

# Child Support Forum January 29, 2025

Cross-border recognition and enforcement of child  
maintenance on the basis of authentic instruments

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4/2009
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# I. Introduction

- Authentic instruments are important for the recognition and enforcement of child maintenance.
- Recognition means that the legal effects of an act of the State of origin are extended to another State, the second State.
- Enforcement means that the effects of the act will be implemented in the State of enforcement, the State addressed.
- Auth. instr. originate as an arrangement between maintenance creditor and debtor. However, in international enforcement, legal provisions on decisions are used to a certain degree.

## II. Legal sources

National authentication	<ul style="list-style-type: none"><li>- Germany: Authentication Act (Beurkundungsgesetz)</li><li>- Germany: Children and Young Persons Assistance Act (Kinder- und Jugendhilfegesetz)</li></ul>
Recognition and enforcement	<ul style="list-style-type: none"><li>- EU Maintenance Regulation 4/2009</li><li>- 2007 Hague Child Support Convention</li><li>- Multilateral (Lugano) and bilateral conventions</li></ul>
National implementation provisions	<ul style="list-style-type: none"><li>- Germany: Foreign Maintenance Act (Auslandsunterhaltsgesetz)</li></ul>
National enforcement law	<ul style="list-style-type: none"><li>- Germany: Code of Civil Proceedings (Zivilprozessordnung)</li></ul>

### **III. Article 48 EU-Maintenance Regulation**

- The EU Maintenance Regulation No 4/2009 is in force for all EU Member States. The (partial) application in respect of Denmark is based on special provisions.
- Art. 48 Maintenance Reg. applies to court settlements and authentic instruments. An auth. instr. is a document which has been formally drawn up or registered in the MS of origin. Its authenticity relates to the signature and the content of the instrument (Art. 2 [1] no. 3 [i]) and has been established by a public authority or other authority empowered for that purpose (e.g. a notary). It is also an arrangement concluded with administrative authorities of the State of origin or authenticated by them (Art. 2 [1] no. 3 [b]); (e.g. German Youth Office or diplomatic representation).

### **Enforcement of authentic instruments**

- For the enforcement of authentic instruments, reference is made to the rules for decisions in Ch. IV. There are two different regimes, depending on whether or not the State of origin is a Member State of the 2007 Hague Child Support Protocol.
- Direct enforcement and recognition by operation of law for auth. instr. originating from Member States of the Hague Protocol follows the provisions for decisions (Arts. 17-22, 39-43 M. Reg.).
- A declaration of enforceability is necessary for non-Member States of the Protocol (Art. 23-43 M. Reg.). This is relevant for the recognition and enforcement of Danish decisions in other Member States.

# Direct enforcement

- The prerequisites for direct enforcement are similar to those for decisions. There must always be a valid enforceable instrument. There is no requirement that applications have been served.
- There is also no requirement that the defendant has been involved in the proceedings.
- There is no public policy review. However, enforcement can be refused where a limitation of enforcement is applicable.
- A conflict with another decision or an authentic instrument concerning the same obligation and period of time is another ground of refusal.

The right to apply for review in the State of origin may block enforcement.

# Uniform forms

## **ANNEX III - Extract from an authentic instrument in matters relating to maintenance obligations not subject to proceedings for recognition or a declaration of enforceability**

1. Date and reference number of the authentic instrument: ...

2. Nature of the authentic instrument

2.1. Instrument formally drawn up or registered on: ...

Agreement concluded or authenticated on: ...

Competent authority: Name, Address, Member State

3. Creditor(s)

4. Debtor(s)

5. Contents of the authentic instrument

The authentic instrument provides that Debtor...must pay the sum of ...to Creditor ....

Done at: ... on: ...

Signature and/or stamp of the competent authority:

## **Declaration of enforceability**

- For a declaration of enforceability for instruments from non-Hague Prot. States, some grounds of refusal applicable for decisions have to be observed. Enforcement may be denied if the auth. instr. is contrary to the public policy of the State addressed (Art. 24 [a]).
- The ground of refusal for a decision given in default where the defendant was not served with the document of appearance that instituted the proceedings (Art. 24 [b]) is not applicable to auth. instr. Enforcement is denied if the auth. Instr. is irreconcilable with a decision between the same parties in the MS in which recognition is sought (Art. 24 [c]). The same is true if the instrument is irreconcilable with an earlier decision (Art. 24 [d]).

## **Declaration of enforceability (2)**

- The procedure for obtaining a declaration of enforceability follows Art. 28 of the Regulation. The application for a declaration of enforceability is to be accompanied by the documents listed in Art. 28(1) EU Maintenance Regulation.
- There are also rules on the transmission of authentic instruments with the help of the national Central Authority.

## **ANNEX IV - Extract from an authentic instrument in matters relating to maintenance obligations subject to proceedings for recognition and a declaration of enforceability**

1. Date and reference number of the authentic instrument: ...

2. Nature of the authentic instrument

2.1. Instrument formally drawn up or registered on: ...

Agreement concluded or authenticated on: ...

Competent authority: Name, Address, Member State

3. Creditor(s)

4. Debtor(s)

5. Contents of the authentic instrument

The authentic instrument provides that Debtor...must pay the sum of...to Creditor ....

Done at: ... on: ...

Signature and/or stamp of the competent authority:

## **IV. 2007 Hague Child Support Convention**

- Art. 30 Convention regulates auth. instr. in the context of 'maintenance arrangements'. These are agreements in writing relating to the payment of maintenance.
- The agreement has to be formally drawn up or registered as an auth. instr. by a competent authority (Art. 3 [e] [i]), e.g. a notary.
- Second kind of agreement: agreement authenticated by, or concluded, registered or filed with a competent authority, and subject to review and modification by a competent authority (Art. 3 [e] [ii]); e.g. issued by a Youth Office. The competent authority can, according to the law of the State or origin, also be a court.

# Treatment of authentic instruments

- Auth. instr. are treated in some parts of the Convention as if they were maintenance decisions (Art. 30 [2]). Art. 30 is much more explicit than the corresponding provision in the EU Regulation.
- They must be enforceable in the same way as a decision in their State of origin (Art. 30 [1]).
- No recommended form has been developed for a statement of enforceability for a maintenance arrangement. An “Explanatory Report” and a “Practical Handbook for Caseworkers” give details.

## Exceptions

- A Contracting State may declare that applications are to be made only through Central Authorities (Art. 30 [7] Support Convention). This excludes direct requests for the enforcement of maintenance arrangements. Such declarations have been made, for example, by some Canadian provinces, New Zealand and Norway.
- Contracting Parties may entirely exclude, by way of reservation, the recognition and enforcement of maintenance arrangements (Art. 30 [8] Convention), e.g. Belarus, Philippines, Turkey and Ukraine. The alternative for the recovery of maintenance is often only the institution of proceedings in the State addressed.

# Enforcement Procedure and the Support Convention

- The enforcement procedure under the Convention is governed primarily by the treaty. No statement of proper notice is required.
- Accompanying documents: Complete text of the maintenance arrangement (Art. 30 [3] [a)) and a document stating that it is enforceable as a decision in the State of origin (Article 30 [3][b]).
- Often registration of the foreign auth. instr. or exequatur is necessary.
- National provisions on auth. instr. deal with details, e.g. German Foreign Maintenance Act § 57 et seq.

## Alternative procedure

- Some Contracting States, like Norway and Turkey, use an alternative procedure for applications in accordance with Art. 24 of the Convention. This applies also to auth. instr.. Under the alternative procedure, the respondent has to be notified and both the applicant and respondent have to be given an opportunity to make submissions to the competent authority (Art. 24 [3]).
- There is also a wider scope for the competent authority in the State addressed to examine the auth. instr. and to consider certain grounds for refusing recognition (Art. 24 [4]).

## **V. Conclusion**

- Authentic instruments are a special solution falling between simple contracts and enforceable decisions.
- Particularly under the EU Maintenance Regulation, authentic instruments can circulate freely in the European Union.
- The 2007 Hague Support Convention is also a useful basis for maintenance enforcement.
- However, despite the efforts to facilitate enforcement, it can still be difficult to achieve as many provisions designed to ensure the integrity of the submitted instrument and the procedural position of the parties – particularly of the debtor – must nevertheless be satisfied.