

Summary of the Child Support Forum

ONLINE MEETING ON 1ST JUNE 2022

I. Introduction

Nearly 10 years after its creation, the Child Support Worldwide Network (<https://www.childsupport-worldwide.org>) remains a success. The website has been continuously developed and supplied with new information. In particular the newsletter, originally called “conference letter” in reference to the 2013 Heidelberg conference, continues to reach about 2000 subscribers on a regular basis. This shows that, in spite of the end of the project’s funding period and the difficulties of communication caused by the pandemic, the project partners have succeeded in creating a sustainable structure beyond the original EU project. At this stage it seems crucial to continue deepening the activities of the network, in particular by strengthening the interactivity between actors in cross-border maintenance recovery. This is why the German Institute for Youth Services and Family Law (DIJuF) took the initiative to organise the first Child Support Forum, which took place on 1st June 2022.

The topic of the first meeting was the **presentation of the national maintenance support and recovery systems by public bodies** in nine different EU countries. In addition to the speakers from Belgium, Czech Republic, Denmark, Finland, France, Germany, Latvia, Lithuania and Sweden, representatives of the Hague Conference on Private International Law and the American association NCSEA as long-standing network members, as well as the German Federal Office of Justice and the Universities of Verona and Bergamo took part in the session and subsequent discussion.

This report summarises the contents of the presentations and comments. It was drafted by Isabelle Jäger-Maillet (DIJuF, Germany) with the participation of Tom Boelaert (FPS Finance, Belgium), Miroslav Šindler (Office for International Legal Protection of Children, Czech Republic), Maj-Britt Sørup Olesen (Familieretshuset, Denmark), Antti Elovaara (Kela, Finland), Aurélie Schaaf (ARIPA, France), Sintija Lavska (Administration of the Maintenance Guarantee Fund, Latvia), Vaida Pakalniškytė (Valstybinio Socialinio Draudimo Fondo Valdybos, Lithuania), Karin Honorato dos Santos (Försäkringskassan, Sweden), Diletta Danieli (University of Verona, Italy) and Cinzia Peraro (University of Bergamo, Italy).

For purposes of clarity of the document and uniformity of language use, the term **child support** means the child’s right to receive money from the non-custodial parent. The term **maintenance support** means the benefits paid by states in lieu of child support when the non-custodial parent fails to pay it.

The inaugural meeting of the Child Support Forum was a first step on the way to the identification of common ground and interests among the public bodies in attendance. The collection and publication of information should make the concerns and specificities of public institutions more visible and, if possible, help them to improve the acceptance and processing of their recovery claims in cross-border cases.

A first obvious common ground is that the participating states have found that supporting children through the payment of maintenance support payments was a major element in the fight against child poverty. Currently, **maintenance support payments exist in 20 EU countries**, but also, for example, in Switzerland and Norway.



Maintenance support payments in the EU



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The trend is upwards. For example, the Czech legislation on maintenance support entered into force in 2021 after a long time of reflection regarding the rules governing the granting of the benefits. Thus, it is to be expected that the recovery of maintenance by public bodies will play an increasing role in the field of maintenance recovery in general in the future.

As to the international **legal background**, the important role of public bodies has been recognised and initial rules have been established in the 1973 Hague Conventions on applicable law as well as on Enforcement of Decisions Relating to Maintenance Obligations. The **EU Maintenance Regulation (Art. 64)** and the **2007 Hague Convention (Art. 36)** have simplified the proceedings and additionally given access to administrative support by central authorities even if public bodies are not on an equal footing with natural persons. The **2007 Hague Protocol** contains two

specific rules regarding the applicable law when public bodies seek the reimbursement of advance maintenance payments (Art. 10 and 11(f)).

International law

➤ 1973 Hague Conventions

- Applicable law: Art. 9, 10
- Recognition and enforcement: Art. 18-20

➤ 2007 Hague Convention/ 2007 Hague Protocol

- Applicable law: Art. 10, 11 f) Hague Protocol + Art. 36 sec. 2 Hague Conv.
- Recognition and enforcement: Art. 36 sec. 1, 3
- Administrative cooperation: Art. 36 sec. 1

➤ Maintenance Regulation EC 4/2009

- Recognition and enforcement: Art. 64 sec. 1 and 3
- Applicable law: Art. 64 sec. 2
- Administrative cooperation: Art. 64 sec. 1

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The cross-border recovery of child and maintenance support remains a **challenge for the national maintenance agencies** in terms of educating competent staff at national level and of successfully conducting proceedings/enforcing maintenance in practice in states that may not have similar systems, are sceptical about requests from a public institution or do not have adequate IT support to handle such requests. A further challenge is the costs of recovery, which can be significant in cross-border cases as public bodies do not usually enjoy the same cost exemption possibilities as natural persons according to international and national provisions.

Unsurprisingly, the national support systems presented during the meeting showed **significant differences** in the rules governing both granting and recovery. In terms of private international law, the difficulty consists precisely in meeting the needs of these many different organisations in the few rules that are dedicated to them in current instruments of international law. At the level of implementation, the difficulty is to make the particularities of the state of origin (representation rules, claim ownership, subrogation, diversity of creditors) compatible with the particularities of the state in which the declaration of enforceability and enforcement is sought. Therefore, it was decided to discuss the **"Challenges of international maintenance recovery by public bodies"** as the **topic of the next meeting, which will be held online on 23rd November 2022.**

The following summary of the national reports gives an overview of the maintenance support schemes presented during the meeting.

II. National reports

1. Belgium

In Belgium, maintenance support is provided by the Maintenance Claims Department (**Service des Créances Alimentaires/ Dienst voor Alimentatievorderingen/ Dienst für Unterhaltsforderungen**), which is based at the Federal Public Service Finance.

The service supports children, former spouses, partners and cohabitants. Former spouses and children can require **assistance in recovering alimonies**. Additionally, children can seek the **payment of maintenance support** up to a maximum of €175 per month and per child. For the recovery of ongoing child support and arrears, a mandate is given by the creditor to the service. For the recovery of maintenance support, the **service is subrogated in the rights of the creditor and acts on its own behalf**.

In order to make use of the services of the Maintenance Claims Department, the creditor must

- have his/her residence in Belgium,
- be in possession of an enforceable order determining the maintenance amount,
- be a minor child or an adult child entitled to alimony.
- The debtor must have failed to pay in whole or in part at least twice in the 12 months preceding the application.

If the requirements for legal support and/or payment of maintenance support are met, the Maintenance Claims Department informs the debtor and requires him/her to comply with his/her maintenance obligation. In a first step an extrajudicial collection is attempted (maintenance notices, reminders, instalment plan). If the debtor does not comply with his/her obligation, enforcement measures are introduced (garnishment on wages or bank accounts by the Maintenance Claims Department itself/ seizure and selling of movable and immovable assets via a bailiff). In international cases, applications are filed with the assistance of the central authorities.

The intervention of the service ends if six successive payments (incl. the contribution of 13%) of ongoing child support are made. However, the recovery of the arrears, if any, continues. If the creditor asks the service to stop its intervention, it will continue the recovery of the arrears of the paid maintenance support on its own behalf. Finally, the intervention can cease on the decision of the Regional Director when insolvency of the debtor is established. In this case, the payment of maintenance support continues without the possibility of immediate recovery.

Facts and figures:

The operating costs of the service are covered by the Federal Public Service Finance, whilst the maintenance support is financed by a separate federal budget and is refinanced by the gains of the recovery measures taken against

the debtors as well as by an additional debtor's contribution in the amount of 13% of the sums that have to be recovered by the service.

In 2021, 27,313 cases (recovery and payment of maintenance support) were pending for 47,377 children and 1,474 files where the creditor is an ex-spouse or ex-partner. In 12,834 files, maintenance support payments in a total amount of EUR 33.9 million were granted for 21,032 children.

In 2021, 3,757 new applications were submitted to obtain the help of the Maintenance Claims Department.

2. Czech Republic

In the Czech Republic, the Act on Maintenance Support for a Dependent Child and on Amendments to Certain Related Acts (Act on Maintenance Support) entered into force on 1st July 2021. This new instrument allows the payment of maintenance support under the following conditions:

- The existence of a maintenance order
- Pendency of enforcement proceedings and a failed enforcement attempt certified by the Czech enforcement authorities or in case of cross-border cases by the Czech central authority
- Residence of the child in the Czech Republic or the parent taking care of the child is an EU citizen residing in the Czech Republic
- The child (as the only possible creditor) is considered as indigent (unable to support itself) under Czech law

The Czech authorities do not provide special assistance in obtaining a maintenance order. The maintenance creditor (e.g. child, spouse etc) must file an action in court and if the debtor does not comply with his/her obligation, the creditor should first try to enforce the order before being entitled to maintenance support. However, maintenance proceedings (for child or spouse support) are in principle free of court fees.

The maintenance support is paid in the amount of the maintenance order or a maximum amount of CZK 3000 as long as the creditor is entitled to child support and for a maximum time of 24 months.

In case of payment of maintenance support, the Czech employment agency decides which maintenance claims of the entitled person, together with the rights associated to them, shall be transferred to the state by administrative decision and to what extent. The employment agency is also in charge of the recovery. The legal basis for enforcement will be the administrative decision issued by the employment agency in connection with the maintenance order. The administrative decision cannot be issued without the maintenance order issued by a court beforehand. Since the Act on Maintenance Support only came into force one year ago, there is no substantiated experience or figures with regard to recovery by the Czech public body.

3. Denmark

The recovery of maintenance in Denmark is implemented by three national authorities.

- **Familieretshuset** (Agency of Family Law), which is the central authority within the meaning of the 1956 UN Convention. A Danish central authority has not been appointed for EU Maintenance Regulation EU 4/2009 as Denmark does not take part in Chapter VII of this regulation, but Familieretshuset handles the tasks of the central authority in relation to the regulation. Furthermore Familieretshuset issues administrative maintenance orders, which are enforceable in Denmark and abroad.
- **Udbetaling Danmark** (Disbursement Denmark), which recovers maintenance claims on the basis of a Danish decision or agreement.
- **Gældsstyrelsen** (Danish Debt Collection Agency), which recovers maintenance claims arising from foreign decisions and supports maintenance creditors submitting requests to the central authority for recovery abroad of Danish maintenance claims.

The payment of maintenance support is carried out by Udbetaling Danmark.

The criteria for obtaining maintenance support are:

- The existence of an enforceable Danish decision from Familieretshuset as the administrative authority designated to issue maintenance decisions in Denmark or in case of appeal from a Danish court.
- Maintenance support only applies to child support and not, for example, to other types of support such as the education contribution.

The maintenance support is the amount stipulated in the maintenance order or, at a maximum, the standard rate of child support (DKK 1,460 per month in 2022). If the order sets a higher support rate, the balance must be obtained from the payer before it is forwarded. The payment of maintenance support leads to a subrogation, after which the public body (Udbetaling Danmark) becomes the claim owner. Udbetaling tries first to obtain voluntary payments. If no payment is made on this basis, the case is forwarded to Gældsstyrelsen for enforcement. In cross-border cases Udbetaling Danmark ascertains first whether voluntary payment can be made. If this is not successful, it is Gældsstyrelsen that prepares and forwards the request in accordance with Art. 64 of the 4/2009 Regulation via the central authority.

4. Finland

In Finland, **Kela**, the Social Insurance Institution of Finland, grants **maintenance support** to the custodial parent in situations where the person liable to provide maintenance fails to do so.

The criteria for obtaining maintenance support payments are:

- The existence of a maintenance order or
- The person liable to pay maintenance is not determined, has passed away or is unable to pay.
- Minimum one month of missed payments.

After the payment of the maintenance support, Kela begins to act in place of the custodial parent to whom maintenance is owed. In other words, **Kela becomes the creditor**. Kela investigates whether the person liable to provide maintenance really has failed to do so by sending a questionnaire. However, this is sometimes difficult in cross-border cases if the whereabouts of the person are not known. Amicable solutions in recovery are preferred and a payment reminder is sent first, but enforcement begins quickly if the debtor is in Finland. After 30 days the case is sent to the National Enforcement Authority, which is a centralised authority.

The custodial parent is obliged by law to provide any information about the person liable to provide maintenance both when applying for maintenance support and after doing so.

Kela is a public body within the meaning of Art. 36 of the 2007 Hague Convention and Art. 64 of the EU Maintenance Regulation. When the instrument used is the Hague Convention, Kela sends outgoing applications for recognition and enforcement through the Finnish central authority, the Ministry of Justice. This also applies to cases handled under the 1956 New York Convention. Kela has a right to perform certain central authority functions within the scope of the EU Maintenance Regulation. These allow Kela to send applications directly to the receiving central authority of the state of enforcement.

Furthermore, applications are always sent directly to the foreign enforcement authorities in the states bound by the **Nordic Convention**.

5. France

In case of non-payment of child maintenance, the custodial parent can make use of the assistance of the Agency for the Recovery of Unpaid Child Support (**Agence de recouvrement et d'intermediation des pensions alimentaires - ARIPA**), which was created in 2017 as a part of the national Caisse d'Allocations Familiales (CAF). ARIPA assists children in enforcing their maintenance orders, issues maintenance titles and pays maintenance support (allocation de soutien familial) if necessary. Furthermore, ARIPA has offered financial intermediation to all separated and divorced parents since October 2020.

The criteria for obtaining the support of ARIPA in recovering unpaid child support are:

- Existence of a maintenance order
- Habitual residence of the child and the custodial parent is in France

The further criteria for obtaining the payment of maintenance support are:

- Custodial parent is a single parent
- No means test
- Failure to pay maintenance according to the maintenance order or the child support set in the order is lower than the maintenance support.

Maintenance support currently amounts to €123 per month and per child regardless of the amount of child support set in the order. The recovery assistance is limited to 24 months.

Particularity: *Intermédiation financière*:

Since 2020, the logic has been reversed. ARIPA now plays a preventive role: as soon as the child support is fixed, ARIPA becomes the intermediary between the parents: it collects the child support from one parent and transfers it to the other parent independently of a conflict and without age limit. If an unpaid child support payment occurs, ARIPA automatically pays maintenance support and intervenes from the first month to set up the recovery process.

The main objectives are:

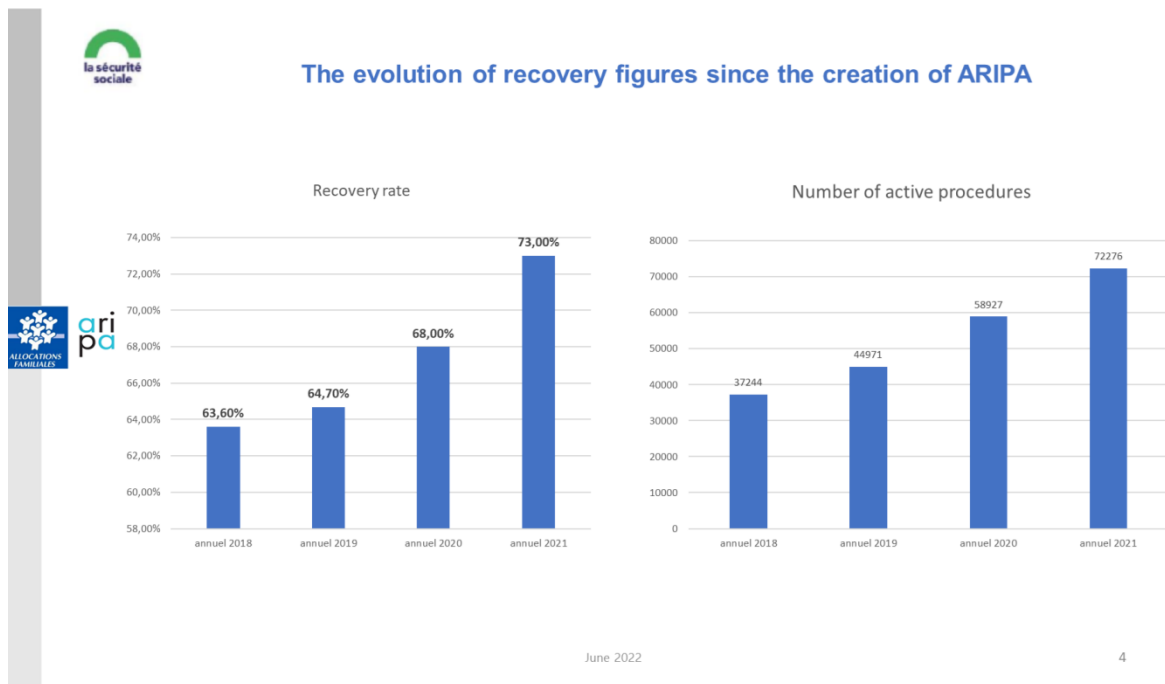
- To prevent and avoid tensions or conflicts with the non-custodial parent;
- To facilitate the education and development of children;
- To secure monthly child support payments, for instance with direct debits;
- To reduce the risk of unpaid or partially paid child support;
- To avoid having to pay back a large sum to the other parent.

As to the recovery in general, CAF promotes an amicable approach. If the maintenance debtor is solvent, CAF negotiates a payment schedule, advising the parent to ask for a new judgement in case of financial difficulties. If the amicable approach fails, enforced collection is implemented depending on the situation of the debtor and their solvency.

As to the recovery of maintenance support, **CAF is subrogated to the parent but not the owner of the debt**. In national cases CAF enforces court decisions issued by local courts according to national law. Enforcement is carried out locally with employers, banks or employment centres. If it is not successful, recovery can also be made by the treasury. For claims specific to social security bodies, the titles are issued by themselves without going before the courts.

On receipt of the sums, there is an order of priority for the repayment of debts: current term of the pension, reimbursement of ASF, payment towards arrears due to the creditor, costs of the proceeding.

Statistics:



6. Germany

The payment of maintenance support is regulated by the German Act on Securing the Maintenance of Children of Single Mothers and Fathers through Advances on Maintenance Payments or Deficiency Payments (Advance Maintenance Payments Act - [Unterhaltsvorschussgesetz](#)) of 17 July 2007.

Advances on maintenance payments are the benefits which are basically able to be recovered against the debtor, whilst deficiency payments are the payments that are not able to be recovered from the outset and are basically tax-financed. For purposes of uniformity with the other national reports, advance maintenance payments will hereafter be referred to as “maintenance support”.

Furthermore, children who do not meet the criteria for receiving maintenance support are not neglected. They can use “[Beistandschaft](#)”, another cost-free service offered by the German Youth Welfare Offices. This support represents professional assistance in the fields of parentage and maintenance questions to which all minor children are entitled. In this case, the public body acts on behalf of the child as a legal representative.

The rules governing the granting of maintenance support are set out in section 1 of the Advance Maintenance Payments Act.

Beneficiaries are (section 1):

- All children between 0 and 18 years. Until 2017 only children under 12 were entitled to these benefits. This is the reason why the expenses and hence the pressure to improve the recovery proceedings have increased significantly since then.
- The child must live with a single parent who must not be married to another person.
- The child does not need to have an enforceable maintenance order already. (This point in particular leads to significant difficulties at the recovery level, as the public bodies have to establish orders on their own behalf.)

Paid amount: Monthly minimum maintenance rate arising from section 1612a of the Civil Code, less the full family benefits. Currently: between 0 and 5: €174, between 6 and 11: €232 and between 12 and 18: €309.

The maintenance support amount does not need to be determined in a maintenance order. It is ordered by law and it does not depend on the needs of the child. For example if the child has an income or is living in another EU state with lower living costs, no adjustment takes place.

Due to the federal system, the granting of maintenance support is done by the Youth Welfare Offices at city or district level.

Recovery rules (section 7)

The organisation of the recovery differs from one region (*Bundesland*) to another.

Bavaria and North Rhine-Westphalia have centralised recovery agencies. In other regions the Youth Welfare Offices granting the maintenance support remain in charge of the recovery. In some cases, competencies have been concentrated.

The payment of maintenance support leads to a **subrogation**. The *Bundesländer* as public bodies become **maintenance creditors**, insofar as a maintenance claim exists between the child and the debtor.

The public body is not entitled to reimbursement or full reimbursement:

- If the debtor is not able to pay maintenance or to pay the full amount to the child (according to the maintenance law)
- If there is no maintenance claim because the child already has an income (for example trainee remuneration)
- If there is a court decision setting a lower maintenance amount than the maintenance support

After the granting of maintenance support, the Youth Welfare Office informs the debtor about the subrogation and requires him/her to provide information in order to calculate the amount of reimbursement. At this level the Youth Welfare Office tries to obtain voluntary payments and, if possible, a voluntary acknowledgement of debt in an enforceable authentic instrument.

If no amicable solution can be found, the Youth Welfare Office:

- applies at court for a so called “legal succession clause”, if the child already had a maintenance order. With this clause the court authorises the public body to enforce the order made for the child on its own behalf. This clause is not always needed in cross-border cases, as the Maintenance Regulation (Art. 64 sec. 3) and the 2007 Hague Convention (Art. 36 sec. 3) authorise the enforcement of an order made for the child under the condition that the subrogation is proved.
- If no order exists, the Youth Welfare Office may decide to apply for establishment at court. In national cases, the application can be filed at the family court of the place of residence of the child. In international cases, the international jurisdiction might be a problem (this issue will be discussed in more detail in the November session).

Duties of the single parent in cooperating with the Youth Welfare Office in order to facilitate the recovery of maintenance:

The single parent only has an obligation of information (about the residence or the financial circumstances of the debtor), insofar as the information is known. He/she has no obligation to take action, for instance, to search for this information. Only with regard to the establishment of paternity is there an obligation to take action in order to identify the father and have the paternity established according to the rules of sec. 1.

Statistics:

The recovery rate is currently an important subject of discussion in Germany. In 2020, €2.29 billion was paid out and only €385 million recovered. This results in a recovery rate of about 17%. There are no statistics for the recovery rate in cross-border cases.

7. Latvia

The **Administration of the Maintenance Guarantee Fund** is the Latvian institution that pays maintenance support on a subrogation basis, collects child maintenance for children and is the central authority within the meaning of the EU Maintenance Regulation and the 2007 Hague Convention.

The criteria for obtaining payments of maintenance support are:

- The existence of a maintenance order is not a prerequisite
- Habitual residence of the child in Latvia
- Payment of maintenance support until the child reaches the age of 21 (if the child is studying)

The maintenance support payments currently amount to €107.50 or €129.

Recovery measures:

If an enforceable order or authentic instrument exists, the custodial parent will initiate the enforcement measures and the bailiff will distribute the paid child support to both creditors (custodial parent and public body).

If an enforceable title does not exist, the public body will issue an administrative decision about the amount to be reimbursed. This decision is enforceable in Latvia and abroad.

Whilst the bailiff can only undertake classic civil enforcement measures, the Administration of the Maintenance Guarantee Fund tries to reach an amicable conflict resolution and can issue administrative sanctions such as a prohibition to use a driving licence, a suspension of the operation of the firearm permit, a prohibition of gambling or a publication in the debtors' registry. It can also introduce criminal proceedings.

8. Lithuania

The **Board of the State Social Insurance Fund under the Ministry of Social Security**, specifically Klaipėda Division, is the Lithuanian institution that pays maintenance support on a subrogation basis, collects child maintenance for children and is the central authority within the meaning of the EU Maintenance Regulation and the 2007 Hague Convention.

The criteria for obtaining payments of maintenance support are:

- Existence of a maintenance order for the child
- Application filed by the custodial parent
- The amount of maintenance support may not exceed 1.8 times of the basic social benefits (EUR 72.00 in 2021, EUR 82.60 from 1st June 2022) per month. If the amount of child support awarded by the court is lower than the maximum amount of maintenance support, the amount awarded by the court is to be paid

The administrative decision on the granting of maintenance support is sent through the electronic system to both the applicant and the debtor. Such a method of service of the decision is considered appropriate according to Lithuanian law. The maintenance support is paid as long as the child support is not paid by the debtor and until the child reaches the age of 18, the child/applicant/debtor dies, etc. If the debtor pays part of the child support, a partial maintenance support may be granted. For example, if the court ordered EUR 100 per month and the debtor pays EUR 50, the amount of maintenance support will be EUR 50.

After payment of the maintenance support, the debtor is obliged to return the advanced amount to the state budget. If the debtor fails to reimburse the maintenance support, interest shall be calculated. If the debtor does not repay the maintenance support made in good faith, it shall be recovered from the debtor by means of enforcement measures specified in Article 20 of the Law on State Social Insurance. Klaipėda Division of the Board of the Fund issues a decision on the recovery of the debt, which is an enforceable title according to Lithuanian law. The decision shall state the legal basis, the details of the debtor, the amount of the debt and the elements of the debt, and shall specify the procedure for appealing against it. Some foreign authorities have expressed doubts about the civil law nature of those decisions.

9. Sweden

The **Swedish Social Insurance Agency** (Försäkringskassan) is a public body within the meaning of Art. 36 of the 2007 Hague Convention/Art. 64 EU Maintenance Regulation and the central authority within the meaning of these instruments. As a social insurance agency, Försäkringskassan supports parents in calculating child support (online

tool) and pays out maintenance support. As a public body, Försäkringskassan can also apply for the collection of child support.

The criteria for obtaining payments of maintenance support are:

- Parents are not in a relationship/do not live together
- The parent living with the child has custody of the child
- The non-custodial parent does not pay child support at all, pays a lower amount than the maintenance support or does not pay on time
- A child support order does not need to exist
- The child is under 18 years of age
- The child is registered with the custodial parent
- The custodial parent and the child live in Sweden

The maintenance support amounts to:

- SEK 1,673 per month until the month the child reaches 7 years of age
- SEK 1,823 per month from the month after the child reaches 7 years of age
- SEK 2,223 per month from the month after the child reaches 15 years of age

It is also possible to receive maintenance support up to the age of 18 years. After 18 the young adult applies by himself/herself and it is possible to receive maintenance support up to the age of 20 years if he/she studies at college level.

Recovery proceeding:

If the debtor lives and works in Sweden, the Swedish Social Insurance Agency makes an administrative decision regarding the reimbursement of the maintenance support, which is only enforceable in Sweden. This decision is based on latest taxed income and how many children the debtor is liable to pay for. Enforcement in Sweden is conducted by the Swedish Enforcement Agency Kronofogden.

If the debtor lives abroad, chapter 19, § 29 Social Insurance Code gives the Swedish Social Insurance Agency the right to step into the child's right to child support insofar as a child support order exists. If the order is for more than Försäkringskassan has paid out, the parent normally gives Försäkringskassan a power of attorney to help him or her to enforce the full amount. The money is then paid to the account of Försäkringskassan, which can take the equivalent of what was paid out in maintenance support and pay the support that exceeds that amount to the child.

If the child support amount is not established in an order, Försäkringskassan requires the creditor to obtain a child support decision. Otherwise, the maintenance support payments stop. Enforcement measures are only attempted in states bound by international instruments.

Statistics:

Out of 58,000 new applications for maintenance support in 2021, 8,000 concerned cross-border cases.

III. Comments / Discussion

Even though the recovery of maintenance by public bodies plays an increasing role, it became clear that the cross-border cases are only a small part of the work of the recovery agencies (statistics on this point unfortunately do not seem to exist). Nevertheless, the maintenance support payments granted by the states have in common that they are significant in terms of disbursed sums and that they are at least partly financed by the recovery steps undertaken against the debtor. From this point of view, the participants were very interested in comparing their solutions and best practices.

However, in terms of legal possibilities, the place dedicated to this special configuration in the international instruments is quite modest, which leads to application difficulties in practice. The first meeting of the Special Commission on the practical operation of the 2007 Child Support Convention and 2007 Maintenance Obligations Protocol recalled in May 2022 Article 36(4) of the 2007 Hague Convention and invited public bodies to provide, in the first instance, any documents necessary to support their application, with a view to avoiding any unnecessary and time-consuming communications between requested and requesting states. The Special Commission also invited public bodies to consult the guidance to complete the mandatory and recommended forms under the 2007 Child Support Convention for assistance in completing the mandatory and recommended forms.

We will probably see in the next meeting that even in cases of applications completed and filed properly, the large diversity of national social systems makes it difficult to handle cases/applications initiated by public bodies. The above-mentioned national reports aim to give an **overview of the maintenance support systems in case of non-payment of child support** and to **help foreign authorities to better understand what applicants/public bodies expect to be set up** when applying for maintenance recovery and how they can implement such applications in their national law.

1. Diversity of applicants

Not every case of application involving a public body/filed by a public body falls under the scope of Art. 64 of the EU Maintenance Regulation/Art. 36 of the 2007 Hague Convention. In some cases the public institution assists the child/the custodial parent in recovering the maintenance debt. It can be authorised by power of attorney (Belgian SECAL) or act as a legal representative (German “Beistandschaft”). In terms of application, the child entitled to maintenance/the custodial parent remains the applicant. In other cases, the public body becomes the creditor (German Länder, Finnish Kela or Danish Udbetaling after the payment of maintenance support). In terms of application, the public body then acts on its own behalf and is the applicant. It is only in this case that Art. 64/Art. 36 apply. This is not always well understood by the public bodies submitting applications and filling in the parts of the forms intended for public bodies. This also leads to difficulties for those abroad who process the applications, especially when sometimes both the child and the public body are creditors (for example when the maintenance amount is higher than the maintenance support paid by the social services).

2. Diversity of applications filed by public bodies

Another finding of the presentations is that most of the systems require the child already to have an enforceable order when applying for assistance in recovering maintenance or payment of maintenance support.

Art. 64 of the EU Maintenance Regulation and Art. 36 of the 2007 Hague Convention shall equate public bodies for the purposes of applications for declaration of enforceability and enforcement only. Within this framework a public body may seek recognition and a declaration of enforceability or claim enforcement of:

- (a) a decision given against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;
- (b) a decision given between a creditor and a debtor to the extent of the benefits provided to the creditor in place of maintenance.

These provisions include direct applications for recognition and enforcement as well as applications for administrative assistance provided by the central authorities.

In the states where maintenance support is paid regardless of the existence of a maintenance order (Germany, Sweden, Latvia) obtaining an order afterwards can be difficult. Firstly, public bodies cannot make use of the assistance of central authorities to file an application for establishment of a maintenance decision (see above). Secondly, they do not always have jurisdiction in their state of origin in order to file an application for establishment of a maintenance order there. Furthermore, it is a difficult undertaking to obtain a decision at the debtor's place of residence abroad. Since the decision of the CJEU C-540/19, *WV vs. Landkreis Harburg* (Germany), public bodies may invoke Art. 3 b) of the EU Maintenance Regulation in order to bring an action for establishment of a decision before the courts where the creditor is habitually resident. Nevertheless this jurisprudence does not apply in three special cases:

- When the person entitled to maintenance no longer lives in the state in which he/she received the maintenance support;
- When there is another international rule that takes precedence over the EU Regulation, like the Lugano Convention;
- When the state of enforcement has made a reservation that it will not recognise or enforce maintenance obligation decisions rendered on the jurisdictional bases set forth in subparagraphs 1(c) of Article 20 of the 2007 Hague Convention (creditor-based jurisdiction), which is the case of the USA.

Different solutions have been trialled in order to recover the sums paid by the public body in place of maintenance. The Swedish Försäkringskassan requires the maintenance creditor to have an order established. The German Social Services may transfer the maintenance debt back to the child entitled to child support and also require him/her to have an order established, but this possibility has been seriously limited by a decision of the German High Court issued in 2020. Alternatively, they try to file applications for establishment of a maintenance order themselves before their own jurisdictions, as far as possible according to the above-mentioned decision of the CJEU, or they try to apply for establishment of maintenance orders abroad on their own behalf. Latvia issues administrative maintenance decisions that are enforceable abroad.



Deutsches Institut für
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Forum für Fachfragen

3. Diversity of enforcement orders used by public bodies

Some of the public bodies enforce orders given between the creditor and the debtor to recover their own debts, which can be a national or a foreign court decision, an administrative decision or an authentic instrument. This seems to be the case in the majority of the states participating in the Child Support Forum and is certainly a consequence of the fact that most of them require the child entitled to maintenance to be in possession of a maintenance order when applying for maintenance support. Some other public bodies have to institute a proceeding in order to obtain an order on their own behalf (Germany). In some other cases the public body issues an administrative decision on the sums to be reimbursed (Denmark, Latvia, Lithuania, Sweden). According to the Swedish report, the administrative decisions issued by Försäkringskassan are not enforceable abroad, whilst Denmark, Latvia and Lithuania do enforce their decisions outside of the state of origin.

4. Diversity of organisations

Due to the different state structures and their sizes, the national maintenance agencies are more or less centralised. The majority of the states participating in the Child Support Forum have centralised institutions assisting children in the recovery and granting of benefits and the recovery of maintenance support payments, and some of them are the central authorities within the meaning of international administrative cooperation. This promotes specialisation, which makes it possible to work effectively in the highly technical field of maintenance obligations in general and in the field of cross-border maintenance recovery in particular, although it might be difficult to implement in large states.

Financial intermediation, generalised in France in March 2022, is an innovative system that favours a preventive approach to non-payment of child support compared to the curative approach in place in the majority of states. It will be interesting to observe in the future whether the expected effects (pacification of the conflict, avoidance of defaults) occur and whether the administrative burden is worth it in terms of recovery rates.

It is also interesting that various states claim penalties (Belgium) or interest (Lithuania) in addition to the reimbursement of maintenance support. The cross-border enforcement of these additional costs, which do not constitute maintenance, will certainly be discussed at the next meeting.

IV. Conclusion:

The described diversity of situations that fall under the general term "recovery of maintenance by public bodies" inevitably leads to legal and practical difficulties in the daily practice of cross-border case management. At the next meeting, the stumbling blocks encountered by public bodies in those special cases will be highlighted. The presentations and discussions will cover in particular the role of public bodies in cross-border recovery cases, the establishment of enforceable orders, the calculation of the amounts to be reimbursed and difficulties related to recognition and the enforcement proceedings as well as the assistance of central authorities.

Heidelberg, 14th September 2022