

Council on General Affairs and Policy of the Conference – March 2018

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 22 of March 2018
Title	Proposal of Switzerland for the establishment of an Expert Group regarding the transfer of funds in relation to the international recovery of maintenance	
Author	Government of Switzerland	
Agenda item	Item IV.1.b.	
Mandate(s)	n.a.	
Objective	To seek Council's approval for the establishment of an Expert Group regarding the transfer of funds in relation to the international recovery of maintenance	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input checked="" type="checkbox"/> For Information <input type="checkbox"/>	
Annexes	n.a.	
Related documents	n.a.	

Proposal of Switzerland for the establishment of an Expert Group regarding the transfer of funds in relation to the international recovery of maintenance

The Hague Convention of 23 November 2007 and other instruments (such as the New York Convention of 1956, or regional and bilateral agreements) have established an international system for the cross-border recovery of child support and other forms of family maintenance.

However, recent changes in banking practice (such as the refusal by more and more banks to accept paper checks) and technological or regulatory requirements (including national rules or practical problems prohibiting Central Authorities to open bank accounts in foreign countries) seriously hamper the success of the international maintenance recovery system:

- The transfer of funds from the debtor to the creditor sometimes takes several months.
- High fees and currency conversion rates can cut by half the badly needed maintenance.
- In an increasing number of cases, the transfer of funds is not possible at all, thereby jeopardizing the functioning and the very *raison d'être* of the maintenance conventions.

During the last years, bilateral attempts between central authorities have tried to address these new challenges, resulting in a complex, costly and often highly inefficient patchwork of diverging case-by-case solutions. In some cases, files had to be closed due to the lack of fund-transfer options.

A multilateral, global discussion of issues pertaining to the transfer of funds could provide information to States allowing them to find multilateral solutions that best serve families and the relevant government agencies.

Based on these considerations, the suggestion is made to establish an Expert Group regarding the transfer of funds in relation to the international recovery of family maintenance.

This Expert Group would be fully in line with the intentions of the States signatory to the 2007 Hague Convention: As specified in Article 35, "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. 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 Group should bring together experts in maintenance recovery (including central authorities) and private-sector experts in cross-border transfer of funds (banks, credit unions and other financial intermediaries), as well as representatives of governments, with the expertise and assistance of the Permanent Bureau. The Permanent Bureau should undertake preparatory work before the first meeting (as a basis, see Prel. Doc. No 4 of 2004 on this topic, available at www.hcch.net/en/publications-and-studies/details4/?pid=4114&dtid=35).

The Group should examine the current problems and analyse possibilities for improving the cross-border transfer of maintenance funds, e.g. exploring options inside the iSupport system, or in cooperation with public and private-sector providers, including the use of new technologies. In addition, the Group should identify situations in which fees or costs will be incurred so that individual States may decide how to allocate such amounts. The information should assist individual States in developing solutions that would be compatible with relevant national banking practices, and take into account the various national regulatory and technological requirements.

The Group should report to Council and suggest further steps. At this stage, the Group should only provide information that might be considered by States and is not being asked to address the desirability or feasibility of any additional instrument on this topic.