



## ONLINE MEETING

# International Maintenance Recovery on the Basis of Authentic Instruments

January 29<sup>th</sup>, 2025

The Child Support Forum open online conference was held on January 29<sup>th</sup>, 2025 with about 75 participants in attendance. The different contributions explored various aspects of the international maintenance recovery on the basis of authentic instruments. The speakers emphasised the importance of authentic instruments in preventive justice especially in continental Europe, they also highlighted the strict conditions under which authentic instruments are issued and the possibilities to recover maintenance on their basis in cross-border cases.

All presentations can be downloaded under <https://childsupport-worldwide.org/33.html>

Here are the key contents and findings of the conference.

## I. Summary of the contributions

### 1. WHAT IS BEHIND THE TERM “AUTHENTIC INSTRUMENT”

The payment of child maintenance is not always ordered by a court. Maintenance debtors may commit themselves to make payments in a unilateral declaration or make a child support agreement with the custodial parent in an enforceable deed. These enforceable deeds are generally called “authentic instruments”.

For the field of maintenance matters, a legal definition of authentic instruments can be found in the EU-Maintenance Regulation (Regulation (EC) no. 4/2009) and to a certain extent in the 2007 Hague Child Support Convention.

Art. 2 (1) no. 3 EUMaintenance Regulation:

**“The term ‘authentic instrument’ shall mean:**

- (a) a document in matters relating to maintenance obligations which has been **formally drawn up or registered** as an authentic instrument in the Member State of origin and the authenticity of which:
- (i) relates to the **signature** and the **content** of the instrument, and
  - (ii) has been established by a **public authority or other authority empowered for that purpose**; or,
- (b) an arrangement relating to maintenance obligations concluded with administrative authorities of the Member State of origin or authenticated by them.

Art. 3 lit. e) 2007 Hague Child Support Convention:

**“Maintenance arrangement”** means an **agreement in writing** relating to the payment of maintenance which

- i) has been **formally drawn up or registered** as an authentic instrument by a competent authority; or
- ii) has been **authenticated** by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority;

Authentic instruments are largely unknown in the common law. They encompass a much wider category of documents like property purchase agreements, donations, wills and the majority of them **is issued by notaries**. Notaries in civil law countries occupy a very different position from notaries in common law countries. They are highly qualified lawyers who have high professional duties, which gives their deeds a **special credibility in legal transaction**.

Authentic instruments are also an instrument of **preventive justice**. Especially in family matters, a number of European jurisdictions encourage the amicable settlement of conflicts via court settlements but also out-of-court agreements, which become enforceable, once they have been authenticated by a notary.

The advantages of the authentic instrument in the context of child support are clear – a directly enforceable instrument setting out reciprocal rights and obligations made voluntarily and without acrimony by the parties, rather than imposed on an recalcitrant non-custodial parent by a court decision; establishment of an enforceable deed without recourse to the courts.

## 2. PRACTICE REPORTS FROM FRANCE AND GERMANY

In France and Germany, authentic instruments in the field of child maintenance recovery are not only issued by notaries but also by the child welfare services (in France the “Caisse d’Allocations Familiales –CAF-” and in Germany the “Jugendamt”).

**In France**, parents who have separated or are in the process of separating following the breakdown of a civil partnership or cohabitation can apply to CAF for a writ of execution regardless of whether or not they receive CAF benefits. This does not apply to divorced

parents or married parents in the process of separating. The parents must not already have obtained an enforceable title (judgment or notarised agreement) or have taken steps to do so before the family court or a notary. If this is the case, the parents must refer the matter to the Family Affairs Judge again in order to have the child support amount changed. Any subsequent enforceable court decision abolishing or modifying the maintenance allowance covered by the parenting agreement cancels the enforcement order issued by CAF.

Before applying to CAF for an enforcement order, the separated parents must have signed a parenting agreement. This document must be attached to the application for an enforcement order. There is no need to refer the matter to a judge or a lawyer, the application is completely free of charge and the decision is made quickly.

**In Germany**, the authentication of declarations concerning maintenance obligations, among others by notaries, Youth Welfare Offices or the German Embassies, is very strictly regulated. The German Authentication Act (Beurkundungsgesetz) requires among others:

- That the identification of the person making the declaration is ensured by the authenticating officer and
- That the entire record of the declaration is read and, if necessary, translated to the person making the declaration, so that there can be no doubt on the fact that he or she has understood what he or she has declared.
- The submission of the debtor to immediate enforcement is expressly mentioned in the deed and is explained by the authenticating officer.

Furthermore, enforceable deeds need to be served before enforcement can take place. So the debtor has several opportunities to start payments or introduce a modification proceeding, if justified, before enforcement is taken.

The establishment of authentic instruments in the fields of acknowledgment of paternity and child maintenance by the Youth Welfare Offices is free of costs.

### **3. CROSS-BORDER RECOGNITION AND ENFORCEMENT OF CHILD MAINTENANCE ON THE BASIS OF AUTHENTIC INSTRUMENTS**

For purposes of declaration of enforceability and enforcement, authentic instruments are treated as equivalent to court maintenance orders in various international instruments.

- Art. 48 EU Maintenance Regulation (EC) no. 4/2009
- Art. 30 2007 Hague Child Support Convention
- Art. 57 Lugano Convention

Within the EU, authentic instruments issued from June 18<sup>th</sup>, 2011 are directly enforceable in other MS according to Art. 17 of the Maintenance Regulation. Older authentic instruments still need to be declared enforceable (Art. 26 and seq. Maintenance Regulation). This is also the case when the enforcement takes place under the 2007 Hague Convention.

Within the EU, “extracts of the authentic instruments” can be used in order to avoid translations costs (see Annexes III and IV of the Maintenance Regulation). Within the scope of the 2007 Hague Child Support Convention, no specific extract of authentic instrument is provided. It is not clear whether the extract of decision form can be used for authentic instruments, but it seems to be an accepted practice in a number of cases.

The grounds on which a declaration of enforceability and enforcement of a judgment can be refused in principle also apply to authentic instruments. However, caution is advised when it comes to violations of the right of defense. The reason for this is that authentic instruments are not the result of court proceedings, but of a voluntary commitment by the maintenance debtor. There is therefore no document initiating the proceedings and no hearing by a judge. The identification of the debtor and his information about what he is signing/committing to is guaranteed by the different national authentication rules.

The following restrictions remain under the 2007 Hague Convention:

- A Contracting State may declare that applications are to be made only through Central Authorities (Art. 30 [7]). 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]), 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.

#### **4. OUTLOOK**

When it comes to the the cross-border recovery of maintenance on the basis of authentic instruments, different obstacles could be identified during the meeting.

- Not all countries recognise authentic instruments as equivalent to court orders.
- Some member states of the 2007 Hague Child Support Convention have declared a reservation against the recognition of maintenance agreements (Turkey, Ukraine, Belarus).
- Even if no reservation has been made, the recognition, declaration of enforceability and enforcement of authentic instruments still meets with skepticism when the authentication procedures are not well-known.
- The specifics of remedies against the enforcement of authentic instruments as well as the modification options are not always well-known by the legal counsels or still controversial in the literature (exact object of recognition, res judicata, are authentic instruments protected by the prohibition of review of the merits?).

- It should be clarified whether the Hague Abstract of Decision Form can be used to enforce authentic instruments. If not, it would be helpful to develop a new form.

## II. Contents of the Conference and Biographies

### Speakers

*Dr. Isabelle Jäger-Maillet* – German Institute for Youth Services and Family Law (DIJuF), Germany

#### **“Report from Practice: Germany”**

Dr. Isabelle Jäger-Maillet is coordinator of the Network “Child Support Worldwide” at the German Institute for Youth Human Services and Family Law (DIJuF). She has studied law in Bordeaux, France, where she comes from, and also holds a German law degree from the LMU Munich. Isabelle has been working for many years for German public bodies in the field of cross-border maintenance recovery and has completed a PhD thesis on the topic of Cross-Border Maintenance Recovery by Public Bodies in 2025.

*Maria Kitanova* – Caisse Nationale d’Allocations Familiales, France

#### **“Report from Practice: France”**

After graduating at Sciences Po Paris and the Ecole Supérieure de Sécurité Sociale, and studying law at the University of Strasbourg, Maria Kitanova carried out a variety of management and executive roles in French social security organizations like Urssaf, the body responsible for the collection of social security contributions or the French pensions fund. She joined the maintenance collection and intermediation agency (ARIPA) in December 2023.

*Nigel Ready* – Scrivener Notary, London (UK)

#### **“What is behind the term “authentic instruments”?”**

Educated Wycliffe College, Stonehouse; Jesus College, Cambridge where he read modern languages and law. Scrivener notary, partner of Cheeswrights, notaries in the City of London 1981-2009, managing partner 1990-2009 and currently a consultant and honorary chairman. Publications include: the 10th (1988), 11th (1992), 12th (2002) 13th (2009), 14<sup>th</sup> (2013) and 15th (2021) editions of Brooke’s Notary (Sweet and Maxwell, London (with Hong Kong supplements (2005, 2017 and 2023)). He is a Past Master (2002-2003) of the Worshipful Company of Scriveners, President (2000-2003) of the Society of Scrivener Notaries, delegate (2011-2019) European Affairs Commission of the International Union of Notaries (UINL), General Councillor (2019- ) of the UINL, member (2019- ) International Cooperation Commission (CCNI) of the UINL and Honorary Fellow of the Australia and New Zealand College of Notaries.

*Prof. Dr. Dieter Martiny* – Europa-Universität Viadrina, Frankfurt (Oder), Germany

#### **“Cross-border recognition and enforcement of child maintenance on the basis of authentic instruments”**

Max Planck Institute for Comparative and International Private Law (since 10/2009); doctorate (1975) and habilitation (1995) in Munich; Research Fellow at the Max Planck Institute in Hamburg (1974-1996); Emeritus Professor at the European University Viadrina Frankfurt (Oder) for civil, private international and comparative law (1996-2009); member of the Commission on European Family Law and co-editor of the European Family Law Series; numerous publications on international, comparative and European family law; collaboration in EU projects on European family law.