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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 Tender, Maintenance and Governance Working Group (5) - 26 January 2015 Meeting

Report of Meeting n° 1

List of Participants

Experts	iSupport Team
John AXIAK (Malta) Leo de BAKKER (The Netherlands) Alisha GRIFFIN (United States of America) Hannah ROOTS (NCSEA) Eduardo SPANO JUNQUEIRA DE PAIVA (Brazil) Thomas STEIMER (Switzerland) - Excused	Philippe LORTIE (Chair) Brigitte VOERMAN Marie VAUTRAVERS

I. OPENING OF THE MEETING

1. Philippe Lortie, First Secretary, welcomed all experts to the Meeting of the Tender, Maintenance and Governance Working Group.
2. Philippe Lortie explained the role of the Tender, Maintenance and Governance Working group which is to analyse and take decisions on tender, maintenance, deployment, governance and business model issues for the drawing up of a tender in the context of the development of the iSupport electronic case management and secure communication system.

II. WORKING GROUP (5) TENTATIVE WORK PROGRAMME

3. He provided a short overview of the work programme of the Working Group, as it was specified in the agenda of the meeting, and indicated that the Working Group would discuss the tender for development and maintenance, governance and business model issues, a description of services and a deployment plan. He stressed the importance of transparency and predictability throughout the tender procedure. He noted that the Permanent Bureau would draft a document to the attention of the Council of General Affairs and Policy, which is the governing body of the Organisation comprised of representatives from the 78 Member States, in order to inform them about the governance issues in relation to the iSupport project. A draft note would be prepared as soon as possible after the meeting and circulated for comments before the next meeting of the Working Group.

III. SUCCESSIVE TENDERS FOR DEVELOPMENT / TENDER FOR MAINTENANCE OR BOTH

4. Philippe Lortie proposed the following alternatives: either an invitation to tender for the development of the system would be issued separately in a first phase (before the maintenance part in a second phase), or both invitations to tender would be issued simultaneously enabling the same company or two associated companies to bid at the same time. He noted that the Advisory Board strongly recommended issuing both invitations to tender at the same time in order to obtain a higher commitment from the developer by involving the developer in the maintenance, and to encourage synergy between development and maintenance actors. It was noted that this option was supported by the European Commission.

5. An expert from the Netherlands mentioned the uncertainty about the number of States that may implement iSupport, and stated that the maintenance costs, for example, would be directly linked to the number of participating States. This would affect matters like the number of time zones to cover when it comes to providing 24/7 services. He therefore asked whether this uncertainty might prevent the organization from awarding a procurement for maintenance at such an early stage.

6. Philippe Lortie recognised the relevance of this issue and the general need for flexibility. He indicated that the issue of 24/7 services will be addressed during the next meeting of the Working Group. He underlined that the comment from the expert of the Netherlands was a valid one at any given time, not just now, since the number of implementing States will keep changing throughout the duration of the project and beyond. He stated that the maintenance costs would rise proportionally to the number of States implementing iSupport. He therefore suggested providing for a number of incidents per Country in the call for tender with a view to anticipating the growth in users.

7. In response to a question from an expert with regard to resolving maintenance issues during the development phase, Philippe Lortie indicated that many issues would be resolved before the maintenance phase, during the development and piloting phase. In that respect, he noted that the maintenance contract would be signed after the development contract and no sooner than 2016.

8. An expert from the United States of America expressed her full support on that proposal and pointed out that two different companies in charge of the maintenance and the development might create a situation where each tries to shift responsibility to the other. She suggested awarding a contract for both development and maintenance at least for a couple of years, which would offer the possibility of issuing a new invitation to tender for maintenance a few years later. She suggested inviting bidding companies to define a price for each future add-ons to the system and also to specify upfront the costs of the helpdesk depending, for example, on the number of calls.

9. Philippe Lortie added that the Advisory Board had recommended contract duration of four to five years, which would provide for a larger margin in relation to any possible investment.

IV. GOVERNANCE AND BUSINESS MODEL ISSUES FOR DISCUSSION / DECISION

Ownership

10. Philippe Lortie recalled that the Advisory Board had recommended developing an open source system, which would therefore not be the object of property rights. Notwithstanding this, it still makes sense for practical purposes to use the term “ownership”. He explained that any change of source code by a State would have to be reported to the Permanent Bureau and the service provider, with a view to properly transferring that knowledge and information. Modifications to source codes that may affect the global operation of iSupport would have to be approved by a Governing Body. However, he stated that source code changes that did not affect the operation of iSupport globally could be changed without any prior approval (modification of an internal template for instance) but it was still important to report and document those changes. This would facilitate the work of the Permanent Bureau and assist the service provider if they were called upon to fix a problem or if the maintenance contract were to be transferred from one service provider to another.

11. Philippe Lortie mentioned that the Hague Conference (comprised of 78 Members) would own the software. He suggested creating a Governing Body that would decide on any necessary modifications (updates and upgrades). The Governing Body would be comprised of States that had implemented and were operating iSupport, as well as States that had contributed financially or technically to the project. He also advised that States that were bound or about to be bound by the 2007 Convention (*e.g.*, in the ratification process) should attend meetings of the Governing Body as “observers”. Since the Hague Conference decision-making practice relies on consensus, the presence of observers could play an important role during the discussions. He also stated that it would be appropriate to invite a representative of e-CODEX and to consider the possibility of a representative of the Hague Conference as part of the e-CODEX Governing Body, in anticipation of possible source code modifications to that part of the system.

Governing Body – Time of implementation

12. Philippe Lortie underlined the role of the Advisory Board in assisting the iSupport team. He observed that the Advisory Board composition was at this time rather similar to the composition of the future Governing Body. He advised that the Governing Body should be in place by September 2016, regardless of the future funding of the project (*e.g.*, European Union or participating States).

Governing Body – Mandate

13. Philippe Lortie set out the following responsibilities that could be contemplated for the Governing Body:

a) Take decisions on addressing important and urgent malfunctions that affect the system. In that respect he stressed the need for a timely response to urgent issues. He accordingly suggested setting up a smaller task group with the necessary expertise within the Governing body.

b) Take decisions on system or configuration modification requests made by users, the Permanent Bureau and the service provider. He suggested providing a policy document on

the decision-making and prioritizing processes to ensure that all concerned persons are involved and that new issues are addressed using an appropriate method for priority-setting.

c) Review Permanent Bureau and service provider Service Level Reports on the implementation and operation of iSupport. In that respect, Philippe Lortie recommended that the service provider should provide the Governing Body regular reports on the implementation and operation of the system. This report should include a detailed list of the difficulties experienced and the appropriate resolutions.

d) 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 updates and upgrades).

14. Philippe Lortie recommended adopting Guidelines / Procedures / Rules concerning the exercise of this mandate including, *inter alia*, the procedures and conditions for an “escalation team”. This would include members of the Governing Body, a representative of the Permanent Bureau and of the service provider, and would become involved when a malfunction needs to be urgently addressed. He also suggested developing detailed rules concerning, for example, how modification requests should be submitted, and the expected frequency of meetings of the Governing Body.

15. Philippe Lortie indicated that the Governing Body would adopt a budget plan for the following year, set the financial contributions of users and take decisions as to the selection of service providers for post-development, installation and maintenance (including helpdesk, updates and upgrades) of iSupport. He added that the Governing Body would ultimately report on a yearly basis to the Council on General Affairs and Policy of the Hague Conference on Private International Law.

16. A participant from the United States of America expressed her support with those suggestions, and stressed the need to specify some of those expectations in the tender. She also suggested drafting detailed procedures and designating key people in each organisation to effectively and quickly handle urgent matters.

iSupport Legal Officer and IT Coordinator

17. Philippe Lortie mentioned the existence of possible European operating grants, which would provide partial financing for a period of up to 5 years. Under these circumstances, he underlined the need to have proper resources to promote iSupport, to possibly provide training, to bring about effective and harmonious implementation of the system in the different States, and to ensure effective relations with the service provider with regard to the implementation and operation of the system. In that respect it was pointed out that the growth of the implementation of iSupport would be in the best interest of all participants and investors. He further explained that the legal officer would be in charge of maintaining the documentation, drafting agendas, and preparing for meetings of the Governing Body, in addition to looking for funding opportunities, and maintaining an effective relationship with the service provider.

Service provider

18. Philippe Lortie raised the issue of the compliance with the national obligations of States in relation to the call for tender regarding the maintenance of the system. In that respect, the Advisory Board recommended that the Hague Conference hire the services of a service provider through an international tender. This would then reduce the necessity of procurements 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.

19. On the other hand, Philippe Lortie stressed the need of States already equipped with an electronic system to keep a certain flexibility in particular with regard to the implementation and maintenance of the local databases by their own service provider. He stressed the need for communication between the iSupport service provider and the national service provider in that area.

20. Philippe Lortie stated that the service provider would prepare and keep updated a list of requests for updates and upgrades (*i.e.*, modifications and enhancements). This would be available in real time to the Permanent Bureau. The service provider would also keep a record of all modifications and enhancements that had been implemented. The service provider would also prepare estimates for costs of updates and upgrades and prepare Service Level reports including budget and financial items for the Permanent Bureau and for the Governing Body.

Implementation Costs

21. Philippe Lortie indicated that the implementation costs are likely to vary from one State to another. He reminded the experts that no development costs would be charged to participating States during the piloting phase of iSupport in relation to e-CODEX, thanks to the assistance and contribution by the Ministry of Justice of Austria and ITTIG to the project. He recalled that any hardware costs would be the responsibility of participating States. He stated that during the maintenance phase (after 31 August 2016), each State would be responsible for the cost of implementing iSupport and e-CODEX in their own State. The State would have the opportunity to 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 can install iSupport using these services providers. It was however noted that the maintenance costs would be shared amongst users.

Service provider fees – Maintenance and support

22. Philippe Lortie stressed the importance of developing a fee that is as predictable and transparent as possible. He explained that this would enable the companies to bid on an equal basis. He further underlined the general need by governments to prepare their budgets several months in advance. He suggested the contract would be for a fixed annual amount of support. This could be based on a set number of incidents per year (including updates, upgrades, helpdesk requests, etc.) at a given cost in euros per incident. He suggested that the iSupport budget would be prepared by the iSupport Coordinator and approved by the Governing Body. Any unused budget surplus from one year could be carried over to the next year for the implementation of upgrades.

23. With regard to the method for allocation of costs, Philippe Lortie presented two possibilities. He mentioned the possibility of costing based on the number of cases or applications per State, but pointed out the difficulty in collecting clear and updated information in that respect. He therefore suggested that the maintenance and support costs could be divided by the number of units (UPU) of all States operating iSupport. He explained that the Universal Postal Union system is based on the size of the population, the size of the State, and some economic growth indexes. He suggested circulating a document explaining the number of units per State.

Possible future EU funding

24. Philippe Lortie indicated that contacts with European Commission representatives would take place in April 2015 in order to discuss possible European funding and pointed out that the call for operation grants corresponding with the implementation phase would probably be published in November 2015 or February 2016.

25. Philippe Lortie explained that an information note to the Council on General Affairs and Policy reporting on the Working Group discussions would be drafted and distributed next week and he invited all experts to provide comments.

V. OUTLINE OF SERVICES FOR GENERAL DISCUSSION

26. Philippe Lortie gave a short overview of the anticipated service provider services. It was agreed to set up a helpdesk that would be available during operational hours of the clients, taking into account the different time zones.

27. A discussion was initiated with regards to incident, problem, configuration and change management. An expert from the United States of America stressed the need to be specific about timelines, notifications, timelines for fixing and, above all, documentation. She also stressed the importance of clearly specifying the expectations for replacement of hardware from any equipment failure, permitted downtime, and restoration of services, to ensure a quick response from the service provider.

VI. OTHER ITEMS FOR DISCUSSION

27. Philippe Lortie invited all experts to share any documents that could be used for the drawing up of the future tender, including specific contractual clauses and documents related to tenders for development or maintenance.

28. Philippe Lortie suggested rescheduling the meeting that was initially planned for 12 March 2015 to 19 March 2015.

29. In closing, Philippe Lortie welcomed any further contributions before the next meeting with regard to non-addressed issues.