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International Maintenance Recovery on the Basis of Authentic Instruments - a Report from Practice

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Authentication procedure in Germany

- **Strong formal requirements of authentication:**
 - Exclusive competence of neutral authenticating officers (notary publics, youth welfare offices, German embassies and general consulates)
 - Authentication procedure ruled in the German Authentication Act (Beurkundungsgesetz)
 - Identification of the person making the declaration is ensured by the authenticating officer
 - The entire record of the declaration is read and if necessary translated to the person making the declaration
- **Service of the enforceable copy of the document is mandatory before enforcement takes place**



Contents of maintenance obligations recognized in German deeds

- Unilateral declaration of commitment or maintenance agreement
- Limited contractual freedom
 - No choice of applicable law possible (Art. 8 (3) Hague Protocol)
 - No renunciation of future maintenance possible (§ 1614 BGB= German Civil Code)
- Submission of the debtor to immediate enforcement
- If paternity has not yet been established, the acknowledgement of paternity can be authenticated in the same deed



Authentic Instruments: a popular enforcement instrument in the German maintenance recovery practice

- Under German law, authentic instruments are treated as equivalent to court enforcement orders (§ 797 ZPO-German Code of Civil Proceedings)
- Prevention of court proceedings (enhancement family peace)
- Quick and uncomplicated establishment of an enforceable maintenance decision
- Authentic Instruments issued by the Youth Welfare Offices are free of costs/ other authenticating authorities are not free but cost-effective



Challenges related to the cross-border maintenance recovery on the basis of authentic instruments

- Not all countries have an agreement with the Federal Republic of Germany on the recognition of authentic instruments (Tunisia, Israel)
- Some member states of the 2007 Hague Child Support Convention have declared a reservation against the recognition of maintenance agreements
- Even if no reservation has been made, the recognition, declaration of enforceability and enforcement of authentic documents is still met with skepticism when the authentication procedures are not well known in some countries
- Modification options: In case of a change of situation, authentic instruments cannot be changed unilaterally by the debtor.
Either the parties agree on a new amount so a new deed can be issued and the old one be returned, or either party may file a request for modification with the competent court.

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Thank you for your attention!

Questions?

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