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Family maintenance

France

1 What do the concepts “maintenance” and “maintenance obligation” cover according to the law of Ireland? Which persons have to pay a “maintenance allowance” to another person?

In French law a maintenance obligation means the obligation imposed by law, on those who have the means to do so, to meet the needs of another person to which they are bound by a family relationship or by marriage. There are therefore various people who can benefit from maintenance, including:

- a spouse from their spouse (Articles 212 and 214 of the civil code (*code civil*)),
- children from their parents (Articles 203, 371-2 and 373-2-2 of the civil code),
- fathers, mothers and other ascendants from their children (Article 205 of the civil code),
- fathers-in-law and mothers-in-law from their sons-in-law and daughters-in-law (Article 206 of the civil code),
- a surviving spouse in need (Article 767 of the civil code).

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

With regard to maintenance for children, there is no legal age limit: the parental obligation of upkeep and education does not end automatically when the child legally becomes an adult (Article 371-2 of the civil code). A distinction must be made between two periods:

- while the child is a minor or, if they are an adult, until they are financially independent, parents have an obligation of upkeep and education towards their child to provide them with the necessary conditions for their development and education;
- once the obligation of upkeep and education has ceased, the general rules for maintenance obligations apply, which require the claimant to provide evidence of their needs (Articles 205 and 207 of the civil code).

The contribution may be paid in whole or in part directly to the child once they have become an adult.

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

If maintenance is not paid voluntarily, the maintenance creditor, their representative or the person who is their main carer must bring a legal action to set the amount to be paid and have the debtor ordered to pay that amount.

A claim for maintenance may be the main subject of the action, or be made as part of, for example, divorce proceedings or proceedings to establish how parental authority is to be exercised.

With regard to claims for maintenance between adults, the person claiming maintenance must prove that they are in need and unable to meet their own needs. If, however, the creditor himself has seriously neglected his obligations towards the debtor, the judge may discharge the debtor from the responsibility of paying all or part of the maintenance debt (Article 207 of the civil code).

4 Who is considered to be the applicant in a maintenance case? Can a request be made on behalf of a relative, (if yes, what grade), or a child?

Under French law, minors are not considered to be the maintenance creditors: only the parent/relative or the third party caring for the child has that capacity and may act against the other parent or parents in order to have a contribution set to the education and upkeep of the child.

Social care services may act on behalf of the maintenance creditor if they are not competent to do so based on Article 205 of the civil code (Article L132-7 of the social action and families code (*code de l'action sociale et des familles*)).

Hospitals and public health establishments/care establishments have direct recourse against those who owe maintenance to someone who is hospitalised (Article L6145-11 of the public health code (*code de la santé publique*)).

A person who is under guardianship must be represented by their guardian (Article 475 of the civil code).

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

The action must be brought before a **family affairs judge** (*juge aux affaires familiales*) at a regional court (*tribunal de grande instance*) (Article L. 213-3 of the judicial organisation code (*code de l'organisation judiciaire*)).

Subject to the application of the provisions of 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, Article 1070 of the code of civil procedure (*code de procédure civile*) states that the family affairs judge with jurisdiction is:

- the judge in the place where the family residence is located;
- if the parents live separately, the judge in the place of residence of the parent with which the minor children habitually live in the case of joint parental authority, or of the place of residence of the parent who has sole parental authority; in other cases, the judge of the place of residence of the person who did not bring the proceedings.

In the case of a joint claim, jurisdiction lies, according to the choice made by the parties, with the judge of the place of residence of one of the parties.

However, if the dispute solely concerns maintenance, contribution to the upkeep and education of a child, contribution to the costs of the marriage or compensatory allowance, the jurisdiction may lie with the judge of the place of residence of the creditor spouse or the parent who is the main carer for the children, even if they are adults.

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

The procedure is oral and does not require representation: claimants may appear in person before the judge with the necessary evidence.

The proceedings may be brought by summons (via a bailiff) or simply by a request addressed to the court.

When maintenance is being claimed as part of divorce proceedings in court, the claimant must be represented by a lawyer with rights of audience (*avocat*).

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

There are no legal costs at first instance. At appeal, a charge of EUR 225 is due.

Claimants may receive legal aid under certain financial circumstances.

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? Can maintenance be claimed and backdated to before the date of application?

A contribution to the upkeep and education of a child may take the following forms:

a monthly payment to the creditor parent (most common);

direct payment of the costs incurred on behalf of the child;

right of use and habitation of a property belonging to the debtor, or abandonment of goods in usufruct, or allocation to the creditor of goods producing an income.

The contribution is calculated according to the **means of each of the parents** and the **needs of the child**. Since 2010 the Ministry of Justice (*Ministère de la justice*) has published a reference table, **purely as an indication**, drawn up based on the income of the debtor and the creditor, the number of children in their care and the scope of visiting rights and accommodation. The judge systematically provides an **indexation** of the contribution (based on the general price index for consumption by urban households).

Other maintenance allowances:

When setting the amount of a **contribution by a spouse to the costs of the marriage**, the judge must take into consideration all of the costs incurred by the person concerned corresponding to useful or necessary expenses. This takes the form of a financial payment, taking responsibility for a loan or even the occupation of the marital home.

In the case of a **maintenance allowance allocated to a spouse in divorce proceedings based on the duty of support**, it may be decided that all or part of the monthly payments for a loan will be taken on; the payment of a monthly amount is, however, favoured by the courts. This allowance is set based on the **standard of living to which the claimant spouse can lay claim given the capacity of their spouse**.

Maintenance grants awarded to ascendants and parents-in-law are only granted in **proportion to the need of the claimant, and to the wealth of the person who owes it**. The judge may, including on their own initiative, and according to the circumstances in the case, attach a variation clause in such maintenance that is permitted by the laws in force (Article 208 of the civil code).

With regard to maintenance, it is always possible to review the allowance, provided that the claimant provides evidence of a new element affecting the creditor and/or debtor's means and/or the needs of the child/creditor.

9 How and to whom will the maintenance be paid?

The civil code does not favour any method of payment. Methods of payment may be determined by an agreement between the parties. In the absence of such an agreement, the judge determines the methods of payment in the decision.

Maintenance allowance is paid directly to the creditor or to the social care service, hospital or public care establishments or healthcare establishments that have brought an action on behalf of the creditor.

It should be noted that in the case of a contribution to the upkeep of a child, the maintenance allowance may be replaced, in full or in part, by the payment of a sum of money to an accredited body responsible for providing the child with an indexed income in return (Article 373-2-3 of the civil code). The judge may also decide that the maintenance allowance will be paid directly to the adult child.

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 creditor has an enforcement order, they may directly instruct a bailiff to implement an enforcement measure on the debtor's assets (except for the attachment of a property or a salary, for which a prior court decision is required). Bailiffs have broad investigative powers to use with the authorities in order to find the necessary information to locate the debtor or their goods.

The main enforcement procedures that a maintenance creditor may use are as follows:

direct payment procedure (Articles L 213-1 and R 213-1 et seq. of the code of civil enforcement procedures (*code des procédures civiles d'exécution*)): this allows the recovery of the last six months of allowance arrears and of the current allowance. The bailiff notifies the third party (employer, bank or any third party debtor of the maintenance debtor) of their obligation to pay the allowance directly to the bailiff;

attachment of earnings (Articles L 3252-1 and R 3252-1 et seq. of the employment code (*code du travail*)): attachment must be authorised by a district court judge (*juge d'instance*);

garnishment (Articles L 211-1, L 162-1, R 211-1 and R 162-1 et seq. of the code of civil enforcement procedures) allows the attachment of debts owed to the debtor (most commonly the attachment of a bank account);

attachment for sale (Articles L 221-1 and R 221-1 et seq. of the code of civil enforcement procedures): attachment of movable goods (television, car, etc.);

attachment of immovable property (Articles L 311-1 and R 311-1 et seq. of the code of civil enforcement procedures): this concerns immovable property owned by the debtor. The sale of the property must be authorised by the enforcing judge (*juge de l'exécution*).

The bailiffs' costs are borne solely by the maintenance debtor.

In criminal proceedings, the debtor may be convicted of **desertion of the family**. This offence is punishable by two years' imprisonment and a fine of EUR 15 000 (Article 227-3 of the criminal code (*code pénal*)).

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

For maintenance, the limitation period is 5 years from each payment due (Article 2224 of the civil code).

The direct payment procedure may not be applied for arrears of more than 6 months. That does not rule out using other enforcement methods to obtain recovery of the previous arrears.

Enforcement procedures must be limited to what appears to be necessary for the recovery of the debt owed and there must not be any abuse in the choice of these measures.

Some assets are declared to be ineligible for attachment by law: maintenance allowances, movable property that is necessary for the debtor's life and work, items that are essential to disabled people, certain benefits and family allowances. From a bank account, only amounts beyond the minimum income (active solidarity income (*le revenu de solidarité active*)) for a single person may be attached. In the case of attachment of salary, the amount that may be attached is determined according to the salary and the people who are dependent on the debtor.

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

Organisations that are responsible for paying family allowances may take on the rights of a maintenance creditor under certain conditions. In this case, they may pursue civil enforcement procedures in the name and on behalf of the latter. Also, if private enforcement proceedings do not work, it is possible to apply to the public prosecutor (*procureur de la République*) to activate public recovery procedures through the public accountant (*comptable public*).

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

Organisations that are responsible for paying family allowances may, under certain conditions, pay the maintenance creditor a family support allowance as an advance on the maintenance due.

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?

If the debtor has their residence in another country and the creditor is in France, the creditor may contact the Maintenance Debt Recovery Office (*Bureau de Recouvrement des Créances Alimentaires (RCA)*) of the Ministry for Foreign Affairs and International Development (*Ministère des Affaires Étrangères et du Développement International*). The office will contact the central authority of the State where the debtor resides in order to recover the debt.

The creditor may also contact the Family Allowance Fund (*Caisse d'Allocations Familiales (CAF)*), which can provide financial support if the debtor fails to pay, even if the debtor is abroad.

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

The French central authority may be contacted by letter, telephone or e-mail:

Ministère de l'Europe et des affaires étrangères
Bureau de recouvrement des créances alimentaires
27, rue de la Convention
CS 91533

75732 Paris Cedex 15

Tel.: + 33 (0) 1 43 17 90 01

Fax.: +33 (0)1 43 17 81 97

Email: obligation.alimentaire@diplomatie.gouv.fr

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?

If the debtor is resident in France and the creditor is abroad, the creditor **must contact the central authority of the State in which they reside**. The central authority making the claim will then contact the French central authority (Maintenance Debt Recovery Office of the Ministry for Foreign Affairs), which will take the necessary measures to recover the debt.

If a creditor has an enforcement decision they may also directly instruct a bailiff to recover the debt (without going through the central authorities). In this case, they may not benefit from the assistance of the central authority.

It should be noted that in the absence of a court decision establishing the principle of a maintenance allowance, the central authority of a Member State making a claim may send a request to obtain a decision from the Maintenance Debt Recovery Office in order for the principle of a maintenance allowance to be established by a French court decision (Annex VII of Regulation (EU) No 4/2009).

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

The French central authority may be contacted by letter, telephone or e-mail:

Ministère de l'Europe et des affaires étrangères
Bureau de recouvrement des créances alimentaires
27, rue de la Convention
CS 91533

75732 Paris Cedex 15

Tel.: + 33 (0) 1 43 17 90 01

Fax.: +33 (0) 1 43 17 81 97

Email: obligation.alimentaire@diplomatie.gouv.fr

If a creditor decides to contact a bailiff directly, they can find the details of competent professionals under the heading 'Find a bailiff' (*'Trouver un huissier'*) or on the website of the National Chamber of Bailiffs (*Chambre nationale des huissiers de justice*).

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

Yes

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

Not applicable.

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?

Legal aid may be total or partial. It is granted:

automatically for children under the age of 21 under Article 46 of Regulation (EC) No 4/2009;

in other cases, if the claimant fulfils the means conditions established by law (Law No 91-647 of 10 July 1991 on legal aid and Decree No 91-1266 of 19 December 1991).

In France, legal aid includes the fees of the lawyer appointed by the legal aid decision for the court proceedings and the fees of the bailiff appointed by the same decision for the debt recovery proceedings.

Claims for legal aid relating to maintenance obligations follow the same process as for other cross-border disputes in accordance with **Council Directive 2003/8/EC of 27 January 2003**.

The claim for legal aid is sent by the creditor, in French, to the Department for Access to Law and Justice and Victim Support (*Service de l'accès au droit et à la Justice et de l'aide aux victimes (SADJAV)*), whose address is as follows:

Ministère de la Justice
Service de l'accès au droit et à la Justice et de l'aide aux victimes
Bureau de l'aide juridictionnelle
13, place Vendôme
75042 PARIS cedex 01
Tel.: 01 44 77 71 86
Fax.: 01 44 77 70 50

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?

The Maintenance Debt Recovery Office acknowledges receipt of the claim submitted by the foreign central authority and of the evidence supplied. It checks whether the file is complete and checks the accuracy and usability of the documents, in particular legal documents. In order to anticipate any enforcement problems, the Office asks the sending authority for clarifications and/or other extracts or translations of extracts where necessary. The Office facilitates the initiation of proceedings relating to the claims laid down in Article 56 by sending them to the judicial authorities with jurisdiction in that area.

The Office helps to locate the debtor and facilitates the search for information regarding their means by bringing the matter before the Public Prosecutor and departments of the Directorate General for Public Finances (*Direction Générale des Finances Publiques*) in accordance with Articles 61, 62 and 63 of Regulation (EC) No 4/2009.

The central authority also facilitates amicable settlements by making direct contact with the debtor and sending their proposals for voluntary payment to the creditor via the central authority of the State of residence of the creditor.

In the event that amicable recovery fails, a judicial recovery procedure is still possible, provided that the foreign decision is enforceable in France. The Office is in contact with the bailiffs tasked with recovering the debt to ensure that the enforcement procedures are progressing well.

The Office systematically asks for a bank transfer to be set up.

In cases where parentage needs to be established in order to recover maintenance, the Office shall inform the creditor of the competent authority for carrying out that procedure.

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