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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 (7) – 2 March 2015 Meeting

Draft Report of Meeting n°7

List of Participants

Experts	iSupport Team
Natasha BUTLER (France) - substituted Cameron COWPER (Canada) – excused Daphne De WIT (The Netherland) 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) - substituted Inese PLONE (Latvia) Tobias PLUM (Germany) Marielle RICHERT (France) - substitute Siri RISNES (Norway) Hannah ROOTS (NCSEA) Petra HUBOVÁ (Czech Republic) - substitute	Philippe LORTIE Brigitte VOERMAN Juliane HIRSCH (Chair) Marie VAUTRAVERS Chad TURNER (intern)

1. Introduction

1. Philippe Lortie, First Secretary, welcomed the participants to the seventh meeting of the Functional Requirements Working Group and opened the meeting with a roll-call. On behalf of the Secretary General of the Hague Conference he asked the participants whether the last Working Group meeting scheduled for 16 March 2015 could be rescheduled for Tuesday, 17 March 2015. He apologised for the inconvenience due to a conflicting meeting on 16 March. The Working Group members agreed to the rescheduling; an expert from Estonia, indicated that she could unfortunately only attend part of the meeting on 17 March.

2. Follow-up – Last Meeting

2. No follow up issues were raised.

3. Items for discussion / decision

Processes for applications in iSupport

3. Juliane Hirsch, Legal Consultant to the iSupport Project, referred to a document circulated to the Working Group in advance of the meeting. She noted that the tables contained in the document were copied from the Deliverables Document circulated for the first Working Group Meeting and that their content was to a large extent based on the Practical Handbook for Caseworkers principally drafted by Hannah Roots (NCSEA). She recalled that the Handbook, of course, only deals with Convention applications, but that the tables on Regulation procedures had been drawn up in parallel to the Convention procedures.

4. Juliane Hirsch suggested going through the tables starting with the outgoing Regulation applications and the outgoing Convention applications and then turning to the incoming applications. She highlighted that the tables contained a rough outline of the processes only. She noted further that the items in the list referred to general steps of casework and that a further adaptation for the iSupport context was necessary. For example, where the table stated that forms will have to be completed, in iSupport this completion will be done by the system.

5. Before commencing the discussion of the tables, Juliane Hirsch noted that the German Central Authority had already in advance of the meeting commented that in the EU procedure table the notification of the data subject in accordance with Art. 63 of the Regulation was missing. She indicated that this would be added.

Regulation – Outgoing applications and requests for specific measures

6. Juliane Hirsch read through the table for outgoing applications under the Regulation (see Table 1.1.1 A) seeking comments from the Working Group. She highlighted the applicable functionalities of iSupport with regard to the work steps. An expert from Finland indicated that under point 6 the box for specific measures should be ticked since for these requests accompanying documents also have to be determined. The text under point 6 should reflect this by making reference to Art. 53(2) of the Regulation. For point 7(1)(e), Juliane Hirsch recalled that the Regulation co-operation rules will also apply to certain Hague Convention (and other instruments) based applications for recognition and enforcement. She noted that the listed forms for the extract of the decision should also contain the recommended Convention form. An expert from Estonia stated that under 7(1)(d) no boxes were checked. Juliane Hirsch agreed that the first two boxes should be marked. An expert from the public body in Finland indicated that under 7(1)(c) the enforcement box should also be ticked. This was noted. Under point 9, Juliane Hirsch recalled that iSupport will auto generate the forms and that they will be sent through iSupport, provided that both the requesting and requested Central Authorities use iSupport. She added that iSupport will also facilitate the mail sending of all necessary forms and documents, where required. On point 11, Juliane Hirsch clarified that iSupport will identify the generally required documents for the relevant type of application and that the caseworker will then be able to add any other case required document or other helpful documents.

Convention – Outgoing applications and requests for specific measures

7. Juliane Hirsch read through the table for outgoing applications under the Convention (see Table 1.1.2 A) seeking comments from the Working Group. She stated that the table resembled to a large extent the one discussed for the Regulation applications. She noted that the missing marks in the tick boxes under 7(1)(c) and (d) would have to be added accordingly. There were no comments.

Regulation – Incoming applications and requests for specific measures

8. Juliane Hirsch then read out the items in the table of incoming applications and specific requests under the Regulation (see Table 1.1.1 B) seeking comments from the experts. Concerning point 6, Juliane Hirsch indicated that the requested Central Authority will, through iSupport, receive information on whether or not this authority considers the non-disclosure of contact information of a person as necessary. She indicated that appropriate steps would then have to be taken in the requested Central Authority. She sought confirmation from Philippe Lortie that it was not envisaged that the categorising of a case by the requesting Central Authority in iSupport as domestic violence case would automatically be mirrored by the system in the requested State. Philippe Lortie confirmed this stating that the requesting Central Authority will note in the application that revealing certain information could jeopardize the health or safety of a person. The categorisation of the case as a domestic violence case would be a “recommendation” of the requesting Central Authority, but not binding on the requested State. Concerning the Regulation set deadlines mentioned in points 8 and 9, Juliane Hirsch noted that these would be deadlines which upon the receipt of the application through the iSupport system would automatically start running. Equally, the deadline mentioned in point 13 would be set automatically by the system.

Convention – Incoming applications and requests for specific measures

9. Juliane Hirsch read out the items in the table of incoming applications and specific requests under the Convention (see Table 1.1.2 B) seeking comments from the Working Group. An expert from Canada stated that an additional column in the four tables could be added to indicate the functionality of iSupport concerning each step of the process. Juliane Hirsch agreed that this would indeed be very helpful. She explained that the exercise of reading through the tables was to establish a common understanding and that due to the limited time available it had not been possible for the iSupport team to prepare a more detailed list. She indicated that she would however, wherever feasible, relate in her oral description to the connected iSupport functionalities. She added that following the discussion of the tables she could give some further details on the matter.

10. Juliane Hirsch turned to point 11(1) in the table and recalled that the Convention provides for two different procedures for recognition and enforcement: Art. 23 - the standard procedure and Art. 24 - the alternative procedure. States when joining the Convention can declare that they want to apply the alternative procedure. Juliane Hirsch noted that should the country specific information of as reflected in its Country Profile be available “live” in iSupport the identification of the correct procedure can automatically be done by the system. She noted, however, that to her knowledge, the country profiles will not be available “live” in the first edition of iSupport and therefore the correct procedure will have to be identified manually by the caseworkers. Brigitte Voerman, Project Director of iSupport and Philippe Lortie confirmed this.

11. Concerning point 11(1)(b), Juliane Hirsch noted that the letter to the competent authority requesting the declaration of enforceability could be one of those available in the form of a general template. She recalled that it still had to be decided which main templates iSupport would provide to assist caseworkers in their work.

12. On point 11(2)(c), Juliane Hirsch noted that there was no equivalent tick box in the Regulation form for establishment and modification allowing the applicant to request a directly the enforcement of the established or modified decision. She took the occasion to inquire how the Central Authorities from EU Member States would proceed in these cases and, in particular, whether they would require the applicant to fill in a separate application for enforcement. An expert from Czech Republic indicated that they would use a very practical approach and would in informal communication with the applicant find out whether the applicant wishes the Central Authority to proceed directly to enforcement without an extra application. An expert from Finland pointed out that they follow the same approach. They proceed to the enforcement as soon as they have the indication that the applicant wishes so. An expert from the public body in Finland added, concerning cases

handled by his authority, that for modification decisions additional formal steps are necessary. No other EU State experts commented on the matter. Juliane Hirsch noted that iSupport should allow States to proceed with their informal approach in assisting creditors by proceeding directly from the establishment of the decision or its modification to its enforcement.

13. An expert from the Netherlands had a further question concerning the iSupport functionality of the Convention and Regulation deadlines mentioned earlier. She asked whether the 30 day or six week deadline once expired could be changed in the system.

14. Juliane Hirsch recalled the decisions taken on the matter of deadlines in earlier Working Group discussions. She recalled that there will be three types of deadlines. (1) Deadlines set by Convention and Regulation that cannot be changed. If these deadlines are not met it will be clearly visible. (2) Another type of deadline is the target date the manager can set. Target dates relate to all cases and can be set for all kind of actions including those for which the Convention or Regulation foresee a mandatory deadline. But with regard to the latter deadlines the target date can only set a deadline that equals or is shorter than the Convention or Regulation set deadline. (3) The last type of deadline is a caseworker deadline, which will allow caseworkers to prioritise amongst tasks concerning individual cases in their daily work. The caseworker deadlines also allow prioritisation of tasks which Convention / Regulation deadline or target date have expired. The caseworker deadline can go beyond the Convention or Regulation set deadline.

15. Upon a further question from the expert from the Netherlands, Juliane Hirsch confirmed that as soon as a certain action will be taken, for which the Regulation or Convention text defines as a starting point for a deadline, the deadline for the following action will start running automatically. Philippe Lortie noted that the system will replicate what is defined by law under the Convention and the Regulation. These deadlines will have to be complied with. He stated that iSupport will assist in working efficiently and managing resources. He noted that should a Central Authority become aware of considerable delays in a greater number of cases, clearly the need for further resources or reforms will have to be addressed. He highlighted the volume of cases will rise as more States begin using the 2007 Hague Convention.

16. Seeing that there were no other comments, Juliane Hirsch suggested to return to the request made by the expert from Canada adding a few more details on the functionality of iSupport in processing applications. She recalled an earlier Working Group decision on the functionality of iSupport in this context stating that iSupport will not force caseworkers to follow steps in a certain order. iSupport will provide help texts based on lists that will allow the caseworker to check that the necessary actions have been taken. The system will have validation processes, most importantly for the applications and related forms. The system will check whether all the necessary information is available to auto generate any given form and will tell the caseworker what information still needs to be completed in the system and where. The system will furthermore validate whether any of the necessary documents that are to be attached to a given application are missing.

17. Philippe Lortie confirmed that these will be the main validation processes lead out by the system but indicated that there will be some additional validations. For example, in case the functional iSupport number will contain the abbreviation of the requested State, the identification of that State in the system is necessary before the system can allocate the number. By contrast, in the overall casework the system will provide sufficient flexibility and will not impose work steps on the caseworkers. He highlighted, for example, the considerable differences in national enforcement law and the need for iSupport to be usable in connection with these different legal systems. He stated that depending on the enforcement means available, the caseworker will have to do what he / she can (wage garnishment, seize tax returns, etc.). This is at national law level and the iSupport system will provide useful general guidance, but will not force the caseworker to act in a certain way.

4. Other Items for Discussion

Transfer of funds

18. Juliane Hirsch suggested to use the remaining time for an initial discussion of the topic of transfer of funds. She asked which among the Central Authorities represented in the Working Group would get involved in the actual transfer of funds for incoming and / or outgoing applications.

19. Six experts, namely experts from Czech Republic, Germany, Latvia, the Netherlands, Norway and the United States of America, indicated that their Central Authorities facilitate the transfer of funds for incoming and outgoing applications. In addition, an expert from the public body in Finland stated that his authority gets involved in the transfer of funds concerning outgoing applications handled by his authority. An expert from Canada indicated that his authority was closely linked to the body facilitating the transfer of funds for outgoing and incoming applications. An expert from the NCSEA added that the British Columbia Central Authority even though not being the body making the transfers monitors payments closely.

20. Five experts, namely expert from Brazil, Estonia, France, Finland and Portugal, stated that they would at this stage not get involved in the transfer of funds. The expert from Brazil clarified that this was true for all current international maintenance cases handled by his authority, which excluded the New York Convention cases. He further stated that it was not yet decided how the 2007 Hague Convention would be implemented in detail.

21. Juliane Hirsch further inquired whether Central Authorities, that are involved in the transfer of funds, monitor payments. Experts from Brazil, Estonia, France Finland and Portugal indicated that they do not monitor payments on a regular basis. When a question on the status of payment arises they contact the competent enforcement body to obtain an update. Experts from France and Estonia indicated that their Central Authorities try to stay updated on the status of payments but that it is often difficult to get the information from the enforcement body.

22. Juliane Hirsch noted that given the large number of Central Authorities which are involved in the transfer of funds, it would be crucial for iSupport to provide for the possibility of monitoring funds. She noted that, as indicated by the experts, Central Authorities that are not involved in the transfer of funds collect some information on the payment status and would therefore benefit from a monitoring of payments section in iSupport. Juliane Hirsch explained that it was still to be discussed whether iSupport was to provide for a transfer of funds section. She noted that a number of States that are involved in the transfer of funds were using very elaborate electronic transfer systems and it was questionable whether these States would want to use an iSupport transfer of funds solution or would prefer to continue running their national solution alongside iSupport both being connected through an interface.

23. Philippe Lortie agreed and suggested to briefly explore with the experts present whether their Central Authority might make use of an electronic transfer system offered by iSupport. He first turned to the States currently not involved in the transfer of funds and asked whether they could make use of an iSupport transfer of funds system.

24. An expert from Estonia stated that her ministry does, at this moment, not handle funds in any case and that according to Estonian law the bailiff can only transfer money to an individual claimant not to an authority. She added, however, that currently thoughts are being given to the establishment of a maintenance fund so that Estonia might in the future have a public body. Thus, she noted that maybe in the future a transfer of funds system might be useful for Estonia.

25. An expert from the Central Authority of Finland noted that while the public body might welcome an iSupport transfer of funds system, it would not be useful for the Central Authority because her authority does not handle money at all.

26. An expert from Brazil stated that Brazil is still designing its systems and that it is still open how the 2007 Hague Convention will be implemented. He highlighted that, although at this very moment his authority does not get involved in the transfer of funds, it is not to be excluded that Brazil would make use of a transfer of funds functionality available in iSupport. An expert from Canada tentatively echoed Brazil's comments. The experts from France and Portugal both indicated that using a possible iSupport transfer of funds functionality would be very complicated. The expert from France noted that the legal ramifications would have to be discussed.

27. Juliane Hirsch turned to the group of Central Authorities currently involved in the transfer of funds and asked them about their prospects of using an iSupport transfer of funds system. An expert from the public body in Finland noted that his authority currently experiences problems concerning payments with certain States and that an added value of an iSupport transfer of funds system would be the overcoming of these difficulties. An expert from Canada pointed out that the notion of a "transfer of funds system" still needed to be defined more precisely.

28. An expert from the United States of America stated an interest in using an iSupport transfer of funds system. She, however, noted that it would depend on how the system would be structured. She explained that when talking about the transfer of funds there are two components: (1) data component with details on the payment and (2) the actual transfer of funds. She suggested thinking about the matter in a two-step process. She detailed that in her view the data component may initially be more important for iSupport since the data component will assist States in the monitoring of transfers which is a matter crucially important for all Central Authorities involved in the transfer of funds.

29. An expert from Czech Republic agreed with the expert from the United States of America. She noted that the status of payment is a very common question from clients. It would be helpful to have the information whether the payment is transferred, even if it was not transferred through iSupport.

30. Juliane Hirsch thanked the experts for the fruitful discussions and apologised for running a few minutes over time.

5. Next videoconference – 5 March 2015, 15h00 UTC (16h00 ETC)

31. Philippe Lortie reminded the experts that the next meeting will take place on 5 March at 15h00 UTC (16h00 ETC). He thanked all the experts for their very useful contributions and comments and closed the meeting at 17h35 ETC.