

“Choice of court in matters relating to maintenance obligations”

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I. The legal framework of the Brussels I Regulation – Previous legal situation

- Art. 23 of the Brussels I Regulation
- Principle: What has been agreed to by or between the parties must be given effect
- Generous possibility to reach choice of court agreements in cross-border maintenance disputes

II. The fundamental innovations of the European Maintenance Regulation

1. Formality

- “A choice of court agreement shall be in writing.”
(Art. 4 par. 2)

- The recitals are useful guidance:

Writing requires a declaration expressing clearly and precisely that the parties agreed to the jurisdiction of the court.

2. Consensus between the parties

- “The parties may agree that ...” (Art. 4 par. 1)
- What is required for an agreement?
- Principle: No recourse to the procedural law of the court seised
- Exception: The formality gives no indication for the establishment of the agreement (e.g.: legal capacity, representation, avoidance of an agreement)

3. Requirements for content

a) Restricted choice of jurisdiction

- Choice of jurisdiction restricted by connecting factors
- Purpose of the restriction is to protect the creditor by reducing the risk of abuse
- The connecting factors are:
(a) habitual residence, (b) nationality and (c) matrimonial court and last common habitual residence

b) Exclusion in relation to minors

- “This Article shall not apply to a dispute relating to a maintenance obligation towards a child under the age of 18.” (Art. 4 par. 3)
- Purpose of the exclusion is the protection of the weaker party
- Scope of the exclusion: Maintenance obligations towards a child under the age of 18
- How to deal with imprecise agreements?

4. Effects of the choice of court agreement

- The court seised has to examine the validity of the agreement (Art. 10)
- Exception: Defendant enters an appearance before the court (Art. 5)
- Autonomy of the parties regarding the concrete effects (e.g.: international and local jurisdiction / exclusive and additional jurisdiction)
- Rule of interpretation (Art. 4 par. 1)

III. Need of a cross-border implication?

- No explicit requirement of a cross-border implication
- Recitals and the legal competence: Need of a cross-border implication
- How can the cross-border implication be examined?

Positive condition for the material scope of the regulation or teleological reduction in the event of a purely domestic case?

IV. Conclusion

- Similarities between Art. 23 Brussels I-Regulation and Art. 4 European Maintenance Regulation
- Several crucial innovations:
 - (1) Strengthened formal requirements
 - (2) Restricted autonomy of the parties in the choice of courts
 - (3) Excluded autonomy of the parties relating to maintenance obligations towards a child under 18

Thank you for your Attention!

EU Maintenance Regulation – The Devil´s in the details
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