

OBLIGATIONS ALIMENTAIRES
MAINTENANCE OBLIGATIONS

Doc. pré. No 6
Prel. Doc. No 6

Février / February 2004



**QUESTIONNAIRE SUPPLEMENTAIRE CONCERNANT UN NOUVEL
INSTRUMENT MONDIAL SUR LE RECOUVREMENT INTERNATIONAL DES
ALIMENTS ENVERS LES ENFANTS ET D'AUTRES MEMBRES DE LA FAMILLE**

établi par Philippe Lortie
Premier Secrétaire

* * *

**ADDITIONAL QUESTIONNAIRE CONCERNING A NEW
GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY OF
CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE**

drawn up by Philippe Lortie
First Secretary

*Document préliminaire No 6 du février 2004
à l'intention de la Commission spéciale de juin 2004
sur le recouvrement international des aliments
envers les enfants et d'autres membres de la famille*

*Preliminary Document No 6 of February 2004
for the attention of the Special Commission of June 2004
on the International Recovery of Child Support
and other Forms of Family Maintenance*

**QUESTIONNAIRE SUPPLEMENTAIRE CONCERNANT UN NOUVEL
INSTRUMENT MONDIAL SUR LE RECOUVREMENT INTERNATIONAL DES
ALIMENTS ENVERS LES ENFANTS ET D'AUTRES MEMBRES DE LA FAMILLE**

établi par Philippe Lortie
Premier Secrétaire

* * *

**ADDITIONAL QUESTIONNAIRE CONCERNING A NEW
GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY OF
CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE**

drawn up by Philippe Lortie
First Secretary

THE ADDITIONAL QUESTIONNAIRE

During the Special Commission of May 2003 on the International Recovery of Child Support and other Forms of Family Maintenance, the Permanent Bureau of the Hague Conference announced that it would continue its study of the electronic transfer of funds and the use of information technology in coordination with the experts and also with central banks and international organisations involved. It was noted, in this respect, that it would be interesting to know from the experts the total number and amounts of the transfers involved in maintenance cases in order to convince the banks to work on this issue (see the "Report of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance of 5-16 May 2003", drawn up by the Permanent Bureau, Preliminary Document No 5 of October 2003, paragraph 51).

In order to gather relevant information in relation to electronic transfer of funds and the use of information technology, the Permanent Bureau has devised a Questionnaire, which is set out below. This Questionnaire is additional to the "Information Note and Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance", drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 1 of June 2002. This document is being sent out to all Member States of the Hague Conference, to States Parties to the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance, to other States invited to the June 2004 Special Commission and to relevant international governmental and non-governmental organisations. It is also being posted on the Hague Conference website at: <<http://www.hcch.net>>, under "Work in Progress". Other background documents concerning the maintenance project are available at the same website address.

The Questionnaire falls into three parts that concern, first, collection and transfer arrangements (Questions 25, 26, 29 and 30 of Preliminary Document No 1 of June 2002), second, statistics concerning the cross-border transfer of funds in your country, and third, the use of information technology.

The project to establish a new instrument on maintenance obligations has the potential to benefit hundreds of thousands of persons, children and adults, in many States around the world, and to contribute to the reduction of welfare / social security dependency. The States and organisations to whom the Questionnaire is addressed are kindly asked to provide their responses to the Permanent Bureau, if possible, **by 16 April 2004**.

PART I COLLECTION AND TRANSFER ARRANGEMENTS - PRELIMINARY DOCUMENT NO 1 OF JUNE 2002

Questions 25, 26, 29 and 30 of the "Information Note and Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance", drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 1 of June 2002, deal with the collection and transfer arrangements of child support and maintenance for other family members. These Questions are copied below.

States and organisations that responded to Preliminary Document No 1 of June 2002 are requested only to supply supplementary responses to those questions, covering any relevant developments since they responded the first time.

States and organisations that were not able to respond to Preliminary Document No 1 are asked to provide full responses.

- 25 How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organised in your country?
- 26 What, if any, particular arrangements apply where payments are to be made or collected from abroad?
- 29 What are the typical banking costs involved in the transfer of maintenance payments from / to your country?
- 30 Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to / from abroad?

In relation to Question 30, see, for examples, "The use of Information Technology with respect to the Recovery of Maintenance – The International Transfer of Funds at a Low Cost", Information Document, Presented by the Permanent Bureau, 16 May 2003, for the attention of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance (5-16 May 2003), attached to this Questionnaire.

PART II STATISTICS CONCERNING THE CROSS-BORDER TRANSFER OF FUNDS

- 1 Does your country have any means of monitoring / tracking / estimating (a) cross-border child support payments or (b) cross-border maintenance payments for a spouse or other family member? Please respond by YES or NO.
- 2 What is your estimate of the total number of (a) outgoing and (b) incoming cross-border transfers in 2003? If possible, it would be appreciated if you could make a distinction between transfers for (i) child support and (ii) maintenance for a spouse or other family member.
- 3 What is your estimate of the total amount of (a) outgoing and (b) incoming cross-border maintenance payments in 2003? If possible, it would be appreciated if you could make a distinction between payments for (i) child support and (ii) maintenance for a spouse or other family member.
- 4 What is your estimation of the annual minimum, maximum and average amount per case handled in 2003? If possible, it would be appreciated if you could make a distinction between payments for (a) child support and (b) maintenance for a spouse or other family member.
- 5 What is the typical frequency of your cross-border collection and transfer of maintenance payments?
- (a) ___% Weekly
 (b) ___% Monthly
 (c) ___% Quarterly
 (d) ___% Other (please specify)

If possible, it would be appreciated if you could make a distinction between (i) outgoing and (ii) incoming cross-border payments.

- 6 What is the approximate cost involved (for example, processing fee, administrative cost, currency conversion) for a cross-border transfer in your country for:
- (a) Paper-based (check, bank note, etc.) transfers
 (b) Electronic transfers (SWIFT or other (please specify))

Please provide amounts in € (Euros) or \$ (US dollars) for Questions 3, 4 and 6.

PART III THE USE OF INFORMATION TECHNOLOGY

- 7 **In a purely domestic context**, may the competent Authority responsible for child support and other forms of family maintenance in your country receive or send by way of fax or e-mail:
- (a) maintenance applications (*i.e.* for the establishment, recovery, modification or enforcement of maintenance);
 - (b) public documents (for example, court or tribunal documents, administrative documents, notarial acts, official certificates such as birth or marriage certificates); and,
 - (c) other types of requests?

If so, please explain subject to what requirements (for example, identification, authentication, confidentiality, integrity, non-repudiation and availability (retrievable)).

- 8 **In the international context**, are cross-border arrangements in place in your country, **as requested State**, according to which the competent Authority responsible for child support and other forms of family maintenance may accept by way of fax or e-mail from abroad:
- (a) maintenance applications (see Question 7(a));
 - (b) public documents (see Question 7(b)); and,
 - (c) other types of requests?

If so, please explain subject to what requirements (see Question 7 *in fine*).

- 9 **In the international context**, are cross-border arrangements in place in your country, **as requesting State**, according to which the competent Authority responsible for child support and other forms of family maintenance can use e-mail and fax to forward:
- (a) maintenance applications (same as Question 7(a));
 - (b) public documents (same as Question 7(b)); and,
 - (c) other types of requests?

If so, please provide examples.

- 10 With regard to Questions 7 and 8, does your country apply a "functional equivalent" approach in relation to electronic documents and electronic communications, covering documents listed under (a), (b) and (c), that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.
- 11 Are electronic signatures used in your country in relation to electronic documents and electronic communications that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

- 12 Has your country enacted legislation based on (a) the UNCITRAL Model Law on Electronic Commerce, and (b) the UNCITRAL Model on Electronic Signatures? Please respond by YES or NO. If YES, please indicate if they apply to maintenance matters and distinguish between the domestic and international context. If NO, please explain.

Note: Respondents are also invited to comment on any other matter that they consider material in relation to the electronic transfer of funds and the use of information technology in the context of child support and other forms of family maintenance.

**Information Document
Presented by the Permanent Bureau**

**Commission spéciale sur le recouvrement
international des aliments envers les enfants
et d'autres membres de la famille
(du 5 au 16 mai 2003)
Special Commission on the
International Recovery of Child Support
and other Forms of Family Maintenance
(5 to 16 May 2003)**

Distribution: 16 May 2003

**THE USE OF INFORMATION TECHNOLOGY
WITH RESPECT TO THE RECOVERY OF MAINTENANCE**

THE INTERNATIONAL TRANSFER OF FUNDS AT A LOW COST

RECOMMENDATION OF THE 1999 SPECIAL COMMISSION

The new instrument should:

"take account of future needs, the developments occurring in national and international systems of maintenance recovery and the opportunities provided by advances in information technology".

RESPONSES TO QUESTIONS 33 (H) & 34 OF THE 2002 QUESTIONNAIRE

Out of the 31 jurisdictions that have answered Question 33 with respect to letter (h) – "What degree of importance do you attach to the provisions concerning co-operation in the international transfer of funds at low costs?" – twenty-one jurisdictions have indicated that this is a priority. Out of these twenty-one jurisdictions: six were of the view that it is very important; twelve answered that it is important / desirable; and three indicated that it is interesting. Furthermore, six jurisdictions did not express any views and four jurisdictions have indicated that this is not a priority.

With regard to question 34 of the 2002 Questionnaire, out of the thirty-one jurisdictions that have answered the Questionnaire: five think that this is a core element; sixteen think that this is an optional element; and ten have no views on this point.

EXISTING NORMS IN RELATION TO THE TRANSFER OF FUNDS

The Inter-American / Montevideo Convention of 15 July 1989 on Support Obligations (Appendices to Prel. Doc. No 3, p. 18) provides at Article 20 that:

"The States Parties undertake to facilitate the transfer of funds required for compliance with this Convention".

EXAMPLES OF DIFFERENT METHODS TO TRANSFER FUNDS

ATM Cards (Maestro (Europay-Mastercard), Cirrus (United States, Canada), etc.)

This method was presented in relation to a domestic situation by an expert at an earlier Special Commission; it could certainly be implemented at the international level.

Nowadays, in the light of the liberalisation of foreign investments (through the web of Bilateral Investment Treaties (BITs) or what other States call Foreign Investment Protection and Promotion Agreements (FIPAs)), it is now possible, in a number of cases, for non-residents to open bank accounts in foreign States. On that basis, a creditor could open a bank account either on her / his own or through a Central Authority (if the bank laws allow for such a possibility) in the State of the debtor. Therefore, funds from the debtor's bank account could be transferred locally at a low cost to the creditor's bank account then the creditor from abroad could access the funds through an Automatic Teller Machine (ATM). In this case, the ATM will automatically make the conversion for the foreign exchange at a low cost. One inconvenience of this system is that if the creditor loses the card it will be difficult to get a new card from abroad.

Inter-branch transfers

Another possibility is to deal with a multinational bank. In this regard, the creditor should choose a bank that has branches in both the State of the debtor and in her / his own State. Once a bank is selected, the debtor on his / her own or subject to a decision of an authority will open a bank account in a branch of that bank located in his / her State. The multinational bank may have means available to it to facilitate the international transfer of funds at a low cost without depending on the settlement systems of third parties. The two bank accounts can be in the same currency or in different currencies.

International settlement systems

Electronic clearing house systems or settlement systems for the transfer and payment of funds have been in existence at the domestic level for quite a long time. Nowadays, such electronic systems exist at the international or regional level. At the international level the most common system that comes to mind is SWIFT.

SWIFT

SWIFT stands for the Society for Worldwide Inter-bank Financial Telecommunications. SWIFT is a co-operative organisation created and owned by banks which operates a network to facilitate the exchange of payment and other financial messages between financial institutions through out the world. SWIFT provides a secure messaging service for inter-bank communication. A SWIFT payment message is an instruction to transfer funds; the exchange of funds (i.e. settlement) subsequently takes place via a payment system or through correspondent banking relationships. Its services are extensively used in the foreign exchange, money and securities markets for confirmation and payment messages. The advantages of SWIFT are that it is broadly available and it is possible to transfer any amount whether for commercial or private purposes. However SWIFT is rather expensive (see <<http://www.swift.com>> for further information).

Work within the EU

According to exploratory research carried out by the Permanent Bureau, an electronic clearing house system or settlement system may be available very soon within the EU (between the different banks of the Member States). This is the next logical step to the implementation of the Euro. However, it is not certain if it will cover both commercial and private payments, or even government payments, and if it will be restricted to certain amounts (see <<http://www.ecb.int>> for further information).

Automatic clearing house system (FedACH)

At this point the FedACH system works northbound between the United States and Canada only. It is a private clearing house system between the Federal Reserve in Minneapolis and the TD Bank in Toronto. No third party (like SWIFT) is involved. The system is extra secure as the transactions are done through a private telephone line (not the Internet) from one mainframe computer to another. There is no minimum limit to the level of payment and it can be used for commercial, private and government purposes. Social benefits and pensions payments are also transmitted through this system. Batch payments of millions of dollars are operated once a day and funds are secured within 2 or 3 days. Therefore the risk is very low. The extremely high volume of transactions makes the system very inexpensive. The fee for a maintenance payment is around 5 Euro cents. Transfers in the United States are electronically directed to the Federal Reserve in Minneapolis at very low cost and payments received in Canada are once again transferred electronically at a very low cost to all other banks and their branches throughout Canada. Furthermore, the system makes an automatic foreign exchange (see <<http://www.frb services.org>> for further information).

A southbound transfer (Canada-United States) at a low cost is also possible. To do so, the TD Bank in Toronto would transfer the funds to its branch in New York. The New York branch having access to the domestic clearing-house system in the United States can then transfer the funds at a very low cost to any bank in the United States.

FUTURE WORK

The Permanent Bureau will continue its work towards the preparation of a Preliminary Document in relation to the use of information technology with respect to the international recovery of maintenance, including the transfer of funds at a low cost. The objective is to prepare a document that will present as many solutions and avenues as possible. This will assist the work of the Special Commission and future co-operation in relation to building and securing effective implementation of the new instrument. In this respect, the Permanent Bureau would be interested to hear from the experts about their experience in relation to the electronic transfer of funds. Furthermore, in carrying out its work the Permanent Bureau will want to consult the relevant international and national banking institutions.