

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (82) 2

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON PAYMENT BY THE STATE OF ADVANCES ON CHILD MAINTENANCE¹

*(Adopted by the Committee of Ministers on 4 February 1982
at the 343rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, *inter alia* by promoting the adoption of common rules in legal matters ;

Noting that a large number of children are brought up by only one of their parents and that often one of the persons who is responsible for meeting their needs (hereinafter referred to as the "debtor") does not live with them and does not comply with the maintenance obligation ;

Considering that it is primarily the responsibility of parents to provide children with appropriate maintenance but that the state should intervene when they fail to do so ;

Recollecting that the European Conference on Family Law, held at Vienna in September 1977, expressed the wish that states take necessary measures to intervene, either by way of advance payment or by any other method, when the father and mother or one of them fails to comply with their maintenance obligations ;

Having regard to Recommendation 869 (1979) of the Consultative Assembly of the Council of Europe on payment by the state of advances on child maintenance ;

Recognising the advantage of adopting common rules to enable states progressively to improve the rights of children in this field,

Recommends governments of member states :

1. to adopt, taking as a guide the principles contained in the appendix to this recommendation, a system of advance payment of maintenance to children when the debtor fails to comply with his obligation, if they already have a system aiming at the same objective, to adapt it, if necessary, to the above-mentioned principles ;
2. to strengthen the means of recovering advances from a debtor resident in another state and, to this end, to facilitate the recognition and enforcement of decisions relating to maintenance obligations for children, where appropriate by ratifying the relevant international instruments.

1. When this recommendation was adopted, the Representatives of Ireland and Italy, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of their governments to comply with it or not.

Appendix to Recommendation No. R (82) 2

Principles

1. Payments of advances on child maintenance will be made under a system set up by the state where a person who is under a legal obligation to pay maintenance, which has become enforceable by compulsory process, has failed to comply with his obligation. This system will apply to children habitually resident in the territory of that state and who are not living with the person liable to pay maintenance.
2. The age of the child up to which payments will be made will be fixed by each state. In any event, the advance payment will be made until the end of the period of compulsory schooling.
3. The advance payments may be refused if the child or the parent with whom he is living has sufficient financial resources to meet his needs.
4. Advance payments may be limited to a sum fixed according to criteria laid down by each state.
5. Advance payments will not release the debtor either from his obligations towards the state with regard to the sum advanced by the latter or from his obligations with regard to the child for any residual sum.
6. Public authorities may recover advance payments from the debtor. Where they have the recognised power to do so they may also recover, on behalf of the maintenance creditor, the full sum required by a legal obligation which has become enforceable by compulsory process. Except in cases of double payment, the failure to recover from the debtor all or part of the advanced payments will not give a right to recover these advances from the child.