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Family maintenance

 Netherlands

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(in civil and commercial
matters)

1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

The obligation to pay maintenance arises from blood relationships and affinity, a (previous) marital bond or a parent-child relationship. Maintenance is an obligation to contribute to the cost of living of the recipient (the ‘maintenance creditor’) despite living apart.

Maintenance obligations towards a (former) spouse (or former registered partner)

The maintenance obligation that exists between spouses during marriage continues after the dissolution of the marriage. The court may, in the divorce judgment or in a later judgment, grant maintenance at the expense of one ex-spouse to the other ex-spouse who does not have sufficient income to support his or her living costs (and is not, as far as can reasonably be expected, able to acquire it) at the latter’s request. In establishing this maintenance allowance, the judge takes into account the needs of the maintenance creditor and the means (financial resources) of the other ex-spouse. Non-financial factors may also play a role, such as the duration of the marriage or the age of the person entitled to maintenance. The maximum period of maintenance is 5 years. If the marriage or registered partnership lasted less than 10 years, the maintenance obligation ends after half of the time the marriage or partnership lasted.

There are 3 exceptions:

- If the spouses have children together, maintenance for the (former) spouse does not stop until the youngest child has reached the age of 12.
- If the marriage lasted at least 15 years and the maintenance creditor receives an old-age pension within 10 years, the maintenance will cease when the pension starts.
- If the maintenance creditor was born on or before 1 January 1970, the marriage or registered partnership lasted for more than 15 years, and the maintenance creditor is not due to receive their pension for more than 10 years, the maintenance period is 10 years.

At the request of the maintenance creditor, the court may set a time limit if, in the light of all the circumstances of the case, applying these statutory time-limits would be at odds with the principles of reasonableness and fairness. Such a request must be submitted within three months of termination of the obligation.

The ex-spouses may come to their own out-of-court agreements as regards maintenance. These are usually established in a (divorce) agreement. In practice, this agreement will be ratified by the court at the time of divorce or termination of the registered partnership. This ratification provides greater legal certainty for the recipient, since the agreements can be executed by a bailiff or, in certain cases, by the LBIO (National Agency for Collection of Maintenance Contributions).

The above also applies with regard to maintenance between former registered partners.

Maintenance obligations of parents and step-parents

Parents must provide, according to their means, for the costs of care and upbringing of minor children. During the marriage or registered partnership, step-parents are also obliged to maintain the minor children of their spouse or civil partner who belong to their family. Parents and step-parents are also obliged to cover the living and study costs of their (step-) children aged 18 to 21. After their offspring reach the age of 21, parents are only required to pay maintenance if their offspring are in need.

Maintenance obligations of biological fathers/partner of the mother

There is also an obligation on the part of a child's biological father to provide maintenance for any child fathered (but not acknowledged) by him, as long as the child has only a mother and is not in a legal family relationship with another parent (in other words, where there is no other legal parent). The same obligation applies to the life partner of a mother who consented to an act which could have resulted in the procreation of the child.

Maintenance obligations of non-parents with joint custody

Any non-parent having custody of a child together with that child's parent has a maintenance obligation towards that child (Article 1:253w of the Civil Code). The maintenance obligation continues until the child's twenty-first birthday when joint custody ends due to the child's coming of age.

When do living costs have to be paid?

The obligation of (step-)parents towards their minor and young adult (step-)children (and maintenance obligations equivalent to that of a parent) exists irrespective of need. In all other relationships, there is only a right to maintenance for persons in need.

Persons are considered to be in need if they have insufficient income to provide for themselves and are not, as far as can reasonably be expected, able to acquire it for themselves. The obligation of (step-)parents towards their minor and young adult (step-) children (up until the age of 21) exists irrespective of need. The need for maintenance is also established for children up to the age of 21.

How is the amount of maintenance determined?

The statutory criteria for determining the amount payable for maintenance are the creditor's need and the credit debtor's ability to pay.

2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

Parents must pay the costs of care and upbringing for children below the age of 18 (minor children). This concerns the cost of living and the other costs involved in bringing up the child, such as education and leisure activities. Parents are obliged to provide for the costs of care and upbringing according to their means. This obligation applies even if the child has his or her own means and/or income.

In the case of children aged 18, 19 or 20 years old ('young adults'), the parents are responsible for paying the costs of living and education. The costs of living and education means the same as the costs of care and upbringing during childhood. This obligation applies even if children have their own means and/or income. Any structural income of the children will, however, determine the extent of their need for a maintenance allowance.

In the case of offspring aged 21 years and over, the parents only have a maintenance obligation towards them if they are in need and not able to care for themselves, for example, in the case of a physical or mental disability.

3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

The sum that the maintenance debtor is obliged to pay can either be established by the parties themselves and laid down in an agreement or determined by the court in a court ruling.

In the context of divorce proceedings, the court is often also requested to decide on maintenance for the ex-spouse or child maintenance.

4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

The application has to be submitted by the maintenance creditor's lawyer. Submitting the application without a lawyer is not permitted. Minor children are represented in court by their legal representative (usually a parent).

5 If I plan to bring the case to court, how do I know which court has jurisdiction?

National jurisdiction

With respect to the national jurisdiction of the Dutch courts, in maintenance cases it is the court that is competent in first instance: the court of the place of residence of either the applicant (one of the applicants) or one of the parties referenced in the application or, in the absence of a place of residence of one of these parties, the court of the place of *de facto* residence of one of them. An appeal may be lodged with a court of appeal in the jurisdiction to which the court in question belongs.

International jurisdiction within the European Union

Since 18 June 2011, Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations has been in force with respect to maintenance obligations within the European Union. The Regulation lays down the provisions on the jurisdiction of the court.

The core of the Maintenance Regulation can be found in Article 3 thereof, which contains four possible grounds for the jurisdiction of the following courts:

- the court for the place where the maintenance debtor is habitually resident, or
- the court for the place where the creditor is habitually resident, or
- as an accessory power: the court which has jurisdiction concerning the status of a person (e.g. descent, dissolution of marriage); or
- also as an accessory power: the court which has jurisdiction concerning parental responsibility.

The parties may also, by mutual agreement, choose jurisdiction on the basis of certain relevant factors. There is no requirement for the application of the Maintenance Regulation that the habitual place of residence of the defendant be located within the territory of a Member State. The nationality of the parties is also irrelevant.

As the rules of jurisdiction in the Regulation are no longer limited to cases where the defendant is domiciled in the EU, they always apply in the Netherlands.

International jurisdiction outside the European Union

As regards the international jurisdiction of the Dutch courts outside the European Union, the following applies. If the defendant lives outside the European Union, the Netherlands court has jurisdiction under the Code of Civil Procedure. The Dutch divorce court is then authorised to make provisional arrangements with respect to the divorce or ancillary provisions such as a maintenance allowance or continued occupation of the marital home. The Dutch court is also competent to rule on an independent application for maintenance if:

- either the applicant or one or more interested parties mentioned in the application live(s) in the Netherlands;
- the case is otherwise sufficiently connected to the legal sphere of the Netherlands;
- the parties have chosen the Dutch courts, or
- the interested party enters an appearance and does not raise a plea of lack of jurisdiction.

6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?

An application to establish, change or terminate maintenance must be submitted by a lawyer. The lawyer represents the applicant during the sitting. Names and addresses of lawyers can be found on website '[Find a lawyer - The Netherlands Bar](#)'.

There is an '[Association of family lawyers and divorce mediators](#)', the members of which specialise in divorce and maintenance, amongst other things. They also specialise in mediation and all that entails.

7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?

A contribution towards the court costs must be paid for court proceedings. That is the court fee. In addition to this, lawyer's and bailiff's fees will also be incurred.

If the litigant is unable to pay the (full) costs of a lawyer, he or she may, under certain circumstances, qualify for legal aid. This is known as a 'legal aid case'. The government pays part of the costs; the litigant pays a 'personal contribution'. The extent of this 'personal contribution' depends on the income and financial means of the litigant. It is the [Legal Aid Board](#) that provides the legal aid. The lawyer must apply for legal aid to the Legal Aid Board.

If legal aid is awarded, the court fee is also be reduced in maintenance cases.

Entitlement to legal aid also applies in the case of cross-border disputes, i.e. if the applicant resides outside the Netherlands. This is regulated in the EU [Directive to improve access to justice in cross-border disputes](#). Legal aid may be requested, invoking Articles 23A to 23K of the Legal Aid Act (*Wet op de rechtsbijstand*), via the Legal Aid Board in The Hague, using the standard form accompanying this Directive, which is identical in all Member States.

8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?

An application to determine, modify or waive child and partner maintenance may be submitted to the court. The application is made by a lawyer.

In its decision, the court will take account of the parties' needs and capacity (financial resources). Recommendations have been developed by the judiciary to give uniform practical application to these concepts (report on [Maintenance criteria](#) published on the Justice website). These recommendations do not have the force of law, and the courts and the parties may deviate from them in individual cases.

The following items of income and expenditure (not exhaustive) may be significant in the court's decision:

- income from work (earnings or profits from self-employment)
- study grants
- income from pensions or benefits
- rental payments
- current potential to increase income (earning capacity)
- repayments and interest on mortgages
- other structural monthly costs

- insurance premiums
- financial obligations towards others
- the amount of any debts and their repayment.

Changes to the amount of maintenance

An agreement or judicial decision may be amended by a subsequent decision if it no longer meets the statutory criteria because of a change in circumstances. A new amount of maintenance may also be agreed mutually between the parties.

Statutory indexation

Each year, the Minister for Justice determines the percentage by which a maintenance contribution determined by the court or a contribution fixed by mutual agreement is to be increased. In the calculation of this percentage increase, pay developments in the private and public sectors and the trends in other sectors are taken into consideration. This percentage is published in the Government Gazette.

There are a number of exceptions to this automatic adjustment of maintenance allowances. The parties or the court may rule out statutory indexation or establish an alternative method of indexation.

9 How and to whom will the maintenance be paid?

Maintenance for former spouses is paid directly to the former spouse. Maintenance payments for minor children are paid directly to the parent who is caring for the child. Young adult offspring receive the maintenance directly.

10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?

If the child and/or partner maintenance obligation is determined by a court ruling and the maintenance debtor defaults, compliance can be enforced by the [National Bureau for the Collection of Maintenance Payments \(LBIO\)](#) in the form of a deduction from the debtor's wages or benefits. Compliance can also be enforced by the bailiff (other types of confiscation also available). In the absence of a court ruling, the case must be brought before the court. A lawyer should be called in to assist with this.

11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system

In the event of seizure of part of the benefits or wages, the exempt amount must be taken into account.

A limitation period of five years applies to cases where no payment has yet been fixed by a court decision or agreement.

In the case of maintenance payments which have already been established, a limitation period of five years applies to expired but not complied with deadlines for mutually agreed maintenance. In the case of maintenance established by a judicial decision, the limitation period for its enforcement is twenty years.

12 Is there an organisation or an authority which can help me to recover maintenance?

In the case of arrears in child and/or partner maintenance payments, the [National Bureau for the Collection of Maintenance Payments \(LBIO\)](#) or a bailiff can be appointed to enforce compliance.

The LBIO must be authorised to do so by the maintenance creditor. The LBIO may, if necessary, proceed to collection by means of forced recovery. The LBIO may, for example, seize a proportion of the wages, benefits or immovable or movable property of the maintenance debtor.

The LBIO must be authorised to do so by the maintenance creditor. The maintenance must have been determined in a court order. The backlog must not be older than six months at the time when the LBIO is called in (the LBIO may recover a backlog older than 6 months if the decision of the court was issued within that 6 months and a retroactive contribution was imposed).

The LBIO may, if necessary, proceed to collection by means of forced recovery. It may, for example, seize a proportion of the wages, benefits or – via a bailiff – immovable or movable property of the maintenance debtor.

Recourse to the LBIO is free of charge for the maintenance creditor. On receiving a request for collection, an attempt is made, before collection involving costs, to settle the matter through mediation and/or by providing an explanation. This is successful in nearly three quarters of cases. However, where the LBIO takes over collection, the maintenance debtor pays a recovery charge. The LBIO imposes a charge for collection. This charge is 15% of the monthly amounts owed and the maintenance in arrears. Any costs of execution are also recovered from the maintenance debtor.

13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?

No maintenance can be advanced by the LBIO or a bailiff.

14 If I am in this Member State and the debtor has his/her residence in another country:

14.1 Can I obtain the assistance of an authority or private organisation in this Member State?

The LBIO also has tasks in the field of the international collection of maintenance. These tasks arise from regulations and conventions to which the Netherlands is party.

The Netherlands is party to the [UN Convention on the recovery abroad of maintenance, New York, 20 June 1956](#). (New York Convention). This is a convention on mutual legal assistance, the aim of which is to facilitate the collection of maintenance in international cases. In the countries that have joined the New York Convention, one or more institutions are entrusted with its implementation. In the Netherlands, that is the LBIO.

Since 1 August 2014, the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance has been in force between the Member States of the European Union (only partially for Denmark) and other contracting States. The Hague Convention replaces the New York Convention between the contracting parties to the extent that the scope of application of the two Conventions coincides. Regarding relations between EU Member States, the Maintenance Regulation (Regulation (EC) No 4/2009) takes precedence.

The activities carried out by the LBIO and the foreign institutions themselves as central authorities are in principle free of charge. The central authority bears its own costs relating to the application of the Regulation and the Convention. The central authority may not charge an applicant any costs other than any separate expenses resulting from a request for specific measures.

14.2 If so, how can that authority or private organisation be contacted?

If you live in the Netherlands yourself, please contact the LBIO:

National Bureau for the Collection of Maintenance Payments ([LBIO](#))

Postbus 8901
3009 AX Rotterdam

In order to engage the services of the LBIO, the application form must be submitted. This form can be downloaded from the '[International maintenance allowance](#)' site.

15 If I am in another country and the debtor is in this Member State:

15.1 Can I address a request directly to such an authority or private organisation in this Member State?

The LBIO also collects maintenance at the request of maintenance creditors residing abroad from maintenance debtors residing in the Netherlands. Maintenance creditors located in another Member State wishing to claim maintenance from a maintenance debtor residing in the Netherlands can invoke the system laid down by the Convention. They must then apply to the sending institution in their own country, which contacts the receiving institution in the Netherlands (the LBIO). The receiving institution then takes the necessary measures to obtain the maintenance.

15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?

For contact details, see answer to question 14.2.

16 Is this Member State bound by the 2007 Hague Protocol?

Yes.

17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?

Not relevant.

18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?

The following is important for the elaboration of the provisions on effective access and free legal aid under the Maintenance Regulation (and the Maintenance Convention) in Dutch law.

The LBIO already acted as the receiving and transmitting authority before the entry into force of the Regulation and the Convention in proceedings under the New York Convention and, as the receiving authority, conducts procedures for the benefit of foreign applicants. Pursuant to Article 6 of the New York Convention, the LBIO, as the receiving institution, takes all appropriate measures to secure recovery on behalf of the creditor. The LBIO acts as a party to the proceedings in its own name in international maintenance proceedings. No court fee is levied by the LBIO in petition proceedings. The LBIO does not charge a foreign applicant for any costs incurred in respect of the proceedings. Article 14(3) of the Convention and Article 44(3) of the Regulation may be applied in accordance with the practice existing under the New York Convention. Indeed, the applicant is able to bring proceedings without legal assistance (in the sense of legal representation by a legal aid provider) because the central authority, the LBIO, itself provides the necessary services free of charge.

19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?

Under the National Bureau for the Collection of Maintenance Payments Act (*Wet LBIO*), the LBIO has sufficient possibilities for carrying out the tasks set out in Article 51 of the Maintenance Regulation.

Among other things, the Act regulates the obligation of a number of institutions and services to provide information free of charge to the LBIO for the purposes of its role as the central authority.

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