CGAP 2022 MARCH 2022 PREL. DOC. NO 13C



Title	2007 Child Support Convention and Maintenance Protocol: Report of the Experts' Group on International Transfer of Maintenance Funds, meeting of 7 to 9 February 2022
Document	Prel. Doc. No 13C of February 2022
Author	РВ
Agenda Item	Item III.1.c.
Mandate(s)	C&D No 32 of CGAP 2021 and C&R No 30 of CGAP 2019
Objective	To report on the 7-9 February 2022 meeting of the International Transfer of Maintenance Funds Experts' Group (ITMFEG) and share the Report and Conclusions & Recommendations resulting from the meeting
Action to be Taken	For DecisionIFor ApprovalIFor DiscussionIFor Action / CompletionIFor InformationI
Annexes	 Annex I: Report and Conclusions & Recommendations adopted by the ITMFEG Annex II: Agenda of the of the February 2022 ITMFEG meeting Annex III: List of Participants of the February 2022 ITMFEG meeting
Related Documents	 <u>Prel. Doc. No 11 of November 2019</u> – Report of the Experts' Group on the International Transfer of Maintenance Funds <u>Prel. Doc. No 10 of February 2021</u> – Report of the Experts' Group on the International Transfer of Maintenance Funds, meeting of 8 to 11 February 2021

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 Regional Office for Asia and the Pacific (ROAP)
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 <u>Prel. Doc. No 17 of November 2021</u> – Questionnaire in preparation of the Experts' Group meeting of 7 to 10 February 2022 on International Transfer of Maintenance Funds <u>Prel. Doc. No 19 of February 2022</u> – Compilation of responses received to the November 2021 Questionnaire on International Transfer of Maintenance Funds

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2007 Child Support Convention and Maintenance Protocol: Report of the Experts' Group on International Transfer of Maintenance Funds, meeting of 7 to 9 February 2022

I. Introduction

- 1 From 7 to 9 February 2022, the International Transfer of Maintenance Funds Experts' Group (ITMFEG) met via videoconference. The meeting was attended by 33 participants representing 15 Members and one Observer, and members of the Permanent Bureau.¹
- 2 Pursuant to the 2019 mandate of the Council on General Affairs and Policy (CGAP),² the Group continued its work discussing good practices and identifying possible future improvements in relation to cross-border transfer of child support payments, with a view to facilitating the most costeffective, transparent, prompt, efficient and accessible cross-border transfer of funds.³ The Group took stock of the implementation by States of the Conclusions and Recommendations unanimously adopted in the first meeting of the ITMFEG in September 2019⁴ and the *Aide-mémoire* unanimously endorsed by the ITMFEG during the second meeting in February 2021.⁵ The Group also discussed any new developments in this area.⁶

II. Next steps

- 3 The Report and Conclusions & Recommendations summarising the work of the Group of the past three years and the outcomes of the meeting were unanimously adopted by the ITMFEG.⁷
- 4 The Report and Conclusions & Recommendations will be discussed and presented for endorsement at the Meeting of the Special Commission (SC) on the practical operation of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, to be held in 2022.

¹ See Annex III – List of Participants of the ITMFEG meeting.

² CGAP 2019, C&R No 30: "Council approved the establishment of an Experts' Group on international transfer of maintenance funds which will meet in September 2019. The composition of the Experts' Group should include child support experts and experts from the financial sector. The primary task of the Experts' Group will be to produce an inventory of good practices. After a first in-person meeting, the Experts' Group could meet through videoconferencing. The Experts' Group will report to Council at its 2020 meeting."

³ See Annex II – Agenda of the ITMFEG meeting.

⁴ <u>Prel. Doc. No 11 of November 2019</u> – Report of the Experts' Group on the International Transfer of Maintenance Funds.

⁵ <u>Prel. Doc. No 10 of February 2021</u> – Report of the Experts' Group on the International Transfer of Maintenance Funds, meeting of 8 to 11 February 2021.

Prel. Doc. No 17 of November 2021 – Questionnaire in preparation of the Experts' Group meeting of 7 to 10 February 2022 on International Transfer of Maintenance Funds, and Prel. Doc. No 19 of February 2022 – Compilation of responses received to the November 2021 Questionnaire on International Transfer of Maintenance Funds.

⁷ See Annex I – Report and Conclusions & Recommendations adopted by the ITMFEG.

ANNEXES

Annex I – Report and Conclusions & Recommendations adopted by the ITMFEG

Experts' Group on international transfer of maintenance funds The Hague, 7-9 February 2022

Report and Conclusions & Recommendations for the attention of the 2022 Meeting of the Special Commission

I. Introduction

At its meeting of March 2019, the Council on General Affairs and Policy (CGAP) of the Hague Conference on Private International Law (HCCH) approved the establishment of an Experts' Group (EG) on international transfer of maintenance funds (see Conclusion & Recommendation No 30 of CGAP 2019).

The EG was established in recognition of persisting challenges to the smooth transfer of international maintenance funds, such as high transfer costs and other difficulties of an organisational nature.

It was noted that the *HCCH Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (hereafter the 2007 Child Support Convention) states in its Article 35:

"(1) Contracting States are encouraged to promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.

(2) A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention."

The first meeting of the EG took place in September 2019 at the Permanent Bureau of the HCCH in The Hague and was attended by experts from 12 Members and one Observer. It was followed in February 2021 by an online meeting, which was attended by experts from 17 Members and one Observer. The third and most recent meeting of the Group took place from 7 to 9 February 2022 and was attended by 33 experts representing 14 Member States, one Member Regional Economic Integration Organisation and one Observer.

The EG elected Mr Arnaldo José Alves Silveira, General Coordinator for International Legal Cooperation at the Ministry of Justice and Public Security in Brazil, as Chairperson. He was joined as Co-chair by Dr Sarah Gerling-Stock, Head of Division II 4 (Cross-border Recovery of Maintenance) at the Federal Office of Justice of Germany, at the February 2022 meeting of the EG.

II. Background to the discussions

A. Members of the EG came together to learn from each other and identify good practices regarding the cross-border transfer of funds. Members of the EG also discussed different ways to facilitate the cross-border transfer of funds with a view to identifying possible solutions that are low cost, cost-effective, transparent, prompt, efficient and accessible. Discussions at the February 2021 and 2022 meetings of the EG were informed by States' responses to <u>Prel. Doc. No 11 of October 2020</u> and <u>Prel. Doc. No 17 of November 2021</u>, Questionnaires in preparation of the EG meetings of February 2021 and 2022 (see <u>Prel. Doc. No 12 of February 2021</u> and <u>Prel. Doc. No 19 of February 2022</u> for compilation of responses to the Questionnaires).

B. The EG acknowledged the diversity of models for child support recovery such as direct transfers from the debtor to the creditor, transfers through an institution in the requested State (e.g., bailiff and other enforcement authorities, court and / or Central Authorities) and sometimes through an institution in the requesting State (e.g., public body and / or Central Authorities). It was recognised that the involvement of Central Authorities and the degree of centralisation of payments vary according to different legal systems, domestic and regional banking systems and available means.

C. In that context, the EG discussed the implementation and operation of Articles 6(2)(d)-(f), 8, 35 and 43 of the 2007 Child Support Convention.

D. It was recognised that large amounts of child support are currently transferred internationally but also that difficulties persist related to high and non-transparent bank fees and / or currency conversion costs, loss of payment data between different payment formats, occasional communication problems between Central Authorities and lack of payments monitoring. In particular, it was underlined that the use of cheques is a major problem. However, good progress towards a gradual elimination of the use of cheques has been made since the inception of the EG.

E. It was noted that the solutions and good practices discussed in the context of the 2007 Child Support Convention are equally relevant to the *United Nations Convention of 1956 on the Recovery Abroad of Maintenance Obligations*, Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, other regional or bilateral instruments.

F. It was underlined that effectively implementing the 2007 Child Support Convention would help States reach the United Nations Sustainable Development Goal No 16.3 (Rule of Law) as it assists parents with meeting their child support obligations in a cross-border context

III. Conclusions and Recommendations

The EG agreed by consensus on the following Conclusions and Recommendations¹ for the attention of the 2022 Meeting of the Special Commission:

Cheques

1. Experts acknowledged that eliminating the use of cheques was a worthwhile goal, after an appropriate transition period, considering that certain States can no longer receive cheques or are under time constraints to stop using them. The EG agreed that electronic transfer of funds² was the way forward. In line with Article 35 of the 2007 Child Support Convention, in addition to multilateral solutions, States are encouraged to discuss bilateral solutions for the elimination of cheques.

Transfer costs

2. All participants agreed that there is a need to find solutions for the international transfer of funds which would result in increased transparency and cost reduction. Creditors should not bear the costs related to the transfer of funds and should receive the full amount in accordance with the maintenance decision. Since the ultimate objective is to eliminate all costs relating to the transfer of maintenance funds, an interim solution could be for courts to stipulate, where possible, in their maintenance decisions, whether the creditor or the debtor is to cover these costs. When these costs are stipulated in the decision, they should be reflected under item 5.1.1. of the Abstract of the Decision.

¹ These Conclusions and Recommendations (C&Rs) are based on the <u>C&Rs</u> adopted by the ITMFEG at its September 2019 Meeting and the <u>Aide-mémoire</u> adopted at its February 2021 Meeting both available in <u>Prel. Doc. No 15 of June 2021</u> - 2007 Child Support Convention and Maintenance Protocol: Report of the Experts' Group on International Transfers of Maintenance Funds, meeting of 8 to 11 February 2021.

² The expression "electronic transfer of funds" should be understood as broadly as possible.

3. A good practice is for the requested Central Authority to have arrangements with their bank to cover the fees ("details of charges: OUR") and for the requested Central Authority to obtain confirmation from the requesting Central Authority that the amount received is the same as the amount sent and, where applicable, information on the reasons for any difference. The EG also noted that some States have made arrangements with government financial institutions for the cost-free transfer of funds. Members of the EG recalled Article 35 of the 2007 Child Support Convention and noted that both the Requesting and Requested States should work bilaterally to reduce the transfer costs.

Centralised point for international transfers

4. Consideration should be given by each Contracting Party to establish a centralised point for international transfers dedicated to both incoming and outgoing transfer of funds. Such centralised point could be as basic as a bank account. When possible, this bank account could be held with a public institution such as a central bank. In this respect, Members of the EG also noted the possibilities afforded by the *Universal Postal Union Postal Payment Services Agreement of 6 October 2016*,³ in particular in terms of cost of transfer. Members of the EG are encouraged to enquire about the status of implementation of this Agreement in their respective States.

- 5. The value of such centralised point was underlined, as it could:
 - help with the standardisation of the international transfer of funds;
 - increase transparency with regard to the costs of such transfers;
 - reduce the costs associated with such transfers;
 - assist the Central Authority in the monitoring of payments;
 - simplify and accelerate the transfer of funds where payments are limited or need to be screened for regulatory purposes.

Consideration should be given also to providing payment transfer services to any debtors transferring payments within the scope of the 2007 Child Support Convention.

Monitoring of payments

- 6. The monitoring of payments could:
 - ensure an accurate payment record;
 - assist with the enforcement of payments;
 - support communication between Central Authorities to reconcile the amounts sent and received;
 - help establish statistical reports, e.g., to measure efficiency and increase understanding about money flows.

Experts acknowledged that not all Central Authorities are directly involved with the transfer of maintenance payments and, therefore, may not have systematic monitoring or communication in place. They noted, however, that another option in this situation would be to adopt a system where the provision of the collection and expeditious transfer of maintenance payments could be delegated to public bodies and / or other bodies, in accordance with Article 6(3) of the 2007 Child Support Convention. Experts also noted the possibilities afforded by the iSupport software in terms of monitoring of payments.

³ The text of which is available under the UPU website at < <u>https://www.upu.int</u> > under "Activities" then "Postal Payment Services" then "Postal Payment Services Agreement (PPSA)" or more specifically at the following address: < https://www.upu.int/UPU/media/upu/files/UPU/activities/PostalFinancialServices/Key%20documents/ppsAgreementEn.pd f >.

Data accompanying the transfer

7. Consideration should be given to using unique case references, known to both the requesting and requested State, attached to each transfer of funds. Such unique case references would link the transfer to an existing case. Consideration should be given, where possible, to use the iSupport case number. This number will be evaluated against banking norms. Experts encouraged the evaluation and adoption of standards which allow for more information to be sent with each payment, such as the ISO-20022 format for electronic data interchange between financial institutions.

Currency conversion

8. Reference was made to the *Practical Handbook for Caseworkers under the 2007 Child Support Convention*⁴ (hereinafter Caseworkers Practical Handbook) which states that a good practice is for the currency conversion of payments to be done by the relevant authority in the requested State at the time of transfer. Members of the EG agreed that over time, due to exchange rate fluctuations, paying the amount stated in a maintenance decision in a different currency may result in under or over payment. To address this, one option could be that the enforcement authority notifies the debtor that the amount to be paid in the debtor's currency will vary from one month to another, based on the exchange rate. Another option could be that, when the maintenance decision is registered for enforcement in another State in that State's currency, the State in question may periodically adjust the amount to be paid by the debtor, in order to avoid the build-up of arrears, which may lead to improper enforcement. The EG also noted that consideration could be given to obtaining the agreement of the debtor (*e.g.*, via a monthly notification) that the amount owed in the foreign currency be directly withdrawn from the debtor's account, with the objective of ensuring the amount paid matches the amount owed. In some cases, this could be the subject of a court decision.

9. Reference was also made to the Caseworkers Practical Handbook in which it is stated that "[t]he maintenance debt is not paid in full until the full amount owing in the currency set out in the maintenance decision has been paid".⁵

10. A good practice should be to promote transparency of currency conversion costs.

Bundled payments

11. It was noted that bundled payments do result in savings on transfer costs, but may involve some delay resulting from processing time. It was noted that automation, also in the context of single payments, can alleviate these delays and could require fewer resources.

Current and future developments

12. It was agreed that it is a good practice for Central Authorities to provide information about international banking to creditors and debtors.

13. The merits of having the Central Authorities involved in the handling of the transfer of funds was discussed, as a means to be proactive. It was agreed that a legal framework, with the appropriate safeguards, enabling requested and requesting Central Authorities to handle the transfer of funds in an automated manner, would assist in this area. It was also highlighted that iSupport could be a solution in the future. The interpretation and extent of the obligations under Articles 6(2)(f) and 11 of the 2007 Child Support Convention were mentioned. To that effect, paragraphs 105-108, 116-117, 154 and 160-161 of the <u>Explanatory Report</u> were recalled.

⁴ Permanent Bureau of the Hague Conference on Private International Law, *Practical Handbook for Caseworkers under the 2007 Child Support Convention*, 1st ed., The Hague, 2013, at p. 174. Available at < www.hcch.net > under "Child Support Section", then "HCCH publications".

⁵ Ibid.

14. The EG noted that, while there is currently no known commercial solution that would suit the needs of Central Authorities, advantage should be taken of the possibilities offered by centralised points, whether they are accounts held with a Central Bank, a commercial or a postal bank. It was agreed that a good practice would be for States to make arrangements with banks that are transparent in relation to their fees and / or are part of the SWIFT GPI (global payment initiative), which enables the tracking or fees arising along the way. The experts noted the advances of Central Bank Digital Currencies (CBDC).

Further steps and follow-up

15. It was recommended that the EG continue its work and meet on a regular basis through video and / or teleconference to share good practices, experiences implementing the above good practices and solutions and to continue the exploration and implementation of additional solutions.

16. Contracting Parties to the 2007 Child Support Convention should ensure that their Country Profile is up to date in relation to payment information (Part V, 1.) and their implementation of Article 6(2)(d)-(f) (Part I, 6.).

17. The membership of the EG remains open. Any contributions or proposals from States which have not yet participated in the work of the EG are always welcome.

18. The Permanent Bureau will continue to monitor innovations in this area.

Annex II – Agenda of the February 2022 ITMFEG meeting

Monday 7 February 2022				
13:30-14:00	Connection and testing with participants			
14:00-14:25	 1. Opening of the meeting - Welcome remarks by the Co-chairs - <i>Tour de table</i> – delegations / experts introduce themselves 			
14:25-14:35	 2. Presentation of the agenda and objectives of the meeting and housekeeping matters - First Secretary, HCCH - Senior Administrative Assistant, HCCH 			
14:35-14:45	3. Developments in the area in general and summary of replies to Prel. Doc. No 17 of November 2021 (see Prel. Doc. No 19 of February 2022 (PD-19) - Compilation of responses – Q9(a)) - First Secretary, HCCH, and iSupport Coordinator, HCCH			
14:45-14:55	Health break			
14:55-15:10	3. Developments in the area in general and summary of replies to Prel. Doc. No 17 of November 2021 (cont.)			
15:10-15:30	4. Elimination of the use of cheques (C&R No 1; PD-19-Q9(b))			
15:30-15:50	5. Solutions with regard to increased transparency and cost reduction of transfers and currency conversion (C&R Nos 2 and 8-10; PD-19-Q9(c))			
15:50-16:00	Health break			
16:00-16:20	6. Solutions where creditors would not bear the costs related to the transfer of funds (C&R No 2; PD-19-Q9(d))			
16:20-16:40	7. Requested Central Authority arrangements with their bank to cover transfer fees or other arrangements to that effect (C&R No 3; PD-19-Q9(e))			
16:40-17:00	8. Requesting Central Authority providing confirmation to the requested Central Authority that the amounts received are the same as the amounts sent and, where applicable, information on the reasons for any difference (C&R No 3; PD-19-Q9(f))			
17:00	End of first day			

	Tuesday 8 February 2022			
13:30-14:00	Connection and testing with participants			
14:00-14:20	9. Establishment of a centralised point (<i>e.g.</i> , bank account, central bank) for international transfers dedicated to both incoming and outgoing transfer of funds (C&R Nos 4 and 5; PD-19-Q9(g))			
14:20-14:40	10. Provision of payment transfer services to any debtors transferring payments within the scope of the HCCH 2007 Child Support Convention (C&R No 5; PD-19-Q9(h))			
14:40-14:50	Health break			
14:50-15:10	11. Implementation of payment transfer monitoring systems (C&R No 6; PD- 19-Q9(i))			
15:10-15:30	12. Implementation of unique case references, known to both the requesting and requested State, attached to each transfer of funds (C&R No 7; PD-19-Q9(j))			
15:30-15:50	13. Implementation of currency conversion of payments done by the relevant authority in the requested State at the time of transfer (C&R Nos 8-10; PD-19- $Q9(k)$)			
15:50-16:00	Health break			
16:00-16:20	14. Implementation of bundled payments to reduce costs of transfers (C&R No 11; PD-19-Q9(I))			
16:20-17:00	15. Any other developments including bilateral solutions put in place between States and ongoing trials between States (PD-19-Q9(m))			
17:00	End of second day			
	Wednesday 9 February 2022			
13:30-14:00	Connection and testing with participants			
14:00-14:50	16. Discussion of consolidated Conclusions and Recommendations from the Expert Group to the Special Commission			
14:50-15:00	Health break			
15:00-15:50	16. Discussion of consolidated Conclusions and Recommendations (cont.)			
15:50-16:00	Health break			
16:00-16:50	16. Discussion of consolidated Conclusions and Recommendations (cont.)			
16:50-17:00	17. Next steps			
17:00	End of meeting			

	Representing	Surname	First name	Job Title	Organisation
MEMBERS	Australia	Unable to attend			
	Brazil	Alves Silveira (EGITMF co-Chair)	Arnaldo	General Coordinator, General Coordination for International Legal Cooperation, Department of Assets Recovery and International Legal Cooperation	National Secretariat of Justice, Ministry of Justice and Public Security
		Froeder Dittrich	Lalisa	Specialist in Public Policy and Government Management, Asset Recovery and International Legal Cooperation	National Secretariat of Justice, Ministry of Justice and Public Security
	Canada	Dostie	Manon	Senior Counsel, Constitutional, Administrative and International Law Section (CAILS) - PIL Unit	Department of Justice Canada
		van Isschot	Andina	Counsel, Family and Children's Law Team	Department of Justice Canada
		Brown	Tammy	Payment Services Manager, BC Family Maintenance Enforcement Program	British Columbia Family Maintenance Enforcement Program
	European Union	Koit	Haldi	Legislative Officer, Directorate-General for Justice and Consumers, Civil Justice	European Commission
		Weitz	Leonhard	Legal Adviser	European Commission
	France	Peni-Trouillas	lva	conseillère juridique, Département Europe International	Chambre Nationale des Huissiers de Justice
	Germany	Gerling-Stock (EGITMF co-Chair)	Sarah	Co-Head of Division II 4 - Cross-border Recovery of Maintenance	Federal Office of Justice
		Langenhorst	Claudia	Program Specialist, Division II 4 - Cross-border Recovery of Maintenance	Federal Office of Justice
		Sampels	Ursula	Team Leader (Processing of International Payments), Division II 4 - Cross-border Recovery of Maintenance	Federal Office of Justice

Annex III – List of Participants of the February 2022 ITMFEG meeting

	Dereser	Celine	Payment Systems Policy Division	German Reserve Bank
Italy	Vinciguerra	Guiseppe	Magistrate / Director of the Central Authorities Division	Ministry of Justice of Italy
Mexico	Mejía Cortés	Dulce María	Director General for Legal Representation and Restitution of the Rights of Girls, Boys and Teenagers	National System for the Comprehensive Development of the Family (SNDIF)
	Lua	Ociel	Head of Department at Unit for Transparency, Directorate General for Legal Affairs	National System for Comprehensive Development of the Family (SNDIF)
Norway	Stranger	Maren	Senior Adviser, The Collection Agency of the Labour and Welfare Administration	The Norwegian Tax Administration - The Collection Agency of the Labour and Welfare Administration
	Bertos	Kari-Lise	Senior Adviser, The Collection Agency of the Labour and Welfare Administration	The Norwegian Tax Administration - The Collection Agency of the Labour and Welfare Administration
	Lovberg	Goril	The Collection Agency of the Labour and Welfare Administration	The Norwegian Tax Administration - The Collection Agency of the Labour and Welfare Administration
Portugal	Vara	Miguel	Head of Unit, International Judicial Cooperation Unit of the Directorate-General for the Administration of Justice	Ministry of Justice
Sweden	Honorato dos Santos Eriksson	Karin	Policy and Development Expert, Unit for Children and Families	Swedish Social Insurance Agency
	Kejonen	Ida-Maria	Legal Officer	Swedish Enforcement Agency
	Grönning	Katarina	Administrative Officer	Swedish Enforcement Agency
Switzerland	John	Sandra	Senior Legal Counsel, Central Authority for International Maintenance Matters	Federal Office of Justice
Ukraine	Shevchenko	Kateryna	Deputy Head of Directorate for International Law – Head of Department on International Legal Assistance	Ministry of Justice, Department of International Law

	Snizhko	Maria	Head, Department on International Legal Assistance in Civil Cases, Directorate for International Law	Ministry of Justice, Department on International Law
United Kingdom	Strachan	Denise	Maintenance Payment Business Centre Team Leader	Ministry of Justice
	Utting	Robert	Maintenance Payment Business Centre Administrative Officer	Ministry of Justice
United States of America	Miller	Anne	Senior Policy Specialist, Administration for Children and Families	Office of Child Support Enforcement
	Lowe	Eliza	Senior Policy Specialist, Administration for Children and Families	Office of Child Support Enforcement
	Ashmore	Philip	Policy Specialist, International Policy & Public Inquiries, Administration for Children and Families	Office of Child Support Enforcement
	Boyer	Linda	Deputy Commissioner	Office of Child Support Enforcement
	McDaniel	Janice	Policy Specialist, Division of Policy and Training	Office of Child Support Enforcement

OBSERVERS	National Child Support Enforcement Association	Roots	Hannah	Legal Counsel and Independent Consultant	Hannah Roots Law Corporation
НССН	Permanent Bureau	Lortie	Philippe	First Secretary	НССН
		Pellet	Jean-Marc	i-Support Project Coordinator	НССН
		Keane	Nietta	Assistant Legal Officer	НССН

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Skrzypek	Joanna	Intern	НССН
Prénas	Mathilde	Senior Administrative Assistant	НССН
Hawkins	Stuart	Website / IT Officer	НССН