



European project

**European platform for the access to personal and family
rights**

EPAPFR

**Extract from the questionnaire
(maintenance law)**

Project Presentation:

Since November 2017, the German Institute for Youth Human Service and Family Law (DIJuF) has participated in the EU-funded project EPAPFR (European Platform for the Access to Personal and Family Rights).

The aim of this project is to analyse the obstacles to implementation of the European instruments regulating private international family law and to present the results on a website (the above-mentioned platform) in order to assist practitioners and individuals with their search for specialised information and relevant agents in the field of cross-border family law disputes.

As a first step, a close look will be taken at the implementation of the European instruments regulating private international family law. For this purpose, the project partners from five member states have prepared the following questionnaire which should be completed by as many practitioners as possible in order to enable elaboration of a representative overview of the problems of implementation.

Within the framework of this project, the German Institute has been entrusted with the task of analysing the implementation of the European Maintenance Regulation (Council Regulation (EC) No. 4/2009). This corresponds to Part I (General Part) and Part II-D of the questionnaire.

Please return your responses regarding Part I and Part II-D to:

**Deutsches Institut für Jugendhilfe und Familienrecht eV
Poststrasse 17
69115 Heidelberg**

or by e-mail to Isabelle Jäger-Maillet: maillet@dijuf.de

Should you be interested in making a comment regarding other parts of the project, please send your comment to the project coordinator (preferably in English or French):

FIJI
64 rue Paul Verlaine
F- 69100 Villeurbanne
France

or by e-mail to Cécile Corso: cecile.corso@fiji-ra.fr

Upon receipt of the completed questionnaires, one or two expert meetings will be held in Heidelberg. During these meetings, the results of the survey will be analyzed and a report will be drawn up. If you are generally interested in participating in the meetings, please send us the attached pre-registration form.

Thank you very much in advance for your interest and kind assistance!

Privacy Policy:

If you submit your personal data to us during your participation in the above-referenced EU-funded research project, those data will be stored by us and, where applicable, used to provide you with project-related information. Besides, they will be forwarded to the project partners, in particular for the purpose of evaluating the following questionnaire. The project partners include the following institutions:

- Femmes Informations Juridiques Internationales (FIJI), France, as project coordinator,
- Université Lyon III (Centre de recherche de droit international privé), France,
- Association pour le droit des étrangers (ADDE), Belgium,
- International Social Service (ISS), Bulgaria
- University of Liege, Belgium
- University of Verona, Italy

It is important for us to make sure you know that protecting your privacy is our utmost priority. Therefore, compliance with statutory data protection provisions is a given. The German Institute guarantees that your personal data will be treated confidentially in accordance with the applicable German and European data protection provisions. Specifically, this means that:

- Your personal data will only be utilized for the above-mentioned purposes.
- Our staff members receive regular training regarding issues of data protection and obligate themselves in writing to adhere to data protection provisions and secrecy.
- You have the right to be informed about the data concerning your person that are stored by the German Institute (§ 34 Federal Data Protection Act).
- You may revoke your consent to the collection, processing or use of your personal data at any time with effect for the future. Then your data will be deleted. This only excludes data we may not yet delete, e.g. due to statutory retention periods in tax law or legal retention obligations.
- In order to ensure the protection of your personal data, the German Institute has appointed Mr. Peter Rodenstein

as external data protection agent.

If you have any questions or suggestions regarding data protection in general or regarding the processing of your personal data by the German Institute, you may contact us, where appropriate, via our data protection agent at any time.

Please also feel free to contact us if you have any complaints. The contact details of our data protection agent are as follows:

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p.rodenstein@priolan.de

I- General part

A- Participant background

1. Function

2. Education and qualifications

3. Organization: which structure do you have?

Government Agency / Court / NGO / Lawyer / Notary / Bailiff / Others

4. Country where the structure is implemented

5. Geographic scope of your action: national/European Union/International

6. Name (optional)

7. Name of the organization (optional)

See general instructions and protection of personal data in the annex attached to the present document

8. Do you agree for your contact details to be published on the platform later: yes / not ?

9. Position and background (requested)

10. Field of activity

11. Financing of the organization:

- By national or local public authorities? (Provide their names if possible and amount as a percentage in view of the overall budget)
- By private foundations (Provide their names if possible and amount as a percentage)
- By private donations (amount as a percentage)
- Other funders

12. Are your actions related to access to private international law of the family funded? If yes, by who? If no, why?

13. Accessibility to the service by the beneficiaries: free / charged (could you please detail the cost of an intervention?) / for which type of public (individuals, professionals)?

14. Would you say that the funding of this issue is sufficient for the needs at a national level? Please give a percentage.

15. Public

a) Individuals:

Total number of individuals who call your service per year:

- Men
- Women
- Children
- Age group

- Social service's beneficiary in %
- Nationality: EU citizen / non EU citizen

b) Professionals

Total number of professionals who call your service per year

16. Number of individual cases / individuals regarding international family law / international child abduction per year
17. Detailed description of the services that the organization provides (legal counseling, social services, etc.)

B- Experience, information and training needs

1) General question about the knowledge in private international law of the family

a. Questions concerning professional's knowledge and information

18. Which questions about private international family law do you most come across in your practice?
19. Have you ever had to get access to a foreign family law? How did you proceed? How did you get access to foreign law? What kind of obstacles did you face? (e.g. cost of subscription, updating of the data?)
20. Which sources of information do you use to answer a question in the field of international private law? (Free access web-sites, subscription to online or paper law journals). Do you know any sites or data basis offering access to foreign laws?
21. Are you using international private law in your practice to assist beneficiaries in their legal steps?
If yes, explain with examples / No, explain why / rarely, explain

22. Have you encountered difficulties in the application of the EU regulation and international instruments in the field of international private law? What difficulties have been opposed in practice (qualification of the « habitual residence », non access to legal aid, civil status problem, etc.).
23. What other difficulties have you faced?
24. Have you ever identified errors in the application of Brussels II Regulation (non application, incorrect application towards European and internal jurisprudence) resulting in inefficiency on access to laws in this field?
- Give examples.
25. Do you feel that you know well enough the legal tools at the disposal of professionals in the field of private international family law? (European regulations, international conventions, etc.)?
26. In your opinion, which information concerning private international family law could be helpful to you, in order to better help your public?
27. In which form should the information be provided? (legal advice, awareness sessions, prevention working groups, etc.)
28. Would trainings / meetings / exchange between professionals' interest you? Why? In what form?
29. Would the creation, in Europe, of a network of relevant actors help you in your practice? What information would you like to find on this network's website?

b. Questions concerning beneficiaries' knowledge and information

30. Which questions about private international family law do your clients most come across in your practice?
31. In your opinion, which information concerning private international family law could be helpful to your public?

32. What tools have you put in place, if need be, to improve information of direct beneficiaries?
33. In which form should the information be provided? How could the information be improved (legal advice, prevention working groups, etc.)
34. Who provides information/counselling to individuals in the field of private international family law in your state?
35. Does your State also offer opportunities for obtaining information to individuals residing in another Member State?

2) Initial and continuing training

36. What initial training is provided in private international family law to the future legal experts/lawyers/judges in your state? Is this training mandatory?
37. Does this training seem sufficient to you? Why?
38. Does bringing basics in international family law as part of an initial training (tools, mechanism, actors) to the social sector seem relevant to you?
39. Have you ever benefited from training in private international family law? If yes, on which field? From which institution?
40. What continuing training is provided in private international family law to the legal experts/lawyers/judges in your state? Is this training mandatory?
41. Does your State offer multidisciplinary training to practitioners? If yes, which aspects are covered (i.e. mediation, psychosocial support, legal)?
42. Does your State provide training to practitioners from abroad? If so, what kind of training, in what language and with what content (national or international law)?
43. Have you been able to implement the contents of the training course(s) in practice?

44. Are you in need of additional advanced training courses? If so, what kind of courses? What did you miss in the past?

3) Access to law and justice

a. Identification of professionals

45. Do you identify a lot of professionals specialized in the field of private international family law in your state?

46. Did you ever have to look for a lawyer abroad, in another European country or elsewhere? How did you proceed? What kind of obstacles did you face?

47. Which tools are at the disposal of the individuals and professionals in access to competent professionals in the field of international family law in your state? How could they be improved?

48. Have you ever had to consult a foreign public or social service (eg : association) ? How did you manage to get the service's contact details? What kind of obstacles did you face (eg : communication, availability/accessibility,...) ? Do you know any websites listing foreign social services?

b. Cross border legal aid

49. Have you ever had to seek international or European legal assistance? How did you proceed (If so, did you apply for it in the State of origin or in the State of destination)? Were you able to get it and what kind of obstacles did you face?

50. Is there the possibility in your state to use cost-free counselling or to apply for exemption from counselling costs in international family matters (e.g. lawyer permanence's, legal aid certificates)?

51. Is there the possibility in your state to use cost-free legal representation or to apply for exemption from the costs of legal representation in international family matters?

52. Do the lawyers requested and specialized in these matters accept legal aid?

53. (Question for the lawyers, anonymous answer): Do you accept legal aid for the files related to private international law of the family, no matter the complexity? How many files per year?

54. Does the poor level of legal aid granted constitute an obstacle, in your opinion, to access to private international law of the family for disadvantaged people?
55. Can the migrants, who did not yet receive a residence permit, get legal aid in your State, for matters related to their personal status or family life?
56. Are there special provisions regarding legal aid in your State in case of minors applying for legal aid? If so, which ones?
57. In case of minors applying for legal aid, is the income of persons other than the minor child considered according to your national law (in particular, income of the parent living with the child or household income)?
58. In your State, are there special rules of jurisdiction for processing cross-border applications for legal aid that are not applicable to domestic cases?
59. In your State, are all translation costs that occur during a proceeding covered by legal aid?
60. Do you think applying for legal aid is an impediment to cross-border enforcement of decisions in the EU claims? If so, why?
61. From your experience, does applying for legal aid result in a substantial delay of the enforcement of decisions in the EU?
62. Are there public organizations dedicated or specialized in access to international family law? If yes, which ones?

If yes, which ones?

63. Is the access to private international family law planned and funded by your State's public policies?
 - At which level (national, regional, local)
 - Which area of public policies
 - If no, please indicate why (absence or unidentified need, etc.)

64. Do you work with non-lucrative organizations, specialized in private international law? If yes, which ones?

c. Application of private international family law by the national authorities

65. Do you identify obstacles in access to justice in the field of private international family law? (Slow procedures, bad knowledge of the relevant legal instruments, incorrect application of the instruments)? If possible give examples.

66. Does the international nature of the procedure slow down the judgment of court decision on the foundation?

67. How many months do you estimate the average length of procedures related to the implementation of EU regulations and The Hague Convention?

- International divorce :

- Marriage annulment :

- Recognition and declaration of enforceability:

- Enforcement application:

- Request for child repatriation:

- Transfer of parental responsibility:

68. In your country, in case of conflict of nationalities (a person having dual citizenship), is the priority given to the European citizenship?

69. In your state, is the judge obliged to instantly apply the rules of laws conflicts (even in absence of claim of the parties)?

II- Specific part

(...)

D- Maintenance

1. Obtaining debtor's related information

a) Obtaining information concerning income and other financial circumstances of the debtor

70. What opportunities are there in your State for obtaining information concerning the financial circumstances of the debtor prior to establishing a maintenance decision?
- Extrajudicial (e.g. right to disclosure)?
 - Judicial (e.g. procedural disclosure obligation of the parties concerned and of third parties, ex officio assessment through the court)
71. Who may use those possibilities of obtaining information concerning the financial circumstances of the debtor (parties to the maintenance matter, only courts, only government agencies)?
72. Who is granted access to the obtained information (in particular, are there any restrictive data protection provisions)?
73. What information is obtained when enquiring the financial circumstances of the debtor? (extent, quality, usability of the information)
74. Does the information provided above also apply to cross-border maintenance cases? (if not, what restrictions or impediments are there?)
75. From your perspective, how could the obtaining information concerning the financial circumstances of the debtor be improved, especially in cross-border maintenance cases?

b) Verification of the Debtor's serviceable Address

76. What opportunities are there in your State for verifying a serviceable address of the debtor?
- Extrajudicial?
 - Judicial?

77. Who may use those possibilities of verification?
78. Who is granted access to the obtained information (in particular, are there any restrictive data protection provisions?)?
79. What information is obtained when successfully locating the debtor's whereabouts? (extent, quality, usability of the information)
80. Does the information provided above also apply to cross-border maintenance cases? (if not, what restrictions or impediments are there?)
81. From your perspective, how could the location process be improved, especially in cross-border maintenance cases?

2. Specific Problems regarding the Maintenance recovery by Public Bodies

a) Jurisdiction at the Seat of the Public Body

According to previous rulings of the European Court of Justice, it is to be assumed that public bodies cannot initiate proceedings for establishment of a maintenance decision pursuant to Art. 3b of Council Regulation (EC) No. 4/2009 because the privileged place of jurisdiction at the creditor's place of residence or official seat does not apply to them.

82. From your perspective, would it be desirable to clarify Art. 3b of Council Regulation (EC) No. 4/2009 so that it applies to public bodies?
83. For what reason?

b) Grant of Public Benefits in Case of Non-Payment of Maintenance

84. Does your State grant public benefits if the debtor fails to pay maintenance?
85. If yes, please describe shortly the prerequisites under which benefits are granted in your State:
86. If benefits are granted, does the State have recourse against the debtor?
87. If so, in what legal form?
- Recovery of maintenance on behalf of the person entitled to maintenance upon application or by mandate
 - Creditor assigns his claim to the State by legal transaction
 - Assignment of the claim to the State by operation of law
 - Through a recourse claim under public law
 - Others:

88. What legal or factual obstacles do occur in the recovery of recourse claims in cross-border cases?

3. Cross-border recognition, enforceability and enforcement of decisions regarding maintenance decisions according to Chapter IV of Council Regulation (EC) No. 4/2009

a) Cross-border declaration of enforceability and enforcement proceedings

89. Have you already applied for the recognition, declaration of enforceability and/or enforcement of maintenance decisions with the foreign competent body (court, public authority, bailiff) without asking the central authority for assistance?

90. In doing so, have you experienced any difficulties? If so, which difficulties? (e.g. obligation to file the application through the central authorities, inadmissible request of translations, requirements that are not foreseen by Council Regulation (EC) No. 4/2009)

91. Do you think enforcement bodies in other Member States treat directly enforceable maintenance decisions within the meaning of Art. 17 Council Regulation (EC) No. 4/2009 in the same way as domestic maintenance decisions?

92. If not, what obstacles are there in your eyes?

93. From your point of view, are there difficulties in the implementation of Articles 21, 24 of Council Regulation (EC) No. 4/2009 (grounds of non-recognition or non-enforcement), which impose limitations to dependants regarding their maintenance claim? If so, which difficulties are there?

94. Do debtors confound modification grounds and grounds for non enforcement?

95. What procedure do debtors usually choose to achieve a reduction in their maintenance obligation? (e.g. modification proceedings, enforcement appeals)?

96. In your State, does the declaration of enforceability proceedings need to be implemented through a lawyer (mandatory representation by a lawyer)?

97. In your State, do enforcement measures need to be implemented through a lawyer (mandatory representation by a lawyer)?

98. In your State, are there possibilities at the level of enforcement proceedings for obtaining information concerning the financial circumstances of the debtor than the ones mentioned in section 1.1 of the questionnaire? If so, which possibilities are there?

99. In your State, are there possibilities at the level of enforcement proceedings for finding out about the current residence of the debtor other than the ones mentioned in section 1.2 of the questionnaire? If so, which possibilities are there?

b) Annexes (Extracts from decisions)

100. In your opinion, are the forms set out in Annexes I-IV easy to find? If not, can you name the difficulties that you have experienced?
101. Are the forms set out in Annexes I-IV easy to fill in? If not, what difficulties did you experience?
102. How could filling in these forms be simplified?
103. Are the made out Annexes I-IV easy to understand for the enforcement bodies? If not, what difficulties do they face? What are typical follow-up questions?
104. How can the forms set out in Annexes I-IV be made more comprehensible for the enforcement bodies?
105. In your opinion, have the forms set out in Annexes I-IV helped to improve the free movement of maintenance decisions in the EU?
106. Would it be desirable to include further information in the forms set out in Annexes I-IV?
107. If so, what information and why?
108. Did you experience difficulties in obtaining the extracts from decisions according to Annex I-IV from the competent body in the State of origin? If so, which difficulties?
109. Are the competent bodies usually willing to issue the forms set out in Annexes I-IV in the language of the State of enforcement as well (i.e. in two languages)?
110. Do courts and competent bodies in your State make use of the possibility to not ask an extract from a decision to be handed in according to Art. 29 No. 1 of Council Regulation (EC) No. 4/2009, if e.g. the maintenance decision is written in the official language of the State of enforcement, or if there is an official translation available? If they don't, what is the reason?

4. Cooperation of central authorities (Chapter 7 of Council Regulation (EC) No. 4/2009)

a) Support from central authorities

111. Have you already made use of the cooperation of central authorities?
If so,
what was the type of application?

what was the requesting authority?

what was the requested authority?

112. Have you faced particular difficulties regarding the implementation of Chapter VII? (Application processing by central authorities, sharing of information...)
113. Does chapter VII meet its objective of allowing defendants effective access to justice? If any, are there difficulties in the implementation that prevent this, e.g. bureaucratic hurdles, processing times, long communication channels)?
114. From your point of view, do central authorities fulfil their role in trying to reach an amicable settlement in maintenance disputes (e.g. transmission of extrajudicial documents after having found the current residence of a debtor)?
If not, why?
115. In case you have applied for official legal aid before: Did you receive the necessary support and counselling before and during the application period? If not, what did you miss?
116. How was the availability of central authorities?
117. Did the support of central authorities lead to the initiation or to the success of maintenance enforcement proceedings? If not, why?
118. Did the central authorities process your application within the time frame established by law?
In case of substantial delays, please state possible reasons:
119. Did the central authorities take measures to accelerate/support the proceedings throughout the process? If so, which measures were taken?
120. From your point of view, do central authorities follow up on proceedings autonomously, e.g. do central authorities answer requests from abroad or does the applicant answer those requests?
121. What are the languages spoken in the central authority of your State? Are all notes/statements sent abroad be translated? How does this increase the financial burden and the length of proceedings?
122. In your State, do you hand in applications directly with the central authority or are there one, or more than one, decentralised bodies serving this purpose?
If yes: Was it easy to find the body that is competent to deal with your case?
Did this body grant you the support you needed?
123. Did you as a public body ever experience being denied the support of a central authority? If so, why?
124. During the course of official legal aid proceedings, has support been offered to defendants from bodies/parties other than central authorities?
If so, did the cost money?
What forms of support do these offers entail? (legal counselling, support in having to deal with emotional consequences of maintenance disputes? Others?)

125. Do you think it is known to defendants and to pertinent counselling agencies that they can apply for official legal aid for the enforcement of maintenance claims within the EU?
126. If not, which measures could help to improve the spreading of information?

b) Working with the forms (Annexes VI and VII)

127. Are the application forms for international administrative assistance easy to find? If not, why are they not easy to find?
128. Are the application forms for international administrative assistance easy to fill in? If not, what could be the difficulties?
129. How could filling in the application forms for international administrative assistance be simplified?
130. Do central authorities or decentralised agencies that fulfil the role of central authorities give practical support to applicants when filling in the application forms for international administrative assistance? If yes, how and to what extent?
131. If not, is it possible in your State to get support elsewhere? If available, does this support cost money?
132. Would it be desirable to include further information in said forms?
If so, what information and why?

Thank you for your participation!