

# A COMPARATIVE STUDY OF CHILD MAINTENANCE REGIMES

## Questionnaire for national informants

### **Focus of questionnaire**

The questionnaire concerns your child maintenance (child support) regime. By this we mean the overall system in your country under which parents meet their financial obligations in respect of children with whom they do not live. These financial obligations arise when parents live apart following a divorce or separation, or when parents have never lived together.

### **Scope**

The questionnaire is primarily concerned with regular payments for financial support, which we call here child maintenance. There are other forms of financial transactions between parents who do not live with each other including spouse maintenance (or alimony), lump sum payments, transfers of property, assets and pension rights. We are interested in these other forms of support only in so far as they affect child maintenance. We do not define a child. Please use those age related definitions of a child or children that are relevant in your country, throughout the questionnaire, with appropriate explanations when necessary.

The child maintenance regime includes arrangements for determination, enforcement and revision of payments. In most countries, the child maintenance regime will be some combination of private voluntary arrangements, formal arrangements made by courts, and formal arrangements made by other organisations or agencies. We seek information about all these.

The questionnaire is primarily concerned with entitlements to and liabilities for transfers of private resources. There are a few additional questions about the interaction of child maintenance with public resource transfers (for example maintenance guaranteed by the state and social benefits).

This questionnaire is not concerned with children for whom the state has assumed responsibility, and/or who live in foster homes, children's homes or other institutions. We seek information about child maintenance in respect of children living at home with one parent.

We are interested in three different groups of parents:

- separated married parents (whether formally divorced or not)
- separated cohabiters
- parents who have never lived together.

### **Core terms**

We call the parent who has the main day-to-day responsibility for the child(ren) concerned, the parent with care. We call the parent who is not currently living with the child(ren) and their other parent, the non-resident parent. The amount of money the non-resident parent is required to pay (or agrees to pay) the parent with care is called the obligation. (In some literature or countries this may be called the award or the obligation.) Definitions of other terms are provided below.

### **Organisation of questionnaire**

The questionnaire is organised in the following way.

- Part One seeks information about the history and general objectives of your child maintenance regime.
- Part Two asks how families enter the child maintenance system, including the general framework for divorce, separation, and the establishment of paternity for nonmarital children.
- Part Three covers detailed information about the determination of maintenance due. We ask how obligations are set, looking at rules, guidelines and discretionary components.
- The procedural aspects of collection and enforcement, and the implications of non-compliance are covered in Part Four.
- Part Five asks about the interactions of receipts and payments with other policies.

- *Administrative costs and quantitative data on outcomes are covered in Part Six.*
- *Part Seven asks you to draw on existing research in a brief evaluation of the child maintenance regime in your country; it also asks for the main topics of research and debate in your country.*
- *Part Eight presents two vignettes, or cases, in which we describe the circumstances of parents and children, and ask you to describe how they might be dealt with under your child maintenance regime.*

*There are further instructions on how to fill in the questionnaire at the beginning of each part (with instructions presented in shaded text). We suggest that you read through the whole questionnaire thoroughly before you begin. We assume you will find it more convenient to complete the questionnaire directly onto the file. If you would prefer a paper copy, with space allowed after each question, please let us know.*

*We ask that you provide us with a list of the sources you consulted most frequently when answering this questionnaire.*

*When we ask for current information, this relates to the situation at 1 July 2006.*

<b>TERMS AND DEFINITIONS</b>	
<i>Advance maintenance</i>	<i>Program in which child maintenance money is provided in advance of any payment made by the non-resident parent. In effect this guarantees an amount of child maintenance.</i>
<i>Child</i>	<i>We do not define a child. Please use those age related definitions of a child or children that are relevant in your country throughout the questionnaire.</i>
<i>Child maintenance</i>	<i>This refers to the money due to children from their liable parent (following the breakdown in the parental relationship). It may be paid to the parent with care or the child(ren); this varies by country.</i>
<i>Child maintenance regime</i>	<i>We include here all arrangements under which non-resident parents provide financial support for their children. We include voluntary arrangements, arrangements through the legal system, and arrangements through governmental agencies. We include both explicit and implicit governmental policies.</i>
<i>Cohabitees</i>	<i>We use this to refer to unmarried parents who live together</i>
<i>Guaranteed maintenance</i>	<i>Same as 'Advanced Maintenance' (see above)</i>
<i>New child or children</i>	<i>Where parents move on after separation or divorce and produce another child/children with a new partner.</i>
<i>New family</i>	<i>Where parents move on after separation or divorce and develop family relationships with a new partner. This may or may not also include children.</i>
<i>New partner</i>	<i>Where parents move on after separation or divorce and develop an intimate relationship with a new adult.</i>
<i>Non-resident parent</i>	<i>Refers to the parent with whom the children do not live a majority of the time. In many countries this is commonly the father.</i>
<i>Nonmarital child or children</i>	<i>Refers to a child or children from a relationship in which the parents are not married.</i>
<i>Obligation or 'child maintenance obligation'</i>	<i>This refers to any award of money made for child maintenance only. We use it as a general term to refer to all official and unofficial arrangements.</i>
<i>Prior child or children</i>	<i>Some parents have children from more than one relationship. We use "prior children" to refer to children from a previous relationship.</i>
<i>Parent with Care</i>	<i>This is the parent who has the main day-to-day responsibility for the children and the child(ren) live with this parent the majority of the time. In many countries this is commonly the mother.</i>
<i>Social assistance</i>	<i>By this we mean programs that provide income to low-income individuals or families. These programs have an income test, and often also have asset limits. This is one type of social benefit.</i>
<i>Social benefit</i>	<i>We intend this to be a very broad term. It includes all programs that provide income to individuals and families. This includes social assistance programs and programs that do not have an income test.</i>
<i>Step child</i>	<i>Where a parent has responsibility for a child living in their household who is not related to them biologically.</i>
<i>Tax benefit</i>	<i>We use this term broadly to refer to special features of the tax system that allow individuals in certain circumstances to pay less taxes. We also include programs that provide income through the tax system.</i>

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## PART ONE: DEVELOPMENT OF CHILD MAINTENANCE REGIME

*This part of the questionnaire seeks a broad overview of your current system.*

*Please remember that we are interested in three groups of parents:*

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

### **1.1 Consider the overall arrangements in your country for determining, enforcing and revising child maintenance payments. What are the broad policy objectives of these arrangements? We are interested in both explicit and implicit objectives.**

We will discuss determining, enforcing and revising child maintenance separately.

#### *a) Determining child maintenance:*

The obligation of a parent to maintain his/her child (in kind or financially) is not fixed on the basis of the situation between the parents, but on the descent between parent and child. When parents are not married the father has to acknowledge the child by means of an authentic deed. He has to have the consent of the mother to do so. There has to be a juristic certainty about the descent.

Art 203 of the Civil Code constitutionalizes this obligation: 'The parents have to take care, in proportion of their means, of the accommodation, the support, the supervision, the parenting and the education of their children.' Child maintenance therefore is of public order.

Determining the amount of child maintenance is slightly different for each of the given situations. Separated married parents will determine child maintenance by Justice of First Instance.

Separated cohabitantes and parents who have never lived together (and also parents divorcing by mutual consent see 2.1.2.) will make a mutual agreement and/or will have it confirmed by the Juvenile Court.

There are neither fixed rules nor a legally recognized system to determine the amount of the maintenance. Judges, lawyer and mediators have to decide with discretion. They will base their decision on two factors: capacity and neediness. And always bear in mind the interest of the child. They will ask the partners all data about their income (from jobs as from real estate or personal estate), loans, hobbies of the children, health of the children, etc. Many judges even take into account money received under the counter. Often they use the Method of Renard, the Method of Roodhooft (some years ago) or the method developed by Gezinsbond as an aid. The Method of Renard is based on: the cost of a child (= the family budget divided by the members of the family), the income of both parents, child allowances, residence of the child, decisions made about extra costs such as clothes, number of children and age of the child. The Method recently developed by Gezinsbond is a more realistic version of the one by Renard. It is based on the outcomes of their own research. This method also takes into consideration: monthly and year income of both parents, tax-deductibility, childcare and scholarships. They also take into account children till the age of 25 (previous till the age of 18). Practical experience shows that the method of Renard gives rather low amounts of child maintenance and the one from Gezinsbond rather high. It is complicated to calculate the amount of child maintenance this way. The program PCA computerized the Method of Renard. Gezinsbond put its method on a cd-rom

#### *b) Enforcing child maintenance:*

Child maintenance is not controlled. If a parent doesn't comply, the other parent has to take initiative to enforce it.

Non-compliance is a legal offence in accordance with Art. 391b of the Criminal Code and could lead to imprisonment.

Other methods are:

- Authority of receipt (=ontvangstmachtiging or loondelegatie): separated married parents can insert this in the divorce deed. It means that the maintenance can be deducted of the earnings

of the non-resident parent in the case of non-compliance. The parent with care can also ask for this 'authority of receipt' after the divorce.

- Sequestration by means of a bailiff. Goods, such as cars, houses and money or income can be sequestered.
- Complaint for family abandonment: If the non-resident parent doesn't pay for 2 periods, the parent with care can file a complaint. For this criminal offence one can get a fine of € 250 - € 2500 or a prison penalty of 8 days to 6 months.
- DAVO, Dienst voor Alimentatievordering (=Service for Maintenance Claiming): This service is situated at the Ministerie van Financiën (= Federal Public Service Finance). Since June 1<sup>st</sup> 2004 DAVO places itself, on the request of the maintenance beneficiary, as a neutral agency between the maintenance beneficiary (= parent with care) and the maintenance-supporting parent (= non-resident parent).

Parents can ask the help from DAVO in two situations:

1. To claim the monthly amount of the maintenance and the maintenance due (since June 1<sup>st</sup> 2004)
2. To apply for advance maintenance (since October 1<sup>st</sup> 2005).

DAVO does not act spontaneously. The maintenance beneficiary must submit an application and has to comply with certain conditions. These conditions are:

- For the 1<sup>st</sup> objective: the maintenance beneficiary has its residence in Belgium + the maintenance was not paid twice or entirely in a period of 12 months before the application.
- For the 2<sup>nd</sup> objective: same as objective 1 + maximum earnings of € 1.152 net a month (+ € 54 per child).

DAVO is not free of charge. Both the parent with care and the non-resident parent have to contribute to the working costs of DAVO. The former has to pay up to 10% of the maintenance (incl. maintenance due), the latter receives 5% less of the maintenance.

DAVO does not make any differences between separated married parents, separated cohabitantes or parents that have never lived together. But they can only act on the basis of a sentence or a valid certificate in which the amount of the maintenance has been determined.

#### c) *Revising child maintenance:*

Child maintenance can only be changed by means of a court order. It is illegal for the parents to change this on their own. Gezinsbond recently suggested that child maintenance should be revised every year or at the age of 6, 12 and 18.

Normally it increases every year by indexation. Some judges or lawyers use the consumption price index, others use the health index (i.e. the consumption price index excluding some budget components).

Gerlo (1994, chapter 1) sees the following as explicit **objectives** of the child maintenance regime:

- To diminish poverty
- To guarantee a larger social security
- To preserve family solidarity

As important implicit objectives we see: - To guarantee a certain minimum standard of living.

- To maintain the previous standard of living of the child.

## 1.2 Please explain briefly the history and development of the current regime.

In 1973 a group of women suggested for the first time to set up a fund to solve the problem of non-compliance. In 1974 this question was put forward as a bill. During the 1980's the politicians tried to solve this problem. It results in an act that puts maintenance due and advance maintenance under the authority of the OCMW (= Openbare Centra voor Maatschappelijk Welzijn = Public Centre for Welfare). But the OCMW has a negative image. From 1990 till 1999 10 bills were introduced. The parliamentarians did not reach consensus. From 1999 till 2003 other 9 bills were introduced in Parliament. These altogether led to the law of February 21 for the founding of a service for claiming maintenance within the Public Service Finance. This act then was postponed until December 2003.

Finally it results in the founding of DAVO with its 2 objectives (see 1.1 b). The second objective remained under the authority of OCMW until October 2005. The advocates of DAVO argue that this way a judicial decision (the child maintenance) finally becomes more enforceable. The proponents say that it will be a budgetary drain.

**1.3 If there has been a major transfer of administrative responsibilities or any major change in approach since 1997, please describe the policy context and the process of creating and implementing the initiative. Were the changes controversial? (an example here might be the establishment of a new agency)**

The approach hasn't changed. The objectives are still the same. It only took several years to found DAVO (which is the largest change). (See 1.2.)

The original bill of February 2003 about DAVO was first postponed because of financial problems. It was not possible to finance the agency. Later this bill was also enervated. The advance maintenance was limited only to those families with low incomes. There are still campaigns and other actions to change this law. The 'Platform for maintenance claims' for example has three demands:

- Advance maintenance should be the same for all children, despite the parents' income.
- DAVO has to become more known to all and has to be accessible to all.
- There has to be an assessment commission.

**1.4 Which of the following were explicit objectives of the change?**

We can assume that they are the same as the ones for the child maintenance regime in general. The regime was improved by the founding of DAVO.

- Limiting public expenditures
- Enforcing obligations to biological children
- Reducing child poverty
- Influencing relationship formation and dissolution behaviour
- Influencing employment of lone parents
- Increasing voluntary arrangements for maintenance
- Other (please describe briefly)
  - To solve the problem of non-compliance.
  - To guarantee a certain minimum standard of living
  - To maintain the previous standard of living of the child

## PART TWO: ENTERING THE CHILD MAINTENANCE SYSTEM

*In this part of the questionnaire we are interested in entrance into the child maintenance system, considering arrangements for couples who have been married, those who have cohabited, and those who have not lived together.*

REMARKE: The obligation of a parent to maintain his/her child is not fixed on the basis of the situation between the parents, but on the descent between parent and child. Furthermore this obligation is of public order. Thus, the parent cannot renounce the obligation in any mutual agreement. As a result, there will be little difference between couples who have been married, who have cohabited or who have not lived together.

### 2.1 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE BEEN MARRIED

#### 2.1.1 In your country, who has primary responsibility for divorce proceedings?

- X    **Courts**  
 \_\_\_\_ **Other (please list and describe)**

#### 2.1.2 Please explain briefly the legislative, administrative and procedural framework for divorce in your country.

Divorce can be applied for through Rechtbank van Eerste Aanleg (= Court of First Instance) There are three main reasons for divorce:

- **Divorce by mutual consent:** (= Echtscheiding door Onderlinge Toestemming = EOT): partners must be married for over 2 years and have to be 20 years of age. The principle of 'fault and guilt' is not applicable in this situation. Divorce by mutual consent is based on the agreement of both parties. This agreement has to be both about the divorce and the consequences (i.e. family and material affairs, thus also child maintenance).  
 Procedure: An appeal has to be turned in and signed by both partners together with their mutual agreement at the Court of First Instance. One month after the appeal the partners have to appear before the Judge. There is a second appearing after 3 to 4 months. This appearing is only a formality. The agreement has to be signed for confirmation. There are no debates. The procedure takes about 6 months. When one of the partners doesn't sign / doesn't confirm the procedure is stopped and has no legal value.
- **Divorce for actual reasons:** One partner calls upon 'fault' of the other partner to start the procedure. This 'fault' can be: a) adultery, b) acts of violence and maltreatment, c) gross insulting. These facts must be proven. The Justice of the Peace Court can instruct provisional measures (e.g. with regard to child maintenance, housing, etc.) The judge also decides the amount of the child maintenance the 'guilty' partner has to pay to the 'innocent' partner.  
 Procedure: One of the partners can start the procedure by way of a writ signed by a process server or by appearing voluntary before the judge. 10 days later the case is introduced. There will be an investigation to prove the facts and to prove the guilt of the partner. When the fact is proven, there can be a judgment. This procedure can take years and is very expensive. Meanwhile the Justice of the Peace Court can decide provisional measures. Once the verdict has been ratified, the Juvenile Court takes over to decide about child maintenance (and other measures concerning the children).
- **Divorce after two years of actual separation:** The partners are living separately for two years and this situation was not forced (e.g. prison). Or one of the partners is mentally ill. This implies a permanent breakdown of marriage. The guilty partner has to pay child maintenance to the other partner if the standard of living is not the same as before the separation. Before 2001 5 years of actual separation were necessary.  
 Procedure: One of the partners can start the procedure by way of a writ signed by a

process server or by appearing voluntary before the Justice of First Instance. 10 days later the case is introduced. It will take about 3 months. After the divorce the Juvenile Court decides about everything involving the children (like the child maintenance).

- **Separation of table and bed:** this situation means that the partners are not officially divorced but live separate because they do not want to divorce for ethical or religious motifs. This situation is also decided in court. Some obligations are lapsed: obligation to live together, to contribute to the costs of marriage, obligation to assistance, all goods are divided and partners can no longer inherit. Legally the partners remain married and thus have to be faithful and cannot remarry. There are two types of this separation: a) for actual reasons and b) by mutual consent. The separation can be cancelled by divorce or by living together again.

When partners get divorced they can get help at the CAW, Centrum Algemeen Welzijnswerk (= Social Work Centre). There are mediators. Recently 'Huizen van Bemiddeling' (= Houses of Mediation) has been founded in 5 Belgian cities (Antwerp, Leuven, Bruges, Gent and Hasselt). It was an initiative of the Flemish Notaries. The first house opened on March 2<sup>nd</sup> 2006. Obviously partners can also take a lawyer (in many forms of divorce it is highly recommended). For a time now, people are able to divorce (start the procedure and do all the paperwork) by means of the Internet ([www.echtscheiding-online.be](http://www.echtscheiding-online.be)).

### **2.1.3 Explain how decision-making about child maintenance fits around the divorce process. Who has the main responsibility for deciding whether and how much child maintenance should be paid when a couple divorce?**

As seen in 1.1., there are no fixed rules to determine the amount of child maintenance. Judges decide with discretion based on two principles: capacity of the parents and neediness of the child. They often use the Method Renard or the more recent method developed by Gezinsbond as a means of reference or comparison. Many judges also ask the parents for a proposal.

Everything about the children is decided by the Juvenile Court. This happens after the actual divorce (which is at the Justice of First Instance). The Justice of Peace could order compelling provisional measures during the divorce process about the children. The procedure is slightly different for the three types of divorce:

- Divorce by mutual consent: the amount of child maintenance is decided by mutual agreement. It is recommended to write the amount and the yearly indexation explicitly in the agreement.
- Divorce for actual reasons: the Justice of First Instance can decide about the child maintenance as a provisional matter. This also stands after the actual divorce. Decisions after the actual divorce are then made by the Juvenile Court.
- Divorce after two years of actual separation: During the procedure the judge does not make any decisions about the child maintenance. Afterwards this is decided by the Juvenile Court.

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## **2.2 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE LIVED TOGETHER WITHOUT BEING MARRIED**

### **2.2.1 Please explain briefly the legislative, administrative and procedural framework (if there is one) in which unmarried parents who had lived together separate.**

To start with, we have to make a difference between 'actual living together' and 'legally living together'. The first form has no protective regulation. The second form incorporates some elements of formal marriage. Because of this the cohabitantes are better protected. Both partners have to make a declaration of their living together at the Registry of Births, Deaths and Marriages. Both forms can also close a 'living together contract' in which they can make more regulations.

Second, a child born outside the marriage has to be acknowledged by the father. He has to do this with consent of the mother and in an authentic act by a notary or by the Registry of Births, Deaths and

Marriages.

The legally cohabitees can dissolve their living together in 2 ways:

- Joint declaration of termination: this declaration is made at the Registry of Births, Deaths and Marriages of the Community where both partners live.
- Unilateral declaration of termination: this declaration is made at the Registry of Births, Deaths and Marriages where both partners live or (if not living together anymore) where the partner who wants the termination lives. Within 8 days the civil servant has to inform the other partner of the termination by means of a writ. He also has to inform the civil servant of the Community of the other partner by registered post.

Both declarations have to mention: date of declaration, personal data (name, date of birth, residence), signature of both partners (or of the one that wants the termination) and statement of the will to terminate the 'living together'.

In this case of legal cohabitees the Justice of the Peace can also make provisional measures.

There are no rules for partners who lived together actually.

### **2.2.2 Explain how decision-making about child maintenance fits into this framework. Who has the main responsibility for deciding whether and how much child maintenance should be paid when an unmarried couple separate?**

Whether the parents lived together legally or actually, the demand for child maintenance (and other measures about the children, such as housing, schooling, etc) has to be brought before the Juvenile Court. (Obviously under the condition that the father has legally acknowledged the child.)

The rules about the amount of child maintenance are the same as for married separated couples (see 1.1 b and 2.1.3.). The procedure is slightly different. Here the Judge will first try to settle amicable/out of court. Or the parents can make a voluntary agreement.

Child maintenance has to be paid to all underage children at the moment of the separation or of whom paternity is determined.

### **2.2.3 Please explain briefly what happens if paternity is disputed in couples who have lived together.**

When paternity is disputed, the father can establish or reject it through Court. He ( or the mother of the child) has to turn in an appeal to the Justice of Peace. He/she can use all legally accepted means to do so. The Justice of Peace will try to reconcile both partners. If this doesn't work the judge will refer them to the Court of First Instance.

Without paternity being established, the father does not legally have to maintain the child.

Normally paternity/descent has to be decided on within three years after birth. But the judge can make many exceptions.

## **2.3 CHILD MAINTENANCE ARRANGEMENTS FOR THOSE WHO HAVE NEVER LIVED TOGETHER**

### **2.3.1 In couples who have not lived together, explain how decision-making about child maintenance is made. Who has the main responsibility for deciding whether and how much child maintenance should be paid?**

The obligation of maintenance applies to all legally certain parents as from the birth of the child. A child born outside marriage has to be acknowledged by the father. He has to do this with consent of the mother and in an authentic act by a notary or by the Registry of Births, Deaths and Marriages. This

implies that the descent can be marital, outside the marriage, adulterous or even incestuous. Also here it is the court to decide how much maintenance should be paid. Parents can also make voluntary agreement by mutual consent. The criteria for determining the amount are the same as for the other parents.

**2.3.2 Please explain briefly the process for establishing legal paternity in couples who have not lived together when paternity is not in dispute. (For example, legal paternity is presumed if the father's name is on the birth certificate.)**

A child born outside the marriage has to be acknowledged by the father. He has to do this with consent of the mother and in an authentic act by a notary or by the Registry of Births, Deaths and Marriages of their Community.

**2.3.3 Please explain briefly what happens if paternity is disputed in couples who have not lived together.**

See also 2.2.3. When paternity is disputed, the mother can establish (or reject) it through Court. The descent could be adulterous or even incestuous. The mother therefore has to turn in an appeal to the Justice of Peace. To establish paternity she can use all legally accepted means. The Justice of Peace will first try to reconcile both partners. If this doesn't work they will be referred to the Court of First Instance.

Without paternity being established, the father does not legally have to maintain the child.

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## PART THREE: THE DETERMINATION OF CHILD MAINTENANCE DUE

*Part Three of the questionnaire is concerned with determination of the child maintenance obligation and entitlement - the decision-making process by which child maintenance is agreed between parents, or decided by Courts or Agencies. This part of the questionnaire does not ask about arrangements for collection or enforcement of maintenance, which is dealt with in Part Four.*

*After an initial overview (Questions 3.1.1-3.1.5), we ask for detailed information about the determination of child maintenance due in three sections which address separately:*

- *voluntary agreements between parents (Questions 3.2.1-3.2.3)*
- *obligations determined by Courts (Questions 3.3.1-3.4.4)*
- *obligations determined by other agencies/organisations (Questions 3.5.1-3.6.5)*

*One of these three sections may not be relevant in your country (for example, if Courts are not involved in determination of maintenance obligations). Please complete the sections which are relevant to your country, and if you leave out a section please explain why.*

*Please remember that we are interested in three groups of parents:*

- *separated married parents (whether formally divorced or not)*
- *separated cohabittees*
- *parents who have never lived together.*

### 3.1 OVERVIEW

**3.1.1 Are parents who were married allowed to make a voluntary agreement as to the amount of maintenance? Are separated cohabittees? Are parents who have never lived together? For each group, please briefly discuss the circumstances in which they are allowed to make a voluntary agreement.**

Parents are obliged to maintain their children. So there will be no agreements about the obligation. Parents can make voluntary agreements about the amount of maintenance.

Married couples divorced by mutual consent can include arrangements about child maintenance in their agreement about the divorce. The Justice will later ratify this.

For married couples divorced in a different way child maintenance is determined by the Juvenile Court. For separated cohabittees and for parents who have never lived together voluntary agreements are also possible. They can decide the amount of the maintenance together. These agreements (if not ratified by the court) have no legal value or consequences. So it is better if they let the judge or a notary confirm their agreement. They will also check if the amount is correct.

**3.1.2 If parents can make a voluntary agreement, does it have to be approved by someone else? By whom? What criteria are used? How often is the agreement approved, and what happens if it is not? (Again please answer each part of this question for separated married parents, separated cohabittees, and those who have never lived together.)**

See 3.1.1. Voluntary agreements do not have to be approved in Court. But then they have no legal value. When improved by the Court, judges or lawyers will also check if the amount (and other regulations made about) the child maintenance are correct.

When divorcing the voluntary agreement about the child maintenance will automatically be confirmed in Court during or after the divorce. Separated cohabittees or parents who have never lived together have to take initiative.

**3.1.3 Do courts play a role in determining maintenance amounts? If so, is it a primary role, or residual? Please briefly explain the circumstances and the types of cases in which the court is involved.**

Determining child maintenance is a primary role for Courts.  
(See 3.1.1. and 3.1.2.)

In many cases they will check whether the amount of the maintenance decided by the parents (with the help of a mediator or lawyer) is correct. But in many other cases they will also determine the exact amount of the maintenance. This is especially the case for parents that are in conflict with each other. As seen in 1.1 they can use a method as a reference point.

**3.1.4 Do agencies other than the court play a role in determining maintenance? If so, which agency/agencies? Please describe its functions, both in terms of functions related to child maintenance and functions related to other areas of responsibility. Please explain the circumstances and the types of cases in which the agency is involved.**

There are no agencies that are explicitly founded for determining child maintenance.

There are organisations where parents can go to get help from mediators. For instance the CAW, Centrum voor Algemeen Welzijnswerk (= Social Work Centre). These mediators will help to make an agreement and decide what's best for the children and both parents. To determine the amount of child maintenance they will use the same methods as the courts or lawyers.

There are other persons that can act as mediators such as notaries or lawyers (recently they founded the House of Mediators). There are also specific organisations that give help and information to parents divorcing or separating.

Agreements put up with the help of these mediators still have to be confirmed in Court to have a legal value.

**3.1.5 For children of formerly married parents, is the child maintenance obligation in the child's name or in the name of the parent with care? Is this different for separated cohabitantes or for children of parents who have never lived together? Does it differ depending on whether it is a voluntary agreement versus being determined by the court or an agency?**

There is no difference between formerly married parents, separated cohabitantes or parents who have never lived together.

Child maintenance is assigned to the parent with care and imposed on the non-resident parent. This is the general principle. Contraventions to this rule are possible. Courts can decide to their own judgement, with discretion. Although the maintenance is assigned to the parent with care, for paying taxes it must be seen as earnings of the child.

If the child (of age) lives on his own, the maintenance can be granted to the child itself. On the condition that the child has not reached the age of 26 and has no income of its own.

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*We now ask more detailed questions about the three types of arrangements, voluntary, court-determined, and agency-determined.*

## **3.2 VOLUNTARY AGREEMENTS ABOUT CHILD MAINTENANCE**

### **3.2.1 Please provide information on voluntary agreements: are lawyers, agencies or other organisations involved in mediating or helping to negotiate voluntary child maintenance**

**agreements? If so, please explain the processes. Are there any formal guidelines on deciding the amount?**

As seen in 3.1., parents can make voluntary agreements about the amount of child maintenance.

When divorcing, this will automatically be dealt with in Court. Separated cohabitants or parents that never lived together will have to take initiative themselves.

The disadvantage is that voluntary agreements have no legal value or consequences. They have to be confirmed in Court. For example: a parent can never claim maintenance due or advance maintenance when there is no legal or authentic deed about it.

When parents don't reach an agreement about the amount or want help with the calculation or the rules, they can get help from mediators. These mediators can be found at the CAW. Parents can also ask lawyers or notaries to mediate.

As seen before, there are no fixed rules or legally excepted methods to determine the amount of maintenance. Mediators can ask for all the data about the parent's income, real estate and personal estate, etc. to determine the amount. Parents (or their mediators) can use the Method of Renard, of Roodhooft or the one of Gezinsbond as a reference point.

**3.2.2 What happens if parents attempt to reach a voluntary agreement but are unable to do so?**

As mentioned in 3.2.1 parents can call in assistance from mediators (such as the CAW) or lawyers and notaries to come to an agreement.

If this doesn't work either the Juvenile Court will determine the amount and enforce the child maintenance to one of the parents.

**3.3 COURT DETERMINATION OF CHILD MAINTENANCE**

*This section seeks detailed information about child maintenance determined by Courts. If Courts are not involved in determination of maintenance in your country, please go on to the section on agency determination (after question 3.4.4). If courts are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the Court uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitants, and parents who have never lived together).*

**3.3.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Court decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitants, and parents who have never lived together?**

As seen in 3.1 and 3.2 parents can get help from lawyers or mediators before or during the determination of child maintenance. Sometimes the Court will only check and confirm the amount of child maintenance. But when parents are in conflict they will also decide about the amount and enforce it.

**3.3.2 How would you describe the main method of Court determination of the amount of maintenance on the following continuum:**

- Full discretion**  
 **Mostly discretion, but with informal guidelines**  
 **Formal guidelines**  
 **Rules/rigid formulae**

**If more than one method is used, please describe the circumstances that could lead to different methods.**

/

**Please report any differences between separated married parents, separated cohabitants, and parents who have not lived together.**

/

**3.3.3 Is there a minimum amount of maintenance required?**

- No**  
 **Yes. How much? What are the circumstances in which it is used?**

BUT parents are obliged by law to provide maintenance to their children. Child maintenance is of public order. So, we can say that there is a minimum: the amount of child maintenance should be over €0.00. Numbers from the practice show that there is almost always a minimum of €125, except for very poor families.

**If there is a maximum, please also provide information on its level and the circumstances in which it is used.**

There is no maximum of child maintenance. The maintenance has to be in proportion to the non-resident parent's income.

**3.3.4 These questions deal with how the Court takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.**

The obligation is based on the descent, so there is always an obligation to maintain the child. Child maintenance is of public order. One cannot neglect it.

The Civil Code says that parents have to take care of their children in proportion to their means. Courts decide with full discretion. They can use the Method Renard (especially in the Walloon Region, less in Flanders) or the method of Gezinsbond to have a certain point of reference. Judges also ask the parents to provide all possible data about their income, costs for the children, etc.. Most of the calculation is based on:

- age of the child
- needs of the child
- financial strength of the parents (income, loans, taxes, etc.)
- style of living of the family
- child allowance
- direct costs the parent makes when the child lives with him/her
- support of other children

Because 'in proportion to their means' is rather vague and judges decide with discretion, we will answer the following questions based on the criteria used by the Method of Renard/Gezinsbond.

**A. How much of the non-resident parent's earnings are considered?**

- All  
 Some (explain)  
 None (go to 3.3.4 C)

**B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?**

- Gross  
 Net (What is deducted?): taxes, social security contributions

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?**

- All ignored  
 All considered  
 Some ignored, some considered. Which ones?

**D. Are the non-resident parent's basic living expenses taken into account?**

- No  
 Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.  
 Yes. Please describe the way it which it affects the obligation.

**E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?**

It will be taken into account when a parent is very ill or disabled. His work expenses will not be taken into account.

**How?** The parent will have to prove his situation by means of receipts or medical certificates.

**F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?**

No

**3.3.5 The following questions deal with how the Court takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.**

The obligation is based on the descent, so there is always an obligation to maintain the child. Legally there is no connection between the visiting rights or parental access and the (amount) of child maintenance. But in reality many times child maintenance is determined (amongst many other criteria) on the basis of visiting rights. E.g. legally a parent cannot ask for a change in child maintenance because he cannot visit or see the child anymore.

So all the questions underneath can be answered NO. Though, these situations can be a reason to ask

for a change of the amount of child maintenance.

- A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?**  
No
- B. Is the obligation affected by whether the non-resident parent had prior children? In what way?**  
No
- C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?**  
No
- D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?**  
No

**3.3.6 These questions deal with how the Court takes account of the parent with care's resources in determining whether there is an obligation and its amount.**

Parents have to take care of their children in proportion to their means. Courts decide with discretion. Sometimes they use the Method Renard (especially in the Walloon Region, less in Flanders) or the method of Gezinsbond to have a certain point of reference. Judges also ask the parents to provide all possible data about their income, costs for the children, etc.. Most of the calculation is based on:

- age of the child
- needs of the child
- financial strength of BOTH parents
- style of living of the family
- child allowance
- direct costs the non-resident parent makes when the child lives with him/her
- support of other children

Because 'in proportion to their means' is rather vague and judges decide with discretion, we will answer the following questions based on the criteria used by the Method of Renard/Gezinsbond.

- A. How much of the parent with care's earnings are considered?**
- All**
- Some (explain)**
- None (go to 3.3.6 C)**
- B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?**
- Gross**
- Net (What is deducted?): taxes, social security contributions**
- C. Are other sources of income (for example, benefit income, asset income, etc.) of**

the parent with care considered?

- All ignored  
 All considered  
 Some ignored, some considered. Which ones?

**D. Are the parent with care's basic living expenses taken into account?**

- No  
 Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.  
 Yes. Please describe the way in which it affects the obligation.

**E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?**

It will be taken into account when a parent is very ill or disabled. His work expenses will not be taken into account.

**3.3.7 These questions deal with how the Court takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.**

See 3.3.5. Here the answers will also be NO.

**A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?**

No

**B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?**

No

**C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?**

No

**3.3.8 These questions deal with how the Court takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.**

**A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?**

In Belgium there legally exists 'co-ouderschap' (=co-parenting) since 1995. This means a child will spend equal time with each of the parents. (For the sake of completeness we mention that co-parenting legally also means parents keep both parental authority, to be more correct we should talk here about bi-location).

When a child is bi-located, the child maintenance should not be paid because there is no longer a parent with care and a non-resident parent. Both parents become parents with care. But in practice the income of both parents will be taken into account. If one makes substantially more

money than the other one, maintenance will have to be paid. Also the child allowance will be taken into consideration and/or given to the parent with a lower income.

**B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?**

As said before, legally there is no connection between determining the amount of child maintenance and the amount of time the non-resident parent spends with the child. Although in practice it is sometimes taken into account.

**3.3.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.**

As said before, there is always an obligation to maintain the child. We also said that there are no fixed rules to determine child maintenance. The answers to the questions underneath have to be seen in this way. The criteria used are different for every Justice. So, we will answer the following questions based on the criteria used by the Method of Renard/Gezinsbond.

**A. Does the child's age affect the amount of the obligation? If yes, what are the age groups? Do obligations increase or decrease with age?**

Yes, the age will affect the amount of maintenance granted.

Child maintenance does not automatically decrease or increase when the child gets older. Though, parents could put this gradual increase/decrease in a separate clause when divorcing or when formulating an agreement for ratification. Gezinsbond for example suggests to put a gradual increase in the agreement at the age of 6, 12 and 18.

**B. Does the number of children affect the amount of the obligation? How?**

Yes.

**C. Is there a minimum desirable amount set per child?**

There is no minimum amount per child.

The practice shows that nowadays the minimum is about € 125.

**D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).**

Characteristics such as disability, illness, ...

**E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)**

The amount can be affected by: schooling, day-care, expensive hobbies, etc.

**3.3.10 These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)**

We will make the same remark for these questions. Judges decide with discretion. Some judges will take them into account, others won't. This must be kept in mind when reading the answers.

- A. Please explain how the Court treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.**

Judges will only take into account the income from these other assets.

- B. Please explain how the Court treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:**

- lump sum payments
- previous voluntary child maintenance payments
- spouse maintenance (alimony) or other financial transfers to ex-partners
- transfer of pension rights

Some judges will take them into account, others won't.

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### **3.4 PROBLEMS AND REVISIONS FOR COURT DETERMINATIONS**

- 3.4.1 Please discuss any problems that arise in gathering information necessary for the Court to determine maintenance, and how such problems are dealt with.**

We didn't find much information about this. But we know that judges will examine all the evidence accurately (such as pay slips and receipts). Some parents deliberately give wrong information about their earnings and income.

- 3.4.2 Approximately how long does it usually take for the Court to make the financial decisions about child maintenance?**

For separated married parents it depends on the type of divorce (see 2.1.2.) Depending on the type of divorce it could take from several months to a year or even more. The Justice of the Peace can make compelling provisional measures during the process about the child maintenance.

Separated cohabitants and parents who have never lived together will go to the Juvenile Court to make decisions about the child maintenance. This procedure will take at least several months. There is a lot of legal backlog. When the Justice introduces the case, he will ask if there are compelling provisional measures necessary.

Attention has to be paid here. The child maintenance is retroactive. This means that child maintenance has to be paid as from the introduction of the case (even if the final decision is made several months later).

- 3.4.3 When does obligation for and entitlement to Court-determined child maintenance end for divorced and separated parents and their children?**

**Please explain with reference to:**

- child's age/education level
- marriage/cohabitation of child
- any other characteristics of child
- cohabitation/remarriage of parent with care
- cohabitation/remarriage of non-resident parent
- any other characteristics of either parent.

The obligation remains until the child is of age and has concluded his education. When the child is still receiving training the obligation remains. This is possible until the age of 26, and if the child has no own income. A court order can stipulate differently. E.g. the maintenance can remain until the child has an

income of its own.

When the child is married, the obligation to maintain the partner has precedence over the parent's obligation.

The other criteria don't have any influence on the child maintenance obligation.

#### 3.4.4 These questions deal with revisions to the amount due.

**A. Does the Court do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)**

There is an annual indexation of the amount following the consumption price index. Other increases or decreases could be put into the divorce/child maintenance deed.

**B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?**

Besides the indexation there is no automatic adjustment. When parents want to change the amount they should go to Court. Judges only change the amount when there is a proven change in the situation not within the will of the parties. These could be: job loss, not coping with the job any longer for physical or psychological reasons, to become ill, to become disabled.

Some organisations like Gezinsbond propose a change linked to age: an automatic change at the age of 6, 12 or 18 years.

**C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?**

Both the parent with care and the non-resident parent can ask an adjustment at the Justice of the Peace Court. This is an obligation. If they change the amount by themselves, they can be convicted.

The increase, decrease or abolition of child maintenance is dependent on many factors. The basic condition is that the situation of one of the parents has changed drastically and this was not within his will. The Court will determine whether the children can maintain the same standard of living. If not, the child maintenance will be changed.

Child maintenance can also be changed when the situation of the child has changed drastically (illness, handicap).

If the change in maintenance is linked to visiting rights, parents have to go to Juvenile Court. As said before, legally there is no link between the two.

### 3.5 AGENCY DETERMINATION OF CHILD MAINTENANCE

*This section seeks detailed information about child maintenance determined by agencies or organisations other than the Court. In some countries there are no such agencies involved in the determination of child maintenance liabilities and entitlements, because such matters are handled solely by the Court. If this applies to your country, please go straight on to Question 3.7.1. If agencies are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the agency uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer*

*questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitants, and parents who have never lived together).*

There are no agencies involved in decision making about child maintenance. Agencies can only act as mediators.

**3.5.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Agency decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitants, and parents who have never lived together?**

**3.5.2 How would you describe the main method of Agency determination of the amount of maintenance on the following continuum:**

- Full discretion
- Mostly discretion, but with informal guidelines
- Formal guidelines
- Rules/rigid formulae

If more than one method is used, please describe the circumstances that could lead to different methods.

Please report any differences between separated married parents, separated cohabitants, and parents who have not lived together.

**3.5.3 Is there a minimum amount of maintenance required?**

- No
- Yes. How much? What are the circumstances in which it is used?

If there is a maximum, please also provide information on its level and the circumstances in which it is used.

**3.5.4 These questions deal with how the Agency takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.**

**A. How much of the non-resident parent's earnings are considered?**

- All
- Some (explain)
- None (go to 3.5.4 C)

**B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?**

- Gross
- Net (What is deducted?)

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?**

- All ignored
- All considered
- Some ignored, some considered. Which ones?

- D. Are the non-resident parent's basic living expenses taken into account?
- No
  - Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
  - Yes. Please describe the way in which it affects the obligation.
- E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?

How?

- F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?

**3.5.5** The following questions deal with how the Agency takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?
- B. Is the obligation affected by whether the non-resident parent had prior children? In what way?
- C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?
- D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?

**3.5.6** These questions deal with how the Agency takes account of the parent with care's resources in determining whether there is an obligation and its amount.

- A. How much of the parent with care's earnings are considered?
  - All
  - Some (explain)
  - None (go to 3.5.6 C)
- B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?
  - Gross

\_\_\_ Net (What is deducted?)

- C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?

\_\_\_ All ignored

\_\_\_ All considered

\_\_\_ Some ignored, some considered. Which ones?

- D. Are the parent with care's basic living expenses taken into account?

\_\_\_ No

\_\_\_ Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.

\_\_\_ Yes. Please describe the way in which it affects the obligation.

- E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?

**3.5.7** These questions deal with how the Agency takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?
- B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?
- C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?

**3.5.8** These questions deal with how the Agency takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.

- A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?
- B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?

**3.5.9** These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

- A. Does the child's age affect the amount of obligation? If yes, what are the age groups? Do obligations increase or decrease with age?

- B. Does the number of children affect the amount of obligation? How?
- C. Is there a minimum desirable amount set per child?
- D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).
- E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)

**3.5.10** These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

- A. Please explain how the Agency treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.
- B. Please explain how the Agency treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:
  - lump sum payments
  - previous voluntary child maintenance payments
  - spouse maintenance (alimony) or other financial transfers to ex-partners
  - transfer of pension rights.

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## **3.6 PROBLEMS AND REVISIONS FOR AGENCY DETERMINATIONS**

**3.6.1** Please discuss any problems that arise in gathering information necessary for the Agency to determine maintenance, and how such problems are dealt with.

**3.6.2** Approximately how long does it usually take for the Agency to make the financial decisions about child maintenance?

**3.6.3** Please explain any circumstances in which Agency-determined child maintenance obligations are overridden by other legal requirements.

**3.6.4** When does liability for and entitlement to Agency-determined child maintenance end for divorced and separated parents and their children?

Please explain with reference to:

- child's age/education level
- marriage/cohabitation of child
- any other characteristics of child
- cohabitation/remarriage of parent with care
- cohabitation/remarriage of non-resident parent
- any other characteristics of either parent.

**3.6.5** These questions deal with revisions to the amount due.

- A. Does the Agency do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)
- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?
- C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?

*This ends the sections of the questionnaire that have detailed questions on the way maintenance amounts are determined in voluntary, Court-based, and agency-based arrangements. The final section of this part asks broader questions.*

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### 3.7 REVIEW AND SUMMARY

**3.7.1 Please review all your answers in Part Three, “The Determination of Child Maintenance Due.” Please summarize the key differences in the ways in which separated married parents, separated cohabitants, and parents who have never lived together are treated differently. What is the rationale for these differences in treatment?**

The principle of child maintenance originates from descendant law and not from divorce law. Everyone whom begets, acknowledges or adopts a child is obliged to maintain this child and contribute according to one’s own ability. In legal terms this is the difference between ‘obligatio’ and ‘contributio’. Parents can determine and make agreements about the contribution but not about the obligation.

Determining child maintenance is the responsibility of the Courts. Parents can also make voluntary agreements (and have them confirmed later) and get help from mediators and lawyers.

The difference between the 3 situations is that parents getting divorced already have to appear and make agreements in Court. Child maintenance will be one of them. Child maintenance agreements are only valid if confirmed in Court. Separated cohabitants and parents who have never lived together will directly go to the Juvenile Court to arrange everything concerning the children. Or will make voluntary mutual agreements (and have them confirmed in Court).

As regards the rules and methods about child maintenance, they are the same for the three groups of parents.

**3.7.2 What are the perceived advantages associated with voluntary agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages and problems, and by/for whom?**

- Advantages: voluntary agreements can be made quickly. Parents can get help at several organisations or from mediators. Because it is not in Court these agreements are also cheaper.
- Disadvantage: Voluntary agreements have no legal power and cannot be used in Court. Only agreements confirmed in Court have legal power. A parent cannot claim maintenance on the basis of a voluntary not ratified document.

**3.7.3 What are the perceived advantages associated with Court-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?**

- Advantage: These agreements have legal value and can be used to claim maintenance due and advance maintenance.
- Disadvantage: Agreements made in Court take some months. Parents most of the time get help from a lawyer and so it becomes more expensive.

**3.7.4 What are the perceived advantages associated with Agency-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?**

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**3.7.5 Please comment on the way that voluntary agreements, Court agreements and Agency agreements interact. What happens if later a voluntary agreement breaks down? Can the parent with care seek assistance from the Court or Agency? Would they recalculate the amount of the obligation?**

Voluntary agreements and court agreements interact in the way that the former can be confirmed in Court and become the latter. So when a voluntary agreement breaks down, parents will have to go to Court. Then the Judge will decide about the amount and enforce the child maintenance.

Some judges do take into account the maintenance already paid by a voluntary agreement, others don't.

Court agreements are the only ones with legal power and consequences. Voluntary agreements therefore should be confirmed in Court to avoid all future problems.

## **PART FOUR: COLLECTION, PAYMENT AND ENFORCEMENT OF CHILD MAINTENANCE**

*This part of the questionnaire is concerned with the way in which child maintenance monies are transferred from the non-resident parent to the parent with care and/or child. For some people, this may be achieved entirely by their own arrangements, including the direct transference of monies from non-resident parent to the parent with care, or arrangements through a bank. For others, transfer of monies may involve an intermediary (for example, a collecting agency), which has responsibility for receiving child maintenance from non-resident parents, and forwarding payments to parents with care/children. We seek information on collection and forwarding, non-payment, and guaranteed or advance payment schemes.*

### **4.1 DIRECT ARRANGEMENTS FOR COLLECTING MAINTENANCE**

#### **4.1.1 Under what circumstances may non-resident parents choose to pay child maintenance directly? We mean direct transfers of money from the non-resident parent to the parent with care or a private bank transaction.**

This is the standard way for paying child maintenance.

Parents can decide privately on the way of payment. Non-resident parents usually deposit the money onto the bank account of the parent with care. Or they open a 'child-account' on which they both deposit money for the child. They can control the account by double receipts. There are no rules regarding this. Regulations about direct payment should be put in the divorce/child maintenance deed, such as: time of payment, place and way of payment and the starting point.

#### **4.1.2 Are these direct payments monitored, and if so, how?**

Non-compliance is a legal offence. But on the other side there is no supervision. Parents have to take initiative to complain.

But to be tax-deductible the maintenance has to be paid frequently. We could see this as an indirect control.

#### **4.1.3 If direct payments are not made, can parents with care seek enforcement of payment? How? What steps would occur?**

When the non-resident parent doesn't pay the child maintenance the parent with care can take several types of measures (see also 1.1). Legally / in theory the maintenance is retroactive to 5 years + interest. But in practice many judges do not apply this.

- Non-compliance is a legal offence in accordance with Art. 391b of the Criminal Code and could lead to imprisonment.
- If the parents (only separated married parents) inserted in the court order about the child maintenance an 'authority of receipt' (=ontvangstmachtiging or loondelegatie) then the maintenance can be deducted of the earnings of the non-resident parent. The parent with care can also ask for this 'authority of receipt' after the divorce/separation.
- Sequestration by means of a bailiff. You can sequester goods (such as a car, house), money (bank account) and income.
- Complaint for family abandonment: (besides other complaints or appliances) when the non-resident parent doesn't pay for 2 periods, the parent with care can file a complaint. For this criminal offence one can get a fine of €250 - €2500 or a prison penalty of 8 days to 6 months.
- DAVO: Dienst voor Alimentatievordering (=Service for Maintenance Claiming): see also 1.1. DAVO

does not act spontaneously. The maintenance beneficiary must also comply with certain conditions. These conditions are:

- To claim the monthly amount of the maintenance and the maintenance due: the maintenance beneficiary has its residence in Belgium + the maintenance was not paid twice or entirely in a period of 12 months before the application.
- To apply for advance maintenance: same as first + maximum earnings of €1.152 net a month (+ €54 per child).

DAVO is not free of charge. Both the parent with care and the non-resident parent have to contribute to the working costs of DAVO. The former has to pay up to 10% of the maintenance (incl. maintenance due), the latter receives 5% less of the maintenance.

#### **4.1.4 Please discuss the perceived advantages of direct payment arrangements, and the perceived problems.**

- Advantage: Direct payment arrangements are the standard way of paying child maintenance.
- Disadvantage: there is no automatic control on compliance. When a parent stops or doesn't pay the maintenance the other partner has to take initiative. For the non-resident parent it is important to hold out all the receipts.

## **4.2 MEDIATED ARRANGEMENTS FOR COLLECTING MAINTENANCE**

### **4.2.1 Is there an organisation/agency that has primary responsibility for collecting and forwarding child maintenance? Which organisation? If this is a different organisation than the agency that assesses maintenance, please provide information on its functions.**

The only agency that can collect and forward child maintenance is DAVO (See 1.1 and 4.1.3.) DAVO only acts on the initiative of the parent when there is non-compliance for more than 2 periods within the 12 months before the application. So these mediated arrangements are only in the case of non-compliance.

### **4.2.2 Please provide information about the administrative and procedural arrangements for collecting and transferring maintenance. If you have more than one scheme, please deal with these separately. Please explain any difference in arrangements for different groups of parents (separated married parents, separated cohabitants and parents who have never lived together). Please explain any differences for whether the amount was set voluntarily, through a Court, or through an Agency.**

As seen in 4.2.1. DAVO only acts on the demand of the parent in case of non-compliance. DAVO makes no difference between separated married parents, separated cohabitants and parents who have never lived together. The only requisite is a sentence or a valid certificate in which the amount of the maintenance has been determined. So private writing, oral agreements and court orders or authentic deeds in which the amount of the maintenance is not mentioned do not count. The parent has to apply for maintenance due or advance maintenance by means of a form. Hereby the applicant has to add all official papers about the divorce, the child maintenance, income, medical certificates, etc. DAVO then will make a proposal. If the parent accepts, DAVO will check everything about the parent with care and the non-resident parent.

### **4.2.3 Please describe any types of circumstances in which payments are automatically withheld from wages (that is, prior to any problem with non-payment).**

This is only possible when the couple has inserted in the court order about the child maintenance an 'authority of receipt' (=ontvangstmachtiging or loondelegatie). This means that when the maintenance is not paid within a certain period, the parent with care has the right to withhold the maintenance directly from the earnings of the non-resident parent.

This can also be applied for after the divorce in the case of non-compliance.

#### **4.2.4 In Section 4.4 below we ask for information on schemes that forward maintenance due in advance of collection. Other than these schemes, what is the usual timescale for delivering payments to parents with care/children?**

There is no time-scale. When maintenance is paid directly, most parents pay periodically. Some parents prefer to pay one large amount at once.

DAVO can also deliver payment to parents with care in the case of non-compliance. They don't have any time scale

#### **4.2.5 What are the perceived advantages of your collection and forwarding scheme(s), and what are the main problems?**

- Advantage: Parents can pay directly. There is no need to pass by an organisation for collecting and forwarding.
- Disadvantages: There is no system for collecting and forwarding maintenance, only in the case of non-compliance. When a parent doesn't receive child maintenance for more than 2 months, they can get help from DAVO. A disadvantage is also that this agency (if it existed) for collecting and forwarding could control or monitor the maintenance paid.

### **4.3 NON-COMPLIANCE**

#### **4.3.1 For parents with mediated arrangements for collecting and transferring maintenance, we are interested in what happens when non-resident parents do not pay the amount due. Which of the following could happen?**

- Attachment of earnings
- Deductions from bank accounts/savings/pensions
- Deductions from benefits
- Recovery through tax
- Seizing and selling assets
- Driving licenses revoked
- Passport confiscation
- Criminal prosecution
- Imprisonment
- Interest charged on debt
- Other

Mediated arrangements are only possible in the case of non-compliance. So the cases ticked here are also valid for parents with direct payment agreements.

#### **4.3.2 Of the interventions marked in 4.3.1, which are most likely? Please comment on whether these typically occur in a particular sequence, that is, differentiate between any that**

**are routinely used at the first instance of non-payment and those only used for persistent non-payment. Finally, please comment on the timing of collection interventions; how soon after non-payment would something happen? (If different types of cases have different steps or different timing, please explain.)**

There are no official statistics about the different interventions. We do not know the real source of the following data:

In the research by Huybrechts (2003) we read that 1/5 never pays maintenance. 2/5 receives maintenance very irregularly.

On an Internet site we read that 17% of these parents ask for attachment of earnings. 1 out of 4 went to the OCMW to ask for the maintenance due or advance maintenance (this now is the task of DAVO).

As seen in 4.1.3. parents have to take initiative to complain. We will discuss some interventions on which we found some information (by means of interview).

- Interest charged on debt: there is no unanimity amongst judges. Most of the time the defaulter is not convicted to pay interests.
- Attachment of goods through a bailiff: it is expensive and it takes a lot of time.
- Complaint for family abandonment: in practice this is used very often. Though it is more used as a means of pressure. For the non-resident parent is punishable by fine or get a prison penalty.
- Sequestration of income (or an authority of receipt): also are very common. This is a more practical solution. Sometimes also cars or other personal objects are being sequestered (this is rarely the house).

**4.3.3 When parents with care and their children do not receive the child maintenance due to them as a result of non-compliance by non-resident parents, what steps could the parent with care take? Who would they complain to? What happens when a complaint is made? (Arrangements by which child maintenance due (or some part of it) is guaranteed by the state are covered in the next section, so do not need to be covered here.)**

The interventions described here are the same as for the situation in 4.1.3..

- Not paying child maintenance is a legal offence in accordance with Art. 391b of the Criminal Code and could lead to imprisonment.
  - If the parents (only separated married parents) inserted in the court order about the child maintenance an 'authority of receipt' (=ontvangstmachtiging or loondelegatie) then the maintenance can be deducted of the earnings of the non-resident parent. The parent with care can also ask for this 'authority of receipt' after the divorce.
  - DAVO: Service for Maintenance Claiming: see 1.1.
  - Sequestration by means of a bailiff. You can sequester goods (such as a car, house), money (bank account) and income.
  - Complaint for family abandonment: (besides other complaints or appliances) when the non-resident parent doesn't pay for 2 periods, the parent with care can file a complaint. For this criminal offence one can get a fine of €250 - €2500 or a prison penalty of 8 days to 6 months.
-

#### 4.4 GUARANTEED MAINTENANCE PROGRAMS

**4.4.1 We are specially interested in schemes which forward maintenance due to the parent with care/child in advance of collection from the non-resident parent, thus guaranteeing that something is received. (We do not include here general social assistance programs available to all low-income parents.) Does your country have such a guaranteed maintenance program?**

Yes (continue)

No (go to Part Five)

BUT only possible after non-compliance.

**4.4.2 Please describe eligibility for the guaranteed maintenance program. For example, are all parents with care eligible, or only those in which non-payment has occurred? Is there an income test? Is this available only for those with certain court or agency agreements, or can those with voluntary agreements also participate?**

The only existing program for guaranteed maintenance program or advance maintenance is through DAVO. (The 'ontvangstmachtiging' cannot be called a program.)

The program from DAVO is only for parents that have a maximum income of earnings of € 1.152 net a month (+ €54 per child). And the non-resident parent had to neglect the payment for 2 periods in the 12 months before the application. The parent with care has to have his residence in Belgium (recently the condition that the non-resident parent has to have its residence in Belgium and has to acquire an income in Belgium was lifted).

DAVO can only act on the basis of a sentence or a valid certificate in which the amount of the maintenance has been determined. So private writing, oral agreements and court orders or authentic deeds in which the amount of the maintenance is not mentioned do not count.

See more about DAVO in 1.1.

**4.4.3 Please describe the amount guaranteed. Is this a proportion of the amount owed or a flat amount? Is there a minimum or a maximum? Does the amount vary across parents? Is the amount ever adjusted (for inflation or for changes in individual situations)? Under what circumstances is it adjusted?**

As said before the only way maintenance can be guaranteed is through advance maintenance by DAVO.

The advance given equals the maintenance. The maximum amount of advance given per child is € 175,00. There is no minimum. If the child maintenance is less than € 175,00, the advance cannot be higher than the maintenance itself.

The advance maintenance will be allowed for a certain period of time (6 months, 12 months). This period is renewable to the extent that the conditions have not changed (such as income).

The amount of the maintenance itself is adjusted every year through the consumer price index.

One should not forget that DAVO is not free of charge.

**4.4.4 We are interested in the interaction between the guaranteed maintenance program and other parts of your social benefits system. Is the guaranteed maintenance program intended to be an alternative to other benefits or is it intended to supplement them?**

As said in 1.1 DAVO is a relatively young service. It started working since June 2004 (for claiming maintenance and future maintenance) and since October 2005 (for advance maintenance). Before it was the task of the OCMW (= Public Centre for Welfare) by the Law of July 6<sup>th</sup> 1976. At the moment DAVO is the only program. It replaced the OCMW task. It doesn't supplement or benefit other programs because it is not explicitly for low-income families.

**4.4.5 Please describe the administration of the program. Who administers it? Who is responsible for recovery of the amounts forwarded?**

The program is through DAVO (See 1.1). DAVO administers it and will also try to recover the amounts already forwarded.

**4.4.6 What are the perceived advantage and disadvantages of the scheme?**

- Advantages: DAVO is a part of the Federal Public Service Finance. Thus it can know more about the financial situation of the parent with care and the non-resident parent. Maybe the fact that there is such a service can be seen as an advantage. Before 2004-2005 only low-income families could apply for advance maintenance at the OCMW.
- Disadvantages: DAVO does not work automatically. DAVO is not free of charge. There is still an income limit to apply for advance maintenance.

## PART FIVE: FINANCIAL INTERACTIONS

*This part of the questionnaire is concerned with the interactions between child maintenance amounts and other policies in your country.*

### 5.1 TREATMENT OF MAINTENANCE RECEIVED

**5.1.1 Do child maintenance payments received by the parent with care/child count as taxable income, for purposes of both central and local taxation? How? If, in your child maintenance regime, child maintenance is in the child's name (rather than the name of the parent with care), please explain how this income is dealt with for tax purposes. Does it matter if child maintenance was agreed on a voluntary basis, or determined by the Courts or Agency? How? Please also explain any differences in tax treatments which depend on the current marital status of the parent with care (whether married to a new partner or not).**

Although the maintenance is granted to the parent with care (often deposited on his/her bank account), it is seen as earnings of the child. This means that the child has to fill out this 'income' in his own tax form and this only for central taxation. This income sums up with other money he makes (such as income from a student job). €2.610,00 of the total amount of the maintenance is tax-exempted. In this situation the child remains to the account of the parent with care. When the maintenance is higher than €2.610,00 80% of this exceeding has to be summed up with the other incomes he/she made.

The non-resident parent that gives the maintenance can tax-deduct 80% of the sum. When he/she does not declare the maintenance to the Treasury, the child does not have to pay taxes on the maintenance.

Concerning taxes there is no difference made between voluntary and court determined agreements. But when made voluntary the Treasury will examine everything punctually.

The current marital status of the parent with care does not change these conditions

**5.1.2 Do child maintenance payments received affect any social benefits of the parent with care and/or child? How? If maintenance counts as assessable income for purposes of social assistance, please explain any disregards that operate. Also, if some portion of child maintenance is retained by the government and not sent to the parent with care, please explain this as well.**

The child maintenance affects certain social benefits of the child, not of the parent with care. There could be other benefits that are affected besides the one mentioned here, that we are not aware of. When a child/student wants to apply for a scholarship, the child maintenance has to be summed up with the other earnings of the family.  
It does not affect the child allowance.

**5.1.3 Do child maintenance payments received affect any tax benefit for the parent with care and child? Do they affect any other formal financial liability or entitlement for the parent with care and child?**

See 5.1.1.

## 5.2 TREATMENT OF MAINTENANCE PAID

**5.2.1 How does child maintenance paid interact with the tax system, in both central and local tax regimes? Can the amount paid be deducted from income, thereby lowering tax liabilities? Does the amount paid affect any tax benefits for the non-resident parent? If there are different tax treatments according to whether the child maintenance is agreed on a voluntary basis, or determined by the Courts or Agency, please explain this. Explain any differences in tax treatments which depend on the non-resident parents' current marital status (whether married to a new partner or not).**

Everything hereby is under the central tax system. Also voluntary agreements are taken into account. The Treasury will do research on the truthfulness.

Child maintenance paid is tax-deductible up to 80%. This under the condition that:

1. The child maintenance is granted on the basis of a legal maintenance obligation (between parents-children and separated married partners, not between brothers-sisters) and (the beneficiary is in a situation of neediness)
2. The beneficiary is no part of the household of the payer (they may not have the same residence)
3. The maintenance is paid regularly (this does not mean always on the same date, but it means periodically)
4. There has to be proof of payment (bank statements)

When parents are in the situation of co-parenting (or bi-location) (see 3.3.8) the situation is a little bit different. There are two possible situations:

- - Children are put on the account of both parents: this means that the tax-advantage is divided over both parents. But a parent that pays child maintenance cannot deduct this maintenance when the child is on the account of both parents.
- Children are put on the account of one of the parents: the other parent pays child maintenance. This way there is a double tax-advantage. There is a tax relief for children on your account and there is the tax deductibility of child maintenance paid.

The current marital status does not change these rules. The obligation to pay child maintenance is not dependent on this situation.

### **5.2.2 Does child maintenance paid (or not paid) affect any social benefits of the non-resident parent?**

The child maintenance paid affects some social benefits and welfare provisions. There could be others, besides the one mentioned here, that we are not aware of:

- A non-resident parent wants to apply for an unemployment benefit. Even when living on his own (alone) he receives an unemployment benefit almost equal to people with a family on their account.
- DAVO will take the social situation of the non-resident parent into account. They could suggest a certain payment scheme when the parent has an unemployment benefit or when there are other social conditions.

Besides this, not paying child maintenance is a criminal offence and can have many consequences.

### **5.2.3 Does child maintenance paid (or not paid) affect any other formal financial liability or entitlement of the non-resident parent?**

Not that we are aware of.

## PART SIX: COSTS AND QUANTITATIVE DATA ON OUTCOMES

*The first section focuses on costs of the child maintenance regime, beginning with governmental costs of any targeted child maintenance agency (if any). We then also ask you to estimate, if possible, costs for court and agencies that may deal with assessment and enforcement. The final section asks for quantitative data on outcomes that are available in your country.*

### 6.1 COSTS OF THE CHILD MAINTENANCE REGIME

**6.1.1 If your country has an agency (or more than one agency) that is primarily responsible for assessing, collecting or enforcing child maintenance, what are its administrative costs? If possible, identify any categories of costs, either by function (costs of assessment versus enforcement) or for different types of cases. Please provide information about the types of costs included and not included (for example, whether these costs are net of any fees or any amounts retained by the government). Finally, if the amount of maintenance collected per unit of administrative cost is available in your country, please provide this information here.**

There is only one agency in Belgium that is occupied with child maintenance: DAVO. They are only responsible for claiming maintenance and providing advance maintenance in the case of non-compliance. The agency is very young. It started operating in 2004 although it was founded in 2003. This delay was the cause of financial problems. The agency is a part of the Federal Public Service Finance.

At this moment the parents that make use of DAVO have to pay the costs. The parent with care has to pay 5% of the maintenance and the non-resident parent has to pay 10%.

We found no data about the founding or the costs of providing advance maintenance of DAVO. Nor were there real numbers about the OCMW (handling advance maintenance before 2005).

**6.1.2 If your country has any child maintenance functions within the courts, please provide, if possible, estimates of the administrative costs associated with assessing, collecting or enforcing child maintenance. Note that we are interested only in the portion of court costs directly related to the assessment, collection and enforcement of child maintenance, not to divorce or separation in general.**

If parents are divorcing, child maintenance will be part of the agreements made at that time. So costs are difficult to separate from the divorce costs. Only when parents have to go to the Juvenile Court after the divorce, costs could be separated from the divorce costs.

Legal costs can vary and often sum up. An appeal in family law costs about €25,00. Juvenile Court costs about €52,00. A writ (for compelling provisional measures, and with divorce) can cost up to €300,00.

It is not obliged to get help from a lawyer in court. One can handle its own affairs. But it is recommended because of the difficulty. When a person asks help from a lawyer prices will vary from €75 to €200 / per hour.

Wetswinkels (Law Shops) are places where people could go for judicial advice. A consultation costs 12 euro. Professional jurists help the parents. Some courts of justice also organise free information sessions.

**6.1.3 If your country has any child maintenance functions within an agency other than an agency primarily responsible for child maintenance, please provide, if possible, estimates of**

**the administrative costs associated with these functions. Again, note that we are interested only in the portion of costs directly related to child maintenance, not to other benefits due to all children or even all low-income children.**

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**6.1.4 If your country has an advanced or guaranteed maintenance programme, please provide any details of costs that are available. If possible, differentiate between administrative costs and monies paid to parents with care that are not reimbursed.**

DAVO: same as 6.1.1.

**6.1.5 Please list any financial costs to parents that are associated with assessing, collecting, or enforcing child maintenance (for both parents with care and non-resident parents). For example, there may be legal fees associated with enforcement, fees for a mediator who assists with voluntary arrangements, fees charged to non-resident parents for forwarding child maintenance to the parent with care, or interest charged to non-resident parents who are behind in their payments. (We do not intend for you to include financial debt that parents with care incur because of non-payment.)**

Costs for parents are those made at DAVO, for a lawyer or at the court. There are no fees or any other financial costs. So, see 6.1.1. – 6.1.4.

The fees for mediators vary. It could be around €35/hour for an individual conversation to €60/hour for mediation. Many mediation-organisations point out that it is cheaper than a normal procedure in Court. At the CAW the cost is calculated on the basis of the income.

**6.1.6 Are there any programs that assist parents in meeting any of these costs? Please provide a short overview of these programs and any estimates of the costs of these programs.**

There are no programs in meeting the costs of DAVO. At the moment there are some organisations that are devoting themselves to the abolition of these costs. They think that if the income limit (to apply for advance maintenance) is removed, DAVO could be able to support itself.

For meeting the legal costs there are two 'Bureau's'. On the one hand there is the Bureau voor Juridisch Bijstand (= Office of Juridic Aid). This Bureau is a part of the lawyers. Single persons have to have a net income below €780 for free help, and between €780 and €1 004 to be partially free of charge. 15% of €834,14 is added for every person (child) on his account. This help will come from a Pro Deo Lawyer.

On the other side there is the Bureau voor Rechtsbijstand (Office of Legal Aid). This aid is for everyone and is given by the Justice of The Peace. It is calculated on the basis of the total legal costs. For the Juvenile Court it goes from €36,44 (costs below €250) to €218,64 (costs above €2500). For the Justice of the Peace the sum sets between €60,73 (costs < €250) and €364, 40 (costs > €2500). For the Justice of First Instance there is a range of Aid from €121,47 (costs < €2500) to €242, 94 (costs > €2500). A supplementary aid can be asked of €60,73.

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## **6.2 QUANTITATIVE DATA ON CHILD MAINTENANCE**

*In this section, please provide information on child maintenance outcomes. (Note that we will be conducting analyses of the Luxembourg Income Study, so you do not need to report these here.) We are interested in information collected by the government as part of the administrative records of courts*

*or agencies, information that comes from household surveys that include questions on child maintenance, and information that comes from any other source. Please provide information from all sources that are available.*

**6.2.1 Please provide the percentage of parents with care who have child maintenance agreements. Of those that have agreements, what percentage of parents have voluntary agreements; what percentage have court agreements, and what percentage have agency agreements? If you can provide these answers separately for separated married parents, separated cohabitants, and parents who have never lived together, please do so.**

There are almost no statistics about child maintenance (in general there are very few statistics about juridical or legal themes). The following data were found on various sources. Only the ones from CBGS and the Ministry are reliable. The other ones must be seen as unreliable because we found no real source or information about the research of which they resulted from.

- Separated married parents: Parents that divorce have 37% 1 child, 44% 2 children, 14% 3 children and 5% have 4 or more children (data 2002-2003).<sup>1</sup> 1/5 never pays child maintenance and in 2/5 cases maintenance is paid irregular.<sup>2</sup>
- Separated cohabitants: 45/100 of these people has also children, further it is also known that they separate more easily than married parents (data 2005).<sup>3</sup>
- Parents who never have lived together: no data found.

Further we know that there are about 600.000 divorces in Belgium. About 50% of these people have the right to maintenance (for the child or for the ex-partner). 40% of these people do not or irregularly receive maintenance.<sup>4</sup>

Data about 1989 say that 13% of Flemish parents and 24% of Walloon parents do not pay any of the maintenance they are obliged to pay. Of these parents, 83% takes legal measures. In 58% of the cases there is no result at all.<sup>5</sup>

Data about 1995 says that 19% of the non-resident parent doesn't pay the child maintenance and 81% does. Of these 81% only 60% pays the maintenance regularly. When parents take legal steps, the maintenance is restarted.<sup>6</sup>

In the year 2005 there were 3342 new cases concerning family law (incl. everything about divorce, descendant questions, child maintenance, etc.)<sup>7</sup>

**6.2.2 What is known about the main reasons a parent with care would not have an agreement?**

Parents are obliged to maintain their children. So every separated parent should have an agreement. We must make the same remark here as at the beginning of 6.2.1..

<sup>1</sup> <http://www.cbgs.be/content/selfwar.pl?pageid=165&ts=1134693640&>

<sup>2</sup> Huybrechts M., 2003, pg 63

<sup>3</sup> <http://www.cbgs.be/content/selfwar.pl?pageid=165&ts=1134693640&>

<sup>4</sup> [http://users.pandora.be/goudi/inf\\_onderhoudsgelden.html](http://users.pandora.be/goudi/inf_onderhoudsgelden.html)

<sup>5</sup> Gerlo J., Onderhoudsgelden, 1994

<sup>6</sup> <http://www.senate.be/www/?MIval=/publications/viewPubDoc&TID=50337676&LANG=nl#FNT1> and Gerlo J., Onderhoudsgelden, 1994

<sup>7</sup> [http://just.fgov.be/img\\_justice/publications/pdf/161.pdf](http://just.fgov.be/img_justice/publications/pdf/161.pdf)

**6.2.3 Please provide whatever information is available on amounts paid by non-resident parents, including the proportion paying anything, the proportion paying the full amount due, and the proportion paying part of the amount due.**

It seems to be that there are no data about the amounts paid by non-resident parents. We quote four sources that give very different numbers. Here we must remark again that we do not know the real source or have information about the research it originated from. Data therefore could be unreliable.

- *www.echtscheiding-online.be*: this website that arranges divorces by means of the internet informs that the amount of maintenance that people filled out in their questionnaire varies between € 1 and € 800 per child per month. This is an average mean of €197,21. They remark that these are maintenances negotiated by the parents themselves without the intervention of Justice. (data February 8 2006)<sup>8</sup>
- *OCMW* says in 1999 that the maintenance has an average of about € 100 per child. (We must remark here that (mostly) low-income families make use of the services of OCMW.) (data 1999)<sup>9</sup>
- *Gezinsbond*: talks about an average of € 148 per child per month. (data 2002).<sup>10</sup>
- A practising lawyer says that nowadays the minimum of child maintenance granted is about € 125 (data 2006).<sup>11</sup>

**6.2.4 What is known about the characteristics of the non-resident parents who are not making payments or who are paying only a portion of the amount due? What is known about reasons for non-payment?**

There is not much known about these parents. But one month after DAVO started working 203 files had been opened. In 90% of the cases the parent with care was a woman. This means that the non-resident parent / the not paying parent is 90% male.

During 2001-2003 there were 15 449 complaints about not paying child maintenance in Belgium.<sup>12</sup>

**6.2.5 Is there data available on the proportion of cases in which children spend roughly equal time with both parents? What is known about the types of cases that have this type of arrangement?**

Co-parenting has been approved as a standard in court with the law of March 21<sup>st</sup> 2006. Justice has to recommend co-parenting unless it is not possible for very good reasons. There are no data about this.

**6.2.6 Consider parents with care who have an agreement in which child maintenance is to be paid. In what proportion are payments to be made directly (that is, directly from the non-resident parent to the parent with care, rather than through a collecting agency)?**

This will be in 100% of all cases. There are no mediating agencies for child maintenance in Belgium. The only agency is DAVO. They will act only in the case of non-compliance.

**Please provide references to any sources you consulted for this part of the questionnaire.**

See Footnotes.

<sup>8</sup> <http://www.echtscheiding-online.be/news.aspx?taal=NL&id=44>

<sup>9</sup> <http://www.avcb-vsgeb.be/nl/mati/cpas/com081299.htm>

<sup>10</sup> [www.gezinsbond.be](http://www.gezinsbond.be)

<sup>11</sup> Conversation with Steven Gibens, practising lawyer

<sup>12</sup> <http://www.sbo.be/wetgeving/sepo%20statistieken.htm>

## **PART SEVEN: THE OVERALL CONTEXT**

*In this section we examine two topics: current topics of debate and research, and your own evaluation of how well the regime works along several dimensions.*

### **7.1 TOPICS OF DEBATE AND RESEARCH**

#### **7.1.1 Consider the following potential topics of research:**

- **the impact of your child maintenance regime on relationships between the parents, and relationships of the parents with their children**
- **the impact of your child maintenance regime on 'new' relationships or marriages, or stepchildren**
- **the impact of child maintenance on the labour market behaviour of parents with care**
- **the impact of child maintenance on the labour market behaviour of non-resident parents**
- **(if there is a guaranteed maintenance program) the effect of guaranteed maintenance on non-resident parents payment of child maintenance**
- **(if some or all child maintenance is retained by the state for parents with care that receive means-tested benefits) the effect of this retention on non-resident parents payment of child maintenance?**

**On which of these topics has there been research? What are the main conclusions of this research? Are there any other main areas of research on child maintenance in your country? Please provide citations of what you view as the 2-5 most important pieces of published research.**

There is little research on the topics above. Research has been done about:

- The amount of child maintenance and poverty within one-parent families (Cantillon B, e.a. Over.Werk 1-2/2004).

#### **7.1.2 What are the current main topics of interest and debate about your child maintenance regime?**

At the moment there is a lot of talk about DAVO. They expected more files based on the data. And some organisations expected it to be more accessible to all parents. But this is only within the organisations and politic. For example, in newspapers there is not much debate about it.

#### **7.1.3 Please describe any impending changes in legislation, or policy developments that are likely to affect your child maintenance regime in the coming five years.**

There are two topics that could influence child maintenance.

- Politicians and Justice want co-parenting to become the standard situation after divorce/separation.

This should influence child maintenance.

- DAVO is a very young organization. Many people want it to become different and better working. We can expect that this will change in the coming years.

#### **7.1.4 What are the public's attitudes towards your child maintenance regime? Please refer to any evidence for your replies.**

As said before there is not much found in the media to recover the public's attitude.

The association 'Platform Alimentatiefonds / Plate-forme Créances Alimentaires' groups some organisations. They are not contented with DAVO and want some changes. One of the demands is that DAVO has to become more known to the public. There are also other organisations (particularly for divorced parents) that have an opinion about DAVO. This opinion is always more or less the same than the one of 'Platform Alimentatiefonds' ([www.creances-alimentaires.be](http://www.creances-alimentaires.be))

Linked to the regime of child maintenance there are also the opinions on various forums about the assignment of the children (almost always) to the mother.

#### **7.1.5 Please describe any organised opposition in your country to the determination and enforcement of child maintenance, and the issues of contention.**

There is no real organized opposition. But many lawyers, civil servants, groups of divorced parents, etc. do demand that the government decides about a regularized way of determining child maintenance. At this moment there are no fixed rules about this determination.

## **7.2 YOUR EVALUATION OF THE CHILD MAINTENANCE REGIME**

*This section provides several criteria that one might use to evaluate the child maintenance regime as a whole. We ask for your expert assessment of areas that your regime is working well and not working well.*

### **7.2.1 Please consider the following criteria that could be used to evaluate a child maintenance regime.**

- a. Maintenance is regularly provided to children and/or parents with care
- b. Children who need (or desire) maintenance have a formal entitlement
- c. Maintenance policies do not negatively influence relationships between children and their non-resident parents
- d. Those in similar circumstances are treated similarly
- e. Those who need more child maintenance, receive more
- f. Parents easily understand how amounts of maintenance are calculated
- g. Child maintenance obligations are determined promptly
- h. Parents with care feel the amount of maintenance is adequate
- i. Nonresident parents feel the amount of obligation is affordable given their costs of living
- j. The child maintenance regime is administered efficiently and effectively
- k. Non-compliance with maintenance obligations does not add a substantial amount to governmental costs

Select one or two of these in which your assessment is that your regime is performing well. (If

**your assessment is that your regime works well on multiple criteria, please select the most important one or two.) In one paragraph, explain.**

The criteria b is true and g is true up to a point.

All children have a right to child maintenance, because it is based on descent and not on the situation of their parents (married, living together, not living together). A parent is obliged to maintain his child until the age of 18 or until the child has finished his training/education. So also g is true for the Belgian regime in the sense that the fact of an obligation existing is clear. Child maintenance obligation doesn't have to be determined in most of the cases (only when parenthood is not certain or contested). All parents are obliged to maintain their children. But if g is seen differently, as determining the amount of the maintenance, than it is not promptly. In g we see the difference between the obligatio-contributio.

**7.2.2 Select one or two of the above criteria in which your assessment is that your regime is not performing well. (If your assessment is that your regime does not work well on multiple criteria, please select the most important one or two.) In one paragraph, explain.**

For the Belgian regime d and f (amongst a and j) do not apply.

Judges can determine child maintenance with discretion. This means people in apparently similar situations will be treated differently throughout the country. It is known that the amount of child maintenance is inconsistent.

Linked to this point, it is not clear to parents how child maintenance is determined. There are some methods (like Renard or the one from Gezinsbond), but there are no formal, fixed rules. Judges decide with discretion and use these methods as a reference point.

**7.2.3 Is there another criteria (not listed) on which you think your regime does particularly well or is a particular problem? What? In one paragraph, explain.**

We asked a practising lawyer for a general overview of the Belgian child maintenance regime. His remarks were:

As rather negative he saw that:

- There is not one justice for child maintenance. The Justice of Peace is seen as the 'family judge' and the Juvenile Court is seen as the 'child judge'. Lawyers can use their experience to go from one Justice to the other. In almost all cases of separation, child maintenance is not the only concern. Going to a certain Justice can block certain other aspects about the separation.
- Because there is not one Justice for child maintenance, the children themselves are not followed up. Children often become a plaything during the process of determining child maintenance.
- Child maintenance is of public order. This means that in every case before court the Public Prosecutor is present to provide counsel or advice.

Between negative and positive:

- The absence of strict and fixed rules to determine the amount of child maintenance. On the one side this means that there is a big difference between parents with a more or less uniform situation. E.g. a judge that has children of his own might know more about the real cost of having and raising children. But on the other side judges will take everything carefully into account. There are a lot of special situations in which the parent's income doesn't show or when he purposely gives inaccurate numbers. He says it should be a good thing if there was one standard for the whole country that judges (and lawyers or the parents themselves) could use as a point of reference. Parents in conflict have more need of fixed rules.

*This concludes Parts 1-7 of the questionnaire. If you have additional comments, please write them here:*

## PART EIGHT: VIGNETTES

*In these vignettes, we provide a basic situation and ask the likely outcome given the child maintenance policies in your country. We then vary a selected characteristic and ask whether the outcome would differ. We then ask you to report on what would happen if various circumstances changed over time.*

Before starting the cases, we would like to point out that we calculated the amount of child maintenance based on the Method of Renard, available on the Internet (see: <http://gzbwezemaal.oletr.net/renard.htm>). Judges decide with discretion and so it would be impossible to determine this in another way. We do remark here that practical experience shows that the method of Renard gives rather low amounts of child maintenance.

As median net wages we used for men €1500 and for women €1200. The child allowance is set at €77,05 for the first child, at €142,58 for the second child and €212,87 for every child after the third one. For unemployed parents (such as Miss Field) the child allowance is €116,28 for the first child under the age of 6.

### 8.1 BASE CASE 'A': MISS FIELD AND MR HILL

*Miss Field is 25 years old and has never been married. She has a daughter, Susan, who is three months old. Miss Field lives with Susan in a small rented flat in the town centre. Miss Field has not had paid work since Susan's birth, and is claiming the social benefits available to a person in her position.*

*Susan's father, Mr Hill, is 27 years old. He has never lived with Miss Field. He lives locally and sees Miss Field and Susan quite often. He is fond of his daughter, and remains a friend of Miss Field's, although they do not want to set up a home together. He bought baby clothes and equipment when Susan was born but he makes no regular financial contribution.*

*He is unemployed but sometimes takes temporary, low-paid work. He currently depends on the out-of-work social benefits available to a person in his position. He rents a small flat. He has no other children, or major financial responsibilities. He has begun to talk recently about a serious effort to re-train, possibly in engineering.*

*Miss Field knows he has very little money. However, she feels that, in view of Mr Hill's interest in re-training, and the possibility that he will be able to earn more in the future, she thinks it might be sensible to make a formal arrangement regarding child maintenance.*

**8.1.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, explain whether Miss Field has a free choice in deciding to seek a formal arrangement.**

- A. If she has free choice, please describe the options available to her in establishing a formal child maintenance arrangement. Which of these options would be most likely? What is the likely time-scale for a decision being reached if she decides to go forward?**

Miss Field has a free choice to decide about the arrangement. Mr. Hill is obliged to this maintenance (if he has acknowledged Susan, otherwise he has to do so or Miss Field has to apply for it first).

If they get along very well they could discuss about the amount of maintenance for Susan by themselves. If they do not reach an agreement together they could go to a lawyer, a notary or a mediator at the CAW. They then can make an agreement that has to become

an authentic deed. This is a more prompt way.  
They could also go to Juvenile Court. Then the Judge will decide about the amount. The procedure before Court will take several months.

**B. If she does not have free choice, please describe what happens, explaining the likely procedures and time-scale for a decision on child maintenance being reached.**

Because Miss Field and Mr. Hill were not married or were not living legally together, they have to take initiative to make an agreement about child maintenance. Miss Field and Mr. Hill don't have free choice about the 'obligatio' but they do on the 'contributio'.

**Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.**

There are no formal or fixed rules to determine the amount of child maintenance. It depends on the mediator or judge how it will be calculated. They could use the Method Renard or the more recent Method of Gezinsbond. These methods take into account the situation (social, financial) of both parents, the situation of the child (age, number, health). So in this situation they will take into account that Mr Hill is unemployed. It could be taken into account that he has paid for some clothes and equipment.

Normally it will not be taken into account that Mr. Hill is thinking about re-training. When he does find a new fixed job, Miss Field can go to the Justice to change the amount in the court order.

**In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.**

**Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.**

Mr. Hill is obliged to pay maintenance for Susan because of descent.

Also the situation before the separation is taken into account. The standard of living has to remain the same for the child. In this situation the parents have never lived together. And Mr. Hill only visits Susan from time to time. There is no formal arrangement about visiting rights. So it could be that the amount of maintenance will be low.

The only problem that could occur at this stage is that Mr. Hill has not acknowledged Susan. Miss. Field can use all legally accepted means to prove this.

**8.1.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. (Please provide the amount in your own currency.) It may be necessary to introduce quantitative information or new facts into your account. For example, you may need to introduce amounts of money, for rent or living expenses, in order to demonstrate the use of standard guidelines. Please use those amounts that would be typical in your country, and explain the basis for these decisions.**

We use the Method of Renard to determine the child maintenance. Doing so, Mr. Hill will have to pay about €45 to Susan. Obviously this amount can differ if decided with the help of a lawyer, mediator or by a judge.

**8.1.3 If an obligation for child maintenance is set, please describe how monies be collected from Mr Hill? How would the money be transferred to Miss Field or Susan (if at all)?**

Mr. Hill can deposit the money on the bank account of Miss Field. Or they could open a special account for Susan. Mr. Hill will be able to control this account by means of double receipts.

#### 8.1.4 If Mr Hill does not pay, what would happen?

If Mr. Hill does not pay, Miss Field can ask DAVO for help. Not only they can give her advance maintenance but she can also claim the maintenance due.

She could also go to court to claim the maintenance (see 4.3.3. for the various ways in which she can accuse Mr. Hill). Because she is unemployed (and therefore has a very low income) Miss Field will be able to make use of a Pro Deo Lawyer, free of charge.

### 8.2 BASE CASE 'A', VARIANT 1: MR HILL HAS REGULAR EMPLOYMENT

*We would like to understand how the outcomes would change if one of the circumstances in this case were slightly different (Variant 1).*

*The situation is exactly the same as Base Case A except that at the time Miss Field pursues maintenance, Mr Hill has just completed his training course, and just gotten a job at which he earns 75% of median full-time male earnings.*

#### 8.2.1 Would the maintenance obligation differ from what you reported in 8.1.2? Please explain.

The maintenance now, according to the Method Renard, is €75. Mr. Hill is employed and so his financial situation is more beneficial.

#### 8.2.2 Would any other outcomes likely differ? Please explain.

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### 8.3 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 1: MR HILL FINDS EMPLOYMENT THREE YEARS LATER

*We now explore how your system would deal with a change in Mr Hill's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.*

*Three years later, Mr Hill completes the training course, and accepts a job at which he earns 75% of median full-time male earnings. Miss Field feels the maintenance amount should be increased.*

#### 8.3.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation would change? To what? Please explain.

Miss Field could ask for a change of maintenance at the Juvenile Court. The judge could (probably)

decide that the maintenance should be increased because it is more beneficial to the child. According to the Method Renard it will be about €75.

### **8.3.2 Would any other outcomes likely differ? Please explain.**

Miss Field could also ask the Justice (or the mediator obviously) to take into account the fact that Susan is 3 years older. The maintenance for a 3-year old under the same conditions would be about €95 according to the Method Renard.

## **8.4 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 2: MISS FIELD FINDS EMPLOYMENT THREE YEARS LATER**

*We now explore how your system would deal with a change in Miss Field's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.*

*Three years later, Miss Field finds employment. She begins to work part-time and earns median female wages for part-time work. Mr. Hill feels his obligation should be reduced if not eliminated, now that she is working.*

### **8.4.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation change? To what? Please explain.**

The procedure will be the same as set in 8.3.1. But Mr. Hill cannot be eliminated from the child maintenance obligation. He has to help maintain Susan until she has reached the age of 18 or until she has finished her education. In practice it is not likely that the maintenance will be decreased.

### **8.4.2 Would any other circumstances likely differ? Please explain**

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## 8.5 BASE CASE 'B': MR AND MRS COAST

*Mrs Coast is about to start divorce proceedings after having been married for ten years. The couple are in their early 40s, and have two children, Anne aged six years and John, aged nine years. Both children attend school.*

*Mrs Coast and the children have remained in the rented accommodation they shared when they were together, while Mr Coast has moved away to another town 100 km away where he rents a small flat.*

*Mr Coast has a secure job, and earns one-and-a-half median male full-time earnings. Mrs Coast has a part-time job, earning median female part-time earnings. There are no child care expenses.*

*Mr Coast collects both children every other weekend, and cares for them in his new home from Friday evening to Sunday evening. This involves a long journey by car (100km each way). While the children are in his home he has full financial responsibility, and has bought stocks of clothes, bedding, equipment and toys, which he keeps at his home.*

*Mrs Coast believes her husband should make significant child maintenance payments. She feels that most of the additional expenditure made by Mr Coast for the children (on clothes and toys) only benefits them when they are at his home. She finds she cannot meet her fuel and telephone bills. She welcomes the chance to formalise their financial situation, and believes it will be in her favour.*

*Mr Coast points to his additional housing expenses, his need to run a car in order to share the care of his children, and the money he already spends on their weekend stays. He does not want to be divorced, anyway, and he is bitter about what has happened. He very much wants to maintain relationships with his children, and is worried that a formal financial arrangement will be made that will leave him in financial difficulties.*

### 8.5.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, what are the options for formalising arrangements about child maintenance, under the circumstances described above. Explain the likely procedures and timescale for reaching a decision.

Because Mr and Mrs Coast are getting divorced child maintenance will be decided in Court. There are differences between the types of divorce (see 2.2.1.). We cannot know what type of divorce will be likely here. If they divorce by mutual consent (in this type parents decide together outside court about everything, afterwards their agreement is ratified) they will agree together on the amount. If they divorce by means of one of the other types of divorce, the Judge will decide during the meeting about child maintenance and the right of parental access.

The amount of child maintenance is determined on the same factors as in case A. But here the situation for the children will change. Mr. Coast earns more money than Mrs Coast. So the standard of living of the children will most probably change. In determining the amount of maintenance the costs Mr Coast makes will be taken into account.

Following the method of Renard Mr. Coast will have to pay € 278 for both children together.

### Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.

There are no formal rules about the child maintenance. So the Judge will decide about it with discretion based on various criteria. He could also use the Method of Renard or from Gezinsbond as a point of reference.

### In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.

**Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.**

As said in case A, the obligation is solely based on the descent between father and child.

**8.5.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. As before, it may be necessary to introduce quantitative information or invent new facts or life circumstances for the couple. You may need to decide how much Mr Coast now pays to rent his new flat. Please use those situations and amounts which would be typical in your country.**

The child maintenance will be put in the divorce court order. This can be decided as a compelling provisional measure during the divorce process or after the divorce by the Juvenile Court. As said in 8.5.1. the amount of child maintenance will be about €278 following the method of Renard.

**8.5.3 If an obligation for child maintenance is set, how would monies be collected from Mr Coast? How would the money be transferred to Mrs Coast or the children?**

Mr Coast can deposit the maintenance on the bank account of Mrs Coast or on a special account on the name of the children opened for this reason.

When Mrs Coast has reason to believe Mr Coast will not pay for the children she can ask for a 'loondelegatie' or 'ontvangstmachtiging' during the divorce process. So when it occurs Mr Coast does not pay, the maintenance will be withheld from his income.

**8.5.4 If Mr Coast does not pay, what would happen?**

Mrs Coast can use the methods as described in 4.3.3. to claim the maintenance.

## **8.6 BASE CASE 'B', VARIANT 1: CHILDREN LIVE WITH BOTH PARENTS EQUALLY**

*We would like to understand how the outcomes would change if one of the circumstances in this case were different (Variant 1).*

*The situation is exactly the same as Base Case B except Mr Coast lives in the same town as Mrs Coast and the children. The Coasts decide that the children will spend an equal amount of time living with each parent, alternating one week with Mrs Coast and one week with Mr Coast.*

**8.6.1 Would the maintenance obligation differ from what you reported in 8.5.2? Please explain.**

Yes it would differ. In this situation of co-parenting/bi-location there should be no maintenance paid. But because Mrs Coast has a lower income, it could be that (besides the child allowance) Mr Coast will contribute a smaller sum of maintenance.

According to the method of Renard, Mrs Coast will have to pay €10 to Mr Coast. This could be because Mrs Coast receives child allowances. These are summed up with her income.

**8.6.2 Would any other outcomes likely differ? Please explain.**

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## 8.7 BASE CASE 'B', CHANGE IN CIRCUMSTANCES 1: MRS COAST HAS A NEW PARTNER THREE YEARS LATER

*We now explore how your system would deal with a change in Mrs Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.*

*Three years later, Mrs Coast tells her husband that she has a new partner who has moved into the house. Mr Coast knows the man personally, and knows he has earnings comparable to his own. He feels that the arrival of this new partner for Mrs Coast should count in the financial decisions that have to be made during the divorce.*

### 8.7.1 How would Mr Coast go about trying to change the obligation?

When Mr Coast wants to change the amount of child maintenance he has to do that in Court. The obligation of Mr Coast cannot be terminated.

### 8.7.2 What would result -- is it likely the obligation would change? To what? Please explain.

A practising lawyer told us that it would be very unlikely that the maintenance would be changed.

### 8.7.3 Would any other outcomes likely differ? Please explain.

## 8.8 BASE CASE 'C', CHANGE IN CIRCUMSTANCES 2: MR COAST HAS A NEW PARTNER AND NEW CHILD THREE YEARS LATER

*We now explore how your system would deal with a change in Mr Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend; Mrs Coast does not have a partner). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.*

*Three years time later, Mr Coast has formed a new relationship with a woman and they have a ten month old child. He wants to maintain contact with his own children, whom he loves dearly, but his own household expenses have now gone up considerably. His new partner does not have paid work herself.*

### 8.8.1 How would Mr Coast go about trying to change the obligation?

The maintenance has to be changed at Juvenile Court. It depends on the discretion of the judge.

### 8.8.2 What would result -- is it likely the obligation would change? To what? Please explain.

A practising lawyer told us that it would be very unlikely that the maintenance would be changed.

**8.8.3 Would any other outcomes likely differ? Please explain.**

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***This concludes the vignettes (Part Eight). If you have additional comments on either of these vignettes, please write them here:***

See next page for sources used to complete the questionnaire.

## LIST OF SOURCES

- <http://www.wvc.vlaanderen.be/gezinsgids/>
- <http://www.goudi.be>
- <http://www.houvast.be>
- <http://minfin.fgov.be/portail1/nl/brochure/publicaties/pdf/BrochureAlimentatie2005.pdf>
- <http://minfin.fgov.be/>
- <http://www.creances-alimentaires.be>
- <http://gzbwezemaal.oletr.net/renard.htm> (to calculate the amount of child maintenance based on Renard)
- Gerlo, J., *Onderhoudsgelden*, Antwerpen: Kluwer, 1994, 368p
- Senaeve, P., e.a., *Onderhoudsgelden*, Leuven: Acco, 2001, 443p
- Huybrechts, M., *Welke (economische) elementen worden door de rechter in aanmerking genomen bij het bepalen van onderhoudsgeld voor ex-echtgenotes en kinderen*, Diepenbeek: LUC, 2003, 121p
- Conversation Steven Gibens (practicing lawyer and Centre for Sociology of Law)