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GOVERNANCE ISSUES IN RELATION TO ISUPPORT

drawn up by the iSupport team

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QUESTIONS DE GOUVERNANCE RELATIVES À ISUPPORT

établi par l'équipe iSupport

(DISPONIBLE EN ANGLAIS UNIQUEMENT)

*Information Document No ?? of February 2015 for the attention
of the Council of March 2015 on General Affairs and Policy of the Conference*

*Document d'information No ?? de février 2015 à l'attention
du Conseil de mars 2015 sur les affaires générales et la politique de la Conférence*

**Draft Information Document for the attention
of the 2015 Council on General Affairs and Policy**

Governance issues in relation to iSupport

1. During the initial stages of the iSupport project¹ *i.e.*, the project to develop an electronic case management and secure communication system for the EU 2009 Maintenance Regulation² and the 2007 Hague Child Support Convention,³ States participating in the project recommended discussing as soon as possible governance issues relating to iSupport, if possible, before the issuance of a tender, for the development of the software and its maintenance, which is contemplated by the end of April 2015.⁴

2. The purpose of this document is to inform the Council on General Affairs and Policy of the Hague Conference on Private International Law of the conclusions and recommendations reached so far by the iSupport Tender, Maintenance and Governance Working Group under the advice formulated by the iSupport Advisory Board at its meeting of 4-5 December 2014.⁵

1. Ownership

3. It is important to note from the outset that States participating in the iSupport project have recommended developing an open source system.⁶ Notwithstanding this, the issue of "ownership" is relevant with regard to the transfer of property rights from the developer to the owner in particular in relation to source codes, their management and modifications.

4. The issue of ownership of iSupport is governed by the Grant Agreement concluded between the Hague Conference on Private International Law (hereinafter, "the Hague Conference") and the European Commission on 2 July 2014.⁷

5. Further to summer 2014 consultations with the European Commission, in the light of *Grant Agreement Article 1.7* and *General Conditions 11.8.1 and 11.8.3*,⁸ the European Commission indicated to the Hague Conference that the European Union did not intend to use iSupport *per se*.

¹ Additional information on the iSupport project is available on the Hague Conference website at < www.hcch.net > under the "iSupport" specialised section.

² EC Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations (hereinafter "the EU 2009 Maintenance Regulation").

³ The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (hereinafter "the 2007 Hague Child Support Convention").

⁴ The intention is to issue a draft tender for comments by the end of March 2015 and to issue a final tender by the end of April 2015.

⁵ A copy of the Report of the 4-5 December 2014 Meeting of the iSupport Advisory Board is available under the "iSupport" specialised section, *supra* note 1, under "Key documents". See in particular paras 65-80 of the Report.

⁶ The rights and obligations relating to the open source nature of the software will be described in the call for tender document.

⁷ The relevant provisions of the Grant Agreement are reproduced in Annex A to this Information Document. It is important to note that the provisions that appear in Annex A are taken from a model agreement usually meant for paper deliverables and not necessarily for a software deliverable like iSupport.

⁸ *Ibid.*

6. Upon completion of the development of iSupport and in accordance with the contract for development, the developer would transfer to the Hague Conference and the other Action Grant beneficiaries the property rights concerning iSupport.

7. It is important to note that the Grant Agreement only provides for the right to use iSupport. Whilst it is understood that property rights include the right to modify the system, in the interest of safeguarding the harmonised operation of iSupport between users (*i.e.*, States) and with a view to promoting a collaborative approach between users in an open source environment, consideration has been given to the development of processes and procedures for an iSupport Governing Body to make decisions on the modifications and evolution of the source codes of iSupport (see under 5 below).⁹ This would include providing processes and procedures for the types of modifications that may not need the approval of an iSupport Governing Body.¹⁰ It is understood that any State implementing iSupport would have to abide to these processes and procedures.

2. Governing Body – Composition

8. States / REIOs¹¹ having an interest in iSupport should have a representative on the Governing Body.¹² This would be:

- States / REIOs that have implemented and which operate iSupport
- States / REIOs that are contributing financially or technically (in kind) to iSupport
- States / REIOs bound by the 2007 Convention or about to be bound (which have signed the Convention) but which are not using iSupport yet – as observers
- One representative from e-CODEX¹³ – as observer
- At least one representative of the Service Provider – as observer(s)
- At least one representative of the Permanent Bureau

3. Governing Body – Decision-making procedure

9. In accordance with the Hague Conference decision-making practice for meetings, the sessions of the Governing Body shall, to the furthest extent possible, operate on the basis of consensus (see Art. 8(2) of the Statute of the Hague Conference).

4. Governing Body – Timing of implementation

10. During the iSupport project, from 1 September 2014 until 31 August 2016, the Hague Conference is responsible in accordance with the Action Grant Agreement and applicable European Union Rules for carrying out the project. The iSupport team has

⁹ See the Draft General Description of the iSupport Maintenance Services in Annex B [to be included once discussed by the Working Group].

¹⁰ These would be modifications that would have a local effect only in comparison to modifications that would have a global effect for all iSupport users.

¹¹ Regional Economic Integration Organisations.

¹² If overtime the Governing Body was to become so large that it would affect its proper functioning then considerations could be given to the adoption of rules and criteria to reduce its size whilst ensuring a just and fair representation of the States using iSupport.

¹³ e-CODEX is the open source secure communication system that could be used in the iSupport project. A decision to use e-CODEX will be taken before the end of February 2015. Additional information about e-CODEX is available under the e-CODEX website at < www.e-codex.eu > and under the “iSupport” specialised section, *supra* note 1, under “Secure Communications (e-CODEX) Working Group (3)” then “Documents for 12 January 2015 Meeting”.

been put in place for that purpose in accordance with the Action Grant Agreement. It is assisted by an Advisory Board and subject matter expertise Working Groups also in accordance with the Action Grant Agreement.

11. As a result, a Governing Body will have to be put in place by 1 September 2016.

5. Governing Body – mandate

12. The Governing Body, or a sub-group of the Governing Body,¹⁴ depending on the circumstances, will be mandated by the owner of the property rights (*i.e.*, the Hague Conference) to manage these rights which would include, for example:

- Taking decisions on how to address an important and urgent malfunctions that affect the system;
- Taking decisions on system or configuration modification requests made by users, the Permanent Bureau and / the service provider;
- Review Permanent Bureau and service provider Service Level Reports on the implementation and operation of iSupport; and,
- Take decisions on the implementation and maintenance of iSupport on the basis of these reports (*e.g.*, SLA (Service Level Agreement), service provider fees, major changes).

13. The Governing Body will need to adopt Guidelines / Procedures / Rules concerning the exercise of its mandate, for example:¹⁵

- Procedures that should be followed by a sub-group of the Governing Body when a malfunction needs to be urgently addressed (*e.g.*, an “escalation Change Advisory Board”¹⁶ including members of the Governing Body, a representative of the Permanent Bureau and of the Service Provider); and,
- Procedures that should be followed when a system or configuration modification, whether local or global,¹⁷ request is made (including the description of the different categories of requests and the setting-up of a prioritisation scheme).

14. Furthermore the Governing Body will:

- Adopt a budget plan for the following year.
- Set the Financial contributions of users.
- Take decisions as to the selection of service providers for post-development, installation and maintenance (including helpdesk, updates and upgrades) of iSupport.
- Report on an annual basis to the Council on General Affairs and Policy of the Hague Conference.

6. Supplementary resources to assist the Governing Body and support the iSupport project

¹⁴ See examples of sub-groups such as Change Advisory Board (hereinafter “CAB”) or escalation Change Advisory Board (hereinafter “eCAB”) in the Draft General Description of the iSupport Maintenance Services in Annex B [to be included once discussed by the Working Group].

¹⁵ Consideration should be given to adopt interim versions of these processes and procedures for the purpose of the tender. They could be then adopted at the first meeting of the Governing Body. See the Draft General Description of the iSupport Maintenance Services in Annex B [to be included once discussed by the Working Group].

¹⁶ See *supra* note 14.

¹⁷ See *supra* note 10.

15. Depending on the number of States that implement iSupport, the number of requests for installation assistance, the required promotion efforts and the funding available, it is recommended in principle to consider the hiring of a part-time experienced lawyer with maintenance obligations experience and a part-time IT Co-ordinator with IT maintenance and implementation knowledge and experience (both paid by the States using iSupport), or a combination of both, to promote and assist with the effective and harmonious implementation of iSupport as well as the 2007 Convention and Protocol in the different States. Both individuals would also provide support to the Governing Body (*e.g.*, maintaining all documentation and communications, and chairing the meetings of the Advisory Board), liaise with members of the Governing Body, States that have implemented iSupport and the service provider looking after iSupport (see under 7 below). In addition, both individuals would look for funding opportunities. Until the completion of the project (August 2016) the iSupport team will assume this role.

7. Service provider

16. The Hague Conference would hire the services of a service provider through an international tender for both implementation and maintenance (including helpdesk, updates and upgrades) of iSupport. This would reduce the necessity of procurement at the national level for the same services. The default invoicing by the service provider would be to the Permanent Bureau with the option for the service provider to invoice the States directly.

17. It will be important to ensure that States already equipped with systems keep a certain flexibility in particular with regard to the implementation and maintenance of their local databases by their own service providers. It will be important to provide for clear channels of communications between the iSupport service provider and the national service providers involved.

18. The service provider would prepare and keep updated a list of requests for changes available in real time to the Permanent Bureau.¹⁸ The service provider will also keep a record of all modifications and enhancements that have been implemented.¹⁹ The service provider will also prepare estimates for costs of changes and prepare Service Level Reports including budget and financial items for the purpose of the Permanent Bureau and the Governing Body.

8. Implementation Costs

19. After 31 August 2016, each State will be responsible for the cost of implementing iSupport and e-CODEX²⁰ in their own State. The States could use the service provider retained by the Hague Conference for this work. States that already have contracts with service providers to install systems in their jurisdictions could install iSupport using these services providers. Again, it will be important to provide for clear channels of communications between the iSupport service provider and the national service providers involved.

¹⁸ See Annex B under Request for Change (RfC).

¹⁹ See Annex B under Knowledge Management.

²⁰ See *supra* note 13.

20. During the pilot phase, installation costs, with the exception of hardware and network, would be covered as far as possible, depending on the funding left, by the iSupport project.

9. Service provider fees – maintenance and support

21. With a view to provide for fees as predictable and transparent as possible to allow States to budget as far as possible in advance, the Hague Conference would contract for a fixed annual amount of support (this is usually a set number of incidents per year such as updates, upgrades, helpdesk requests, etc.) at so many euros per incident. The iSupport budget would be prepared by the iSupport Co-ordinator and approved by the Governing Body. Unused budget from one year could be carried over to the next year for the implementation of upgrades.

22. This amount plus the costs (*i.e.*, salary, travel expenses, etc.) for the iSupport Lawyer and IT Co-ordinator, would be divided by the number of units (UPU) of all States operating iSupport.

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23. If a State implements iSupport in the middle of the financial year, the fees will be allocated on a pro rata basis using the number of days that iSupport will be operational that year. These funds would be kept in a reserve fund for major upgrades of the system.

10. Future Funding

24. During the coming weeks / months the iSupport team will make some inquiries / research with regard to possible operation grants or other sources of funding.

ANNEX A

**Extracts of ownership related provisions from
the Grant Agreement
concluded between**

**the Hague Conference on Private International Law
and
the European Commission**

on 2 July 2014

Grant Agreement I.7 *"The Union shall have the rights of use specified in the General Conditions and in points above for the whole duration of the industrial or intellectual property rights concerned".*

General Conditions II.8.1 *"(...) Ownership of the results of the action, including industrial and intellectual property rights, and the reports and other documents relating to it, shall be vested in the beneficiaries.*

General Conditions II.8.3 *"(...) the beneficiaries grant the Union the right to use the results of the action for the following purposes :*

- (a) Use for its own purposes, and in particular, making available to persons working for the Commission, other Union institutions, agencies and bodies and to Member States institutions, as well as, copying and reproducing in whole or in part and in unlimited number of copies*
- (b) Distribution to the public, and in particular, publication in hard copies and in electronic or digital format, publication on the internet, including on Europa website, as a downloadable or non-downloadable file, broadcasting by any kind of technique of transmission, public display or presentation, communication through press information services, inclusion in widely accessible databases or indexes;*
- (c) Translation*
- (d) Giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation (...) 2001 (...);*
- (e) Storage in paper, electronic or other format;*
- (f) Archiving in line with the document management rules applicable to the Commission*
- (g) Rights to authorise or sub-licence the modes of exploitation set out in points b. and c. to third parties"*

ANNEX B

Draft General Description of the iSupport Maintenance Services