

Please note that the original language version of this page [de](#) has been amended recently. The language version you are now viewing is currently being prepared by our translators.

German

Swipe to change

**Family maintenance**

Austria

There is no official translation of the language version you are viewing.

You can access a machine translated version of this content here. Please note that it is only provided for contextual purposes. The owner of this page accepts no responsibility or liability whatsoever with regard to the quality of this machine translated text.

-----English-----

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

Maintenance serves to cover all appropriate – i.e. necessary and usual – needs, taking into account the circumstances applying in each case. In particular, it covers food, clothing, accommodation (including heating and electricity), medical care and hygiene, the payment of additional contributions to social insurance, leisure and recreational activities, culture and sports, communications and mass media (telephone, radio, TV, internet), and education and training. Maintenance does not include contributions to wealth accumulation or private pension schemes.

A maintenance obligation is the obligation to pay maintenance as appropriate. The amount of maintenance payable depends on the specific needs of the person entitled to maintenance, as well as on the ability to pay of the person obliged to make maintenance payments.

Maintenance must be paid by:

parents to their children and grandchildren;  
children to their parents and grandparents; and  
spouses and registered partners to each other.

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

There is no age limit. Children are entitled to maintenance until they are able to support themselves.

The main differences between a minor's and an adult's entitlement to maintenance arise in terms of its legal enforcement.

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

Maintenance claims must be asserted by judicial process.

Spouses and registered partners must assert their claims by way of legal action in contentious civil proceedings. The court – in practice, a judge – rules on the case by handing down a judgment following a procedure for the taking of evidence. In addition, spouses and registered partners may seek an interim injunction concerning the provisional payment of maintenance in connection with maintenance or divorce/dissolution proceedings. In these cases, the court decides following an attestation procedure.

Child maintenance must be claimed in non-contentious proceedings. This also applies in the case of children above the age of majority. The guardianship court (*Pflegschaftsgericht*) – in practice, a *Rechtspfleger* (higher official of the Austrian judicial organisation with the authority to deliver judgments) – rules on the case by handing down a decision following a procedure for the taking of evidence. In addition, a child may seek an interim injunction concerning the provisional payment of maintenance in connection with maintenance proceedings; the court decides on the matter following an attestation procedure. Minors may request the provisional payment of maintenance irrespective of maintenance proceedings.

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

An application for the determination or enforcement of maintenance for minors can be made by the legal representative, i.e. the person who has custody of the child. With the consent of this person, the child and youth welfare service (*Kinder- und Jugendhilfeträger*) may also act as the child's representative.

In all other cases, claimants may only be represented by someone who has power of attorney or by a special legal representative (*Erwachsenenvertreter*).

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

Jurisdiction in maintenance matters is defined by law.

Under Section 114 of the Court Jurisdiction Act (*Jurisdiktionsnorm* – JN), the guardianship court is also competent in decisions on the legal maintenance claims of minors. Legal maintenance claims of other relatives in the ascending or descending line fall within the competence of the court in whose area of jurisdiction the entitled person's general place of jurisdiction for disputes is located. This depends on the place where the person is domiciled or habitually resident.

Under Section 76a JN, the competent court for matters relating to the maintenance of spouses or registered partners is the court where divorce or dissolution proceedings are pending. If no such proceedings are pending, the competent court depends on the general place of jurisdiction of the defendant (Sections 65 to 71 JN).

**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?**

Child maintenance: the parties do not need to be represented in the first instance. However, if they wish to be represented and the case involves money or a monetary value in excess of EUR 5 000, this can only be done by a lawyer (relative requirement to have legal counsel, Section 101(1) of the Non-contentious Proceedings Act (*Außerstreitgesetz* – AußStrG)). In the case of appeal proceedings, an absolute requirement to have legal counsel applies.

Maintenance of spouses or registered partners: the parties do not need to be represented in the first instance. However, if they wish to be represented and the case involves money or a monetary value in excess of EUR 5 000, this can only be done by a lawyer (relative requirement to have legal counsel, Section 29(1) of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO)). In the case of appeal proceedings, an absolute requirement to have legal counsel applies.

**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?**

The fees payable for bringing a maintenance case to court vary depending on the value of the maintenance awarded. Hence, for maintenance claims awarded in the past, the basis of assessment is the amount awarded. Where the case concerns future maintenance, the amount to be used as the basis of assessment is one times the annual maintenance amount. If maintenance is awarded for a period of less than 1 year, the total amount is to be taken as the basis of assessment (note 1 to fee item 7 of the Court Fees Act (*Gerichtsgebührengesetz* – GGG) for child maintenance proceedings; Section 15(5) GGG for proceedings concerning maintenance for spouses or registered partners).

With regard to the actual fee amount, a distinction is made between child maintenance in non-contentious proceedings and cases concerning maintenance for spouses or registered partners.

For cases concerning **child maintenance**, applicants who are minors (under 18) do not have to pay fees.

For adult applicants, the flat-rate fee for decisions and settlements concerning maintenance claims is 0.5% of the value of the maintenance claim awarded (fee item 7 GGG). The fee is payable by the maintenance debtor (i.e. the person who owes maintenance payments). If a new application results in the increase of a maintenance amount that had already been awarded by final judgment or by settlement, the difference between the awarded amount and the amount previously payable should be taken as the basis of assessment.

For example: a future monthly maintenance payment of EUR 250 is awarded.

The flat-rate fee is EUR 15.00 (EUR 250 × 12 × 0.05).

If an adult owing maintenance payments applies for a reduction of the maintenance amount, the (fixed) flat-rate fee is EUR 15.00. This fee will be waived if the applicant is wholly successful in their request for a reduction in the maintenance amount payable (note 3 to fee item 7 GGG).

Fee item 1 GGG must be applied in proceedings concerning the **maintenance of a spouse or registered partner**. The flat-rate fee will only be charged for the complaint – as the request instituting the proceedings – and will be payable on a sliding scale depending on the basis of assessment. In order to illustrate this point, the fees applicable according to fee item 1 GGG (as at 21 April 2022) are shown below:

Value of the claim in dispute – applicable fee:

Up to and including EUR 150 – EUR 25

Over EUR 150, up to and including EUR 300 – EUR 48

Over EUR 300, up to and including EUR 700 – EUR 68

Over EUR 700, up to and including EUR 2 000 – EUR 114

Over EUR 2 000, up to and including EUR 3 500 – EUR 182

Over EUR 3 500, up to and including EUR 7 000 – EUR 335

Over EUR 7 000, up to and including EUR 35 000 – EUR 792

Over EUR 35 000 up to and including EUR 70 000 – EUR 1 556

In civil proceedings, pursuant to Sections 63 to 73 ZPO, legal aid must be granted on request to the extent that a party is unable to pay the costs for conducting the proceedings without risking the resources required for their subsistence. Pursuant to Section 7(1) AußStrG, these provisions must be applied *mutatis mutandis* in non-contentious proceedings (such as in proceedings concerning child maintenance).

The resources required for subsistence are set, in abstract terms, at a level between the statistical average income of an employee and the minimum subsistence level. This amount is deemed at risk if the party and their family members entitled to maintenance would not even be able to lead a modest existence, taking into account any usable assets or the possibility of accumulating savings in the course of lengthy proceedings. Partial legal aid may also be granted.

Legal aid should only be awarded where the intended legal action or defence does not appear to be obviously frivolous or futile. The party's nationality is irrelevant in this respect.

Legal aid includes, in particular, a provisional exemption from the payment of court fees and fees for witnesses, experts and interpreters, as well as the payment of the parties' travel costs where they have to appear in person. If representation by a lawyer is required by law (e.g. in appeal proceedings) or if it is deemed necessary given the particular circumstances of a case, then an Austrian lawyer should be appointed provisionally at no cost to the party. The lawyer's work also includes pre-litigation advice regarding an out-of-court settlement.

Section 71 ZPO provides that parties granted legal aid must be obliged to repay part or all of the amounts from which they were provisionally exempted and that have not yet been repaid, as well as to pay the fees payable under the pay scale to their assigned lawyer, in so far and as soon as they are able to do so without risking the resources required for their subsistence. After a period of 3 years following the conclusion of the proceedings, the repayment obligation can no longer be imposed. The court may ask the party to provide – within an appropriate period of time stipulated by the court – a new summary of assets, including reasonable documentary evidence, in order to verify that the preconditions for repayment are met.

**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)?**

The court determines maintenance as a monetary benefit. The parent who runs the household in which they care for the child contributes to the child's maintenance by doing this. The other parent is obliged to make maintenance payments.

The amount of maintenance to be paid for the child depends on the parent's ability to contribute and on the child's needs and is determined on a case-by-case basis. Based on the percentage method developed in case-law to provide guidance, the maintenance debtor must pay a certain percentage of their monthly (net) income:

16% for children under 6 years of age;

18% for children aged between 6 and 10;

20% for children aged between 10 and 15; and

22% for children over 15.

If a person is obliged to pay maintenance for several children, this will be taken into account by reducing the percentages accordingly. The percentage points to be deducted in a case where more than one child is concerned are one percentage point for each additional child under 10 years of age, two percentage points for each additional child over 10 years of age and zero to three percentage points for a spouse entitled to maintenance, depending on the spouse's own income.

Based on case-law, payments for maintenance claims have an upper limit (known as the *Luxusgrenze* (luxury limit)). This is two to three times the average amount needed to cover basic needs (*Regelbedarf*), which is also laid down in case-law. This is adjusted annually and, since 1 July 2020, it amounts to the following per month for children:

under 3 years of age: EUR 213.00

aged between 3 and 6: EUR 274.00

aged between 6 and 10: EUR 352.00

aged between 10 and 15: EUR 402.00

aged between 15 and 19: EUR 474.00

aged between 19 and 25: EUR 594.00

Maintenance for spouses or registered partners while they are still married or registered as partners also depends on both the debtor's ability to pay and the needs of the person entitled to maintenance, and must be established on a case-by-case basis. Based on the percentage method developed in case-law to provide guidance, the maintenance claim of the party with the lower income is calculated at a rate of 40% of the family income (net income of both spouses /partners) minus the claimant's own income. If one party has no income of their own and only runs the household, they are entitled to a third (33%) of the breadwinner's net income. Other care responsibilities must be taken into account (by making deductions from the percentage amounts).

#### **9 How and to whom will the maintenance be paid?**

Maintenance must be paid in advance at the beginning of the relevant month (Section 1418 of the Civil Code (*Allgemeines bürgerliches Gesetzbuch* – ABGB); Section 70 of the Marriage Act (*Ehegesetz*); Section 22(1) of the Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz* – EPG)). Payments must be made to the entitled person or their representative (parent, special legal representative (*Erwachsenenvertreter*)).

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

After the amount of maintenance has been determined in the original proceedings, enforcement (compulsory execution) may be conducted against the debtor according to the general rules.

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

The debtor (in enforcement proceedings: obliged party) must retain a minimum amount (i.e. an amount which cannot be seized) that is equal to the minimum subsistence level. The minimum subsistence level is redefined on an annual basis and depends on several factors. Under Section 291b of the Enforcement Code (*Exekutionsordnung* – EO), the resources left to the obliged party need only amount to 75% of the minimum subsistence level in the event of enforcement based on a legal maintenance claim. The difference between this reduced minimum subsistence level and the standard minimum subsistence level must first be used to satisfy any current legal maintenance claims, irrespective of the order of priority of the pledge established for these claims and commensurate to the current monthly maintenance payment. In this respect, maintenance creditors (i.e. people owed maintenance) have priority over other creditors.

Any (outstanding) claims that have been awarded by enforceable judgment (*Judikatschulden*) have a limitation period of 30 years and can therefore be enforced by law within this period of time.

There are no special limitation periods in relation to the enforcement of maintenance claims.

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

If written consent has been obtained from a minor's other legal representative, the child and youth welfare service can act as the child's representative to establish or enforce the minor's maintenance claims.

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

The purpose of paying maintenance in advance is to ensure that minors receive maintenance payments if one parent does not make regular payments or fails to meet their payment obligations altogether. The advance payment of maintenance will be granted by the government upon request. The request must be filed with the court in the name of the child by the parent who is authorised to represent the child.

Minors are entitled to advance payment of maintenance if they:

are habitually resident in Austria;

have Austrian citizenship or are citizens of another EU/EEA Member State or are stateless; and

do not live in the same household as the maintenance debtor.

The advance payment of maintenance is granted from the beginning of the month in which the request is filed, for a maximum of 5 years. Payments are made in advance, on the first day of each month, by the Higher Regional Court (*Oberlandesgericht*) to the person entitled to maintenance.

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

If the maintenance debtor lives abroad and has no enforceable assets in Austria, enforcement must take place abroad. Applications for this can be made via the central authority (Section 8 of the 2014 Foreign Maintenance Act (*Auslandsunterhaltsgesetz 2014*)).

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

The child and youth welfare services (district authorities (*Bezirkshauptmannschaften*) or magistrates (*Magistrate*)) and the district courts (*Bezirksgerichte*) will support maintenance creditors in asserting or enforcing their claims. The central authority will forward the applications to the foreign country.

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

During the authorities' and courts' opening hours; the central authority also provides advice by telephone and e mail.

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

As soon as the maintenance creditor's applications have been received by the competent court, the maintenance creditor will generally be treated in the same way as a maintenance creditor living in Austria.

Applications will be forwarded to the court by the central authority. The court will grant legal aid, where applicable, and will arrange for the Austrian Chamber of Lawyers to appoint a legal aid lawyer. This legal aid lawyer will act as the foreign creditor's representative who is familiar with Austrian law and will be responsible for filing all further applications, transferring maintenance payments received and reporting on these activities (Section 9 of the 2014 Foreign Maintenance Act).

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

As the principle of cooperation between two central authorities applies, it is primarily the responsibility of the authorities in the Member State of residence to provide this support.

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

Not applicable.

#### **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 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?**

Until 1 August 2014, only the provisions of this Chapter were applicable; since then, access to justice in cross-border cases has also been effectively governed by Sections 10 et seq. of the 2014 Foreign Maintenance Act, Federal Law Gazette (BGBl.) I 34/2014.

#### **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?**

Establishing simplified bureaucratic procedures through the 2014 Foreign Maintenance Act to enable Department I 10 of the Federal Ministry of Justice to process an increasing number of cases with the same amount of staff.

This web page is part of [Your Europe](#).

We welcome your [feedback](#) on the usefulness of the provided information.



This webpage is part of an EU quality network

Last update: 04/08/2022

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.