

**First meeting of the Special Commission on the practical operation of the  
 2007 Child Support Convention and on the 2007 Protocol on the Law Applicable to  
 Maintenance Obligations - June 2020**

<b>Document</b>	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 2 of August 2019
<b>Title</b>	Questionnaire on the practical operation of the <i>Protocol of 23 November 2007 on the Law applicable to Maintenance Obligations</i>	
<b>Author</b>	Permanent Bureau	
<b>Agenda item</b>		
<b>Mandate(s)</b>	C&R No 28 of the March 2019 meeting of the Council on General Affairs and Policy	
<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.	
<b>Related documents</b>	Prel. Doc. N° 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>	

## 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”), tentatively to be held in The Hague in June 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](http://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>	Germany
<i>For follow-up purposes</i>	
Name of contact person:	
Name of Authority / Office:	Bundesamt für Justiz/Federal Office of Justice (Central Authority)
Telephone number:	
E-mail address:	auslandsunterhalt@bfj.bund.de

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:  
Please insert text here
- b. As regards the definition of a parentage relationship?
- No
- Yes, please specify:  
Please insert text here
- c. As regards the definition of a marriage relationship?
- No
- Yes, please specify:  
Please insert text here
- d. As regards the definition of a registered-partnership relationship?
- No
- Yes, please specify:  
Please insert text here

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

e. As regards the definition of an affinity relationship?

No

Yes, please specify:

Please insert text here

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:

Issues have occurred with regard to legal institutes that contain elements of maintenance as well as of other property claims, such as matrimonial property or compensation for personal suffering in connection with the divorce.

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:

Specifically concerning the preliminary question of parentage, the Federal Court of Justice of Germany has yet to rule on this matter, i.e. if the law designated by the Protocol or the law designated by the generally-applicable rules of conflict of laws is applicable. This is why there is no uniform approach by German courts.

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:

German courts are required to determine and apply the contents of foreign law ex officio. However, this is regularly connected to in-depth research on the applicable foreign law which may include contacting - if applicable - the National Contact Points of the European Judicial Network or the International Hague Network of Judges or ordering an expert opinion on the contents of the foreign law. Germany strives for a high expertise of courts by establishing centralised

jurisdiction for international maintenance cases and therefore a specialization of the judges handling these cases.

### 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:

Issues arise in certain constellations that make it difficult to define the creditor's habitual residence, i.e. child abduction, creditor studying/working abroad for a limited period of time, creditor with two equal residences,...

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

Please specify :

According to the case law of the ECJ an autonomous definition is required.

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:

Determining the creditor's habitual residence has sometimes proven impossible in cases of child abduction, where it was unclear whether a habitual residence was established at the place the child was abducted to or whether the habitual residence remained with the left-behind parent. Another scenario that might make it impossible to determine the habitual residence concerns cases where the duration of a stay is unclear (habitual residence vs. temporary residence).

### 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:  
 The ECJ ruling of 7 June 2018 in case C-83/17 suggests an extensive application of Art. 4(2) which may lead to forum shopping.

#### 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:

The party raising the objection of Art. 5 has to prove the requirements which often causes problems.

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:

The definition of "closer connections" may be difficult especially in cases set in a border region in which the spouses work in one State but live in another or in cases in which the spouses have lived in several States together.

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

The "closer connections" are determined individually for each case; if it is unclear the courts might fall back on the current habitual residence.

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:

A common residence can easily be created, but it can prove difficult to define the moment in time when it becomes "habitual".

## 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:

The special rule of defence of Art. 6 is rarely invoked. When it is, German courts are required to determine the contents of the foreign-law (see question 2) and compare it to the applicable law.

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:

Please insert text here

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:  
[Please insert text here](#)

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:  
[Please insert text here](#)

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

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:  
[Please insert text here](#)

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:

[It is unclear whether to rely on the effective or the ineffective nationality.](#)

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

[In most cases the effective nationality is given priority.](#)

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:

[Please insert text here](#)

## 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:

[It is unclear whether limitation periods for enforcement/execution of a decision and forfeiture fall within the scope of Art. 11 and are therefore governed by the law designated by the Protocol.](#)

## 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:

[Regarding Art. 18, there is disagreement whether the Protocol should also prevail with regard to Contracting States to the Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations and the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children that are not Contracting States to the Protocol.](#)

**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](#)

**PART III – FOR THE ATTENTION OF CONTRACTING PARTIES AND NON-CONTRACTING PARTIES**

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:

[Amendment of a decision](#)

- Which law governs the requirements for the possibility to request an amendment (lex fori or the law designated by the Protocol)?
- Are additional requirements for the amendment of a decision (apart from the change of the habitual residence) necessary to limit the possibility of forum shopping (e.g. change in financial circumstances)?

**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](#)