each considered individually, on its own merits, by a court. The ability to support oneself is interpreted in a broad sense as meaning the ability to provide for all needs or relevant costs of living on one's own (i.e. using one's own money). This ability must be sustainable. Occasional income cannot be regarded as establishing the ability to provide for one's own needs.
In practice, courts rely on the fact that the parental maintenance obligation is elastic because blood relations are not limited in time and therefore this obligation may be renewed if, for instance, children decide to study later or if they are not admitted to university straight after secondary school. According to case law – bearing in mind the current dearth of employment opportunities for fresh graduates and school-leavers – additional courses subsequently enabling them to find a job in a field other than that which they had been studying for up to that point can also be treated as a child's continued vocational training.
When a child starts earning a regular source of income from employment, a business venture, etc., the task of judging when a maintenance obligation has dissipated is made simpler. Given the situation on the labour market, the existence of many more forms of study and educational institutions, the need to learn languages for a child to be able to put his or her training into practice, retraining courses, continuing education, study stays abroad, and the need to become better qualified, it will be more difficult for the courts to establish the moment when a child is able to fend for itself. Some of these forms (of continuing training) may be warranted, in particular, if the paying parent has significant means. Parallel to this, the child's interests, reflected in his or her abilities and talents, must be taken into account so that the child picks up the right skills for future employment. Yet it is legitimate to demand that these skills be implemented early on so as to prevent parental maintenance abuses steeped simply in an aversion to work (manifested, for example, in children wilfully losing their jobs).
**The age limit of 18 years takes on importance when we view it from a procedural perspective. Until a child's majority, the court can open proceedings for maintenance on its own motion; past that age, proceedings can only be initiated by application.** An application, filed by an adult child, may be directed at one or both parents and must state the amount of the maintenance allowance sought and the time from which it is to be paid. The court must remain strictly within the confines of the adult child's application for maintenance to be adjusted, since such cases are not childcare proceedings under Section 111 et seq. of the Code of Non-contentious Civil Procedure.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

If the party entitled and the party liable fail to reach agreement, a district court with due jurisdiction decides on the maintenance obligation. Except in cases involving a maintenance obligation of parents towards their minor children, the court commences proceedings further to an application brought by the party entitled (the applicant) against the party liable (the defendant). Proceedings on a minor child's maintenance may be initiated by the court on its own motion (ex officio) (Section 23 of the Code of Non-contentious Civil Procedure) because in these cases the court has a duty of care to minors.
Anyone may act before a court autonomously as a party to the proceedings (i.e. they have procedural standing) insofar as they have the capacity to acquire rights and assume obligations through their own acts. Natural persons not having the capacity to stand before a court on their own (e.g. minor children) must be represented by their legal guardian (Section 68 of the Code of Contentious Civil Procedure).
Besides statutory representation, the CSP and the Code of Non-contentious Civil Procedure also make a distinction between the representation of parties to proceedings under a power of attorney and representation further to a court decision.
A minor child cannot be represented by either parent in cases concerning legal acts which could prompt a conflict between the interests of the parents and those of the minor child or between the interests of multiple minor children represented by the same parent. In this situation, the court appoints what is known as a guardian ad litem to represent the child during proceedings or during a particular legal act.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

See the answer to question 3.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

Territorial jurisdiction is defined by Section 3 of the Code of Non-contentious Civil Procedure. Jurisdiction in rem is governed by Section 12 of the Code of Contentious Civil Procedure. District courts always have territorial jurisdiction in the first instance. Generally, the court in whose jurisdiction the defendant resides (i.e. the person against whom the application is directed) is competent, i.e. the rule of territorial jurisdiction based on the defendant's ordinary court applies. The ordinary court having jurisdiction over the defendant is the court in whose jurisdiction the person resides or, if they are not resident, the court in whose jurisdiction the person is staying. The Code of Non-contentious Civil Procedure explicitly provides for special cases where this rule is not observed.
**The court in whose jurisdiction a minor child resides by arrangement of the parents or under a court order, or where the child resides on other relevant grounds, is competent to consider a maintenance application** (this is called exclusive territorial jurisdiction under Section 112(1) of the Code of Non-contentious Civil Procedure).

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

Cf. the answers to questions 3 and 4.
An applicant (beneficiary) who has procedural standing may lodge an application instituting proceedings directly, i.e. without being represented, to the court with due jurisdiction.
Section 127 of the Code of Contentious Civil Procedure lays down the general particulars of an application instituting proceedings: the recipient court, the person making the application, the case it concerns and what the applicant is seeking, and a signature.
Apart from the general particulars, an application instituting proceedings must provide certain specific information as set out in Sections 25 and 26 of the Code of Non-contentious Civil Procedure. An application instituting maintenance proceedings must also specify the amount of the maintenance allowance sought and the time from which it is to be paid.
Applications may be lodged in writing, either in paper form or electronically. An electronic application submitted without authorisation pursuant to the relevant special legislation must in addition be sent in paper form or electronically with authorisation pursuant to the relevant special legislation. Applications in maintenance cases may also be made orally and recorded in the minutes.

The requisite number of copies of an application, including enclosures, must be submitted so that the court keeps one original counterpart and each party receives one original copy, including enclosures as necessary. If a party fails to provide the required number of copies and enclosures, the court makes copies at the party's expense.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Fees to be paid for the individual acts or procedures conducted by courts are governed by Act of the Slovak National Council No 71/1992 on court fees and copies of entries in the criminal records. The fees are charged by reference to a list of court fees. This legislation also provides for exemptions from court fees based on personal circumstances or on the subject matter.

In the context of maintenance, the following provisions are important:

Proceedings relating to judicial child protection are among those exempted based on the subject matter. This means that proceedings relating to maintenance claims for minor children are also exempted from court fees.

Under the personal circumstances criterion, court fee exemptions apply to:

applicants in proceedings for a maintenance order, proceedings for an increase in a maintenance allowance, as well as proceedings for payment of late charges on maintenance allowances and proceedings for the recognition or declaration of the enforceability of a foreign maintenance order;

unmarried mothers in proceedings for a maintenance allowance and for payment of certain expenses related to pregnancy and childbirth.

Item 8 on the List of Court Fees explicitly quotes the fees for proceedings relating to maintenance claims between spouses and to alimony claims:

| **Item 8** | |
|---|---|
| a) for applications seeking maintenance between spouses, alimony, and maintenance claims between other relatives, and for applications seeking an increase in a maintenance allowance | 2% of the price of the subject matter, no less than EUR 16.50 |
| b) for applications seeking a decrease or cancellation of maintenance between spouses, alimony or maintenance claims between other relatives | 2% of the price of the subject matter of the proceedings, no less than EUR 16.50 |

Where the list of fees does not stipulate a particular rate and the case falls neither within the personal circumstances category nor the subject matter category, the fees referred to under Item 1 of the List of Court Fees apply:

| **Item 1** | |
|---|---|
| For an application instituting proceedings, unless a specific rate is stipulated, | |
| a) of the price (payment) of the subject matter of the proceedings or of the value of the subject matter of the dispute | 6%, no less than EUR 16.50, no more than EUR 16 596.50, in commercial cases no more than EUR 33 193.50 |

The court may, further to an application, award exemption from court fees if this is justified by the party's circumstances (Section 254 of the Code of Contentious Civil Procedure). The circumstances of the parties must be documented with a view to the court's decision on the application.

The mechanism for legal aid provision and the method of such provision by the Legal Aid Centre to natural persons who, suffering hardship, cannot use legal services in order to duly exercise and defend their rights, and the extent to which legal aid is provided, are governed by Act No 327/2005 on the provision of legal aid to persons suffering hardship and amending Act No 586/2003 on the legal professions and amending Act No 455/1991 on licensed trades (the Trading Act), as amended, as amended by Act No 8/2005. The above law also sets out the criteria for the provision of legal aid, the procedure to be followed by natural persons and by the competent authorities in the proceedings relating to legal aid applications and the institutional organisation of the provision of legal aid.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

In Slovakia, the law does not specify the particular amount of a maintenance allowance.

In family matters, courts must always consider each case individually, based on the particular circumstances, and therefore the law does not specify any particular amount of maintenance. Indeed, in family matters, more than in any other area, a piece of legislation cannot neatly and explicitly package up the full diversity of life.

According to Section 75(1) of the Family Act, in determining the amount of maintenance the court takes into account **the legitimate needs of the beneficiary**, as well as **the abilities, opportunities and financial situation of the party liable**. The court also considers the abilities, opportunities and financial situation of the party liable in cases where, for no material reason, the party liable quits decent employment or a good job, or relinquishes a steady source of income; it also takes into account any unreasonable financial risks taken by the party liable.

As to parent-child maintenance, both parents must contribute to the maintenance of their children according to their abilities, opportunities and financial situation. A child has the right to share a parent's living standard. In determining the amount of maintenance allowances to be paid, the court takes into account which parent personally takes care of the child and to what extent. Where parents share custody of a minor child, the court also takes into account the time of residence with each parent in determining the amount of maintenance allowances or, alternatively, the court may rule that as long as the child is in alternating residence with both parents no maintenance is to be granted.

Section 62(3) of the Family Act sets a **minimum maintenance allowance** (currently EUR 27.13): *Regardless of ability, opportunities and financial circumstances, each parent is obliged to meet the minimum maintenance obligation, which is 30% of the subsistence minimum for a dependent minor child or a dependent child as laid down in the relevant law.*

Under Section 78 of the Family Act, **arrangements and court orders in respect of maintenance claims may be revised if circumstances change**. Apart from the maintenance allowance for a minor child (cf. Section 121 of the Code of Non-contentious Civil Procedure), maintenance orders may only be altered or cancelled upon an application. If a maintenance allowance for a minor child is cancelled or reduced retroactively for a certain past period, any allowance spent is not refunded. When circumstances change, the cost of living is always taken into account.

**9 How and to whom will the maintenance be paid?**

Maintenance is generally paid by the party liable (debtor) to the party entitled (creditor).

According to Section 76 of the Family Act, maintenance allowances are to be paid in regular, recurrent amounts due a month in advance. Mutual claims may only be offset against maintenance claims by agreement. Claims involving maintenance allowances for minor children cannot be offset. If the party liable is late in the payment of a court-ordered maintenance allowance, the beneficiary is entitled to seek payment of late charges on the overdue amount under civil law provisions. Any payment made towards maintenance is first allocated to the principal amount and then, once the principal amount is covered in full, it is allocated to the late charges.

With maintenance allowances for minor children, the courts have established case law requiring the non-custody parent to pay maintenance allowances to the parent who takes care of the child personally and to do so by a set date each month.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

Bailiffs are used to enforce maintenance payments. Enforcement proceedings commence upon a motion for enforcement. The procedure is governed by Act of the National Council of the Slovak Republic No 233/1995 on court officers and distraint activities (Execution Procedure Act) and amending certain other laws, as amended Most often, maintenance liabilities are recovered by attachment of earnings or other income of the party liable. If an enforcement order is handed down that imposes the obligation to pay a sum of money, additional options apart from the attachment of earnings or other income are available to recover overdue maintenance allowances: a third party debt order, sale of movable property, sale of securities, sale of immovable property, sale of a business, or driving licence suspension order. The last mentioned option is particularly important in the context of maintenance recovery. The bailiff can order the suspension of the driving licence of anyone who does not comply with a court's maintenance order. The bailiff also delivers enforcement orders for driving licence suspension to the competent police body. Once the grounds for enforcement have been resolved, the bailiff immediately issues an order to reinstate the driving licence.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Section 77 of the Family Act provides that there is no prescription period for the recovery of maintenance claims. However, maintenance may only be granted from the date on which court proceedings are opened. Maintenance allowances for a minor child can be ordered for no more than three years retroactively from the date of the commencement of the proceedings, but reasons meriting special consideration must exist. Limitation periods apply to entitlement to various recurring maintenance payments.

Section 101 of the Civil Code (Act No 40/1964) sets out the limitation periods as follows:

*(1) Where the entitlement was granted by a final decision of a court or other body, it shall lapse ten years from the date on which it was meant to be complied with. Where the entitlement was acknowledged by the party liable in writing as regards the grounds and the amount involved, it shall lapse ten years from the date on which acknowledgement was given; if the acknowledgement specified a compliance deadline, the limitation period shall run from the expiry of that deadline.*

(2) The same limitation period applies to the individual payments specified in the decision or the acknowledgement of the entitlement; the limitation period for the individual payments runs from the date on which they fall due. Where the whole debt becomes due as a result of failure to meet one of the payments, the ten-year period of limitation shall run from the due date of the payment not made.

*(3) The period of limitation for interest and recurring payments shall be three years; however, in the case of entitlements covered by a final judgment or acknowledged in writing, this limitation period shall apply only to interest and recurring payments that have fallen due after the judgment became final or after the acknowledgement.*

**12 Is there an organisation or an authority which can help me to recover maintenance?**

There is no special authority intended to provide 'assistance' or help to recover maintenance in national cases.

In cases involving a foreign country, the Centre for the International Legal Protection of Children and Youth (*Centrum pre medzinárodnoprávnu ochranu detí a mládeže*) can help. The Centre helps to recover maintenance in cases where the person liable to pay maintenance for a child lives abroad while the beneficiary lives in Slovakia or vice versa, i.e. if the beneficiary lives abroad and is recovering maintenance from a party liable whose habitual place of residence is in Slovakia.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

Act No 201/2008 on substitute maintenance and amending Act No 36/2005 on the family and amending certain laws, within the meaning of Decision No 615 /2006 of the Constitutional Court of the Slovak Republic (*Ústavný súd*), provides for a mechanism whereby substitute maintenance can be advanced by the State (the Office for labour, social affairs and family – *úrad práce, sociálnych vecí a rodiny*) to beneficiaries. Substitute maintenance contributes to the maintenance of a dependent child in cases where the party liable fails to pay as ordered by a final court decision or under a court-approved arrangement.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Yes.

**14.2 If so, how can that authority or private organisation be contacted?**

The Centre for the International Legal Protection of Children and Youth was set up by the Slovak Ministry of Labour, Social Affairs and the Family, which directly manages it as a state-funded organisation providing legal protection to children and young people where a foreign country is involved. The Centre covers the whole of Slovakia and has been in operation since 1 February 1993.

Under Act No 195/1998 on social assistance, as amended, the Centre has been classified as a governmental social assistance authority since 1 July 1998.

Contact details/Address:

Špitálska 8, P. O. BOX 57, 814 99 Bratislava,

E-mail: cipc@cipc.gov.sk, info@cipc.gov.sk,

Tel.: +421 2 2046 3208, +421 2 2046 3248,

Fax: + 421 2 2046 3258, non-stop telephone line (emergency only) + 421 915 405 954.

In the Slovak Republic, the Centre is a central authority under 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 (the 'Maintenance Regulation') and under the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

You cannot address a request from abroad directly to the Centre. A person seeking payment of maintenance who resides in another country must contact the competent authorities in that country, who then refer the request to the Slovak Centre.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

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**16 Is this Member State bound by the 2007 Hague Protocol?**

The Slovak Republic is bound by the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

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**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

In cross-border maintenance cases, the provision of legal aid depends on the application of Article 44(3) of the Maintenance Regulation. The Central Authority for Slovakia is the **Centre for International Legal Protection of Children and Youth**. It provides its services free of charge, making it possible for the parties to ordinary proceedings determining or altering maintenance obligations in Slovakia to conduct these proceedings without needing legal aid.

Where the proceedings cannot be conducted without legal aid, it is provided free of charge for persons under the age of 21 in accordance with Article 46 of the Regulation. This legal aid is granted by the **Legal Aid Centre** in accordance with Act No 327/2005 governing the provision of legal aid to persons in financial need (the Legal Aid Act), as amended.
Where Article 46 of the Regulation does not apply, legal aid is granted free of charge under the Legal Aid Act to applicants who meet the criteria laid down therein.
Applicants who do not meet the criteria have to pay the court fees in accordance with Act No 71/1992 governing court fees and fees for extracts from the criminal register. Proceedings in cases involving the reciprocal maintenance obligation between parents and children are exempt from the court fees laid down in this Act. Applicants in proceedings where maintenance is to be determined or increased are also personally exempted from paying the court fees. In addition, the parties to the proceedings pay the trial costs incurred by themselves and those of their representatives. Shared costs are paid by the parties in proportion to their involvement in the case and the proceedings. In the case of maintenance for an adult, the court awards the successful applicant the costs necessary for the proper enforcement or protection of the right against the losing party.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The Central Authority within the meaning of Article 49(1) of the Maintenance Regulation is the Centre for International Legal Protection of Children and Youth, which was set up on 1 February 1993. As the Centre had already been operating as the transmitting authority and receiving authority for recovering maintenance under international agreements (in particular, the Convention on the Recovery Abroad of Maintenance of 20 June 1956) prior to the Maintenance Regulation, there was no need for special measures to be taken for the central authority tasks laid down in Article 51 of that Regulation. When the Maintenance Regulation took effect, the Centre only needed to make some minor organisational changes concerning personnel.

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## Family maintenance - Finland

**1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

The (Finnish) Act on Child Maintenance (704/1975) lays down provisions on child maintenance.
According to this Act, a child has a right to adequate maintenance. This means addressing the material and psychological needs of children at their various stages of development and covering the costs of their care and education, as required, as well as other related expenses.
A child has a right to receive maintenance from its parents, who are responsible for this, according to their ability. If a parent neglects his or her role in maintenance in respect of a child, or if a child does not live permanently with his or her parent, that parent may be ordered to pay a maintenance allowance in respect of the child.
Parents have no right to receive maintenance from their child.
The (Finnish) Marriage Act (234/1929) lays down provisions on maintenance payable to a spouse.
In a marriage, each spouse has a role to play in the family’s common household expenses and the maintenance of the other spouse, according to their ability. If a spouse neglects his or her obligation to pay maintenance or if spouses live separately, one may be ordered to pay maintenance to the other.
Following a divorce, one party is obliged to pay maintenance to his or her former spouse if the parties have entered into an agreement regarding this and the local authority social services department has endorsed it. If a couple divorces, a court may also order one party to pay maintenance to the party requiring it. In Finnish case-law, however, it is rare for a party to be ordered to pay maintenance to their spouse. In general, after a divorce the parties support themselves.
A spouse’s entitlement to receive maintenance from their previous partner ends if the party receiving maintenance remarries.
What is enacted in the law concerning spouses also applies to the relevant parties in a registered partnership.
Parties have no obligation to pay maintenance in respect of one another in the context of any other personal relationships.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

A child’s right to receive maintenance from its parents ends when the child reaches the age of 18.
Parents are also liable for the costs of their children’s education after children have reached the age of 18 if that is considered reasonable. This is, however, a rare phenomenon in Finnish case-law.
See also question number 1.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

Both the party entitled to maintenance and the party with an obligation to pay maintenance may contact the Municipal Board of Social Welfare, which can assist in drawing up an agreement relating to a maintenance allowance. An agreement approved by the Municipal Board of Social Welfare is directly enforceable, as with a court judgment.

Section 8(a) of the Child Maintenance Act states that, even if a child or a party with an obligation to pay maintenance has no domicile in Finland, the Municipal Board of Social Welfare may endorse a maintenance agreement if a court in Finland has jurisdiction in the case within the meaning of Articles 3 or 6 of Council Regulation (EC) No 4/2009 and if the parties have agreed that the laws of Finland should govern the obligation regarding maintenance in accordance with Article 7 of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.
If a case of maintenance is in dispute, the party entitled to maintenance or the party with an obligation to pay maintenance may bring the matter before a court by means of an application for a summons.
Spouses may draw up an informal written agreement on maintenance and ask the local authority social services department to endorse it. If requested to, the authority will help the parties draw up the agreement.
A maintenance case involving two spouses may be brought before a court by means of an application for a summons.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

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**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

Council Regulation (EC) No 4/2009 and its rules on jurisdiction apply to cross-border cases relating to maintenance.
In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:
the court for the place where the defendant is habitually resident, or
the court for the place where the creditor is habitually resident, or
the court which, according to its own law, has jurisdiction to determine the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or
the court which, according to its own law, has jurisdiction to determine parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.
If the case has no cross-border connection, the rules on jurisdiction can be found in the (Finnish) Code of Judicial Procedure (4/1734).
Under Chapter 10, Section 1 of the Code of Judicial Procedure, the venue for the investigation of a claim against a natural person is the District Court in whose jurisdiction that person has his or her domicile or permanent place of residence. Under Chapter 10, Section 9, a claim for maintenance may also be investigated by the District Court in whose jurisdiction the party claiming or receiving maintenance has his or her domicile or permanent place of residence.
Where a case concerns divorce or the end of cohabitation, there may be claims regarding an agreement on maintenance, child custody or access rights or any other claim connected with the divorce or end of cohabitation. In such a case, the court with jurisdiction is the divorce court.
If a claim for maintenance is made in connection with proceedings relating to custody of a child or establishment of paternity, the lawsuit regarding maintenance may also be dealt with by the court where proceedings are to be brought in respect of the first-mentioned matter.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

An applicant has the right to bring proceedings without an assistant (attorney). However, a party in legal proceedings usually needs expert assistance, so it is advisable to use an assistant or attorney.
In cross-border maintenance cases, the parties concerned may refer matters to a central authority.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Bringing a case to court is subject to a fee. The court charges the fee, and the amount concerned (EUR *86-200*) depends on the court and the need to consider the case. (Fees charged by District Courts).
The (Finnish) Legal Aid Act and (Finnish) Act on the Central Authority in Finland in Certain International Matters Relating to Maintenance (1076/2010) lay down provisions on an applicant's entitlement to legal aid. An applicant living abroad may also receive legal aid in maintenance cases on the basis of a special reciprocal agreement. There are such agreements between Finland and certain states in the United States and certain provinces in Canada.
More information on legal aid in Finland can be found here.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

The Act on Child Maintenance (704/1975) lays down provisions on child maintenance payable in respect of a child.
As a general rule, maintenance allowances are payable in cash monthly in advance, unless otherwise agreed or stipulated. As an exception, maintenance may be ordered to be paid in a lump sum, or paid in the form of moveable or immovable assets.
In Finland, the amount of maintenance payable in respect of a child is not determined according to a table. Each case is decided individually. Under Section 1 of the Act, a child has a right to adequate maintenance. This means addressing the material and psychological needs of children at their various stages of development and covering the costs of their care and education, as required, as well as other related costs. Under Section 2, parents are responsible for the maintenance of their children, according to their ability. When assessing this ability, account is taken of their age, ability to work, their chances of obtaining gainful employment, the assets and funds they hold and other aspects of their legal responsibility for maintenance. In assessing the extent of the responsibility that parents have for maintenance, account is also taken of the child's ability and opportunities to take responsibility for his/her own maintenance and factors owing to which parents cannot be expected to incur the expenses of child maintenance or the expenses involved are made minimal.
The amount of the maintenance allowance payable is automatically increased periodically in accordance with the rise in the cost of living. Further provisions on the automatic increase are enacted in the (Finnish) Act on the Linking of Certain Maintenance Payments to the Cost of Living Index (583/2008).
The amount for a maintenance allowance and its method of payment can be changed by an agreement or a judgment of a court, if there have been such fundamental changes to the circumstances prevailing when the allowance was approved as to consider the change reasonable, given the situation with respect to the child and the parent paying maintenance.
The Marriage Act lays down provisions on maintenance payable to a spouse. In Finnish case-law, however, it is rare for a party to be ordered to pay maintenance to their spouse. In general, after a divorce the parties support themselves.
A maintenance allowance in the form of cash can be ordered to be paid either indefinitely or until such time as the fixed period for payment, as contained in an agreement, decision, or judgment, expires. However, maintenance can be ordered to be paid as a lump sum, if the personal finances of the party with the obligation to pay maintenance and other factors justify this. Maintenance can also be ordered to be paid in the form of moveable or immovable assets.
To reflect the rise in the cost of living, the maintenance allowance payable is periodically increased automatically. Further provisions on the automatic increase are enacted in the (Finnish) Act on the Linking of Certain Maintenance Payments to the Cost of Living Index (583/2008).
A decision or judgment given by a court, or an agreement entered into by the two marriage partners, may be amended if that is considered to be justified owing to altered circumstances. A decision, judgment or agreement in which maintenance has been ordered to be paid as a lump sum, however, may not be

changed after the allowance has been paid. An agreement concerning maintenance entered into by the two marriage partners may be changed if the agreement is held to be untenable. Under the law, the obligation to pay maintenance on a periodic basis lapses if the party entitled to maintenance remarries.

**9 How and to whom will the maintenance be paid?**

A maintenance allowance in respect of a child is paid to the child's guardian (into their bank account).

A maintenance allowance in respect of a spouse is paid to the spouse her/himself (into their bank account).

As a general rule, maintenance allowances are payable in cash monthly in advance, unless otherwise agreed or stipulated. As an exception, maintenance may be ordered to be paid in a lump sum, or paid in the form of moveable or immovable assets.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

A party entitled to a maintenance allowance or, where certain conditions are met, the Social Insurance Institution of Finland (Kela) (see section 12), has the right to take action to enforce payment of maintenance, if the party with the obligation to pay maintenance does not pay an allowance ordered by a court or contained in an agreement.

A party entitled to a maintenance allowance may request a bailiff to enforce a maintenance agreement or decision, as provided in the (Finnish) Enforcement Act. The local authority social services department can also provide advice in matters relating to family law.

If a spouse with an obligation to pay maintenance fails to do so in breach of an agreement endorsed by the local authority social services department or a decision or judgment given by a court, the party entitled to maintenance may request a bailiff to enforce the agreement or decision/judgment, as provided in the Enforcement Act.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Enforcement and the rules on debtor protection

Where a case is referred to an enforcement agency, the debtor is first sent a notice of proceedings and a payment reminder. Normally, the debtor must be given an opportunity to make payment in response to a reminder.

If a debtor fails to pay in response to a reminder or does not voluntarily contact an enforcement agency regarding payment, the enforcement agency will embark on an investigation of the debtor's income and assets by consulting registered data.

Action taken to investigate a debtor's income and assets and any subsequent investigations are tightly regulated.

In most cases, the debtor's income and bank account funds are seized. In general, one-third of the debtor's salary, pension, unemployment benefit or maternity allowance may be seized. Holiday bonuses, fringe benefits, commissions, fees, honoraria and other pay awards also count as income. The amount seized is calculated from net earnings. Social assistance and welfare payments such as housing and child benefit are not eligible. As an alternative to seizing income on a periodic basis, a payment plan may also be agreed.

Enforcement actions and payment plans always take into account the portion of the debtor's assets that is protected by law: in other words, the sum left over to enable him or her to survive. This protected portion is revised to correspond to the National Pensions Index. The agreed protected portions with example cases can be found here.

A debtor has the right of appeal, although the debt recovery process will not cease unless a court orders this separately.

**Statute of limitation with regard to a maintenance debt**

Section 16(c) of the Act on Child Maintenance states that a maintenance allowance paid periodically and any interest on arrears calculated with respect to it must be recovered from the party with the obligation to pay maintenance within a period of five years from the start of the year following that in which the payment falls due. Otherwise, the entitlement to payment is forfeited. Maintenance paid as a lump sum and any interest on arrears with respect to it must, on the other hand, be recovered within a period of five years from the time when the allowance falls due and, at the latest, within a period of five years following the time when the recipient of the allowance has come of age.

Similarly, the Social Insurance Institution must recover any child maintenance benefit it pays from the party with an obligation to pay maintenance within a period of five years from the start of the year following that in which the maintenance allowance, for which the benefit has been paid owing to default, falls due. Otherwise, the entitlement to payment is forfeited (Child Maintenance Benefit Act 580/2008, Section 22).

**12 Is there an organisation or an authority which can help me to recover maintenance?**

If a party with an obligation to pay maintenance fails to pay maintenance as agreed, the entitled party must request a bailiff to recover the outstanding sum. The enforcement agency will provide guidance on how to make such a request. The local authority social services department can also provide advice in matters relating to family law. See sections 13 and 14. An enforcement agency will not charge for recovery of maintenance payments. Further details on the procedure can be found here.

If a party entitled to maintenance receives child maintenance benefit from the Social Insurance Institution of Finland (Kela) owing to a failure to pay the maintenance allowance, that party may not take action to recover maintenance payments. If Kela is paying a child maintenance benefit, it will assume the right to the maintenance allowance, equivalent to the portion it has paid in child maintenance benefit (*right of recourse*) (Child Maintenance Act 580/2008, Section 19). If the agreed maintenance allowance is a larger sum than the child maintenance benefit paid by Kela, and the party with the obligation to pay maintenance fails to pay maintenance, Kela will pay the full child maintenance benefit and recover the unpaid maintenance allowance in its entirety from that party. If the outcome is successful, Kela will pay the difference between the maintenance allowance and the child maintenance benefit to the parent having custody of the child following recovery of the debt.

In cross-border cases concerning the recovery of maintenance payments, the parties concerned may refer matters to the Ministry of Justice in its capacity as central authority.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

If a party with an obligation to pay maintenance fails to pay what is owing according to a maintenance agreement or a decision in respect of a child residing in Finland, the child has a right to receive child maintenance benefit from the Social Insurance Institution of Finland (Kela). Information on the size of child maintenance benefits paid by Kela is available on its website ((Act on the Linking of Certain Maintenance Payments to the Cost of Living Index (583 /2008)).

It is also possible to obtain child maintenance benefit if a child maintenance allowance has been established under a maintenance agreement or in a decision at a sum smaller than the amount for child maintenance benefit payable currently, owing to financial hardship on the part of the spouse with the obligation to pay maintenance. In such cases, Kela will pay the difference between the child maintenance benefit and the maintenance allowance. In addition, the child will receive from the debtor the allowance specified in a maintenance agreement or a decision. If the party with the obligation to pay maintenance is unable to pay the allowance, the sum involved may also be set at EUR 0. In such cases, Kela will pay the child maintenance benefit in full.

The Child Maintenance Act (580/2008) lays down provisions on the requirements governing receipt of child maintenance benefit. Child maintenance benefit is granted on application from a child's guardian or legal representative, or someone having bona fide care of the child. A child who has reached the age of 15 may also apply if he or she lives independently. Payment of child maintenance benefit makes no difference to the obligation of the party concerned to pay

the maintenance allowance in full. When Kela decides to pay child maintenance benefit owing to a failure to pay the maintenance allowance, it will have the right – and be under an obligation – to recover all outstanding maintenance payments from the party concerned.
A spouse entitled to maintenance may receive a maintenance allowance only from his or her spouse.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

The Ministry of Justice is the central authority in Finland with respect to international arrangements for the recovery of maintenance (see, for example, Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, and the Hague Convention of 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance). The duties of the central authority extend to the receipt of applications for maintenance, forwarding them to the competent authorities, and bringing proceedings relating to applications.
If a party with an obligation to pay maintenance resides in a country where the international arrangements for the recovery of maintenance are in effect, the applicant may contact the Ministry of Justice for recovery of maintenance in that foreign country. If necessary, applicants are encouraged to contact their local legal aid office or a private solicitor (for example, regarding how to prepare the application documents). The local authority social services department can also provide advice in matters relating to family law.
If a party entitled to maintenance is being paid child maintenance benefit by Kela owing to a failure to pay the maintenance allowance, Kela will assume the right to the maintenance allowance, equivalent to the portion it has paid in child maintenance benefit (*right of recourse*) (Child Maintenance Act 580/2008, Section 19). Kela will, in such a case, recover the outstanding maintenance payments on behalf of the party entitled to the allowance, who in such circumstances may not take action to recover the debt. If the agreed maintenance allowance is a larger sum than the benefit paid by Kela, Kela will pay the full child maintenance benefit and recover the unpaid maintenance allowance in its entirety from the party with the obligation to pay maintenance. If the outcome is successful, Kela will pay the difference between the maintenance allowance and the child maintenance benefit to the parent having custody of the child following recovery of the debt.
A spouse entitled to maintenance may receive a maintenance allowance only from his or her spouse. A spouse entitled to maintenance may receive a maintenance allowance only from his or her spouse. A spouse entitled to maintenance may contact a bailiff and try to find out whether a spouse resident abroad has assets in Finland that could be seized under the Enforcement Act. They may also ask the Ministry of Justice for assistance in the recovery of maintenance abroad.

**14.2 If so, how can that authority or private organisation be contacted?**

**The contact details for the Ministry of Justice (central authority) are:**

Address: Ministry of Justice
PO BOX 25,
00023 Government
Phone: +358 29516001
Fax: +358 9 1606 7524
Email: maintenance.ca@om.fi
The Ministry of Justice website can be found here.
The contact details for the Social Insurance Institution of Finland (Kela) are:
Address: Kansaneläkelaitos,
Perintäkeskus
PO BOX 50,
00601 Helsinki
Phone: +358 20 634 4940 (individuals), +358 20 634 4942 (authorities)
Fax +358 20 635 3330
Email address: maintenance@kela.fi
The Kela website can be found here.
The websites of legal aid offices can be found here.
The contact details for local authority social services departments can be found in the telephone directory or by calling Finnish directory enquiry services. When calling, it needs to be stated what local authority social services department is required. Finland has around 320 local authorities (municipalities).

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

An applicant in another country is best served by contacting the competent central authority in that country, which will then contact the Finnish Ministry of Justice. (See sections 13, 14 and 15).
An applicant may also contact the Finnish authorities directly.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

See the replies to question 15.
If a party entitled to maintenance (a child or spouse) and the party with the obligation to pay it live in separate countries, the Ministry of Justice may assist either party in the matter as well as the competent authorities in the foreign country. The applicant (the eligible child or spouse) may ask the Ministry to ensure that a judgment, decision or approved agreement on maintenance given/made in a foreign country is enforced in Finland and that maintenance obtained through enforcement by distraint is paid into a bank account indicated by the eligible party. The Ministry of Justice cannot, however, pay maintenance on behalf of the debtor.
Various international arrangements in place mean that functions of the Ministry of Justice as the central authority also extend, for example, to assistance in discovering the whereabouts of a debtor or creditor, the acquisition of information regarding the income of a debtor or creditor, and assistance in establishing parentage, if required in the recovery of maintenance.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

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**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

If the Ministry of Justice or a person authorised by it, by virtue of its functions as a central authority within the framework of the various international arrangements in place, represents an applicant before a court or another authority in Finland, the applicant is provided legal aid for free, notwithstanding the provisions on the prerequisites for legal aid elsewhere in the law.
This applies to matters that concern:
establishing that a maintenance decision issued in a foreign state is to be recognised or may be enforced in Finland;
establishment of paternity;
ordering a parent to pay maintenance to his or her child;
a change to a maintenance allowance agreed for a child if the applicant is a child or the child's representative.
What is enacted in paragraphs 2-4, however, only applies if the child is under 21 years of age when proceedings are brought.
If the Ministry of Justice or a person authorised by it, by virtue of its task as a central authority within the framework of the various international arrangements in place, represents an applicant in the enforcement of a maintenance decision, the applicant is not liable for any costs of enforcement.
In other cases, an applicant may seek public legal aid. Legal aid means that the applicant may obtain the services of an assistant (attorney) to resolve a legal matter entirely or partly funded by the state. Legal aid covers all legal matters. Generally, it is restricted only to cases heard in Finland. It may be applied for at any of the Public Legal Aid Offices in the country, regardless of where the applicant resides. It is most practical to file the application at the nearest office. Applicants must present a breakdown of their earnings, expenditure claimed, and assets and debts. There also needs to be a description of the case for which legal aid is being sought and details of any legal expenses insurance held by the applicant. Further information here.
The Finnish enforcement authorities do not charge for maintenance enforcement.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The Ministry of Justice has been designated the central authority, pursuant to Article 51 of the Regulation. There is also additional national legislation on its functions in the Act on the Central Authority in Finland in Certain International Matters Relating to Maintenance (1076/2010).

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## Family maintenance - Sweden

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Swedish law provides for a maintenance obligation for children, spouses and divorced spouses. The provisions concerning maintenance obligations between spouses are applicable also to registered partners.

Children

Parents are responsible for their children's maintenance, according to what is reasonable having regard to the needs of the child and the combined financial capacity of the parents. A parent who does not have any capacity to contribute to his or her child's support is not liable to provide maintenance.
A parent who neither has custody of the child nor lives permanently with the child shall discharge his or her maintenance obligation by paying a maintenance allowance. A parent who has joint custody with the other parent may also be liable to pay a maintenance allowance. This is the case if the child permanently lives with only the other parent, regardless of whether that person is single or is living with a new partner.
A person who is living permanently with another person's child and with a parent who has custody of the child is also responsible for maintenance of that child if the parties are married to each other or have a child or children together. A step-parent is, however, responsible for maintenance only to the extent that the child cannot obtain maintenance from the other parent, i.e. not the one with whom the step-parent is living.
Maintenance payments are determined by a court ruling or by an agreement. An agreement will be valid only if it is in writing and witnessed by two persons. The parties can also agree that future maintenance payments will be made as a lump sum or for periods of more than three months. If the child is under 18 years of age, such an agreement must be approved by the relevant social welfare committee (*socialnämnden*).
Maintenance in the form of a lump sum must be paid to the social welfare committee if the child is under the age of 18. The sum paid to the committee must be used to purchase from an insurance company an annuity for the child appropriate to the maintenance obligation, unless the agreement prevents this or the committee considers that the sum can be used in some other appropriate manner for the maintenance of the child.
Maintenance is paid in advance for each calendar month. However, the court may decide on another method of payment if there are specific reasons for doing so.
A claim to establish maintenance payments cannot be granted retroactively for a period more than three years before the date on which the claim was brought, unless the person liable for maintenance agrees.
Claims for established maintenance allowance become unenforceable (time-barred) five years after the due date of payment.

Couples

During the marriage, each of the spouses is responsible for their own maintenance and that of their spouse. If one of the spouses cannot maintain him or herself completely, the other spouse is liable to contribute to the spouse's personal needs.

After a divorce, the principle is that each spouse is responsible for his or her own support. However, if one of the spouses needs money for his or her maintenance for a transitional period, he or she is entitled to an allowance from the other spouse according to what is reasonable, having regard to the capacity of that spouse and other circumstances. In exceptional cases, a spouse can obtain maintenance for a longer period.
If the spouses cannot agree on the issue of maintenance, the dispute can be settled in court.
After a divorce, the maintenance allowance will be paid in regular instalments. However, the court may order the amount to be paid as a lump sum if there are specific reasons for doing so, e.g. if the spouse has to make a pension payment.
A claim to establish maintenance payments cannot be granted retroactively for a period more than three years before the date on which the claim was brought, unless the person liable for maintenance agrees.
Claims for established maintenance allowance become unenforceable (time-barred) three years after the due date of payment.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

The parents' maintenance obligation generally ceases when the child reaches the age of 18. However, if the child has not yet completed secondary education, the maintenance obligation will continue to apply while the child remains at school, until his or her 21st birthday at the latest. School here means compulsory secondary education or upper secondary school or other comparable general education.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

There is no specific authority in Sweden that determines or helps to determine maintenance. Maintenance payments may be determined either by a court ruling or by an agreement. If the parties fail to reach agreement, the petitioner therefore has to apply to a district court (*tingsrätt*) and submit an application for a summons.

If you have any questions concerning international maintenance, you can contact the Swedish Social Insurance Agency (*Försäkringskassan*), which is the central authority in Sweden.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

A parent who has custody is entitled to claim maintenance on behalf of a minor child. If a special guardian has been appointed, he or she is also entitled to act on behalf of the child.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

The rules on jurisdiction can be found in the Parental Code (*föräldrabalken*), the Marriage Code (*äktenskapsbalken*) and the Code of Judicial Procedure (*rättegångsbalken*). Information can also be obtained from a district court.
Child maintenance proceedings are heard in the place where the defendant has his or her habitual residence. If no other court is competent, the case will be heard by the Stockholm District Court.
Questions about maintenance payments to a spouse may be dealt with in the divorce hearing. Matrimonial cases are heard by the district court in the place where one of the spouses has his or her habitual residence. If neither of them has their habitual residence in Sweden, the case will be heard by the Stockholm District Court. If proceedings relating to maintenance for the spouse are not started in connection with the matrimonial case, the general rules on jurisdiction in Chapter 10 of the Code of Judicial Procedure will apply.
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 (the Maintenance Regulation) lays down rules on jurisdiction in in cross-border cases.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

No. Anyone wishing to bring a case to court must apply to the competent district court for a summons.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

The court proceedings themselves are free of charge in Sweden, except for an application fee, which is currently SEK 900. If the petitioner engages a legal adviser or lawyer, this will entail costs. The submission of evidence, e.g. through witnesses, may also involve costs.
It is impossible to estimate costs, as they will vary from one case to another.
Legal aid can be granted under certain conditions. Particular grounds are required for legal aid to be granted in a maintenance case. Such grounds may exist, for instance, if the circumstances are more complicated than usual and call for more extensive legal assistance.
The granting of legal aid means that the petitioner is assigned a legal counsel and that the State pays that person's fee if the petitioner cannot afford it. Legal aid also includes the costs involved in submitting evidence, investigation, interpretation and translation and the costs of an intermediary. Those who have been granted legal aid are also exempted from certain fees payable to courts and the Swedish Enforcement Authority (*Kronofogdemyndigheten*).
Those who are not Swedish citizens and are not or have not been resident in the country can be granted legal aid for cases to be brought in Sweden, if there are particular reasons for doing so. If the matter is to be examined abroad, legal aid can only be granted if the person is resident in Sweden. Citizens of all EU Member States have the same right to legal aid as Swedish citizens. Citizens of certain other countries also have the same rights, under a special provision that requires there to be an agreement on reciprocal treatment in force.
For cross-border disputes within the EU, there are some specific provisions on legal aid, notably to ensure that free legal aid can be provided for certain cases under the Maintenance Regulation concerning a parent's maintenance to a child under the age of 21.
Information about legal aid can be obtained from the Swedish Legal Aid Authority (*Rättshjälpsmyndigheten*) ( http://www.rattshjalp.se ).

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

Assessment of the amount of child maintenance is based on legal criteria. A parent who is liable for maintenance is entitled to retain from his or her post-tax income a certain amount for his or her own maintenance. This includes the cost of housing, which is calculated separately at a level deemed to be reasonable. Other living costs are calculated on the basis of an index-linked standard amount. The parent in question can also reserve an amount for maintenance of the spouse with whom he or she lives, if there are specific reasons for doing so. Finally, the parent liable for maintenance can reserve an amount for the maintenance of any children living at home. How much of the remaining amount should go to the maintenance allowance depends, among other things, on the needs of the child and the other parent's capacity to bear the costs of the child's maintenance. To some extent, deductions can be made for expenses for contact.
There are no legal criteria for the maintenance allowance for a spouse. However, some of the assessment criteria mentioned above serve as guidelines.
Maintenance payments are index-linked to ensure that they retain their original value. The index reflects the changes in the price base amount according to the Social Insurance Code (*socialförsäkringsbalken*), unless a different provision on indexation is referenced in the court ruling or agreement setting the maintenance allowance. The Social Insurance Agency decides each year whether the maintenance allowance is to be altered and, if so, by what percentage. The alteration, usually on 1 February, applies to maintenance allowance determined before 1 November of the preceding year.

If the parties agree, they may amend a fixed maintenance payment by signing a new agreement. This applies even if the maintenance allowance was previously determined by a court ruling. A ruling or agreement can also be adjusted by the court, if there are grounds for doing so in view of a change in circumstances. For the period prior to the commencement of proceedings, an adjustment contested by either party may only take the form of a reduction or cancellation of payments not yet made. Specific grounds are required for a court to increase the allowance for a divorced spouse as a result of changed circumstances.
The court may also alter a maintenance agreement if the agreement is unreasonable in view of the circumstances under which the agreement was made and the general circumstances. However, repayment of maintenance already received may only be ordered if there are specific reasons for doing so.
If the amount of a periodic maintenance payment for a child has been unchanged for six years, apart from index-linked adjustments, the court may review the maintenance payment for the future, without needing to invoke any specific grounds.

**9 How and to whom will the maintenance be paid?**

Maintenance must be paid to the person to whom it is owed. If the person owed maintenance is a child under the age of 18, the allowance will be paid to the parent who has custody and lives with the child.
Maintenance in the form of a lump sum must be paid to the social welfare committee if the child is under the age of 18.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

An application for enforcement may be submitted to the Enforcement Authority. The application is made orally or in writing. The enforcement order must be filed with the application. A written undertaking, witnessed by two persons, relating to maintenance allowance in accordance with the Marriage Code or the Parental Code can be enforced as a final judgment that has the force of law.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

In the case of child maintenance, a claim to determine maintenance may not be granted for a period longer than three years prior to the date on which the claim was brought, unless the debtor so agrees. Claims for established maintenance allowance become unenforceable (time-barred) five years after the due date of payment.
In the case of maintenance to a spouse, a claim to determine maintenance may not be granted for a period longer than three years prior to the date on which the claim was brought, unless the debtor so agrees. Claims for established maintenance allowance become unenforceable (time-barred) three years after the due date of payment.
As regards enforcement, there are a number of exemptions from attachment, e.g. clothes and other items intended only for the debtor’s personal use, up to a reasonable value, and certain belongings needed for a home and the care thereof. If the debtor has a family, the items used by the family and the family’s needs are taken into account in determining what is to be exempted from attachment.
Only that part of the debtor’s wages or salary that exceeds what they need for their own subsistence and that of their family may be attached. The part of the debtor’s wages or salary which cannot be attached (*förbehållsbeloppet*) is determined by reference to a standard amount. The standard amount covers all usual living expenses, with the exception of housing costs, which are determined separately and added to the standard amount. The standard amount is established annually by the Enforcement Service.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

In Sweden, the Enforcement Authority provides assistance in recovering maintenance. In cross-border cases, the person entitled to maintenance can obtain administrative assistance from the Social Insurance Agency in applying to the Enforcement Authority for recovery.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

For children whose parents have separated, the Social Insurance Agency may provide maintenance support totalling SEK 1 673 per month until the month in which the child reaches the age of 7, SEK 1 823 per month until the child reaches the age of 15, and SEK 2 223 per month from the month in which the child reaches the age of 15 to the parent who lives and is officially registered with the child. The decision on maintenance support is taken after an application to the Social Insurance Agency, the authority that administers social insurance. Maintenance support is a way for society to ensure that a child whose parents have separated receives a certain level of maintenance even if the parent liable for maintenance fails to fulfil his or her maintenance obligation. The parent liable for maintenance must repay the State, according to his or her income and the total number of children in respect of whom he or she is liable for child maintenance. The obligation to pay is determined by an administrative procedure. If the maintenance allowance is instead paid directly to the parent who lives with the child, the amount of maintenance support paid by the Social Insurance Agency will be reduced accordingly. This is known as supplementary allowance (*utfyllnadsbidrag*).
If the parent liable for maintenance lives abroad, or lives in Sweden but receives remuneration or other income in or from another country, the Social Insurance Agency may instruct the parent who has custody of and lives with the child to take measures to ensure that the maintenance liability is determined. The Social Insurance Agency thus takes over the child’s right to maintenance allowance up to the sum paid out by the Agency as maintenance support.
It is not possible for a spouse to obtain maintenance support from the Social Insurance Agency.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

In cross-border cases, the petitioner may obtain administrative assistance from the Social Insurance Agency. The Social Insurance Agency is the central authority under the EU Maintenance Regulation and the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Hague Convention) as well as the transmitting/receiving agency under the 1956 New York Convention on the Recovery of Maintenance Abroad.

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

See reply to question 14.

**14.2 If so, how can that authority or private organisation be contacted?**

The contact details of the Social Insurance Agency are as follows:
Swedish Social Insurance Agency (*Försäkringskassan*)
PO Box 1164
SE-621 22 Visby
Sweden
Tel.: +46 (771) 17 90 00
Fax: +46 (10) 11 20 411
E-post: centralmyndigheten@forsakringskassan.se
The Social Insurance Agency will take all appropriate measures to facilitate recovery of maintenance. The functions of the Social Insurance Agency as a central authority under the Maintenance Regulation and the 2007 Hague Convention derive respectively from the Regulation and the Convention. Among other things, the Social Insurance Agency must assist persons entitled to maintenance with applications that can be made via the authority, such as an

application to obtain a ruling on maintenance in another State. For further information on help available to applicants, please contact the Social Insurance Agency.

**15 If I am in another country and the debtor is in this Member State:**

Applicants who wish to recover maintenance under the 1956 New York Convention on the Recovery Abroad of Maintenance must apply to the transmitting agency in their home country, which will forward the application to the receiving agency in Sweden (the Social Insurance Agency).

The same applies if the applicant wishes to receive the assistance that can be obtained from central authorities under the Maintenance Regulation or the 2007 Hague Convention, i.e. the applicant must contact the central authority of his home country, which will forward the application to the central authority in Sweden (the Social Insurance Agency).

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

If the person entitled to maintenance wishes to recover maintenance under the 1956 New York Convention on the Recovery of Maintenance Abroad, the Maintenance Regulation or the 2007 Hague Convention, he or she must submit an application to the transmitting agency / central authority in Sweden (the Social Insurance Agency), which will then forward the application to the receiving authority in the country in which you reside and/or have income.

If, as a person liable to pay maintenance, you wish to be assisted with, for example, changing a fixed maintenance allowance, you may contact the central authority in your home country, which will forward the application to the central authority in Sweden (the Social Insurance Agency).

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

See reply to question 16.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes. Sweden is bound by the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations (the Hague Protocol), the provisions of which have applied in the EU since 18 June 2011. The main rule under the Hague Protocol is that the law of the State in which the person entitled to maintenance is habitually resident is applicable. For the sake of the child, in particular, it is possible to apply the law of the country of the court or the law of the country of which both the child and the person liable to pay maintenance are nationals, if application of the law of the country of habitual residence is not in the child's interests. The parties may also reach agreement on which law is to be applicable, but the scope for such agreements is limited in cases of maintenance for children under the age of 18, for example.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

Sweden is bound by the HagProtocol (see reply to question 20).

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

See reply to question 7 on the general conditions for legal aid.

In the case of cross-border disputes within the EU, there are some specific provisions on legal aid. Where the conditions for legal aid laid down in the Maintenance Regulation are met, legal aid will be granted and will be free of charge if the claimant needs legal assistance and that need cannot be met by other means.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

No specific measures have been adopted.

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## Family maintenance - England and Wales

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Parents can pay maintenance for their children or any child of the family to the parent or person with care, either through the court or by using the statutory Child Maintenance system (the administrative system set up by law for England and Wales and Scotland). The statutory Child Maintenance system is made up of three organisations, the Child Maintenance Service (CMS), Child Maintenance Options and the Child Support Agency (CSA). To use the Child Maintenance system, the people involved (parents or person with care and children) must be habitually resident in the United Kingdom.

All applications to the statutory scheme have been managed by the CMS, with parents accessing the Service through Child Maintenance Options. The CSA is being closed down and all cases with an ongoing liability have now ended. Parents with arrears only cases are being contacted to ask if they still want the debt collected, where it may be transferred to the CMS.

Parents can pay maintenance to their children under the age of 18. Upon application a "child" over the age of 18 can receive maintenance from the parent for further education, where they are undergoing training for a trade, vocation or profession or where there are special circumstances ( Children Act 1989 Schedule 1).

Child maintenance can also be paid by parents who live apart from their children using the CMS. The CMS determines maintenance through an administrative rather than a judicial process – if the child is under 16, or is under 20 in full-time education which is not advance education (at school or an equivalent educational establishment), or is under 20 and living with a parent who has registered for Child Benefit for them. It is paid to the receiving parent.

Either parent or the person with care of the child can apply to the CMS. The amount is calculated by the CMS. The weekly payment is made by the paying parent, either directly to the receiving parent (known as Direct Pay) or using the CMS "Collect and Pay" service, for which a fee must be paid (see below).
A divorced spouse can pay maintenance to the other spouse. Maintenance can be paid to either party to the marriage. An ex-civil partner may also have to pay maintenance to the other ex civil partner and to any children of the family.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

See the answer above. No age limit is specified in the Children Act 1989 Schedule 1.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

When parents separate in England and Wales, before they can apply to the CMS they are required to contact Child Maintenance Options for advice and information to help them make an effective arrangement about maintenance for their family. This can either be what is called a "family-based arrangement", which is an arrangement between themselves, or an application to the CMS. Parents cannot access the CMS unless they have first spoken to Child Maintenance Options.
If a parent decides they cannot make a family-based arrangement, they must pay a fee to apply to the CMS. The current fee information is available on the Government website. You may not have to pay a fee if, as the applicant, you are under 19 years of age, a resident of Northern Ireland, or have made a declaration of domestic violence which has been reported to an authority recognised by the CMS. Payment of the fee should provide the applicant with services: a CMS calculation of payments based on the paying parent's income, tracing of the paying parent and managing any variations in the liability. The calculation of the maintenance to be paid is based on a percentage of the paying parent's gross income according to the number of children to be paid for and the liability can either increase or decrease if other factors are taken into account such as paying parents additional income or recognising a shared care arrangement. The CMS does not guarantee that any payments will result from their work.
Once a maintenance assessment has been made, and if both parents agree to pay each other directly through the Direct Pay Service then only the application fee is required. Users of the CMS who want the CMS to make the payment using the Collect and Pay service must pay collection fees. For the paying parent this is an additional 20% on top of their usual child maintenance payment. The receiving parent will have 4% deducted from the amount of child maintenance they receive. The collection fees can be avoided by having a family-based arrangement or using Direct Pay.
The paying parent must also pay a fee to the CMS for enforcement actions by the CMS, which are orders made by the court against the paying parent who has not paid the maintenance due.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

For child maintenance, anyone such as a friend, relative or a legal adviser (e.g. a lawyer in England and Wales) can make an application on behalf of a paying or receiving parent with care of a child. They will need to authorise the person making the application to do so, unless they already have authority, for example a power of attorney. In England and Wales an application cannot be made on behalf of a child as children cannot apply for child maintenance in their own right.
A request in England and Wales for reciprocal enforcement of maintenance can be made on behalf of a child or of a divorced spouse or ex civil partner or on behalf of other persons where the relevant international convention or agreement on the reciprocal enforcement of maintenance so provides.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

For applicants in England and Wales, applications can be made to one of three Maintenance Enforcement Centres, depending on locations, for England (excluding London), London and Wales.
The administrative staff at the court will provide information if a different court needs to be addressed.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

An application for child support maintenance is an administrative process handled by the CMS.
Applicants for the reciprocal enforcement of a maintenance order are not required to have a lawyer to apply to the court for recovery of maintenance under the various international conventions and agreements. The application received from another country will be sent to the Maintenance Enforcement Business Centre for the area in which the respondent resides.
Applicants under the Children Act 1989 Schedule 1 are not required to have a lawyer to apply to the court.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

For recovery of maintenance, legal representation is not usually required and fees are not required in the majority of cases. Where legal representation is required legal help and assistance is available, but is subject to a means and merits test in some cases; the applicant may be required to pay a contribution.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

For the recovery of maintenance, the court can grant an order for child maintenance, spousal maintenance, or child/spousal maintenance. The court can make an order for periodical payments, a lump sum, settlement payments or secured periodical payments. The court or the CMS can in appropriate cases decide that maintenance is to be backdated. Account will be taken of all the circumstances of the individual case in deciding whether to backdate and in assessing the amounts. Application can be made to the court at any time to vary an order for maintenance.
In some circumstances a pension may be used to provide spousal maintenance. Although parties are free to agree their financial arrangements themselves without the need for a court order, where there is sharing of a pension or the transfer of pension funds a court order is required before the pension provider is able to act.

**9 How and to whom will the maintenance be paid?**

The people eligible to receive maintenance are set out at question 1 above.
The Maintenance Payments Business Centre (MPBC), which is part of the England and Wales court service, deals with payments to individuals. The Reciprocal Enforcement of Maintenance Orders (REMO) Section does not deal with payments.
The CMS provides a calculation, collection and payment service. If paying parents are late with payments or do not pay, the CMS will intervene to get money flowing and that they pay any child maintenance arrears they owe quickly. The CMS can use various enforcement methods where necessary.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

For the recovery of maintenance, the court can order payment to be made directly to the court; the court can order a particular method of payment; the court can make an attachment of earnings order; the court can make the orders shown below when applied for by the CMS.
For child maintenance using the CMS, if a paying parent does not pay their child maintenance liability, the CMS will take the necessary action to make sure that they pay the child maintenance due. The CMS has a range of powers it can use. These include taking money direct from earnings and bank accounts and taking court action (enforcement action). If necessary in extreme cases, the court may be asked to take away the paying parent’s passport, driving licence or even send them to prison.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

None for the enforcement of maintenance orders.

The CMS must consider the welfare of any child who may be affected by any decisions of the CMS about how quickly it requires arrears to be paid and how much must be paid each time.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

For child maintenance collected using the child maintenance system, the relevant organisation is the CMS (see above).

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

For child maintenance administered by the CMS, it can only pass on money it receives, where appropriate. It is not able to pay the maintenance, or part of it, itself or in place of the non-resident parent.

The Central Authority for England and Wales (REMO) cannot take responsibility for making payments.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Reciprocal Enforcement of Maintenance Orders (REMO) is the process by which maintenance orders made by United Kingdom courts on behalf of United Kingdom residents can be registered and enforced by courts or other authorities in other countries against people resident abroad.

This is a two-way arrangement governed by international conventions or agreed schemes, which means that foreign maintenance orders in favour of individuals abroad can likewise be registered and enforced by United Kingdom courts against United Kingdom residents.

How to apply -

A United Kingdom resident who wishes to apply to obtain maintenance from a person overseas should approach:

• the Maintenance Enforcement Business Centre responsible for the area in which they live shown at [insert hyperlink for https:www.gov.uk/child-maintenance-if-one-parent-lives-abroad/ex-partner-lives-abroad]

They may apply for their order to be enforced in the country where the payer resides. Procedures also exist to enable an applicant to ask the authorities of another country to create an order for maintenance on their behalf.

There is no need for the applicant to engage a lawyer. MEBC staff will tell the applicant what form to use and will forward the application to the relevant authority, which for England and Wales is the REMO Unit.

The REMO Unit will send it to the foreign authority for registration and enforcement against the person living there.

Applications from outside the United Kingdom must be sent to the REMO Unit by the foreign authority for the country in which the applicant resides. REMO will forward the application to the MEBC with the jurisdiction to deal with the case.

For child maintenance it is only possible for the CMS to make a maintenance calculation where both parents or the receiving parent and the child are habitually resident in the United Kingdom or the paying parent is working outside the UK as a British civil servant, diplomat, member of the armed forces or seconded health worker or is working outside the UK for an employer which is a registered company with its payroll based in the UK. The income from abroad subject to UK taxation of a person habitually resident in the United Kingdom can be taken into account for any child maintenance calculation.

Under the EU Maintenance Regulation 4/2009, the CMS is also able to apply to other EU countries to recover arrears of maintenance.

**14.2 If so, how can that authority or private organisation be contacted?**

The contact addresses for each of the MEBCs are:

**For individuals living in Greater London:**

The Maintenance Enforcement Business Centre – London
Central Family Court
First Avenue House
42-49 High Holborn
London
WC1V 6NP
DX 160010 Kingsway 7
e-mail: MEBC.London@justice.gov.uk

**For individuals living in England outside Greater London**

The Maintenance Enforcement Business Centre – Bury St Edmunds
Triton House
St Andrews Street North
Bury St Edmunds
Suffolk
IP33 1TR
e-mail: MEBC.BSE@justice.gov.uk

**For individuals living in Wales**

The Maintenance Enforcement Business Centre – Wales
Wales Maintenance Business Centre
Port Talbot Justice Centre
Harbourside Way
Port Talbot
SA13 1SB
Telephone: 01656 673 833
e-mail: mebc.wales@justice.gov.uk

The REMO Section can be contacted at:
Reciprocal Enforcement of Maintenance Orders (REMO)
Official Solicitor and Public Trustee
Victory House, 30-34 Kingsway

London
WC2B 6EX
Telephone: 020 3681 2757(within the UK)
+44 20 3681 2757 (international)
e-mail: remo@offsol.gsi.gov.uk
REMO Website

The MEBCs and the REMO Unit cannot give legal advice to applicants or others. However, general procedural guidance can be given. The precise nature of reciprocity available between the United Kingdom and other jurisdictions depends on the convention or agreement to which the other country is a party and the MEBCs can provide advice about how the various conventions may apply to a particular case.

New applicants must first apply to Child Maintenance Options before applying to the Child Maintenance Service . Child Maintenance Options can be contacted on telephone number 0800 0835 130 from within the United Kingdom or by visiting their website.

If you have an existing CSA or CMS case, the contact telephone number is on any letter they have sent you.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

An application can be made through the authority or court which deals with reciprocal enforcement in the foreign jurisdiction where the applicant resides. An application can also be made from another country direct to REMO, to the court or to the MEBC.

For child support maintenance the CMS only has jurisdiction to make a maintenance calculation if the applicant and the child are resident elsewhere in the United Kingdom (that is, Scotland or Northern Ireland).

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

The contact details for REMO, the MEBCs and the CMS are given above. The assistance provided is described above. The circumstances when the CMS can and cannot accept an application are detailed in earlier answers.

**16 Is this Member State bound by the 2007 Hague Protocol?**

The United Kingdom is not bound by the 2007 Hague Protocol and therefore it does not apply in England and Wales.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

The law of England and Wales applies to all cases in England and Wales.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

For recovery of maintenance, legal representation is not usually required and fees are not required in the majority of cases. Where legal representation is required legal help and assistance is available (Chapter V), but is subject to a means and merits test in some cases; the applicant may be required to pay a contribution. As part of legal help, an assessment can be made to decide whether the nature of the case means full legal aid should be applied for.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (SI 1484/2011) support the operation of the Maintenance Regulation 4/2009. Regulation 3 and Schedule 1 designate the Central Authorities for the United Kingdom and set out their role in the transmission of applications. Regulation 4 and Schedule 2 set out which bodies are to provide information to the Central Authorities (including information on the debtor) and provide rules on the proper disclosure of that information by Central Authorities.

Paragraph 18 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 sets out the availability of legal aid in England and Wales in accordance with the Maintenance Regulation.

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## Family maintenance - Northern Ireland

**1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Maintenance can be paid by a parent for their children or any child of the family to any person who is taking care of the child. Maintenance can also be paid to either party to a marriage or civil partnership by the other party.

Parents can pay maintenance for their children or any child of the family to the parent or person with care, either through the court or by using the statutory child maintenance system (the adminstrative system set up by law for Northern Ireland).

The statutory child maintenance system is made up of two organisations, the Child Mainteance Service (CMS), which is part of the Department of Communities, and Child Maintenance Choices. To use the child maintenance system, the people involved (parents or person with care and children) must be habitually resident in the United Kingdom.

Child maintenance can also be paid by parents who live apart from their children using the CMS. The CMS determines maintenance through an adminstrative rather than a judicial process - if the child is under 16, or is under 20 in full-time education which is not advanced education (at school or an equivalent educational establishment), or is under 20 and living with a parent who has registered for Child Benefit for them.
It is paid to the parent or the person with care. Either parent or the person with care can apply to the CMS. The amount is calculated by the CMS. The weekly payment is made by the non-resident parent, either directly to the parent or person with care (known as Direct Pay) or using the CMS "Collect and Pay" service, for which a fee must be paid (see below).
Under the Domestic Proceedings (Northern Ireland) Order 1980, a party to a marriage may apply to the court for an order for financial provision and under the Matrimonial Causes (Northern Ireland) Order 1978, a spouse can apply for financial provision during proceedings for divorce or judicial separation.
The Court can order periodical payments to be made, either to the petitioner or for the benefit of a child. Alternatively, the Court may order that a lump sum is paid.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Under the Child Support (Northern Ireland) Order 1991 a child can benefit from child support maintenance if they are under 16, or is under 20 and attends a course of full-time education which is not advanced education (still at school or an equivalent educational establishment).
Under the Domestic Proceedings (Northern Ireland) Order 1980, the court will not make a financial provision order in favour of a child who has attained the age of 18. However, in some circumstances, provision can be made if there are “special circumstances” or if the child is receiving instructions at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also or will also be in gainful employment.
Under the Matrimonial Causes (Northern Ireland) Order 1978, maintenance is available for a child until he or she attains the age of 16 (or 18 if the child remains in full time education). The Court can extend the payment of maintenance if education is continued beyond the age of 18 or if certain special circumstances exist which require maintenance to be ongoing.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

When parents separate in Northern Ireland, before they can apply to the CMS they are required to contact Child Maintenance Choices for advice and information to help them make an effective arrangement about maintenance for their family. This can either be what is called a "family based arrangement", which is an arrangement between themselves, or an application to the CMS. Parents cannont access the CMS unless they have first spoken to Child Maintenance Choices.
If a parent decides they cannot make a family-based arrangement, the parent can ask the CMS to work out the calculation of payments. The calculation of the maintenance to be paid is based on a percentage of the paying non-resident parent's income according to the number of children to be paid for.
If the parent then wishes the CMS to collect and pass on maintenance payments, they must pay a fee. If parents agree to pay each other directly (Direct Pay) there is no fee. Users of the CMS who want them to make the payment using the Collect and Pay service must pay collection fees. For the non-resident parent this is an additional 20% on top of their usual child maintenance payment. The parent with care will have 4% deducted from the amount of child maintenance they receive. The collection fees can be avoided by having a family-based arrangement or paying by Direct Pay.
The non-resident parent must also pay a fee to the CMS for enforcement actions by them, these are orders made by the court against the non-resident parent who has not paid the maintenance due.
You can apply through the Northern Ireland Central Authority to the court to obtain maintenance if you or your children have an order for maintenance against a person who lives in Northern Ireland or another country or territory that has a reciprocal arrangement with the United Kingdom for maintenance obligations; or wish to commence court proceedings for maintenance in another country or territory that has a reciprocal maintenance arrangement with the United Kingdom.
If you are making your application for enforcement of an existing maintenance order under Regulation (EU) No. 4/2009 you can also make your application directly to the magistrates' court in Northern Ireland.
The main elements of the procedure provide, where applicable, a process to:
register an order in Northern Ireland and enforce it,
register a Northern Ireland Order elsewhere and enforce it,
commence proceedings in Northern Ireland (including applying for a provisional order),
commence proceedings or register an order outside Northern Ireland (including applying for a provisional order).
If you have an existing CMS assessment in Northern Ireland you should first contact CMS to confirm if they can take enforcement proceedings on your behalf in this jurisdiction.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

For child support maintenance, anyone such as a friend, relative or a solicitor can make an application on behalf of a parent or person with care of a child. The parent or person with care will need to authorise them to do so, unless they already have authority such as a power of attorney etc.
In Northern Ireland an application cannot be made on behalf of a child as children cannot apply for child support maintenance in their own right.
A request in Northern Ireland for reciprocal enforcement of maintenance can be made on behalf of another person where the relevant international convention on the reciprocal enforcement of maintenance so provides.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

The relevant court area for bringing cases is determined by reference to three Administrative Court Divisions in Northern Ireland. Cases can be brought in any Administrative Court Division although generally, they are brought in the Division where either party is domiciled. The Central Authority for Northern Ireland can help establish the appropriate Division.
Contact details for local court offices in Northern Ireland are available on the website of the Northern Ireland Courts and Tribunals Service.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

An application for child support maintenance is an admimistrative process handled by the CMS within Northern Ireland and the wider United Kingdom.
Applicants for the reciprocal enforcement of a maintenance order are not required to have a solicitor to apply to the court for recovery of maintenance under the various international conventions and arrangements. The application received from another country will be sent to the location of the family court in the area in which the respondent resides or to the originating court by the Central Authority for Northern Ireland.
Court staff can assist with completing the forms required but cannot offer any legal advice therefore it may be advisable for an applicant to secure the services of a lawyer experienced in family law. The Law Society of Northern Ireland (telephone +44 28 9023 1614) can provide individuals with the names of solicitors who can provide advice and assistance in child support/maintenance cases.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

The administrative process in enforcing or obtaining reciprocal maintenance orders is provided free of charge in Northern Ireland.

However an applicant may incur legal costs if either party is using a lawyer and the case goes to court. Costs will, of course, vary and an applicant may apply for legal aid to cover legal advice and assistance, giving particulars of their resources, i.e. claimant's disposable income and disposable capital. The rules on legal aid are governed by the Access to Justice (Northen Ireland) Order 2003. The typical costs and expenses involved could be:
Standard legal fees.
Any irrecoverable court costs.
Enforcement expenses.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

For the recovery of maintenance, the court can grant an order for child maintenance, spousal maintenance, or child/spousal maintenance. The court can make an order for periodical payments, a lump sum, settlement payments or secured periodical payments. The court can in appropriate cases decide that maintenance is to be backdated. Account will be taken of all the circumstances of the individual case in deciding whether to backdate and in assessing the amounts. Application can be made to the court at any time to vary an order for maintenance.

**9 How and to whom will the maintenance be paid?**

The people eligible to receive maintenance are set out at question 1 above.
Within Northern Ireland and the United Kingdom the CMS provides a calculation only Direct Pay service and Collect and Pay service. Under the first option the CMS works out the amount of maintenance to be paid, and parents arrange payment directly between themselves. Under the second option the CMS collects the correct amount from the non-resident parent. When parents pay or receive child mainteneance through the Collect and Pay service, they pay a fee each time.
Under the Domestic Proceedings (Northern Ireland) Order 1980, the court can order that payments be made directly by the debtor to the creditor or to a collecting officer (normally the clerk of petty sessions).

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

For those using the Collect and Pay service, the CMS, will take the necessary action to make sure that the non-resident parents pay the child maintenance due, The CMS has a range of powers it can use. These include taking money direct from earnings and bank accounts and taking court action (enforcement action). If necessary in extreme cases, the court may be asked to take away the non-payer non-resident parent's driving licence or impose a prison sentence.
Under the Domestic Proceedings (Northern Ireland) Order 1980 and the Matrimonial Causes (Northern Ireland) Order 1978, a party can apply to the court to enforce the payment of any arrears. The court has a range of powers it can use including taking money direct from earnings (attachment of earnings order).

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

An application for enforcement of a maintenance order made outside the jurisdiction of Northern Ireland can be made before the expiry of three years from the date of default on the payments due or before the expiry of any longer limitation period provided for under the law of the state of origin.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

The CMS in Northern Ireland can collect money owed to parents using the statutory Collect and Pay service.
Applications for the recovery of maintenance under Regulation (EC) 4/2009 can be made directly to the magistrates' court in Northern Ireland or can be transmitted to it by the Central Authority of Northern Ireland. All other applications for the recovery of international maintenance should be sent to the Central Authority for Northern Ireland.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

The CMS can only pass on monies it receives in cases it administers. It is not able to pay the maintenance, or part of it, itself or in place of the non-resident parent.
The Central Authority for Northern Ireland (REMO) cannot take responsibility for making payments under regulation (EC) 4/2009.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

The applicant can contact the REMO Unit within Northern Ireland Courts and Tribunals Service, which acts as the Central Authority in Northern Ireland under various reciprocal international arrangements concerning maintenance.
Local court offices can assist a person in completing an application but they cannot give legal advice. The court office will, where appropriate, send the application to the Central Authority for Northern Ireland for checking and onward transmission to the Central Authority in the requested Member State.
More information is available on the REMO pages of the NI Direct website.
For child support maintenance it is only possible for the CMS to make a maintenance calculation where the non-resident parent is in another part of the United Kingdom (that is, England, Wales or Scotland), or is working outside the United Kingdom for an employer whose payroll is based in the United Kingdom.

**14.2 If so, how can that authority or private organisation be contacted?**

The Central Authority for REMO can be contacted by writing to:
Department of Justice for Northern Ireland
REMO Unit at Operational Policy Branch
Northern Ireland Courts and Tribunals Service
4th Floor Laganside House
23-27 Oxford Street
Belfast BT1 3LA
Northern Ireland
Tel: 0300 200 7812 (UK)
+44 28 9049 5884 (International)
Email: reciprocalenforcement@courtsni.gov.uk
Contact details for local court offices in Northern Ireland are available on the website of the Northern Ireland Courts and Tribunals Service.
Child Maintenance Choices advice line can be contacted on: 0800 028 7439 (UK) +44 800 0287439 (International). (Note this number only operates from 9.00 - 17.00, Monday to Friday)
General enquiries can be made to: 0845 608 0022 (UK) or 0345 608 0022 (UK) and +44 845 608 0022 (International) or +44 345 608 0022 (International). Lines are open Monday to Friday 8.00 to 20.00 and Saturday 9.00 to 17.00.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

An applicant in another country should generally first contact their country's designated Central Authority to determine whether or not a reciprocal arrangement currently exists. If there is no arrangement in place, then an alternative would be for the applicant to raise an action in Northern Ireland. In these circumstances the applicant should contact the Law Society of Northern Ireland (telephone: +44 28 9023 1614) who can provide individuals with the names of solicitors who can provide advice and assistance in child support/maintenance cases.
If there is an arrangement in place, applications for the recovery of maintenance under Regulation (EC) 4/2009 can be made directly to the court or can be transmitted to it by the Central Authority for Northern Ireland. Applications under other reciprocal arrangements should be sent to the Central Authority.
In these circumstances the CMS would only have jurisdiction to make a maintenance calculation if the petitioner and the child are resident elsewhere in the United Kingdom (that is, England, Wales or Scotland). If the petitioner is outside the United Kingdom the CMS does not have jurisdiction to make a maintenance calculation.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

If there is a reciprocal arrangement in place then, once an application has been sent to Northern Ireland, the Northern Ireland Central Authority acts as a point of contact for the applicant, solicitors and foreign authorities.
The Central Authority for Northern Ireland will also arrange, where appropriate, for a court order to be registered and for a solicitor to be appointed on behalf of the applicant subject to legal aid requirements.
The Central Authority will process your application and, if in order, will forward to the appropriate magistrates' court for action (although as noted, applications under Regulation (EU) 4/2009 can also be made directly to the magistrates' court). The contact details for the Central Authority are provided above.
The CMS may be able to make a maintenance calculation in limited circumstances. See earlier answers for circumstances where an application cannot be accepted by the CMS and relevant contact details.

**16 Is this Member State bound by the 2007 Hague Protocol?**

The United Kingdom is not bound by the 2007 Hague Protocol and therefore it does not apply in Northern Ireland.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

The law of Northern Ireland applies to all cases decided in Northern Ireland.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

For recovery of maintenance, legal representation is not usually required and fees are not required in the majority of cases.
Where legal representation is required, legal help and assistance is available (Chapter V) but is subject to a means and merits test in some cases; the applicant may be required to pay a contribution. As part of legal help, an assessment can be made to decide whether the nature of the case means full legal aid should be applied for.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (SI 1484/2011) support the operation of Regulation (EC) 4/2009. Regulation 3 and Schedule 1 designate the Central Authorities for the UK (including Northern Ireland). Regulation 4 and Schedule 2 sets out which bodies are to provide information to the Central Authorities (including information on the debtor) and provide rules on the proper disclosure of that information by Central Authorities.

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## Family maintenance - Scotland

**1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

In Scotland there are presently two systems for the determination of support: the Child Support Act 1991 has generally taken priority over the Family Law (Scotland) Act 1985 and has removed child support from the private law area and the jurisdiction of the courts to the public sphere.
However, the Child Support Act generally only applies where the person with care, non-resident parent and child are habitually resident in the UK. Where the 1991 Act does not apply, then the older scheme contained in the Family Law (Scotland) Act 1985 will operate.
Under the Child Support Act 1991 only a "qualifying child" (one who has at least one non-resident parent) is eligible to benefit from a maintenance decision made by the Child Maintenance Service A parent (or other qualifying person) with care of a child can apply for maintenance for the child from the non-resident parent.
Under the Family Law (Scotland) Act 1985 an obligation of aliment is owed by:
A husband to his spouse
A wife to her spouse
A father or mother to his or her child
A person to a child (other than a child who is boarded out with him by a local or other public authority or voluntary organisation) who has been accepted by him as a child of his family.

An ex-civil partner may also have to pay maintenance to the other ex civil partner.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Under the Child Support Act 1991 Act a child must be:

under the age of 16 or

under the age of 19 and in full-time education which is not advanced education or

Under 18 and available for either work or youth training while the parent is still claiming child support in respect of the child.

Under the Family Law (Scotland) Act 1985, a child is defined as:

a person under the age of 18 or

a person over that age but under 25 and "reasonably and appropriately undergoing instruction at an educational establishment, or training for employment or for a trade, profession or vocation".

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

If both parents are in Scotland, or another part of the United Kingdom, application is made to the Child Maintenance Service. If one parent resides outside of Scotland, the other parent can apply to their local Sheriff Court for a maintenance order but would need to seek legal advice on how to do this.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

A request for child maintenance may be made on behalf of a parent or other person with responsibility for the child, provided the applicant has been given authority to do so or has power of attorney. A child cannot apply for maintenance in their own right, unless they are over 12 years of age and live in Scotland.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

The Sheriff Court within whose area the child resides will generally have jurisdiction. Details of Scottish courts can be found on the Scottish Courts and Tribunals Service website.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

Yes, legal advice should be sought from a lawyer practicing family law.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

Court fees and legal fees will have to be paid, but application for legal aid may be made to the Scottish Legal Aid Board.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

Courts can make orders for child or spousal maintenance. The amount of the order will be determined by a number of factors, notably the income of the payer. It is possible for either party to seek modification of a maintenance order by application to the court. Maintenance claims are not usually backdated beyond the date of application, although this can be done at the discretion of the Sheriff.

**9 How and to whom will the maintenance be paid?**

For child maintenance, payment is generally paid to the parent with whom the child lives.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

There are a range of enforcement methods available in Scotland. These include:

Arrestment of earnings

Arrestment of funds from bank accounts or other sources

Inhibition over land and buildings

Enforcement action is generally taken by Sheriff Officers, who are independent officers of the court.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

Enforcement procedures in Scotland are prescribed by law under the Debtors (Scotland) Act 1987. The Act makes provision for statutory enforcement procedures and provides a level of debtor protection. For example, the Act limits the amount that can be deducted by an employer from a debtor's salary. There is no prescription period for the recovery of a maintenance debt in Scotland. Any debt due will be recoverable for as long as the debtor is in Scotland, or has attachable assets in Scotland. However, if the law of another country has to be applied by a Scottish court in relation to a maintenance obligation, the court will apply the relevant rules of law of that country.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

The Child Maintenance Service (when both parents are resident in the UK). The Scottish Central Authority (when one parent is abroad). Details of the Scottish Central Authority are provided below.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

No.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

You should contact the Scottish Central Authority.

**14.2 If so, how can that authority or private organisation be contacted?**

Scottish Government Justice Directorate

Central Authority and International Law Team

St Andrew's House (GW15)

Regent Road

Edinburgh EH1 3DG

Scotland

Tel: 00 44 131 244 3570

00 44 131 244 4829

00 44 131 244 2417

Fax: 00 44 131 244 4848

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

You should contact the Central Authority for the Member State concerned. Each authority can be contacted directly.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

See above.

**16 Is this Member State bound by the 2007 Hague Protocol?**

No.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

The Family Law (Scotland) Act 1985 applies to the Maintenance Regulation. Corresponding private international law rules are contained in the Child Care and Maintenance Rules 1997, as amended.

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

Applications by creditors under Article 56 of the Regulation are granted legal aid automatically, unless the application is considered to be manifestly unfounded.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Additional action was taken to ensure assistance can be provided in accordance with Article 51. This included amendments to legislation, court rules and legal aid provisions.

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## Family maintenance - Gibraltar

**1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

Under Gibraltar law, both the Magistrates' Court and the Supreme Court have the power to make orders with respect to the payment of maintenance. Maintenance is generally covered under the Maintenance Act. In the Supreme Court, provision for child, civil partner, dependant and spousal maintenance may be made ancillary to divorce, judicial separation, annulment or dissolution proceedings. Both the Supreme Court and Magistrates’ Court retain jurisdiction to vary the terms of maintenance payable after the granting of the decree absolute, or dissolution order. In the Magistrates' Court, there is power to make a maintenance order in favour of a wife, a husband, child, or even to the parents of the parties where certain conditions are satisfied. Such an order can be made upon a complaint to be laid before the Magistrates' Court. There is also statutory provision to make a maintenance order where a cohabitee fails to maintain the other cohabitee.

**2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

A child under the age of sixteen is entitled to receive maintenance. Additionally, a child who, having reached the age of sixteen but who is under twenty-one and is either in full time education or undergoing full-time training for a trade, profession or vocation and for not less than two years is also entitled to receive maintenance.

A child whose earning capacity is impaired through illness or disability of mind or body and who has not reached the age of twenty-one is also entitled to maintenance.

**3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

To seek maintenance in cases where the jurisdiction of the Supreme Court has not been engaged, an applicant should apply to the Magistrates' Court by way of complaint.

Maintenance applications which are ancillary and arise out of divorce, judicial separation, annulment or dissolution proceedings should be made to the Supreme Court.

**4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

A request for maintenance can be made on behalf of a child by a person having a care order / parental responsibility attached to the child. Pursuant to the provisions of the Maintenance Act, a child himself may apply for maintenance against a person liable to maintain him.

**5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

If the claim for maintenance arises out of a marriage or a civil partnership, the Magistrates' Court may have jurisdiction to deal with the matter. If the claim for maintenance arises out of divorce, judicial separation, annulment or dissolution proceedings within the jurisdiction of the Supreme Court, then it is that Court that should consider the question of maintenance.

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

An applicant can bring a claim in person and represent himself in Court, alternatively, instruct solicitors to act on their behalf.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

The filing of a complaint in the Magistrates' Court attracts no fee. Therefore, an applicant in person may appear without having to incur any expense.

In the Supreme Court, the filing of a summons normally attracts a fee of £150. In both the Magistrates' Court and the Supreme Court, legal assistance may be available subject to a means test. Applications for legal assistance in either court should be made to the Supreme Court and application forms are available from the Supreme Court Registry.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

Upon hearing the complaint, the Magistrates' Court may make a maintenance order for the payment of a weekly or other periodic sum as the Court considers reasonable in all the circumstances of the case for the maintenance of a child, a father, partner, cohabitee, mother and/or spouse.

Applications can subsequently be made for the variation of maintenance orders. This application would also be made to the Magistrates' Court or to the Supreme Court, where applicable.

The court can in appropriate cases decide that maintenance is to be backdated.

**9 How and to whom will the maintenance be paid?**

Maintenance can be paid from one party to another or alternatively, payments can be made into Court.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

There is provision for a complainant to apply for an attachment of earnings order once a defendant has missed at least two of the payments required by the original maintenance order. The Magistrates' Court also has the power to make committal orders, thereby committing a defendant to prison for failure to adhere to the terms of a maintenance order. However, in such cases, the Court gives an opportunity to a defendant to make representations why such an order should not be made.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

There is no limitation period.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

Applications for maintenance are normally dealt with by the Magistrates' Court of Gibraltar, 32 – 36 Town Range, Gibraltar. Where a claim for maintenance arises out of divorce, judicial separation or annulment proceedings, the application should be made to the Supreme Court of Gibraltar, 277 Main Street, Gibraltar.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

There is no provision for this in Gibraltar law. Payment can be enforced by an attachment of earnings order or by the use of committal orders.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

Enquiries should be made to the Magistrates' Court, 277 Main Street, Gibraltar or the Supreme Court, 277 Main Street, Gibraltar.

**14.2 If so, how can that authority or private organisation be contacted?**

Enquiries can be addressed to the:
Clerk of the Magistrates' Court,
Magistrates' Court,
32 – 36 Town Range
Gibraltar
telephone: +350 200 75671
fax: +350 200 40483.

Alternatively, enquiries involving maintenance proceedings in the Supreme Court can be addressed to
The Registry,
Supreme Court,
277 Main Street,
Gibraltar
telephone: +350 200 75608
fax: +350 200 77118.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

A complaint setting out the relief claimed in Gibraltar can be sent directly to the Magistrates' Court as and when the jurisdictional requirements are satisfied. Alternatively, the appropriate application can be filed at the Supreme Court Registry where the claim for maintenance arises out of divorce, judicial separation or annulment proceedings.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

As per previous question.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Gibraltar is not bound by the Hague Protocol and it does not apply in Gibraltar.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

The laws of Gibraltar apply to all cases decided in Gibraltar

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

This Regulation provides a series of measures aimed at facilitating the payment of maintenance claims in cross-border situations. Such claims arise from the obligation to help family members in need. For example, they may take the form of maintenance paid to a child or to a former spouse following divorce.

The Regulation applies to maintenance obligations arising from:
a family relationship;
parentage;
marriage or affinity.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

The Maintenance Act sets out the operation of the Maintenance Regulation. The central authority has been designated as:
Minister for Justice,
Government of Gibraltar
Suite 771 Europort
Gibraltar

Tel: + 350 200 59267
Fax: + 350 200 59271
e-mail: moj@gibraltar.gov.gi
The Legal Aid and Assistance Act sets the tests for merit and financial conditions required to qualify.

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