



Project co-funded by the  
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) Monday 26 January 2015, 15h00 UTC (16h00 ECT)**

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#### **iSupport Business Model Working Paper**

What follows are ideas to facilitate the discussion of the 26 January 2015 Meeting of the Tender, Maintenance and Governance Working Group.

#### **1. Ownership**

The issue of ownership of iSupport is governed by the Grant Agreement concluded between the Hague Conference on Private International Law and the European Commission on 2 July 2014. The relevant provisions are copied below.

It is important to note that the provisions that follow are taken from a model agreement usually meant for paper deliverables and not necessarily for a software deliverable like iSupport.

**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”

Further to summer 2014 consultations with the European Commission in the light of *Grant Agreement Article I.7* and *General Conditions II.8.1 and II.8.3*, the European Commission indicated to the Hague Conference that the European Union did not intend to use iSupport *per se*.

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 intellectual property rights concerning iSupport. In essence that is the Hague Conference on Private International Law (including all its Members), CCBE, ITTIG and the UIHJ.

It is important to note that the Grant Agreement only provides for the right to use. It is silent with regard to the right to modify. 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, consideration should be given to the development of processes and procedures for the Governing Body to make decisions on the modifications and evolution of the source code of iSupport (see under 4 below). This would include providing for the types of modifications that may not need the approval of the Advisory Board.

## **2. Governing Body - composition**

States / REIOs<sup>1</sup> having an interest in iSupport should have a representative on the governing body. This could be:

- States / REIOs that have implemented and which operate iSupport
- States / REIOs that are contributing financially or technically (in kind) to the project
- States / REIOs bound by the 2007 Convention or about to be bound (which have signed the Convention) – as observer
- One representative from e-CODEX

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<sup>1</sup> Regional Economic Integration Organisations.

### **3. Governing Body – time of implementation**

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 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.

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

### **4. Governing Body – mandate**

- The Governing Body will be mandated by the owner of the intellectual property rights (*i.e.*, the Hague Conference on Private International Law) to manage these rights which would include, for example:

- Taking decisions on how to address an important and urgent malfunction that affects 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
  - 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).
- The Governing Body will need to adopt Guidelines / Procedures / Rules concerning the exercise of its mandate, for example:
- Procedures that should be followed when a malfunction needs to be urgently addressed (*e.g.*, an “escalation team” including members of the Governing Body, a representative of the Permanent Bureau and of the Service Provider)\*
  - Procedures that should be followed by the Governing Body when a system or configuration modification request is made (including the description of the different categories of requests and the setting-up of a prioritisation scheme)\*
- The Governing Body will adopt a budget plan for the following year
- The Governing Body will set the Financial contributions of users
- The Governing Body will take decisions as to the selection of service providers for post-development, installation and maintenance (including helpdesk, updates and upgrades) of iSupport
- The Governing Bodu will report to the Council on General Affairs and Policy of the Hague Conference on Private International Law

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\* 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.

## **5. iSupport Lawyer and IT Co-ordinator**

Depending on the number of States having implemented iSupport, the number of requests for installation assistance and the required promotion efforts, consideration is being given to hiring a part-time<sup>2</sup> experienced lawyer with maintenance obligations experience and a part-time IT Co-ordinator<sup>3</sup> 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 implementation of iSupport, the 2007 Convention and Protocol. Both individuals would also support 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 6 below). Until the completion of the project (August 2016) the iSupport Team will assume this role.

## **6. Service provider**

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 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.

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

## **7. Implementation Costs**

Each State will be responsible for the cost of implementing iSupport and e-CODEX in their own State. The State can 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.

## **8. Service provider fees – maintenance and support**

With a view to provide for fees as far as possible in advance 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 Coordinator and approved by the Governing Body. Unused budget from one year could be carried over to the next year for the implementation of upgrades.

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<sup>2</sup> Depending on the circumstances between 0.5 and 0.8 FTE.

<sup>3</sup> Depending on the circumstances between 0.5 and 0.8 FTE.

This amount plus the costs (i.e. salary, travel expenses, etc.) for the iSupport Lawyer and IT Coordinator, would be divided by the number of units (UPU) of all States operating iSupport. Using the number of files, cases or applications as a basis is not perfect since at the beginning we may not know exactly the number of files falling under iSupport and the number of files used two years ago may not correspond to the number of files today.

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 in a reserve fund for major upgrades of the system.

## **9. Future EU Funding**

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