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CIVIL JUSTICE PROGRAMME  
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## iSupport

cross-border recovery  
of maintenance obligations  
*pour le recouvrement  
transfrontière des  
obligations alimentaires*

### **iSupport Functional Requirements Working Group (1) – Meeting (4) – 5 February 2015 Meeting**

## **Report of Meeting n° 4**

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### **List of Participants**

<b>Experts</b>	<b>iSupport Team</b>
Natasha BUTLER (France) - excused Cameron COWPER (Canada) Daphne De WIT (The Netherlands) Paulo GONCALVES (Portugal) Alisha GRIFFIN (United States of America) Arnaldo JOSÉ ALVES SILVEIRA (Brazil) Pietari KORTEKANGAS (Finland) Haldi KOIT (Estonia) Tanja NIEMI (Finland) Marketa NOVAKOVA (Czech Republic) - excused Inese PLONE (Latvia) Tobias PLUM (Germany) Siri RISNES (Norway) Hannah ROOTS (NCSEA) - excused	Philippe LORTIE Brigitte VOERMAN Juliane HIRSCH (Chair) Marie VAUTRAVERS

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### **1. Introduction**

1. Philippe Lortie, First Secretary, welcomed the participants to the Functional Requirements Working Group Meeting and opened the meeting with a roll-call.
2. Philippe Lortie explained that the expert from Brazil had been in contact with the Brazilian media about iSupport and that Brazilian TV was interested to record a few minutes of the Working Group meeting. He asked the Working Group experts whether they had any objections. No objections were raised.

### **2. Follow-up – Last Meeting**

3. Philippe Lortie noted that the iSupport team had received written comments submitted by the expert from the United States of America. These comments concerned suggestions on the definition of a “case” and some related matters. He asked the expert

from the United States of America whether these comments could be circulated to the Working Group, to which the expert agreed. He proposed that the suggestions would be addressed in a later meeting once all Working Group experts had time to read them. There was general agreement with this suggestion.

4. Juliane Hirsch, Legal Consultant to the iSupport Project, asked the Working Group experts whether there were, at this stage, any additional remarks concerning the topics dealt with at the last meeting. No additional points were raised.

### **3. Items for discussion /decision**

5. Juliane Hirsch gave a brief overview of the forms that will be available in iSupport for the purpose of Regulation, Convention and other international maintenance cases.

#### **Which forms will be available in Regulation cases in iSupport?**

6. Juliane Hirsch noted that for cases falling within the scope of the EU Maintenance Regulation the following forms will be available:

- The mandatory Regulation forms Annex I-IX;
- The new European recommended arrears form; and,
- Adapted versions of the recommended Convention forms for status reports for each main type of application:
  - Recognition or Recognition and Enforcement;
  - Enforcement;
  - Establishment; and,
  - Modification.

7. An expert from Estonia asked whether the Regulation Annexes X-XII could be made available in iSupport too, which was confirmed.

#### **Which forms will be available in Convention cases in iSupport?**

8. Juliane Hirsch explained that for cases falling within the scope of the 2007 Hague Convention the following forms will be available:

- The mandatory Convention forms Annex 1-2;
- The twelve recommended Convention forms;
- An adapted versions of the EU Regulation form for specific measures request (Annex V of the Regulation);
- An adapted version of the new European recommended arrears form; and
- For certain Convention cases, where the requested and the requesting State are EU Member States, the EU Regulation form Annex VI.

#### **Which forms will be available in other international maintenance cases in iSupport?**

9. Juliane Hirsch recalled that iSupport will also be usable for international maintenance cases falling outside the scope of the EU Regulation and the 2007 Hague Convention. For these other international maintenance cases, which are not in the focus of the project, no extra forms would be created. However, certain instrument neutral of the above mentioned forms could be made available for this group of cases, for example, the arrears form and certain of the Convention forms.

### **Auto-population of forms by the system**

10. Juliane Hirsch explained how the completion of the forms in iSupport is envisaged. She stated that the caseworker will, instead of working in the form itself, fill in the necessary information on the different screens of the case management system. All information will be entered into the database and iSupport will then on demand create the fully populated relevant form. The system will, once the type of application is chosen by the caseworker, provide the appropriate form in accordance with the classification of a case as Convention or Regulation case.

11. Juliane Hirsch drew attention to the fact that the forms contain more than the necessary information mentioned in the text of the law. For example, the EU Regulation application form Annex VI contains fields for "profession" and "marital status" of the applicant and defendant which information is not necessarily required for the application. She stated that a question that had come up in the internal discussions of the iSupport team was whether iSupport would populate the forms with all the data available in the national iSupport database corresponding to the fields in the form or whether a restriction would be made. She explained that for the EU Regulation mandatory forms the iSupport team would suggest the following approach. In view of the mandatory nature of the forms Annexes I to IX and in view of the fact that all items included in the forms had been agreed to by the European Member States to be shared among themselves, iSupport will populate these forms with all available corresponding data found in the system. The same approach would be adopted for the two mandatory Convention forms Annex 1 and Annex 2. Juliane Hirsch remarked that the situation was slightly different for the recommended Convention forms. However, noting that these forms had been developed and adopted as recommended forms by 60 States, wide spread agreement on the authorisation to transmit all information included in the forms is to be expected. She stated that details on possible data withholding concerning certain limited fields could be discussed in the detailed analyses of the forms.

12. There was overall agreement in the Working Group with the suggested approach. An expert from the Netherlands stated that it would be important to make certain that the system would allow to make an application that refers to only one child, leaving blank the data fields concerning possibly existing other children in the same family. The iSupport team noted this requirement.

13. Several experts from EU countries, including experts from Estonia, Finland, Germany and Portugal recalled two important developments with regard to the EU Regulation forms: (1) The European Commission is, with the assistance of national experts, preparing guidance on how to fill in the EU Regulation forms. The first experts' meeting is to take place in the 7<sup>th</sup> calendar week of 2015. Target groups for the guidance are authorities and individuals filling in these forms. The group will start working on guidance for the forms Annex VI and Annex VII. Juliane Hirsch noted that it was the intention to include this guidance in the help texts offered in iSupport. (2) The second point raised by the experts is that new slightly corrected versions of some of the EU forms are soon to be published. Philippe Lortie added on this point that following the last update he was given from the European Commission, the editing of the revised forms is finalised. However, the EU is currently still in the process of adapting all the different language versions of the forms.

14. The experts of the Working Group agreed to keep each other updated with regard to any further developments concerning the EU forms. Philippe Lortie emphasised that the iSupport team will keep a close connection to the work undertaken by the European Judicial Network, in the context of which the Central Authorities designated under the EU Maintenance Regulation meet, and indicated that he will attend the upcoming meeting of that group which will take place in Brussels on 12 March 2015.

15. An expert from the United States of America asked the iSupport team to make available all the EU Regulation forms to the non-European participants of the Working Group, which was agreed.

### **Check of completeness by the system**

16. Juliane Hirsch explained that iSupport will check the forms once auto populated for completeness. For this purpose all necessary fields will have to be identified. She noted that the beginning of a detailed discussion of the individual forms was foreseen for the end of this Working Group meeting.

17. Juliane Hirsch added that the following consequences were envisaged should a form be incomplete: the caseworker will receive a note that required information is missing and will be lead to the relevant screen or screens in which the information is to be added. To avoid contradiction between form and database and to capture all necessary information in the database, the missing information would never be entered in the form itself but always edited in the corresponding fields in iSupport. An incomplete form would not be sent through iSupport. It can be saved and printed. However when printed, the incomplete form will be marked "draft".

18. The Working Group generally agreed with the suggested approach, however, a number of concerns were raised with regard to the blocking of transmission of "incomplete" forms.

19. A number of experts from European Union Member States, including experts from Finland, Germany and The Netherlands highlighted the practical difficulties they would face should this approach be adopted with the EU Regulation application forms Annex VI and VII. Part B of these forms is filled in by the applicant and usually arrives at these State's Central Authorities in paper form. The experts noted that the proposal to allow the transmission of Annex VI or VI in electronic form through iSupport only when "complete" would pose an extra burden on their Central Authority. They clarified that currently they do not in all cases capture the full information contained in Part B in their system before sending the paper version of that Part B on to the requested State together with the Central Authority Part A. If in addition to Part A, Part B would also have to be "completed" in iSupport to be transmitted through the system's secure communications to the requested Central Authority, they would have to replicate the full content of Part B in the database. Currently, the information captured in their systems is the only one considered necessary for the requesting Central Authority not all data the applicant has filled in. Juliane Hirsch noted that the detailed form analysis would have to show whether the minimum information currently captured for Part B coincides with the necessary minimum information identified for this part of the application. This way an electronic submission of the data of both Part A and Part B of the application forms through iSupport would be possible in accordance with the above suggestion without that Central Authorities change their practice. The advantage of sending the Part B data which the requesting State selects electronically would be that the requested Central Authority would not have to redo the exercise of transcribing the Part B information in their system which would result in considerable time saving. Juliane Hirsch, however, noted the sending of an electronic version of Part B that differed from the (scanned) original paper version of Part B would be problematic. She suggested coming back to this topic after the form analyses. She mentioned that a part of the solution of the problem might be detaching Part A and Part B and their treatment by the system.

20. Some other experts from EU Member States, such as an expert from Latvia and an expert from the Finnish public body, which serves as Central Authority in outgoing EU Regulation cases, indicated that they would not face this problem in their practice since they would fill in both Part B for the applicant and Part A.

21. An expert from the Netherlands noted a difficulty with the suggested approach for marking the print out of forms when incomplete as "draft". The way the Dutch Central Authority currently deals with the EU application forms is as follows: The caseworker fills in the Central Authority Part A and the first two items of Part B for the applicant and sends the Annex VI form by mail to the applicant for completion. When the completed and signed version of the form comes back from the applicant, it is transmitted to the requesting State. In accordance with the suggestion of the iSupport team, the print out transmitted for

completion by the applicant would be marked "draft" since it would be incomplete. The expert foresaw problems should the then in writing completed "original" version bear the marking "draft".

22. An expert from Brazil asked whether an informal transmission of an incomplete application through iSupport would be possible. He explained that it was currently common practice to seek advice from the requesting State on certain matters sending a draft application. Juliane Hirsch noted the request and stated that the iSupport team would explore further options.

23. An expert from Estonia queried whether iSupport would not be able to transmit the EU forms with electronic signature provided that a decision would be made to use e-Codex for the secure communication. She noted that this might be a way to address the discussed Part A and Part B dilemma. If the formal requirement for a signature was satisfied through the use of an electronic signature there would be no obstacles to the electronic data transmission. She highlighted that in Estonian courts, using electronic signatures was already common practice. The iSupport team clarified that the use of e-Codex (once agreed upon) would not automatically include the possibility of using electronic signatures in iSupport. The electronic signature would, however, be an envisaged function for a future release of iSupport. Philippe Lortie highlighted that there is an e-signature project within e-CODEX as well as an e-Payment project but these two projects are not complete. Brigitte Voerman, iSupport Project Director, added that the usage of e-CODEX in iSupport concerns the communication between States, not between an individual applicant and a State. This would be a further step.

### **Steps towards the transmission of the form to the other State**

24. Juliane Hirsch explained that once an application form was complete and ready to be transmitted to the requested Central Authority, all required documents would be attached before the sending. She stated that the minimum required documents could be identified by the system in accordance with the chosen relevant application, and depending on whether the case is a Convention or Regulation case. The caseworker will then be able to manually attach additional required or useful documents with respect to the individual case. She noted that due to the signature requirement of the EU Regulation forms an additional attachment would have to be the scan of the signed original form. Depending on whether the requested State would see the signature requirement satisfied or not by a scan of the original an additional sending by mail might be necessary. Juliane Hirsch stated that a record of any sending of applications and accompanying documents via secure communications would be kept in iSupport.

25. Juliane Hirsch recalled that the use of iSupport will also be adapted to situations where the corresponding Central Authority would not (yet) use iSupport. In the absence of secure communications between the requesting and requested Central Authority, the caseworker will have to send the application and all accompanying documents by mail. iSupport will in these cases allow the caseworker to note that the sending was effectuated by mail.

26. Juliane Hirsch stated that overall three types of sending applications could be noted in the system: (1) sent through iSupport, (2) sent through iSupport and by mail, and (3) sent by mail.

27. Apart from concerns surrounding the described difficulties with the EU application forms Annex VI and Annex VI, there was general agreement in the Working Group with the suggested approach.

### **Domestic violence cases**

28. Juliane Hirsch recalled that once a case is identified as a domestic violence case in iSupport, a filter would be applied when populating the forms. The sensitive contact data

of the domestic violence victim would be replaced by alternative contact details. She asked the experts whether they would wish iSupport to include as a default replacement address the address of the Central Authority. She noted that once the discussions on the address screen would take place, the functionality of replacing the protected information by contact information other than that of the Central Authority, such as for example, the contact information of a representative, could be looked into.

29. The Working Group agreed with the suggested approach. The experts from Canada and the United States of America noted that the default replacement of the sensitive contact data by that of the Central Authority would also be advantageous as concerns the implementation of a protocol mentioned in the last Working Group meeting to make certain that a contact with the protected person could be made when needed by the courts of the requested State.

### **Restricted access cases**

30. Juliane Hirsch stated that the iSupport team envisaged not applying a filter on forms for this category of cases. That is to say, the case data available in the system corresponding to the fields in the form would auto populate the form without restriction. Should a State handling a case as a “restricted access” case wish the corresponding Central Authority to give this case a special treatment, this could be noted in the free text field of the form when applicable or in an accompanying message. She recalled that discussion that took place during the last Working Group meeting had shown that the concept of restricted access cases only exists in a small number of States.

31. There was general agreement in the Working Group with the proposal. An expert from the Netherlands noted that for the Dutch Central Authority, which does not have the category of restricted access cases, a request from another State to handle a case marked in that State as restricted access case with a particular protection in the Netherlands would be impossible to comply with. She was therefore concerned about the implications of such a request but indicated that in any event case information is never shared with third parties. Juliane Hirsch stated that iSupport offering the option to mark cases as restricted access cases would not impose on Central Authorities introducing this category into their practice. She reassured the expert that iSupport would not interfere with the Central Authorities’ internal policy decisions. The example given was meant to illustrate a possible co-operation in this situation.

### **Identification of the necessary fields in the EU Regulation Annexes VI and VII**

32. Juliane Hirsch noted that with a view to identifying the necessary fields for the check of completeness by the system as well as with regard to a number of other important questions concerning the implementation of the forms in iSupport, it was necessary to quickly go through all the Regulation and Convention forms in the course of the Working Group meetings. She proposed beginning with the EU Regulation application forms Annex IV and Annex VII and referred to the commented versions of forms sent to the Working Group prior to the meeting. She explained briefly that all information considered necessary had been marked red and that fields that contained additional information or would only have to be filled in as appropriate had been marked yellow. The blue marked comments contained general remarks.

33. The remaining meeting time allowed the Working Group to discuss Part A of Annex VI and some aspects of Part B of Annex VI. A new version of the commented form Annex VI will take into account the comments, corrections and additions made during the 4<sup>th</sup> and the 5<sup>th</sup> meetings of the Working Group.

34. An expert from Estonia noted that the red comment beside Annex VI No.1 should state “at least one of these boxes must be ticked” since the first two boxes could both be ticked in one application.

35. Juliane Hirsch noted that for the data fields referring to the requesting and requested State Central Authority, iSupport would contain a drop down menu listing all Central Authorities under the Regulation and the Convention. She noted in this context that as concerns the EU Member States, so far, most States seem to have designated the same body as Central Authority under both the Regulation and Convention, but there could be some exceptions. An expert from the United States of America asked whether the list of Central Authorities could be in the alphabetic order of countries, which was confirmed.

36. Juliane Hirsch explained on point 2.6 of Annex VI that iSupport will under “reference number” fill in both the functional iSupport case number as well as, possibly, an existing internal reference number for the same case. As concerns the option to mark cross-referenced cases under “Application to be handled with ...” she noted that this was not part of the necessary information. She recalled that the Working Group had during its last meeting agreed on the inclusion of a “cross-references” field in which the caseworker could list all connected cases. She asked whether a simple copy of this field’s possible content would be appropriate here. An expert from Estonia responded negatively. She stated that not all cases considered as “connected” for the caseworkers in the requesting Central Authority should be named in this field of the form. The caseworker should be able to make a choice and to collect only the connected cases relevant for the application. Juliane Hirsch noted that a field was necessary in iSupport to include the connected cases that should be mentioned in the application under point 2.6 “Application to be handled with ...”.

37. With regard to point 2.7 of Annex VI, Juliane Hirsch referred to the Regulation obligation in Article 57(2)g) to include the contact details of the person or unit from the requesting Central Authority responsible for processing the application, which equally exists in Article 11(1)h) of the 2007 Hague Convention. She noted that the decision on whose name to enter in this field was closely linked to the earlier discussion concerning the caseworker(s) assigned to a case. She suggested that the system would enter as a default the person marked as principal caseworker. An expert from the Netherlands noted that in their current practice the person taking the first steps to prepare the sending of the application to the other State was not necessarily the person later responsible for the case. Juliane Hirsch suggested that in situations where the finally responsible caseworker was not known prior the sending of the application, the name of the caseworker first working the case would be communicated under point 2.7.1. As soon as a later change of responsibilities is known this could be communicated to the requested Central Authority.

38. As concerns the telephone number and email address, Juliane Hirsch noted that when both requesting and requested State operate iSupport these contact details would be less important, since communications would take place via iSupport and would be case-linked as opposed to person-linked. That is to say, an inquiry or message on a case will be “sent to the case”. The receipt of this message will be notified, in accordance with the workflow settings adapted in the Central Authority, to the responsible person or persons. Nonetheless, a direct telephone number of the principal caseworker (if determined) would be a helpful addition. Furthermore, in cases where the requested State does not have iSupport, communication would have to take place through other channels; here precise contact details would be of even higher importance. As concerns email addresses Juliane Hirsch noted that many Central Authorities preferred to have incoming and outgoing messages routed through the general Central Authority email account and then distribute messages internally, which iSupport did not intend to affect.

39. Following a brief discussion, the Working Group agreed that as a good practice a specific member of the Central Authority, provisionally or permanently responsible for the case, and this person’s contact details should be mentioned under 2.7. Should this not be possible, the unit name as well as the general telephone number and email address of the Central Authority would be appear here.

40. Concerning point 4 of Annex VI, an expert from Estonia noted that the second of the first two items on the list, currently marked as necessary items, might not always be necessary or available. She referred to the example of the usage of the Annex VI form in certain 2007 Hague Convention cases (to be discussed later) and noted that an extract of the decisions in these cases would be impossible to provide using the EU Regulation forms Annex I or Annex II. She also noted that it was good practice not to refuse an application where, instead of an abstract of a decision, a full translation of the decision in the language of the requested State was accompanying the application. She referred to Article 29 of the Regulation, which for applications following Section 2 of Chapter IV of the Regulation states that court or authority competent for the declaration of enforceability, could “accept an equivalent document”. Juliane Hirsch noted that in view of the very different kinds of applications that can be made using the form Annex VI a further refinement of the comments on point 4 were necessary. She stated that the exact minimum required documents would be discussed in the Working Group in context with the processes description for each type of application.

41. Juliane Hirsch noted that in Annex VI, an asterisk appears in relation to points 4 and 5 which encourages the numbering of the attached documents in the order in which they are attached. Brigitte Voerman stated that numbering the attached documents sequentially is not too difficult to develop.

42. Juliane Hirsch asked for some initial remarks on Part B of Annex VI before the closing of the meeting. An expert from Estonia noted that point 6.1. could be ticked at the same time as 6.2. An expert from Portugal added that a note should mark that in domestic violence cases the payment information of the victim would not be revealed under point 13.

43. Juliane Hirsch thanked all the experts for their comments and announced that the detailed forms discussion would continue at the following meeting.

#### **4. Other items for discussion**

44. No other items were suggested for discussion.

#### **5. Next videoconference – 9 February 2015, 15h00 UTC (16h00 ETC)**

45. Philippe Lortie reminded the experts that the next meeting will take place on 9 February at 15h00 UTC (16h00 ETC) and apologised in advance for the late distribution of the documents for that meeting. He thanked all the experts for their contributions and closed the meeting.