



## The EU Maintenance Regulation

This **Regulation is directly applicable to all Member States** of the EU9 and came into force on 18 June 2011.

The Civil Jurisdiction and Judgment (Maintenance) Regulation 2011 (“the 2011 Regulation”) came into force on 18 June 2011 to facilitate implementation of the Regulation in England and Wales.

For maintenance applications between two Member States, the **Regulation takes priority over the Convention**.

The goal of the Regulation was to **enable a maintenance creditor to obtain easily a decision that will be automatically enforceable in another Member State** without formalities. It applies to any foreign maintenance order (i.e. not just those from a Member State).

Essentially the Regulation provides:-

1. Rules on obtaining a maintenance decision to include jurisdiction and rules on applicable law;
2. Rules on **modifying a maintenance decision**;
3. Rules on recognition, enforcement and enforceability of a maintenance decision;
4. Rules on the **responsibilities and operation of the Central Authorities**;
5. Rules on **access to justice and legal aid**;
6. Rules on providing up to date information to the public about national laws and procedures concerning maintenance obligations together with a description of how the State will meet its obligations under the Regulation; and
7. For the Commission to report on the application of the Regulation to include an evaluation on the practical experiences of Central Authorities.

Its aims are to **limit conflicting decisions in different jurisdictions** and encourage private agreements.

**The Regulation includes administrative authorities in its definition of ‘court’.**

A ‘decision’ refers to a **decision made by a ‘court’** as defined. A decision would therefore include a **child maintenance assessment (arrears only** because such an assessment would, in most cases, cease as soon as a party becomes non-resident in the jurisdiction of England & Wales). It would not include a **‘family-based’ agreement**. Article 48 further provides that Court settlements and authentic instruments enforceable in a Member State shall also be recognised and enforceable.

There are two different tracks for recognition and enforcement of a decision under the Regulation. **A decision given in a state bound by the protocol** of 23 November 2007 on the Law Applicable



to Maintenance Obligations (“2007 **Hague Protocol**”) (namely all EU States save the UK and Denmark), shall be recognised without any possibility of opposing its recognition and no need for a declaration of enforceability.

This skips a step that must be taken when **enforcing a decision given by a state not bound by the 2007 Hague Protocol**. This process is called **exequatur** and its purpose is to **protect the rights of an individual in exceptional circumstances**.

Focusing on enforcement, under the Regulation a **creditor may apply to the Central Authority in their jurisdiction for assistance with the enforcement of a decision**.

The **Central Authority or other body as designated by the Member State** has a number of functions to include:-

- a) Cooperate with other Central Authorities to give effect to the Regulation (Article 50)
- b) Transmit and receive applications and initiate or facilitate the institution of proceedings (Article 51(1))
- c) Provide or facilitate the provision of legal aid (Article 51(2)(a))
- d) **Help locate the debtor or creditor** (Article 51(2)(b))
- e) Help obtain relevant information concerning income including the location of assets (Article 51(2)(c))
- f) Facilitate the on-going enforcement of maintenance decisions, payment of arrears and the collection of maintenance payments (Article 51 (2)(e) & (f))
- g) Facilitate the obtaining of documentary of other evidence and service of documents (Article 51 (2)(g) & (j))
- h) providing assistance in establishing parentage (Article 51(2)(h))
- i) Shall assist the applicant to ensure the application is complete (Article 58(1))
- j) Shall acknowledge an incoming application within 30 days of receipt (Article 58(3)) and within 60 days of acknowledgement provide a status update (Article 58(4)).
- k) Shall keep other Central Authorities informed about the progress of the case (Article 58(5)) and shall progress a case as quickly as possible (Article 58(6)).
- l) Having access to information held by other State bodies on the address of a creditor or debtor, the debtor’s income, the debtor’s employer and bank accounts and assets (Article 61(2)).

The Central Authority shall (generally speaking) bear its own costs.

The question of whether a creditor may apply direct to a court (rather than just via the Central Authority) in the jurisdiction in which the debtor resides for enforcement or variation of a decision has arisen in England and Wales. Mr Justice Mostyn, held that such an application was possible under the Regulation in relation to the enforcement of a decision.



Sir Peter Singer in considering a variation application held that the application must to go through the Central Authority. The later decision places importance on the wording of the 2011 Regulation which arguably misinterprets the Regulation.

**The issue is important because practice suggests that to involve the Central Authorities means the process takes many months or even years to resolve. A direct application to the English court will likely result in a hearing within 8-12 weeks though it may not be free.**

Empirical research was carried out on the effect of the Regulation by Dr Lara Walker in 2011/12, the results for which are published in her book "Maintenance and Child Support in Private International Law", Hart 2015.

#### **Copyright note:**

This paper is an extract from a paper prepared and presented at the HCCH Global Conference on Child Support and Family Maintenance in Asia-Pacific and Worldwide in November 2015.

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#### **Questions:** focus on vocabulary:

What are the main goals of the **Regulation**?

Who acts as the **Central Authority** in your country and have you ever dealt with the CA in your professional capacity?

How easy or difficult is to obtain a **maintenance order** in your country?

How easy or difficult is it to **enforce such an order**?

May the maintenance order be **enforced directly** or is an **enforcement order** needed to **garnish the wages** or **attach a bank account** of the obliged person?

Is there some strict and general **formula** used in your county by family courts or family law judges to **quantify the child maintenance** and what is it based on?

When and how may the person obliged to pay maintenance **seek modification of the maintenance order** and what will the **court test in order to vary such standing order**?

Will the parent seeking the order or modification of maintenance order **be entitled to pro bono representation or legal aid** in your country?

Must the party **be indigent** in order to **qualify for pro bono or free legal aid**?

Are all child custody and maintenance cases **exempt from court fees** in your country?

Who is **guardian ad litem** and when does the court in your country **appoint** one?

In **cross border cases** is the Central Authority always **appointed to act as the guardian ad litem** of the child if the child is a **minor**?

Is the parent **under an obligation to seek maintenance** from the other parent in your country or can the parent **waive the right to child support**?

May the child support be collected many years after the order was issued or does a **period of limitation bar the claim** under some circumstances?

Does **failure to pay maintenance** amount to a **criminal offence** in your country and do you find **prison sentences** an effective remedy?