

DECEMBER 2020

PREL. DOC. NO 2

<b>Title</b>	<b>Questionnaire on the practical operation of the <i>Protocol of 23 November 2007 on the Law applicable to Maintenance Obligations</i></b>
<b>Document</b>	<b>Prel. Doc. No 2 of August 2019</b>
<b>Author</b>	PB
<b>Agenda item</b>	TBD
<b>Mandate(s)</b>	C&R No 28 of the 2019 CGAP
<b>Objective</b>	<ul style="list-style-type: none"> <li>– To seek information as to the implementation and practical operation of the 2007 Protocol in Contracting Parties;</li> <li>– To identify challenges or questions that have arisen in the practical operation of the 2007 Protocol; and</li> <li>– To obtain views and comments, including from non-Contracting Parties, about other issues for discussion at the upcoming meeting of the Special Commission</li> </ul>
<b>Action to be taken</b>	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input type="checkbox"/> For Action <input checked="" type="checkbox"/>
<b>Annexes</b>	n.a.

Hague Conference on Private International Law – Conférence de La Haye de droit international privé

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Regional Office for Asia and the Pacific (ROAP) - Bureau régional pour l'Asie et le Pacifique (BRAP)

Regional Office for Latin America and the Caribbean (ROLAC) - Bureau régional pour l'Amérique latine et les Caraïbes (BRALC)

<b>Related documents</b>	Prel. Doc. No 1 of August 2019 – Questionnaire on the practical operation of the <i>Convention of 23 November 2003 on the International Recovery of Child Support and Other Forms of Family Maintenance</i>
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## **INTRODUCTION**

### **Objectives of the Questionnaire**

This Questionnaire is being circulated in preparation for a possible meeting of the Special Commission on the practical operation of the *HCCH Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (hereinafter, the “2007 Convention”) and the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (hereinafter, the “2007 Protocol”), to be held in The Hague in December 2020 (dates to be confirmed). The Questionnaire focuses on the 2007 Protocol; another Questionnaire will focus on the 2007 Convention.

This Questionnaire is addressed primarily to Contracting Parties to the 2007 Protocol, but certain questions (at the end of the Questionnaire) are also addressed to non-Contracting Parties. After 10 years of operation of the 2007 Protocol, the Questionnaire has the following broad objectives:

- a. To seek information as to the implementation and practical operation of the 2007 Protocol in Contracting Parties;
- b. To identify challenges or questions that have arisen in the practical operation of the 2007 Protocol; and
- c. To obtain views and comments about other issues for discussion at the upcoming meeting of the Special Commission.

The Questionnaire is designed to facilitate an efficient exchange of information on these matters prior to the meeting of the Special Commission and assist with the drawing up of an agenda for the meeting.

### ***Scope of the Questionnaire***

The Questionnaire covers all the provisions of the 2007 Protocol with the exception of Article 14 concerning the determination of the amount of maintenance and the general provisions and final clauses (Arts 20-30).

In considering the questions that follow, Contracting Parties may find it useful to refer in particular to the Explanatory Report (Bonomi) on the 2007 Protocol.

### ***Instructions for completion***

The Questionnaire is being sent to Central Authorities designated under the 2007 Convention as well as National and Contact Organs. Central Authorities are invited to co-ordinate as appropriate between

themselves and other competent authorities. For Contracting Parties to the Protocol, Central Authorities are ultimately responsible for submitting the completed questionnaire to the Permanent Bureau.

In order to allow the Permanent Bureau to extract parts of the Questionnaire for a compilation and analysis of the responses, please use **this Word Version** of the document, and please **do not return a PDF version** of the completed Questionnaire.

We kindly request that replies to the Questionnaire be sent to the Permanent Bureau by e-mail to < secretariat@hcch.net > **no later than 30 November 2019** with the following subject matter captioned in the heading of the e-mail: “[name of State] Response to the 2007 Protocol Questionnaire – 2020 Special Commission”. Any questions concerning the Questionnaire may be directed to < secretariat@hcch.net >.

We intend, except where expressly asked not to do so, to place all replies to the Questionnaire on the HCCH website (www.hcch.net). Please therefore clearly identify any responses which you do not want to be placed on the website.

Thank you for your kind co-operation as the Permanent Bureau prepares for the meeting of the Special Commission meeting in 2020.

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE  
PROTOCOL OF 23 NOVEMBER 2007 ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 2007 Protocol, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

<b>Name of State or territorial unit:<sup>[1]</sup></b>	Lithuania
<i>For follow-up purposes</i>	
Name of contact person:	Vaida Pakalniškytė
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Please note:

- Contracting Parties to the 2007 Protocol are requested to complete ALL questions below.
- Non-Contracting Parties to the 2007 Protocol are requested to complete those sections at the end of the Questionnaire.

**PART I – FOR THE ATTENTION OF CONTRACTING PARTIES**

**1. Scope of the Protocol (Art. 1):**

1.1. Have issues arisen before the authorities and / or courts or tribunals of your State with respect to the definition of the relationships that are within the scope of the Protocol?

a. As regards the definition of a family relationship?

No

Yes, please specify:

Relationship between biological and social family.

<sup>[1]</sup> The term "State" in this Questionnaire includes a territorial unit, where relevant.

b. As regards the definition of a parentage relationship?

No

Yes, please specify:

[Regarding biological and social parentage.](#)

c. As regards the definition of a marriage relationship?

No

Yes, please specify:

[Regarding recognition of the form of marriage in different Member States when it is entered into between persons of the same sex in the absence of a partnership.](#)

d. As regards the definition of a registered-partnership relationship?

No

Yes, please specify:

[Please insert text here](#)

e. As regards the definition of an affinity relationship?

No

Yes, please specify:

[Regarding assessment of kinship by blood relations.](#)

f. As regards the definitions of other relationships?

No

Yes, please specify:

[Please insert text here](#)

1.2. Have issues arisen before the authorities and / or courts or tribunals of your State with respect to the definition of the maintenance obligations that are within the scope of the Protocol?

No

Yes, please specify:

[Please insert text here](#)

1.3. Which law have the competent authorities of your State applied to preliminary / incidental questions relating to the existence of the family relationship raised in connection with a proceeding having the maintenance debt as its principal subject-matter?

a. The law designated by the Protocol as governing the principal issue relating to maintenance obligations?

No

Oui

- b. The law designated as being applicable to the issue arising on a preliminary / incidental basis by the generally-applicable rules of conflict of laws in your State?

No

Yes, please specify:

The following legal acts of the European Union are applicable in disputes regarding adjudging financial support (with a foreign element): 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; Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000. It should be noted that the Hague Protocol of 2007 is applicable universally (ergo omnes), i.e. even in cases when a state associated with a dispute is not a party to the protocol, the rules of the protocol are applicable and the laws of the state, which is not a party to the protocol, chosen according to it, must be applicable to identifying obligations (Art. 2 of the Hague Protocol of 2007), even if the states in question are not parties to another international private legal act.

- c.  Others?

Please specify:

Please insert text here

## 2. Access to foreign law (Art. 2) :

- 2.1. Have the competent authorities of your State encountered difficulties in determining and applying the contents of the foreign law applicable to maintenance obligations designated under the Protocol?

No

Yes, please specify:

Please insert text here

## 3. General rule relating to applicable law (Art. 3):

- 3.1. Have issues arisen before the authorities and / or courts or tribunals of your State with respect to the definition of the creditor's habitual residence?

No

Yes, please specify:

Please insert text here

- 3.2. If applicable, how have the competent authorities of your State defined the concept of habitual residence?

Please specify :

No inaccuracies regarding the definition of the regular place of residence of a creditor in the application of Art. 3 of the Hague Protocol arise in court. Art. 3 of the Hague Protocol establishes that the laws of the state, where the regular place of residence of the creditor is located in, are applicable to financial support obligations. The aforementioned general rule is not applicable in cases when the protocol establishes different options for choosing applicable law (see Art. 8-4 of the Hague protocol of 2007). The Hague Protocol of 2007 establishes special rules for determining law applicable to privileged creditor groups in cases, when such creditors cannot be adjudged financial support from a debtor (Art. 4 of the Hague Protocol of 2007) according to the laws of the their habitual (regular) residence (Art. 3 of the Hague Protocol of 2007).

The place of residence of a natural person, meaning the legal relations of the person with the state or territory thereof, is in the state or territory thereof, where he/she permanently or mostly resides, considering such state or territory thereof to be the place where his/her personal, social and economic interests are located in (Art. 2.12 of the Civil Code of the Republic of Lithuania)

3.3. Have the competent authorities of your State encountered an impossibility in determining the creditor's habitual residence, or encountered the creditor's lack of a habitual residence?

- No  
 Yes, please specify:

After a dispute is initiated the place of residence of the applicant changes for the period of determining the shortcomings in the action and setting a period for eliminating the shortcomings in the action.

#### 4. Special rules relating to applicable law (Arts. 4 and 5):

##### As regards application of Article 4:

4.1. Have the competent authorities of your State encountered challenges in the application of Article 4(1)? Have issues arisen in this respect?

- No  
 Yes, please specify:  
 Please insert text here

4.2. Have the competent authorities of your State encountered challenges in the application of Article 4(2)? Have issues arisen in this respect?

- No  
 Yes, please specify:  
 Please insert text here

##### As regards application of Article 5:

4.3. Have the competent authorities of your State encountered challenges in the application of Article 5? Have issues arisen in this respect?

- No  
 Yes, please specify:

There were no disputes regarding applicable law when the matters regarding dissolution of marriage by agreement of both spouses have been addressed. After the court decision becomes res judicata, and the matter of applicable law may arise if after some time one of the former spouses applies to court with an application to change the conditions of the agreement on dissolution of marriage by mutual agreement under dispute procedure. The case has not evolved to the matter of choosing applicable law because an objection to the jurisdiction of Lithuanian courts has been expressed in the statement of defence.

4.4. Have the competent authorities of your State encountered difficulties in the determination of the criteria defining the "closer connections" with the marriage required by those provisions?

- No  
 Yes, please specify:

In the assessment of the concept of a "closer connection" in marriage, evaluative questions arise – what influences and has a greater probative value – social or economic connection, balance thereof?

- Please specify, in practice, the connecting factors required by the competent authorities of your State for the implementation of these provisions:

The reference of "the last habitual residence" in Art. 5 of the protocol is not an assumption; it only shows how significantly such law may be associated with marriage. According to the wording of Art. 5 the possibility that the law of another place of residence, not the last habitual residence, may be closer associated with the marriage should not be ruled out. A habitual residence is defined by the life elements of the parties of the case – place of entering the marriage, last place of residence, place of residence of underage child, etc.

All the connections of the marriage concerned, such as the spouses' habitual residence and/or domicile during the marriage, their nationalities, the location where the marriage was celebrated and the location of the legal separation or divorce.

4.5. Has the express, though non-exclusive, mention of the spouses' last common habitual residence given rise to issues in the implementation of these provisions?

- No  
 Yes, please specify:

Problematic aspects – regular (habitual) residence and the last place of residence are different. The category of a habitual residence is associated with declaration of a person's place of residence in the Republic of Lithuania.

## 5. Special defence of the debtor (Art. 6):

5.1. Have the competent authorities of your State encountered challenges in the application of Article 6? Have issues arisen in this respect?

- No  
 Yes, please specify:  
 Please insert text here

5.2. More specifically, has the concurrent existence of the rules in Article 4 and in Article 6 caused difficulties in the implementation of these provisions?

- No  
 Yes, please specify:  
[Please insert text here](#)

**6. Designation of the applicable law by the parties for the purposes of a particular proceeding (Art. 7):**

6.1. Have the competent authorities of your State encountered challenges in the application of Article 7? Have issues arisen in this respect?

- No  
 Yes, please specify:  
[Regarding the agreement for application of foreign law or applying to a relevant court before the dispute actually begins it is considered that the electronic correspondence between the parties is sufficient fulfilment of the requirement for submitting a written form.](#)

6.2. In this respect, when the law of the forum is designated by the parties, is the parties' choice interpreted as being based on Article 7(1) (with effects restricted to a particular proceeding) or on Article 8(1) (with effects for the future as well)?

- No  
 Yes, please specify:  
[Please insert text here](#)

6.3. Do the competent authorities of that State make the validity of that procedural agreement contingent upon specific formalities under domestic law in excess of the minimum requirements of Article 7(2)?

- No  
 Yes, please specify:  
[Please insert text here](#)

6.4. Have issues arisen with respect to the terms and the timing of the choice when it is made in the course of the proceeding, as these matters are not determined by the Protocol?

- No  
 Yes, please specify:  
[The vagueness of applicable law may cause delay in the proceedings, abuse of procedural rights. According to procedural rules, if a party in a dispute chooses the law of a state different than that in which the court is located or law applicable to the applicant \(creditor\), it becomes necessary to postpone examination of the case and further examine both, factual circumstances, and the law requested to be applied. A procedural situation may arise due to the necessity to renew or stop the proceedings. It is proportionate and appropriate to identify the position of the parties regarding the law applicable in the dispute and before the final speeches.](#)

6.5. Have the competent authorities of your State considered that for the purposes of Article 7, initiation of the proceeding is required to occur within a specific time after the parties' designation of the applicable law?

- No  
 Yes, please specify:

It is considered that the parties should agree on the law applicable to a dispute before starting the examination of the dispute in court according to judicial procedure.

**7. Designation of the applicable law by the parties at any time (Art. 8):**

7.1. Have the competent authorities of your State encountered challenges in the application of Article 8(1), and in particular Article 8(1)(c) and (d)?

- No  
 Yes, please specify and mention the relevant sub-paragraph:

The expression "Any time" is not sufficiently clear as to the moment of indicating applicable law. It should be defined more specifically, for example: until the end of the stage of examining the merits of the case or making a court decision (exit to the meeting room).

7.2. Have the competent authorities of your State encountered challenges in the application of Article 8(2) to (5)? Have issues arisen in this respect?

- No  
 Yes, please specify and mention the relevant paragraph if applicable:

Please insert text here

7.3. More specifically, how do the competent authorities of your State ensure that the parties are fully informed and aware of the consequences of their choice?

Please specify:

The parties of the case should be informed about application of the chosen provisions of law within the scope of the examination of the dispute (District Court of Klaipėda)

Parties are informed about their rights and consequences of their choice (District Court of Plungė)

To inform about the right of a party to choose the law applicable to the dispute during preparation for verbal examination of the case, or to correspondingly inform in writing – before appointing examination of the case in a court hearing.

7.4. Has the determination of manifestly unfair or unreasonable consequences for any of the parties raised difficulties before the competent authorities of your State, including in particular inconsistencies in case-law?

- No  
 Yes, please specify:

Please insert text here

**8. Interpretation of the concepts of "nationality" and "domicile" for the purposes of Articles 4(4), 6 and 9 of the Protocol:**

8.1. Have the competent authorities of your State encountered challenges connected with the existence of several nationalities common to the debtor and creditor (Arts. 4(4) and 6):

No

Yes, please specify:

The matter of citizenship may be associated with having a dual citizenship. Having a dual citizenship is possible in some Member States.

If so, please specify the criteria applied to determine the prevailing nationality:

Please insert text here

8.2. Have the competent authorities of your State made use of the provisions of Article 9?

No

Yes

8.3. If so, does your State generally make use of the concept of domicile in matters of conflict of laws, even on an accessory basis, in accordance with the spirit of these provisions?

No

Yes

## 9. Public bodies (Art. 10):

9.1. Have the competent authorities of your State encountered challenges in the application of Article 10? Have issues arisen in this respect?

No

Yes, please specify:

In the event that the regular place of residence of the debtor changes after the main court decision for adjudging financial support and does not correspond to the law of the public institutions.

## 10. Scope of the applicable law (Art. 11):

10.1. Have the competent authorities of your State encountered challenges in the application of Article 11? Have issues arisen in this respect?

No

Yes, please specify:

Art. 11 of the Hague Protocol of 2007 establishes what falls within the scope of the law applicable to financial support relations, i.e. the law applicable to financial support relations governs: 1) the terms of the financial support obligations and the potential debtor, i.e. defines when a creditor can expect financial support, depending on his/her family ties to the debtor, age, and so on; 2) the amount of financial support arrears; 3) the basis for calculating financial support arrears and indexing procedure; 4) who has the right to bring an action for financial support, i.e. who has the right to bring an action for adjudging financial support; 5) periods when it is possible to apply for adjudging financial support; 6) the scope of the financial support obligations of a debtor if a public institution seeks to recover benefits paid to the creditor in lieu of financial support.

**11. Exclusion of renvoi (Art. 12):**

11.1. Have the competent authorities of your State encountered challenges in the application of Article 12? Have issues arisen in this respect?

- No  
 Yes, please specify:  
[Please insert text here](#)

**12. Public policy (Art. 13):**

12.1. Have the competent authorities of your State encountered challenges in the application of Article 13? Have issues arisen in this respect, in particular as regards interpretation of the term "manifestly"?

- No  
 Yes, please specify:  
[Please insert text here](#)

12.2. If applicable, in your State, what situations have resulted in the implementation of these provisions?

Please specify:  
[Please insert text here](#)

**13. Internal conflicts and non-unified legal systems (Arts. 15, 16 and 17):**

13.1. Have the competent authorities of your State encountered challenges in the application of Articles 15, 16 and 17? Have issues arisen in this respect?

- No  
 Yes, please specify and mention the Article or Articles concerned:  
[Please insert text here](#)

**14. Coordination with earlier Hague Conventions and other instruments (Arts. 18 and 19):**

14.1. Have the competent authorities of your State encountered challenges in the application of Articles 18 and 19? Have issues arisen in this respect?

- No  
 Yes, please specify and mention the Article or Articles concerned:  
[Please insert text here](#)

**PART II – FOR THE ATTENTION OF NON-CONTRACTING PARTIES**

1. Are there particular reasons for your State not having ratified / acceded to the Protocol?

- No  
 Yes, please specify:  
[Please insert text here](#)

2. Is your State currently contemplating signing, ratifying or acceding to the 2007 Protocol?

- No  
 Yes, please specify:  
[Please insert text here](#)

3. Are there any amendments / improvements of the Protocol that would make its ratification / accession more attractive to your State?

- No  
 Yes, please specify:  
[Please insert text here](#)

<b>PART III – FOR THE ATTENTION OF CONTRACTING PARTIES AND NON-CONTRACTING PARTIES</b>
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1. Are there particular issues relating to the Protocol that your State wishes to address during the meeting of the Special Commission?

- No  
 Yes, please specify and rank by priority:  
[Please insert text here](#)

**Miscellaneous:** respondents are also requested to make known their comments about any other matter they regard as being relevant to the practical application of the Protocol and to make known, if applicable, any other particular difficulties that have arisen when their courts have been called upon to apply or interpret the Protocol:

[Please insert text here](#)