



Newsletter 2021, No. 49

## Newsletter of the Global Network: “Child Support Worldwide”

**Dear network members and child support experts all over the world,**

### Post-BREXIT Recovery of EU-Maintenance orders in the UK

(This contribution is based on the current practical experience of DIJuF and only reflects its own views).

Almost two years after Brexit and more than half a year after the end of the transitional period, the practice of cross-border maintenance enforcement in relation to the United Kingdom does not seem to be uniform across the EU. This legal uncertainty has significant practical disadvantages for maintenance creditors and their advisors, who in particular have no clear guidance on the application documents to be submitted and the possible grounds for refusal.

According to one view, applications for a declaration of enforceability and enforcement of EU titles filed from 01.01.2021 are fully subject to the 2007 Hague Child Support Convention, irrespective of the date of issue of the maintenance order or the date of initiation of the establishment proceedings in the country of origin. Applications filed under EU law continue to be processed under the rules of Regulation 4/2009. This is, for example, the practice of the English MEBCs.

According to other views (e.g., the German and British Central Authorities), Article 67(2)(c) of the Withdrawal Agreement between the EU and the United Kingdom ([EUR-Lex - 12019W/TXT\(02\) - EN - EUR-Lex \(europa.eu\)](#)) is to be understood in such a way that the legal basis for the declaration of enforceability and enforcement of EU maintenance orders is different depending on the date it was issued or the date that the establishment proceedings were initiated. Consequently, applications for a declaration of enforceability and enforcement initiated before 1 January 2021 will continue to be subject to EU rules, because they were filed under EU law, as will applications filed after 1 January 2021, when the order to be registered was issued or the proceeding were initiated before January 2021. Therefore, it is not the time of filing the application that is decisive, but the time of issuing the maintenance order or initiating the establishment proceedings.

The application “on the merits” must be distinguished from the application for administrative assistance (Art. 67 No. 3 b). Here, the date of the application is to be taken into account.

In DIJuF's view, the wording of Art. 67 of the Withdrawal Agreement is relatively clear and speaks in favour of the second view. However, it is



doubtful whether the authors of the agreement drafted this provision in awareness of the practical consequences. Concerning applications filed via the Central Authorities, the logical application of Art. 67(2)(c) and (3)(b) of the agreement leads to a desynchronisation of the application for administrative assistance (Hague provisions and forms) from the application on the merits (EU provisions and forms) in most cases. Concerning direct applications, the question of the forms is less acute but Art. 67 nevertheless leads to an unnecessary prolongation of the transitional period to the exclusive application of the 2007 Hague Convention. Furthermore, in case of objection, different grounds for refusal will continue to be applicable for a long time.

This short contribution aims to raise awareness of the complicated and confusing legal situation, to the detriment of maintenance creditors and to appeal to the responsible authorities for a regulation which is as clear and simple as possible, taking into account the objectives of the Hague Convention to make proceedings accessible, prompt, efficient, cost-effective, responsive and fair.

If you would like to share your experience with the CSW-members or express your view, don't hesitate to send your contribution to [childsupport@dijuf.de](mailto:childsupport@dijuf.de).

### **Switzerland: Recommendation of the Federal Council to ratify the 2007 Hague Child Support Convention and its Protocol**

In its report of 18.06.2021, the Swiss Federal Council recommended that Switzerland ratify the 2007 Hague Maintenance Convention and its Protocol. Currently, the following legal bases apply to maintenance matters:

- In the area of mutual administrative assistance: the 1956 UN-Convention, bilateral agreements or formal reciprocity.
- In the area of recognition, declaration of enforceability and enforcement: the Lugano Convention, the 1973 Hague Maintenance Convention, bilateral agreements (e.g., with respect to the USA).
- In the area of applicable law: the 1973 Hague Convention on the law applicable to maintenance obligations.

The Federal Council notes that these legal tools are outdated and that the ratification of the 2007 Hague Maintenance Convention and its Protocol would, among other things, promote the cross-border enforcement of claims by public bodies and enable maintenance creditors to be granted free legal aid in more cases. However, it is still unclear how the Convention can be implemented in the Swiss federal system. A decentralised organisation of the local debt collection agencies, the establishment of cantonal Central Authorities or a federal Central Authority, as well as a mixed system in which small authorities in particular could transfer their competence to a central body for reasons of efficiency are all possible options which will be the subject of future discussions.

Overall, the Report of the Federal Council represents an important step towards ratification of the 2007 Hague Child Support Convention and the Protocol. However, the fundamental considerations regarding their implementation and the current reform of debt collection aid will certainly take some time.

### **New Zealand ratifies the 2007 Hague Child Support Convention**

As a result of the ratification, the 2007 Hague Child Support Convention will

enter into force for New Zealand on 1 November 2021. In relation to the participating States, it will replace the Commonwealth Scheme and the 1956 UN Convention on the Recovery of Maintenance Abroad. With regard to non-Convention Parties, existing Reciprocal Agreements like for example with Australia will continue to apply.

New Zealand has made no reservations regarding the recognition of maintenance agreements or a basis for recognition and enforcement under Article 20(1) c), e) and f) of the Convention but applications for recognition or recognition and enforcement of a maintenance arrangement can only be made through Central Authorities. In other cases, internal laws allow for direct requests. An applicant can approach Inland Revenue (which is also the Central Authority) in a number of ways. Information is available [here](#).

Proceedings will be initiated under the [Family Proceedings Act 1980](#) and [Child Support Act 1991](#).

### **CSW-Newsletter – get involved!**

Thank you for your feedback on the latest contributions!

In order to strengthen interactions between our readers and discuss more often relevant developments in the different national legal systems, you are cordially invited to share with us information regarding:

- Your national child support law and public supporting instruments,
- Private international law related to child support,
- The practice of cross-border recovery of child support in your States.
- Any events related to cross border recovery of child support.

### **Enforcing Maintenance despite the Coronavirus Measures**

The impact of the Covid-19 restrictions on the operational status of child support authorities seems to be steadily decreasing all over the world. As far as is relevant for your State, we thank you for your assistance in keeping the [status table](#) up to date.



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