

**COMPILATION DES COMMENTAIRES  
RELATIFS AUX DOCUMENTS PRÉLIMINAIRES  
NOS 2A, 2B, 3, 4, 5 ET 6**

*établie par le Bureau Permanent*

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**COMPILATION OF COMMENTS  
ON PRELIMINARY DOCUMENTS  
NOS 2A, 2B, 3, 4, 5 AND 6**

*drawn up by the Permanent Bureau*

*Document préliminaire No 9 de novembre 2009 à l'intention  
de la Commission spéciale de novembre 2009 sur la mise en œuvre de  
la Convention de 2007 sur le recouvrement des aliments et  
du Protocole de 2007 sur la loi applicable aux obligations alimentaires*

*Preliminary Document No 9 of November 2009 for the attention  
of the Special Commission of November 2009 on the implementation of  
the 2007 Child Support Convention and of  
the 2007 Protocol on the Law Applicable to Maintenance Obligations*

**COMPILATION DES COMMENTAIRES  
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**COMMENTAIRES RELATIFS  
AUX DOCUMENTS PRÉLIMINAIRES NOS 2A ET 2B**

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**COMMENTS ON  
PRELIMINARY DOCUMENTS NOS 2A AND 2B**

## **I. COMMENTAIRES GENERAUX /GENERAL COMMENTS**

### **Australie / Australia**

We would like to thank the Forms Working Group for their research and consideration of country requirements in the preparation of these documents.

Our Australian working group member, Mr Simon Kay, has confirmed that previous feedback has been well considered and incorporated into these documents.

### **Communauté européenne / European Community**

The European Community congratulates the Forms Working Group on its work of high quality. It believes that the recommended forms will be important in practice and will considerably facilitate the application of the Convention. The use of tick boxes, medium neutral language and uniform structure is appreciated.

### **États-Unis d'Amérique / United States of America**

The United States commends the Forms Working Group for its outstanding work. Standardized forms provide many benefits. They ensure that applications and supporting documents contain the Convention required information. They assist competent authorities because necessary information will be in the same location and in the same format, regardless from which Contracting State the form comes. We especially appreciate how the Working Group has designed the forms so that a minimum of narrative information is needed; the use of tick boxes will reduce translation costs and facilitate the electronic transmission of the forms.

The Forms Working Group has benefitted from the leadership of co-chairs Sheila Bird and Zoe Cameron of Australia, The Honorable Shireen Fisher of the IAWJ, and currently Anna Svantesson of Sweden and Meg Haynes of the United States. They ensured that the views of all Working Group members were respectfully considered, and that the forms will work in both administrative and judicial legal systems. Two issues that have been of particular interest to the United States – nondisclosure of identifying information in domestic violence cases and the need to ensure that Statements of Proper Notice and Abstracts are completed by officials from the competent authority in the State of origin – were carefully considered by the Working Group and resolved to our satisfaction. And we would be remiss if we did not also commend the Permanent Bureau's invaluable assistance with coordinating the conference calls, taking minutes, and helping to facilitate the discussions.

## **II. COMMENTAIRES RELATIFS AU DOCUMENT PRÉLIMINAIRE No 2A / COMMENTS ON PRELIMINARY DOCUMENT No 2A**

### **États-Unis d'Amérique / United States of America**

We note that the word Acknowledgement is spelled two different ways in the Report. Although in the United States, we spell the word as "Acknowledgment," the Convention spelling is "Acknowledgement." Therefore, a second "e" needs to be added to the word as it appears on pages 5, 6, and 7 of the Report, and in footnote 2.

**Page 7\*, para. 9 / Page 7\*, para. 9**

Second line of this paragraph – Either the word “application” should be plural, or the plural word “Forms” should follow the word “Application.”

**Page 8, para. 13 / Page 8, para. 13**

This paragraph contains the following language with regard to an Application for Recognition or Recognition and Enforcement of a Decision: “Two tick boxes are included in the application form for the applicant to indicate whether he or she has benefited from legal assistance in the State of origin (Arts 17 and 25(1) f).”

Whether an applicant has benefited from legal assistance in the State of origin is irrelevant in Article 10(1) a) and b) applications for the support of a child under the age of 21. The Application Form correctly limits the tick boxes to the appropriate situations. We suggest that language be added to the Report to clarify that the tick boxes referred to above are limited to Applications for Recognition or Recognition and Enforcement other than Article 10(1) a) applications for the support of a child under the age of 21.

The same paragraph goes on to say:

*The Status Report for that application contains a section where it is possible to indicate the findings of the ex officio review made in accordance with Article 23(4)<sup>22</sup> and a section where it would be possible to indicate the grounds for challenge or appeal raised by the respondent (Art. 23(7)).*

Article 23(7) does not limit challenges to those raised by the respondent. It is therefore suggested to end the sentence after the word “appeal.”

**Page 9, para. 17 / Page 9, para. 17**

This paragraph contains the following opening sentence regarding an Application for Enforcement of a Decision Made or Recognised in the Requested State: “As the Convention does not set out any documentary requirements for this Application, the Working Group developed a list of documents to be attached to this application, . . .”

Because the Convention does not require certain documents for this Application, we suggest the addition of the word “suggested” before the word “documents” in the phrase “list of documents.” Another approach would be to use language similar to that in paragraph 18, i.e., “a list of possible documents that could be attached to this application.”

**Page 10, para. 20 / Page 10, para. 20**

This paragraph contains a typographical error in the 5<sup>th</sup> line. The word “States” should be the singular “State.”

That same paragraph contains the following discussion:

*During the review of the Forms in the light of the final text of the Convention, it was suggested to include a statement to know whether the applicant is insured for legal assistance. The Forms Working Group was of the view that such a statement would be too difficult for Central Authorities to manage. Furthermore, it was of the opinion that such insurance coverage should not affect the possibility of seeking legal assistance, with the exception of States where legal assistance cannot be provided to applicants who have such insurance coverage. It was suggested that the country profile include a section in that respect.*

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\*. Les références aux numéros de page dans cette section font référence aux numéros de page des Doc. pré-l. Nos 2A et 2B.

\* References to page numbers in this section make reference to page numbers of Prel. Docs Nos 2A and 2B.

We concur that the Forms should not address insurance for legal assistance. We also object to its inclusion within the Country Profile, in light of the Convention's requirements to provide free legal assistance in applications for the recognition and enforcement of child support obligations where the child is under 21 years of age. We fear that the potential harm caused by the addition of such a question, without the more complete discussion of Articles 14 – 17, would far outweigh the usefulness of such information.

To the extent that the Forms Working Group Report is amended, we suggest adding a reference to Articles 14 – 17 to clarify the limited situations in which such information would be relevant.

## **Suisse / Switzerland**

### **Pages 7 et 8, paras. 9 et 10 / Pages 7 and 8, paras 9 and 10**

Nous estimons que les demandes doivent être signées par le demandeur et non par l'Autorité centrale. Les demandeurs doivent avoir une idée précise du mandat qu'ils confient. Si les demandeurs ne signent pas leur demande ni n'établissent une procuration, il ne sera plus possible de déterminer en quoi consiste le mandat qu'ils entendent donner. Or, il n'est ni possible ni souhaitable de faire supporter aux Autorités centrales la responsabilité du contenu des demandes.

En outre, les informations fournies par le demandeur pour le formulaire ne seront pas forcément recueillies par des collaborateurs de l'Autorité centrale ; elles pourront aussi l'être par des employés d'autres organismes visés à l'art. 6, par. 3, de la convention. Le nom figurant au bas du formulaire ne serait donc pas toujours celui d'un fonctionnaire de l'Autorité centrale, il pourrait aussi être celui d'un employé d'un de ces organismes. Concernant les deux cases à cocher au bas du formulaire, la nécessité, dans chaque cas, de cocher une seule de ces cases, ou les deux, ne semble pas très claire. Comme nous l'avons exposé, la délégation suisse estime que les formulaires relatifs à des demandes, de même que le « Formulaire relatif à la situation financière », devraient dans tous les cas être signés par le demandeur.

Par ailleurs, il convient de noter que les formulaires de demande ne contiennent pas de demandes concrètes du demandeur. Un complément général est nécessaire sur ce point. Le formulaire « Demande d'obtention d'une décision » devrait inclure les demandes effectives du demandeur, par exemple le montant des aliments exigés. Les formulaires « Demande de reconnaissance ou de reconnaissance et d'exécution » et « Demande d'exécution d'une décision rendue ou reconnue dans l'Etat requis » devraient notamment indiquer quels sont les montants requis, par exemple uniquement l'entretien courant.

### **Page 8, para. 12/ Page 8, para. 12**

Formulaires « Résumé de la décision », « Attestation du caractère exécutoire de la décision », « Attestation de notification » :

Il n'est pas judicieux de faire figurer sur les documents « Résumé de la décision », « Attestation du caractère exécutoire de la décision » et « Attestation de notification » le nom du fonctionnaire responsable de l'Autorité centrale et le numéro de référence de cette dernière. Il devrait être suffisant que l'autorité qui a pris la décision établisse le document, le signe et le munisse de son timbre. Pour des raisons pratiques, cette autorité ne fera pas (ne pourra pas faire) cette déclaration devant un fonctionnaire de l'Autorité centrale et lequel ne serait de toute façon pas en mesure de confirmer ce que le fonctionnaire de l'autorité ayant rendu la décision veut attester. Par ailleurs, ces documents pourraient aussi être utilisés à d'autres fins ou pour des procédures autres que celles visées par la convention sur le recouvrement des aliments.

### III. COMMENTAIRES RELATIFS AU DOCUMENT PRÉLIMINAIRE NO 2B / COMMENTS ON PRELIMINARY DOCUMENT NO 2B

<b>Commentaires généraux / general comments</b>
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#### **Australie / Australia**

Where there is a reference to 'Details for electronic transfer of payments' in any form, would it be possible to footnote a strong preference for this method of payment transfer.

E.g., a. Details for electronic transfer of payments (if applicable)\*

\*electronic transfer of payments is a preferred method of making payment.

If this does not suit other countries, Australia will ensure that this is included in the Country Profile information.

#### **Communauté européenne / European Community**

***Confidentiality and personal information protection notice*** (pages 4, 19, 24, 29, 33, 38, 43, 49 and 53):

The forms speak of "personal information" in the sub-heading and the first paragraph whereas the mandatory forms to the Convention speak of "personal data". We propose to align the recommended form with the mandatory forms and suggest that "information" be replaced by "data" in the sub-heading and the first paragraph.

***Restricted information on the Applicant form*** (pages 9, 28, 37, 48 and 59):

The form states that information "shall not be disclosed or confirmed in accordance with Article 40". This expression gives the erroneous impression that the determination of nondisclosure of certain information by the Central Authority in State A is binding on the receiving Central Authority in State B. Article 40(2) makes it clear that such a determination in State A shall be taken into account in State B - not more and not less - and the form should reflect this. The text should be formulated as follows:

*"N.B. The requesting Central Authority has determined that information under [insert as appropriate] on this page shall not be disclosed or confirmed for the protection of the health, safety or liberty of a person. Such a determination shall according to Article 40(2) be taken into account by the requested Central Authority.*

#### **Commentaires linguistiques à la version française**

Dans la version française, les termes « *authorised representative of the central Authority* » à la fin des formulaires sont traduits tantôt en français par « *fonctionnaire autorisé de l'autorité centrale* », tantôt par « *fonctionnaire de l'autorité centrale* » (pages 31, 36, 47 et 51 par exemple) ou « *représentant autorisé de l'autorité centrale* » (page 27). Il conviendrait que ces termes fassent l'objet d'une traduction homogène en français.

#### **Linguistic comments on the English version**

On page 5 (point 3.3 and equivalent subsequent points) Grand parent grand child should be amended to read as one word, i.e. grandparent / grandchild.

On page 10 and 17 point 3.5 and on page 26 point 6.5 should read "*Effective date of the decision*".

## **Nouvelle-Zélande / New Zealand**

La Nouvelle-Zélande dans sa réponse à la consultation a informé le Bureau Permanent qu'ils n'avaient pas de commentaire à formuler concernant les formulaires recommandés. / New Zealand in its response to the consultation informed the Permanent Bureau that they had no comments on the recommended forms

## **Norvège / Norway**

Norway would prefer that there is only one status report form, where all types of application are incorporated.

In general we feel that there is room for simplification, as parts of the proposed forms in many cases are identical.

**Demande de reconnaissance ou de reconnaissance et d'exécution / Application  
for Recognition or Recognition and Enforcement (p. 4)**

### **Page 4 - Titre du formulaire / Title of the form**

#### **Communauté européenne / European Community**

Title of the form: Footnote 1 asks the applicant to delete the Article numbers which do not apply in his/her case. We believe that this indication may be overlooked by applicants while it would be very useful for the Central Authorities to know exactly which type of application they are dealing with. We therefore suggest to add a new point in the form where the applicant would clarify the type of application (e.g. creditor seeking recognition and enforcement of a decision (Article 10(1)(a)), debtor seeking recognition and enforcement of a decision (Article 10(2)(a), or creditor seeking recognition and enforcement of a maintenance arrangement (Article 30)).

### **Page 4 - Point 2 / Section 2**

#### **Communauté européenne / European Community**

In order to identify the parties concerned, it would be helpful to indicate in every application form, as optional information and if available, also the *nationality* and the *identity number or social security number* of the applicant, the person for whom maintenance is sought or payable and the debtor.

### **Page 6 - Point 4.1.g. / Section 4.1.g.**

#### **Australie / Australia**

To assist with the location of the debtor, it would be useful to ask for - Particulars (if known) of **Employment Details** and **Telephone numbers**. If there is a concern about increasing the length of the particulars required, these could be provided as examples of 'other information that may assist' under point g.

E.g., g. Any other information that may assist with the location of the debtor, for example  
Employment details, telephone numbers\_\_\_\_\_



## Communauté européenne / European Community

This point should be turned into a separate entry worded *"Any other information that may assist with the location of the respondent"* since applications for recognition or for modification can also be made by the debtor. In such cases the debtor can give information that may assist with the location of the creditor.

### Page 7 - Point 7 / Section 7

## Communauté européenne / European Community

**Heading:** We propose to say *"please tick all the relevant boxes"* instead of *"please check all relevant lines"*.

**Fourth tick box:** We suggest to delete the words "provided that". By ticking the box, the applicant is stating that both conditions set out in Article 20(l)d) are met. The word "and" which has already been inserted makes this clear.

**Last tick box:** The text should be redrafted since it gives the erroneous impression that it is up to the applicant or the requesting Central Authority to estimate how the law of the State addressed would have operated in the case in question. It could read for example: *"Where the State addressed has made a reservation regarding the bases indicated in the third, fifth or sixth tick box, it is asked to recognise and enforce the decision under Article 20(3) of the Convention."*

Another possibility might be to turn it into a separate entry (in the Convention it is a separate paragraph in Article 20 and not a subparagraph under paragraph 1 like the other tick boxes).

## États-Unis d'Amérique / United States of America

Section 7 contains the following tick box:

"The child for whom the maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted and provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;"

The word "and" before "provided" in the second line should be deleted. See language in Article 20(1) d).

### Page 7 - Point 8 / Section 8

## Communauté européenne / European Community

We suggest to add to the text of the first tick box the words "or was represented" after "appeared" to mirror the text of Article 25(1) c)).

## Norvège / Norway

Norway would like the tick boxes relating to the respondent's participation in the assessment process to be more adjusted to administrative systems. The respondent will not "appear" during an administrative assessment process, but he/she will be notified and given the opportunity to submit documentation and comments. Perhaps the addition of another tick box could be considered.

In other words, we would like the form to be more in line with article 22e) of the convention.

<b>Résumé de la décision/ Abstract of a Decision (p. 10)</b>
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**Commentaires généraux / General comments****Suisse / Switzerland**

Pour être complet et précis, il conviendrait de préciser, dans ce formulaire, de quel type de décision il s'agit ou à l'issue de quelle procédure elle a été arrêtée (divorce, établissement du lien de filiation, procédure relative à une obligation alimentaire, action alimentaire intentée contre des proches, etc.)

**Page 10 – Point 5.1. / Section 5.1.****Canada**

Section 5.1 of this Form asks for the names and dates of birth of the person entitled to support or maintenance, arrears and other payments. As drafted, it does not appear to allow for the possibility of an order in which payments are specifically directed to a public body (such as a government department that provides social welfare/assistance to the person entitled to support), nor does it seem to provide for orders where some payments are payable to the creditor (ongoing support) while other payments (arrears, interest, etc.) are payable to the public body.

**Page 11 - Point 5.1.2. / Section 5.1.2.****Communauté européenne / European Community**

Point 5.1.2. (and all other points mentioning "arrears"):

Since "arrears" mean the unpaid maintenance for periods after the decision, they should not be included in the Abstract of the Decision. Once the creditor takes steps to have the decision enforced, he/she will need to attach a separate document showing the amount of any arrears and the date on which such amount was calculated (see Article 25(1) d)).

Instead of arrears, the form should include retroactive maintenance meaning the maintenance for periods prior to decision. The information should include the period covered, the amount due retroactively and the terms of payment of the amount in question.

**Page 11 - Point 5.1.3. / Section 5.1.3.****Suisse / Switzerland**

Point 5.1.3 du formulaire (Autres paiements prévus dans la décision) La convention sur le recouvrement des aliments ne contient pas de définition de la notion d'aliments. Il convient de préciser que seuls peuvent être mentionnés des paiements entrant effectivement dans le champ d'application de la convention. Une clarification pourrait être apportée en citant des exemples de paiements pouvant figurer dans la dernière case à cocher du point 5.1.3.

**Page 15 - Point 7 / Section 7****Canada**

Section 7 of this form addresses interest that may accrue when maintenance payments are late. As drafted, it appears to exclude late payment penalties that are flat amounts rather

than being calculated as interest. We suggest that this section of the form be drafted using more general language, so as to capture all types of late payment penalties, however calculated.

**Page 15 - Point 8 / Section 8**

**Suisse / Switzerland**

Le chiffre 8 « Effet de la décision » devrait être complété par une case à cocher supplémentaire accompagnée du texte suivant :

- jusqu'au moment où l'enfant aura terminé une formation adéquate.

**Page 15 - Point 9 / Section 9**

**Communauté européenne / European Community**

Point 9: It should be taken into account that also the creditor may have been ordered to pay costs and expenses.

<b>Attestation du caractère exécutoire de la décision / Statement of Enforceability of a Decision (p. 16)</b>
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No comments

<b>Attestation de notification / Statement of Proper Notice (p. 17)</b>
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**Commentaires généraux / General comments**

**Communauté européenne / European Community**

In order to take into account that some States will be effecting service under the 1965 Hague Service Convention we suggest to add a second footnote to the title of the form which could read as follows: "The certificate annexed to the Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents may replace this statement where the respondent was given notice on the basis of that Convention".

**Page 18 - Point 5 / Section 5**

**Suisse / Switzerland**

Concernant le chiffre 5 et les documents à joindre, il conviendrait de préciser dans ce formulaire, et également dans le manuel pratique pour les responsables de dossiers concernant la Convention recouvrement des aliments de 2007 (le manuel), que certains Etats exigent une attestation de notification conformément à la Convention du 15 novembre 1965 relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, ou une attestation de notification par la voie diplomatique ou consulaire.

Dans ce contexte, soulignons qu'en différents endroits, le manuel devrait être complété pour préciser que les notifications à une partie doivent être faites (ou avoir été faites) conformément aux dispositions internationales applicables (au moment de la notification) dans

son Etat de résidence. En fonction des circonstances, une notification faite uniquement selon les dispositions en vigueur dans l'Etat où la décision a été prise pourrait ne pas suffire.

## **Canada**

In some states, proper notice of a court application may be given to a respondent in accordance with the terms of a court order authorizing substitutional service. If this has taken place, the certificate or affidavit of service may name a person other than the respondent as having been served. If the Certificate/Affidavit of Service only is provided, and the person served in that Certificate is a name other than the debtor, the application may be rejected by the competent authority in the requested state because they are not aware that the service was made in accordance with a court order. In light of this, should the check box indicate that the Certificate of Service, and if applicable, any court order that directs the manner of service, is attached? This way, there is a clear chain of evidence that demonstrates that the respondent was given proper notice in accordance with the law of the state in which the decision was made.

This might be simply included in the Handbook or as a footnote on the form rather than as an addition to line 5 on the form itself.

**Rapport sur l'état d'avancement – article 12 . Status of Application Report –  
Article 12 (p. 19)**

### **Page 19 - Point 3 / Section 3**

#### **Communauté européenne / European Community**

It might be better to indicate not only the family name but the full name of the applicant, the person for whom maintenance is sought or payable and the debtor.

### **Page 20 - Point 4. a., c. et d. / Section 4. a., c. and d.**

#### **Suisse / Switzerland**

il conviendrait de préciser que ces formulaires ne doivent pas être utilisés pour éluder les prescriptions en matière de notification prévues par la Convention de La Haye du 15 novembre 1965 relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, ou d'autres prescriptions applicables en matière de notification. Ce sera pourtant précisément le cas si les décisions peuvent simplement être jointes aux formulaires.

Pour les Etats qui tiennent au respect des voies de notification de la Convention de La Haye de 1965, ou de la voie diplomatique ou consulaire (cf. également la Convention du 1er mars 1954 relative à la procédure civile), la mention « décision jointe », figurant dans les formulaires aux chiffres cités ci-dessus, devrait être suivie d'autres cases à cocher avec le texte suivant :

- Cette décision sera formellement notifiée
- Formulaire de la Convention de La Haye de 1965 ci-joint

**Page 20 - Point 4.d. / Section 4.d.****Communauté européenne / European Community**

"Requirements to appeal attached" is not understandable. On the basis of the French text we would suggest "*Appeal conditions attached.*"

**Demande d'exécution d'une décision rendue ou reconnue dans l'État requis /  
Application for Enforcement of a Decision Made or Recognised in the Requested  
State (p. 24)**

**Commentaires généraux / General comments****Norvège / Norway**

Norway cannot see the necessity of having a separate form "Application for Enforcement of a Decision Made or Recognised in the Requested State" for article 10(1) b of the convention, as this type of application is very straight forward. We would like this application incorporated in the form "Application for Recognition or Recognition and Enforcement". This may be done by adding the alternative "or enforcement only" in the heading.

Please be aware that the word "recognized" is misspelled in the heading of page 24.

**Page 24 - Point 2 / Section 2****Communauté européenne / European Community**

In order to identify the parties concerned, it would be helpful to indicate in every application form, as optional information and if available, also the *nationality* and the *identity number or social security number* of the applicant, the person for whom maintenance is sought or payable and the debtor

**Page 26 - Point 7 / Section 7****Communauté européenne / European Community**

It could be useful to add a new point 7a along the lines of point 10 in the Application for Recognition or Recognition and Enforcement form to indicate whether the applicant has benefited from legal assistance in the State of origin. This information is not always included in the decision. Furthermore, Article 17 applies also to requests for enforcement only.

**Rapport sur l'état d'avancement – article 12 / Status of Application Report –  
Article 12 (p. 29)**

**Page 29 - Point 3 / Section 3****Communauté européenne / European Community**

It might be better to indicate not only the family name but the full name of the applicant, the person for whom maintenance is sought or payable and the debtor.

**Page 29 - 30 - Point 4. b., c. et d. / Section 4. b., c. and d.****Suisse / Switzerland**

Il conviendrait de préciser que ces formulaires ne doivent pas être utilisés pour éluder les prescriptions en matière de notification prévues par la Convention de La Haye du 15 novembre 1965 relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, ou d'autres prescriptions applicables en matière de notification. Ce sera pourtant précisément le cas si les décisions peuvent simplement être jointes aux formulaires.

Pour les Etats qui tiennent au respect des voies de notification de la Convention de La Haye de 1965, ou de la voie diplomatique ou consulaire (cf. également la Convention du 1er mars 1954 relative à la procédure civile), la mention « décision jointe », figurant dans les formulaires aux chiffres cités ci-dessus, devrait être suivie d'autres cases à cocher avec le texte suivant :

- Cette décision sera formellement notifiée
- Formulaire de la Convention de La Haye de 1965 ci-joint

**Page 30 - Point 4.d. / Section 4.d.****Communauté européenne / European Community**

"Requirements to appeal attached" is not understandable. On the basis of the French text we would suggest "*Appeal conditions attached.*"

**Demande d'obtention d'une décision / Application for Establishment of a Decision (p. 33)**
**Commentaires généraux / General comments****Communauté européenne / European Community**

The form should include tick boxes indicating whether parentage has been established or whether it needs to be established (Article 10(1) c)).

Furthermore, it would seem appropriate to add - along the lines of what is currently found in point 8 of the Application for Modification of a Decision form (page 46) - a point where the applicant would have to indicate the exact amount of maintenance sought and the terms of payment.

**Page 33 - Point 2 / Section 2****Communauté européenne / European Community**

In order to identify the parties concerned, it would be helpful to indicate in every application form, as optional information and if available, also the *nationality* and the *identity number or social security number* of the applicant, the person for whom maintenance is sought or payable and the debtor.

**Page 35 - Point 7 / Section 7****Communauté européenne / European Community**

The tick box on "affidavit" could read "*affidavit / attestation*" in order to make the form reflect better the different legal systems.

**Suisse / Switzerland**

Le droit de certains Etats ne connaissant pas l'affidavit, cette expression ne devrait pas être utilisée dans la liste des documents à faire parvenir. Une solution de rechange pourrait être de préciser « affidavit ou autre document... ». Cette énumération ne doit pas avoir pour conséquence que des Etats exigent que des affidavits leur soient envoyés d'autres Etats.

**Rapport sur l'état d'avancement – article 12 / Status of Application Report –  
Article 12 (p. 38)**
**Page 38 - Point 3 / Section 3****Communauté européenne / European Community**

It might be better to indicate not only the family name but the full name of the applicant, the person for whom maintenance is sought or payable and the debtor.

**Page 39 - Point 4.1.c., d. et e. et 4.2.c., e., f. et g. / Section 4.1.c., d. and e. and 4.2.c., e., f. and g.****Suisse / Switzerland**

Il conviendrait de préciser que ces formulaires ne doivent pas être utilisés pour éluder les prescriptions en matière de notification prévues par la Convention de La Haye du 15 novembre 1965 relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, ou d'autres prescriptions applicables en matière de notification. Ce sera pourtant précisément le cas si les décisions peuvent simplement être jointes aux formulaires.

Pour les Etats qui tiennent au respect des voies de notification de la Convention de La Haye de 1965, ou de la voie diplomatique ou consulaire (cf. également la Convention du 1er mars 1954 relative à la procédure civile), la mention « décision jointe », figurant dans les formulaires aux chiffres cités ci-dessus, devrait être suivie d'autres cases à cocher avec le texte suivant :

- Cette décision sera formellement notifiée
- Formulaire de la Convention de La Haye de 1965 ci-joint

**Page 39 - Point 4.1.d. / Section 4.1.d.****Communauté européenne / European Community**

"Requirements to appeal attached" is not understandable. On the basis of the French text we would suggest "*Appeal conditions attached*"

**Page 39 - Point 4.2 / Section 4.2****États-Unis d'Amérique / United States of America**

Section 4.2 of the form discusses the status of establishment of parentage. We suggest adding tick boxes related to the coordination of genetic testing.

**Demande de modification d'une décision / Application for Modification of a Decision (p. 43)**
**Commentaires généraux / General comments****Suisse / Switzerland**

Il devrait être signalé, ne serait-ce que dans le manuel, que les informations fournies ne constituent pas une garantie de ce que la décision sera effectivement modifiée dans l'Etat requis sur la base de ces informations, ou de ce que la modification sera conforme à ce qui est demandé dans le formulaire, car cette question dépend du droit applicable à la modification de la décision.

**Page 43 - Point 2 / Section 2****Communauté européenne / European Community**

In order to identify the parties concerned, it would be helpful to indicate in every application form, as optional information and if available, also the *nationality* and the *identity number or social security number* of the applicant, the person for whom maintenance is sought or payable and the debtor

**Page 44 - Point 4.1.g. / Section 4.1.g.****Communauté européenne / European Community**

This point should be turned into a separate entry worded "*Any other information that may assist with the location of the respondent*" since applications for recognition or for modification can also be made by the debtor. In such cases the debtor can give information that may assist with the location of the creditor.

**Page 46 - Point 7 / Section 7****Communauté européenne / European Community**

Point 7, eighth tick box, paragraph 46:

The word "proper" seems rather unclear in this context. We would therefore suggest to delete it and to maintain only the word "adequate".



**Suisse / Switzerland**

Concernant le chiffre 7, l'ajout suivant (souligné) pourrait être fait pour les deux premières cases à cocher :

- modification des revenus du créancier ou de sa situation économique
- modification des revenus du débiteur ou de sa situation économique

**Page 46 - Point 8 / Section 8****Canada**

Section 8 of this form sets out the modifications that are being sought by the applicant. This list should include an additional item, namely an application to reduce or cancel arrears of support or maintenance. Applications to address support arrears will occur with sufficient frequency that they should be specifically referenced in this section of this form.

**Page 47 - Point 12 / Section 12****Communauté européenne / European Community**

Point 12, first tick box under Article 18:

It should be indicated that the first condition (Art. 18(2) a)) does not apply in disputes relating to maintenance obligations in respect of children.

**Rapport sur l'état d'avancement – article 12 / Status of Application Report –  
Article 12 (p. 49)**

**Page 49 - Point 3 / Section 3****Communauté européenne / European Community**

It might be better to indicate not only the family name but the full name of the applicant, the person for whom maintenance is sought or payable and the debtor.

**Page 50 - Point 4.c., d. et e. / Section 4.c., d. and e.****Suisse / Switzerland**

Il conviendrait de préciser que ces formulaires ne doivent pas être utilisés pour éluder les prescriptions en matière de notification prévues par la Convention de La Haye du 15 novembre 1965 relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, ou d'autres prescriptions applicables en matière de notification. Ce sera pourtant précisément le cas si les décisions peuvent simplement être jointes aux formulaires.

Pour les Etats qui tiennent au respect des voies de notification de la Convention de La Haye de 1965, ou de la voie diplomatique ou consulaire (cf. également la Convention du 1er mars 1954 relative à la procédure civile), la mention « décision jointe », figurant dans les formulaires aux chiffres cités ci-dessus, devrait être suivie d'autres cases à cocher avec le texte suivant :

- Cette décision sera formellement notifiée
- Formulaire de la Convention de La Haye de 1965 ci-joint

**Page 50 - Point 4.d. / Section 4.d.****Communauté européenne / European Community**

"Requirements to appeal attached" is not understandable. On the basis of the French text we would suggest "*Appeal conditions attached*".

**Formulaire relatif à la situation financière / Financial Circumstances Form  
(p. 53)**
**Commentaires généraux / General comments****Communauté européenne / European Community**

We propose to include the text of footnotes 1 and 2 in the heading of the form as a reminder from the outset to the person completing the form.

It should be considered whether the form could not be simplified since it contains very detailed information which in some instances may be at odds with national data protection legislation (for example in points IV.A, V.C and V.D).

**Suisse / Switzerland**

Les renseignements concernant les revenus et la fortune de tiers, c'est-à-dire de personnes autres que les parties, ne peuvent en principe être requis que par le moyen d'une demande formelle d'obtention de preuves. Par conséquent, ces informations ne devraient être transmises qu'avec le consentement et la signature du tiers en question (l'époux / épouse ou partenaire du créancier ou du débiteur). Le formulaire devrait donc comprendre, outre la signature du demandeur, une case à cocher pour la déclaration de consentement du tiers, avec sa signature.

Il serait judicieux de signaler (par exemple dans une note de bas de page) que ce formulaire n'exempte pas de fournir les pièces justificatives correspondantes telles que certificats de salaire, bordereaux d'impôts, attestations du montant des primes de l'assurance-maladie, etc., dont peuvent avoir besoin les tribunaux et autorités pour mener à bien la procédure ou pour accorder l'assistance judiciaire gratuite.

**Page 54 - Point II.C / Section II.C****Suisse / Switzerland**

Les points II.C. et III.C. du formulaire appellent une clarification. Il convient de préciser pour qui le partenaire actuel du créancier ou du débiteur doit payer des aliments.

**Page 54 - Point III.A.1 / Section III.A.1****Communauté européenne / European Community**

We propose to add spouse, partner and child.

**Suisse / Switzerland**

Le point III.A.1. doit être complété pour que l'époux / épouse ou l'ex-époux / ex-épouse, l'enfant ou une autre personne puisse aussi être indiqués comme débiteur, dans les cas où l'obligation alimentaire découle d'autres relations de famille, de filiation, de mariage ou d'alliance (cf. art. 2, al. 3, de la Convention du 23 novembre 2007 sur le recouvrement international des aliments destinés aux enfants et à d'autres membres de la famille). L'époux / épouse (ex-époux / ex-épouse) devrait aussi figurer au point II.A.1.

**Page 55 - Point III.C / Section III.C****Suisse / Switzerland**

Les points II.C. et III.C. du formulaire appellent une clarification. Il convient de préciser pour qui le partenaire actuel du créancier ou du débiteur doit payer des aliments.

**Page 55 - Point IV.A / Section IV.A****Suisse / Switzerland**

Les points IV.A. et V.D. (actif du débiteur et du demandeur) pourraient aussi inclure les assurances-vie, avec indication de la valeur de rachat.

**Page 55 - Point IV.B / Section IV.B****Norvège / Norway**

On the bottom of page 55 there is a table B. "Value of debtor's debts". The word "creditor" in the table may be confused with the maintenance creditor in the case. We therefore suggest that this should be changed to "bank" or "provider of credit".

**Page 56 - Point V.A / Section V.A****Suisse / Switzerland**

On trouve au point V.A.4. le terme « rentes » en français, correspondant à « allowances » dans la version anglaise. Il faut ici préciser ce que l'on entend par là, notamment s'il s'agit bien des « allocations familiales » ou « family allowances ».

**Page 57 - Point V.C.9 / Section V.C.9****Suisse / Switzerland**

Le point V.C.9. du formulaire devrait aussi mentionner les frais de déplacement par les transports publics. En outre, le point V.C. devrait comprendre un chiffre supplémentaire consacré aux impôts, pour les pays dans lesquels les impôts ne sont pas directement prélevés sur le salaire.

**Page 57 - Point V.D / Section V.D****Suisse / Switzerland**

Les points IV.A. et V.D. (actif du débiteur et du demandeur) pourraient aussi inclure les assurances-vie, avec indication de la valeur de rachat.

**Page 58 - Point VI / Section VI****Suisse / Switzerland**

Concernant le point VI. du formulaire, relatif à l'assurance médicale, il importe de préciser que dans certains pays (dont la Suisse), le montant est déjà pris en compte dans le calcul de la contribution d'entretien et ne figure dès lors pas en tant que tel dans la décision. Par ailleurs, le point VI.D. appelle une clarification. Il faut ici mentionner que certains pays, la Suisse par exemple, ont bien une assurance maladie, mais que les primes des enfants sont dues indépendamment de celles des parents. C'est d'ailleurs la raison pour laquelle le montant de ces primes est compris dans la contribution d'entretien. Il faut donc introduire au point VI.D. une case à cocher supplémentaire avec le texte suivant :

- primes d'assurance d'un montant de ... (devise)

**COMMENTAIRES RELATIFS  
AU DOCUMENT PRÉLIMINAIRE NO 3**

\* \* \*

**COMMENTS ON  
PRELIMINARY DOCUMENT NO 3**

## **I. COMMENTAIRES GÉNÉRAUX /GENERAL COMMENTS**

### **Australie / Australia**

The Australian Government thanks the Permanent Bureau and the Country Profile Sub-Committee of the Administrative Co-operation Working Group for their excellent work on this Draft Country Profile. Our Australian working group member, Mr Simon Kay, has confirmed that previous feedback has been well considered and incorporated into this document.

### **Canada**

Canada would like to extend its gratitude for all the work that was accomplished by the members of the Country Profile Sub-committee, with a special thanks to all those other countries that provided comments and feedback on this important document. Without this true collaborative spirit and invaluable participation, the document would not have reached this stage of completion.

Canada views the Country Profile as being an essential tool for international case processing under the Convention. The completion of the Country Profile will be extremely valuable as it will increase administrative cooperation among countries and improve the day-to-day implementation of the Convention. This document will most certainly prove far reaching and will affect generations to come by ensuring that families get the support they are entitled to. We also hope that the work put into this document, will continue to foster increased cooperation and respect between countries.

As member of the Country Profile Sub-committee, Canada would also like to thank the co-chairs of the Sub-committee for their leadership as well as members of the Permanent Bureau for all their assistance.

On completion of the English version of the Country Profile it will be necessary to ensure that in making the necessary modifications to the French version, any missing words or typographical errors in the current document are addressed.

### **Communauté européenne / European Community**

The European Community would first of all like to express its appreciation of the work done by the Country Profile Sub-Committee. We are aware that the Country Profile set out in Preliminary document No 3 is the result of intensive efforts on the part of all parties involved and that concessions and compromises have had to be made to arrive at this result. We are convinced that the Country Profile will play an important role in practice and will considerably facilitate the application of the Convention. It is therefore essential for us to point out that the comments set out below are not intended to question the draft Country Profile as currently structured. They are intended to draw the attention to some technical aspects which it may be wise to clarify in order to increase even further the practical value of the Profile.

#### **Legal character of stage 2**

The Country Profile is divided into two parts: Stage 1 includes information required under the Convention and Stage 2 includes additional information which may facilitate the operation of the Convention. Most of the information included in Stage 2 could, however, be regarded as information required under Article 57(1) a) or d) of the Convention. We suggest not to indicate that only information included in Stage 1 is required under the Convention as it may create the impression that it is less important to fill in the information included in Stage 2.

## **Reservations and declarations**

We would like to point out that since the Country Profile only takes into account some of the reservations and declarations which Contracting Parties may make, it is always important to check not only the Country Profile but also the reservations and declarations made by the Contracting State in question. It may be advisable to inform the users of the Country Profile about the possible existence of additional reservations and declarations by inserting a warning at the beginning of the Country Profile together with a link to the website where these reservations and declarations can be found.

## **Wording**

The use of the terms "you" and "your State" in the various items of the Country Profile may be confusing. While it is clear for the authority which will be completing the Country Profile, it may be less clear for the future users of the Profile, who will most often be creditors / debtors / caseworkers from another State. It may be advisable to adapt all items to the future users of the Country Profiles. We would therefore suggest to have a blank space in all items instead of "you" and "your State" in which the name of the country would be inserted automatically in the electronic format of the Country Profile - just like what is currently foreseen at the top of every page.

## **States in which different legal systems apply**

The Country Profile should take into account States with two or more territorial units in which different systems of law apply, for instance by giving States the possibility to give different answers for each unit.

## **États-Unis d'Amérique / United States of America**

The United States commends the Country Profile Subcommittee for its outstanding work. The Country Profile will be a tremendous resource in the effective implementation of the Convention. In the United States, we maintain an electronic Intergovernmental Referral Guide, which summarizes the child support laws in each of our individual states. Child support caseworkers and lawyers find it a very practical resource for better understanding a state's laws and procedures. Access to such a tool at the international level will be invaluable. We especially appreciate how the Subcommittee has designed the Country Profile so that a minimum of narrative information is needed; the use of tick boxes will reduce translation costs and will facilitate the Profile's electronic use. We also think that the Profile provides an easy format for Contracting States to use to provide the information required by the Convention.

As a member of the Country Profile Subcommittee, we would also like to commend the Co-Chairs Annick Boulay and Ann Barkley for their stewardship of the Subcommittee. They ensured that meetings were conducted efficiently, and provided ample opportunity for the views of all Subcommittee members to be respectfully considered. And we would be remiss if we did not also commend the Permanent Bureau's invaluable assistance with coordinating the conference calls and helping to facilitate the discussions.

## **No suggested changes**

The United States does not have any suggested changes to the Country Profile.

## **Co-ordination between the Practical Handbook and the Country Profile**

However, we do note that the Handbook makes several references to questions within the Profile that currently are not there. We do not object to the inclusion of such information, and assume that the Permanent Bureau and the Country Profile Subcommittee will work together to ensure that the Profile and Handbook are "in sync."

### **Suggestion from the Report of the Forms Working Group**

We also note that the Report of the Forms Working Group contains a suggestion to add a question to the Country Profile regarding legal insurance; we do not support the inclusion of such an addition as noted in our comments to the Forms Working Group Report.

#### **Malaisie / Malaysia**

La Malaisie dans sa réponse à la consultation a informé le Bureau Permanent qu'ils n'avaient pas de commentaire à formuler concernant le Projet de profil des États / Malaysia in its response to the consultation informed the Permanent Bureau that they had no comments on the Draft Country Profile.

#### **Mexique / Mexico**

Le Mexique dans sa réponse à la consultation a informé le Bureau Permanent qu'ils n'avaient pas de commentaire à formuler concernant le Projet de profil des États. Ils ont complété le Projet de profil des États à titre d'exemple. / Mexico in its response to the consultation informed the Permanent Bureau that they had no comments on the Draft Country Profile. They completed the Draft Profile as an exemple.

#### **Suisse / Switzerland**

Il convient de garder à l'esprit que les procédures d'obtention ou de modification de décisions dans un Etat requis peuvent nécessiter l'application du droit de l'Etat requérant. Dans ce cas, les autorités de l'Etat requis pourraient avoir besoin d'autres informations et documentations relatives au droit de l'Etat requérant.

#### **Norvège / Norway**

Norway would like to point out the fact that recognition and enforcement of private agreements, maintenance arrangements and authentic instruments are non-existent in the Draft Country Profile. We would like private agreements etc. to be more of a focal point in the country profile. In the least, there should be possibilities in section IV or V of the form for a contracting state to explain and outline its process of recognition and enforcement of maintenance arrangements and agreements.

## **II. COMMENTAIRES SPÉCIFIQUES /SPECIFIC COMMENTS**

### **Page 6\* - Phase 1. I. 4. a / Stage 1. I. 4. a**

#### **Norvège / Norway**

The wording of letter number 4. a. on page 6 is not very well adapted to administrative systems, where the Central Authority functions are performed by public bodies, without the functions being delegated.

For Norway, for instance, the answer to number 4.a. will be yes, but the details in 4.b. will be the same as number 1 and 2 on page 5. We raise the question as to whether the sentence might be rephrased "Can the functions of the Central Authorities be performed by other bodies, independently or subject to the supervision of the competent authorities of your State?"

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\* Les références aux numéros de page dans cette section font référence aux numéros de page du Doc. pré-l. No 3 / References to page numbers in this section make reference to page numbers of Prel. Doc. No 3.



**Page 6 - Phase 1. I. 4. b / Stage 1. I. 4. b****Communauté européenne / European Community**

Item 4 b.: In order to allow States to indicate other extents of functions than territorial and personal we suggest to use only the terms "extent of functions" which would mirror Article 6(3).

**Page 7 - Phase 1. I. 4. c / Stage 1. I. 4. c****Communauté européenne / European Community**

Item 4 c: We would suggest to allow for an indication of the title of the bilateral or other agreement instead of just allowing for a link.

Before item 5 (page 7) on the specific functions of the Central Authorities it might be appropriate to add a question which takes into account Article 6(1)b). All other questions under item 5 relate to aspects dealt with in Article 6(2).

**Page 7 - Phase 1. I. 5. a / Stage 1. I. 5. a****Canada**

This question does not provide all the available options for the provision of legal assistance. It could be quite difficult for a country to fill out, depending on their scheme of legal assistance. For example, there may be differences in how they provide legal assistance depending on whether it is an application or an appeal.

A country may wish to check off box #2 for example (Legal Assistance is not required in most cases. Administrative Assistance is provided. Legal assistance is provided where required.) and may wish to further elaborate that where required, one or more of the options in the 5<sup>th</sup>, 6<sup>th</sup> + 7<sup>th</sup> boxes apply.

We would suggest adding a Subheading after the 4<sup>th</sup> check off box that would say: "Where legal assistance is required:" and then list the last three check off box. We think that this would add clarity since the first four check off boxes are describing when legal assistance is provide and the last three check off boxes are describing how legal assistance is being provided.

**Communauté européenne / European Community**

Fifth tick box under item 5 a. "*legal assistance is provided by lawyers employed by the Central Authority*" may create confusion. Legal assistance as defined in Article 3 c) is different from the services of the Central Authorities (see Article 14(3) and paragraphs 375- 376 of the explanatory report). We suggest to delete this tick box. An alternative solution could be to use as a model the wording of Article 14(3).

**Norvège / Norway**

Number 5.a, on page 7 in the 7th tick box on the right hand side, the word "are" should be deleted.

**Suisse / Switzerland**

Nous considérons qu'il devrait être possible de cocher plusieurs cases, car les mesures concrètes à prendre peuvent varier selon les cas mais que toutes les mesures citées ne sont pas appliquées dans tous les cas. Il conviendrait de le préciser à un endroit approprié (par exemple dans une note de bas de page).

**Page 8 - Phase 1. I. 5. c / Stage 1. I. 5. c****Suisse / Switzerland**

D'autres cases devraient être ajoutées, avec les textes suivants :

- «  Dans les relations transfrontalières, les conventions et traités suivants sont applicables :
- Convention de 1970 sur l'obtention de preuves ;
  - Convention de 1954 ;
  - Autre, veuillez spécifier.
  - L'Autorité centrale indique à l'Autorité centrale requérante sur la base de quelle convention et par quelle voie la demande doit être présentée. »

**Page 9 - Phase 1. I. 5. d / Stage 1. I. 5. d****Suisse / Switzerland**

Une case supplémentaire devrait être ajoutée, avec le texte suivant :

- «  En règle générale, avant d'introduire une procédure d'exécution, un règlement amiable est recherché avec le débiteur, auquel la possibilité de paiements volontaires est accordée. »

**Page 9 - Phase 1. I. 5. f / Stage 1. I. 5. f****Canada**

The questions canvass how the Central Authority would facilitate the collection and transfer of payments but then give an option where the Central Authority is not responsible because payments are transferred by a public body or private entity. It would be useful if the Country would be prompted to provide information in the Profile about how that public body or private entity would facilitate the collection and transfer of payments.

We would suggest redrafting the right hand column as follows (Additions are underlined>):

**Collection of payments within the Requested State**

- The Central Authority is responsible for the collection of child maintenance payments:
- Payments must be made to a central location;
  - Payments may be made at local locations;
  - Payment may be made by preauthorized withdrawal from a financial institution account;
  - Payments may be made by payroll deductions;
  - Payments may be made by cheque or warrant;
  - Payments may be made by credit card;
  - Payments may be made by electronic funds transfer;
  - Payment may be made by cash;
  - Other, please specify.

The Central Authority is not responsible for the collection of child maintenance. It refers an application requiring ongoing collection to the appropriate public body for collection of payments. The Public body facilitates the collection of payment as follows:

- Payments must be made to a central location;
- Payments may be made at local locations;
- Payment may be made by preauthorized withdrawal from a financial institution account;
- Payments may be made by payroll deductions;
- Payments may be made by cheque or warrant;
- Payments may be made by credit card;
- Payments may be made by electronic funds transfer;
- Payment may be made by cash;
- Other, please specify.

The Central Authority is not responsible for the collection of child maintenance payments. This collection is handled privately. The private body facilitates the collection of payment as follows:

- Payments must be made to a central location;
- Payments may be made at local locations;
- Payment may be made by preauthorized withdrawal from a financial institution account;
- Payments may be made by payroll deductions;
- Payments may be made by cheque or warrant;
- Payments may be made by credit card;
- Payments may be made by electronic funds transfer;
- Payment may be made by cash;
- Other, please specify.

**Transfer of payments to the Requesting State**

The Central Authority or public body or private body is responsible for transferring child maintenance payments:

- Payments may be transferred by cheque;
- Payments may be transferred by electronic funds transfer.

Upon request from a Central Authority in the requesting State, the Central Authority will obtain and provide information from the appropriate public or private body concerning the transfer of child maintenance payments.

Other, please specify.

**Page 9 -11 - Phase 1. I. 5. d à f et i / Stage 1. I. 5. d to f and i**

**Communauté européenne / European Community**

Items 5 d. to 5 f. and 5 i. are limited to children. Since the scope may be wider, States applying a wider scope should be given the possibility to indicate how they comply with these requirements regarding other forms of maintenance than child maintenance.

**Page 10 -11 - Phase 1. I. 5. g et j / Stage 1. I. 5. g and j**

**Communauté européenne / European Community**

The first question under item 5 g. could be redrafted since it may not be the Central Authority of the 2007 Child Support Convention but another authority that applies the 1970 Evidence Convention. We would suggest to use here the wording used in item 5 j . "*The Central Authority complies with the requirements ...*". In both items we would suggest to use the terms "*the following international instruments*" instead of "*treaties and Conventions*" as this would cover better the instruments of the European Community.

**Suisse / Switzerland**

Nous proposons de modifier comme suit le texte de la première case :

«  Les Conventions et traités suivants sont applicables : »

Par ailleurs, l'énumération devrait aussi inclure chaque fois la Convention de La Haye du 1er mars 1954 relative à la procédure civile.

Nous partons du principe qu'à ces deux chiffres (5 g et 5 j), il est possible de cocher simultanément les trois cases principales.

Il faudrait ajouter, sous la troisième rubrique (« En vertu des traités, Conventions, ou lois mentionnés plus haut, l'Autorité centrale est responsable des actes suivants »), une nouvelle case, avec le texte suivant :

«  Indiquer à l'Autorité centrale requérante sur la base de quelle convention et par quelle voie la demande doit être présentée »

Nous notons que la formulation de la troisième rubrique n'est pas identique au chiffre 5 g (« ... responsable des actes suivants ») et au chiffre 5 j (« ... responsable dans les cas suivants ») – contrairement à la version anglaise.

**Page 11 - Phase 1. I. 5. h / Stage 1. I. 5. h****Suisse / Switzerland**

Une case supplémentaire devrait être ajoutée, avec le texte suivant :

«  Si la demande doit être régie par la Convention de 1970 sur l'obtention des preuves ou par une autre Convention, l'Autorité centrale le signale et indique par quelle voie la demande doit être présentée. »

**Page 11 - Phase 1. I. 5. j / Stage 1. I. 5. j****Canada**

It is not clear whether this question is meant to be answered from the perspective of a requesting State or a requested State. Depending on the perspective, the answer could be different. Furthermore, the answer could depend on the particular type of proceeding for which service of documents is required. For example, a requested State may apply the 1965 Service Convention if it receives a Specific Measure request under Article 7 to serve documents relating to a proceeding pending in the requesting State. However, the same requested State may apply domestic law governing service of documents when it receives an application under Article 10. In fact, it is not clear when a requested State could apply the 1965 Service Convention when it receives an Article 10 application. Therefore, because the question posed at (j) could have different answers for different purposes, we propose that it be clarified to permit different responses for different circumstances and to specify that this question is to be answered from the perspective of a requested State. A possible option would be to set out specific questions and the same choice of answers in the current Profile for each:

(j) i: As the Central Authority of a Requested State, how do you facilitate service of documents on a debtor or creditor in your State where the documents relate to an application under Article 10?

(j) ii: As the Central Authority of a Requested State, how do you facilitate service of documents on a debtor or creditor in your State where the documents relate to a request for a specific measure under Article 7?

(j) iii: As the Central Authority of a Requested State, how do you facilitate service of documents on a debtor or creditor in the Requesting State where the documents relate to a proceeding arising from an application under Article 10 (for example, a challenge to recognition and enforcement by the debtor or an appeal)?

## **Page 12 - Phase 1. II : Commentaires Généraux / Stage 1. II : General Comments**

### **Norvège / Norway**

Regarding documental requirements, we note that almost all the tick boxes have been ticked off in advance. The reason for this seemingly is to save the states the trouble of doing the ticking themselves. A state which does not require one or more of the documents in question, then would have to remove the tick. We see no reason why this should not function as intended, but still raise the question as to whether a short explanation would be wise, as the method entails a reversal of the general method of the "Profile" of ticking off the points that apply for your state.

### **Suisse / Switzerland**

Toutes les demandes doivent mentionner les conclusions du demandeur. Dans toute la Phase 1. II, à chaque point où il y a la mention « Autres informations » (dont vous avez besoin afin de traiter la demande), il faut donc ajouter une case avec le texte suivant :

«  Conclusions du demandeur »

## **Page 12 - Phase 1. II.1 : intitulé / Stage 1. II.1 : Headings**

### **Norvège / Norway**

Norway feels that the heading of II paragraph 1 on page 12 also includes the second type of application starting on page 14 "Applications for enforcement of a decision made or recognized in your state" . We therefore suggest that the heading of application type 1 should be altered to "APPLICATIONS FOR RECOGNITION OR RECOGNITION AND ENFORCEMENT OF A DECISION MADE IN **ANOTHER** CONTRACTING STATE".

## **Page 12-16 - Phase 1. II. 1 à 2/ Stage 1. II. 1 to 2**

### **Communauté européenne / European Community**

Regarding applications 1 and 2 it would be useful to add a tick box indicating whether a complete copy of the decision certified by the competent authority in the State of origin must accompany the application (Article 25(3)a)). This would help to identify Contracting States which have imposed this additional requirement. (NB. paragraphs 261, 263, 296, 338 and 803 and the last bullet point under title A. Practical Advice on pages 68 and 107 of the draft Practical Handbook for Caseworkers advise to check this information in the Country Profile).

Applications 1 and 2 should take into account maintenance arrangements. A reference to documents required by Article 30(3) should be made. For clarity the Country Profile could also include information on whether a State has declared that applications for recognition and enforcement of a maintenance arrangement may only be made through Central Authorities (Article 30(7)) and whether a State has reserved the right not to recognise and enforce a maintenance arrangement (Article 30(8)). (NB. paragraphs 302 and 316 of the draft Practical Handbook for Caseworkers indicate that the Country Profile includes this information).

**Page 12 - Phase 1. II. 1.b / Stage 1. II. 1.b****Communauté européenne / European Community**

On page 12, in application 1 for recognition or recognition and enforcement it should be clarified what is meant in item b. by "*information or document specified by declaration in accordance with Article 63*". If it refers to the possibility under Article II(l)g) to specify by declaration any information or document, it could be deleted since Article II(l)g) does not apply to applications under Article 10(l)a).

**Page 13 - Phase 1. II. 1.c / Stage 1. II. 1.c****Communauté européenne / European Community**

There is an incompatibility between the pre-checked "*complete text of the decision or decisions*" and the optional last tick box "*abstract or extract of the decision*". If a State accepts an abstract or an extract of the decision the complete text is not required, hi the same item tick boxes 4 to 6 are marked "required" although under Article 25 these documents are required only where necessary. It may be advisable to clarify these items. Under the tick box concerning the abstract or the extract of a decision it should be possible for a State to indicate in which circumstances it will accept such an abstract or extract (see Article 25(3) b)).

**Page 14-24 - Phase 1. II. 2 à 5/ Stage 1. II. 2 to 5****Communauté européenne / European Community**

In applications 2 to 5 it could be clarified that in addition to obligatory documents under Article 25, only documents specified by a declaration under Article II(l)g) and 63 could be required.

In applications 2 to 5 the words "*and if appropriate*" should be added after "*if known*" in the tick box concerning financial circumstances to mirror correctly Article 11(2).

**Page 15 - Phase 1. II. 2. a / Stage 1. II. 2. a****Suisse / Switzerland**

A l'antépénultième case, le complément suivant (souligné) devrait être ajouté :

«  Si le demandeur est le créancier ou son représentant »

**Page 16 - Phase 1. II. 2.f / Stage 1. II. 2.f****Communauté européenne / European Community**

Page 16 f) : « Existe-t-il **une** quelconque différence . . . ? » Il manque « une »

**Page 16 -24 - Phase 1. II. 3 à 5/ Stage 1. II. 3 to 5****Communauté européenne / European Community**

Regarding applications 3 to 5 it might be useful to draw the attention of the future users of the Country Profile to the fact that the Country Profile includes matters which will be determined by the law applicable to the claim, which will not always be the law of the requested State. As an example, it would be misleading if a creditor sees in the Country Profile of the requested State that there are no time limits for establishing a maintenance decision and then finds out later that the law of another State is applicable and that this law imposes a time limit.

**Page 16 - Phase 1. II. 3.a / Stage 1. II. 3.a****Communauté européenne / European Community**

In application 3 under item a. (page 16) we propose to word the answers in the present since it is a question of jurisdictional bases in the State completing the Country Profile (and not about the bases for refusing recognition and enforcement). The answers should be:

- 1) "The debtor is habitually resident in your State [name of country] at the time proceedings are instituted",
- 2) "The debtor submits to ..."
- 3) "The creditor is habitually resident in your State [name of country] at the time proceedings are instituted",
- 4) "The child for whom maintenance is sought is habitually resident in your State [name of country] at the time proceedings are instituted",
- 5) deleted (see below),
- 6) "The authority has jurisdiction on a matter of personal status or parental responsibility and that jurisdiction is not based ..."

(the rest of the tick boxes need not be changed).

The fifth tick box never applies since item a. is restricted to child maintenance. It should therefore be deleted. The answer given could be inserted under item m. on differences between applications for child maintenance and applications for other types of maintenance.

**Page 16 - Phase 1. II. 3.c / Stage 1. II. 3.c****Suisse / Switzerland**

A l'antépénultième case, le complément suivant (souligné) devrait être ajouté :

«  Si le demandeur est le créancier ou son représentant »

**Page 18 - Phase 1. II. 3.d / Stage 1. II. 3.d****Communauté européenne / European Community**

Furthermore, in application 3 under item d. that lists the required documents, a new document should be added, namely

- "decision of the requested State to refuse the recognition and enforcement (where applicable) ".

In this same item we suggest to make it possible for the State completing the Country Profile to make a distinction (under "*Child Status*") between the evidence needed for a child who has not yet reached the age of majority and for a child who has. Many States would require no evidence of attendance at an educational institution nor of disability if the child is still under 18.

**Suisse / Switzerland**

Sous « Déclaration financière », deux cases supplémentaires devraient être ajoutées :

- «  Détenteur de l'autorité parentale
- Documents relatifs à la situation financière (par ex. attestation de salaire, déclaration fiscale, coûts de l'assurance-maladie) ; veuillez spécifier »

**Page 19 - Phase 1. II. 3.e / Stage 1. II. 3.e****Norvège / Norway**

Norway feels that letter e) on page 19 regarding time limits is more or less identical to, or at least has the same intent as, letter h) on page 20. We raise the question as to whether one of them should be deleted. Our suggestion would then be that letter e) is removed, as this subject logically should be placed after letter g) regarding necessary documents to prove that an obligation to provide maintenance exists.

**Page 19 - Phase 1. II. 3.g / Stage 1. II. 3.g****Canada**

Another option needs to be added: proving that a child support obligation exists by providing an affidavit (or attestation) that the respondent debtor is the only possible father (parent).

The list details how to establish that the respondent has an obligation to pay. But establishing that an obligation exists also requires a statement that the Applicant has care and control of the child.

**Communauté européenne / European Community**

In application 3 item g. we suggest to write "*affidavit / attestation*".

**Page 21 - Phase 1. II. 3.m / Stage 1. II. 3.m****Communauté européenne / European Community**

Page 21 m) « Existe-t-il une quelconque différence, en comparaison avec l'information mentionnée plus haut.... » : II manque « une » et « haut »

**Page 22 - Phase 1. II. 4.a / Stage 1. II. 4.a****Suisse / Switzerland**

A l'antépénultième case, le complément suivant (souligné) devrait être ajouté :

- «  Si le demandeur est le créancier ou son représentant »



**Page 23 - Phase 1. II. 4.b / Stage 1. II. 4.b****Communauté européenne / European Community**

Regarding application 4 item b. on required documents a new tick box

- "a complete text of the decision or decisions"

should be added since the requested State does not always have means to find the decision which is to be modified.

**Page 23 - Phase 1. II. 4.c / Stage 1. II. 4.c****Suisse / Switzerland**

Une case supplémentaire devrait être ajoutée, avec le texte suivant :

- «  La situation du détenteur de l'autorité parentale a changé de façon à justifier la modification »

**Page 26 - Phase 1. III : Commentaires Généraux / Stage 1. III : General Comments****Communauté européenne / European Community**

In the draft Country Profile only one item (Stage 1, 1.5.a)) deals with legal assistance. It provides the necessary information for the application of Articles 6(2)a) and 3 c). It would be in the interest of the future users of the Country Profile to include a separate item for the description of how the applicants are provided with effective access to procedures, as required under Articles 14 and 57(l)c). (NB. paragraph 828 of the draft Practical Handbook for the Caseworkers advises to consult the Country Profile regarding the extent of legal assistance available).

We also propose to add information concerning which authority is competent to make a decision on maintenance. The alternatives of 1) judicial authority and 2) administrative authority should be presented. If the alternative administrative authority is marked, its name should be indicated. After that there should be a tick box "*Decisions of the above mentioned administrative authority always meet the requirements of Article 19(3).*" This information would be necessary in the light of Articles 57(l)e) and 25(l)b).

Also, in conformity with Article 25(3)c) the Country Profile should include a tick box indicating that a Contracting State does not require a document stating that the requirements of Article 19(3) are met.

(NB. Paragraph 281 of the draft Practical Handbook for Caseworkers also advises to check the Country Profile for the information concerning administrative authorities.)

Furthermore, we would also like to point out that paragraphs 413 and 808 (communication by electronic means) and tip on page 89 (alternative procedure under Article 24) include a reference to the Country Profile. However, the information in question is not given in the Country Profile.

**Page 26 - Phase 1. III. 1. b / Stage 1. III. 1. b****Canada**

The question seems to be asking about the status of the child (who receives or benefits), but there is one choice dealing with the status of the respondent debtor (in loco parentis) which is more about who pays than who receives. The wording of this question and the response choices could be clarified.

**Page 27 - Phase 1. III. 1. f / Stage 1. III. 1. f****Canada**

We suggest that child's date of birth be added as one of the possible responses.

**Page 27 - Phase 1. III. 1. h / Stage 1. III. 1. h****Canada**

Another possible response to be added: child moves away from the creditor's care (and there is no court order re-directing payments to someone else).

**Page 28 - Phase 1. III. 1. j / Stage 1. III. 1. j****Communauté européenne / European Community**

In item 1 j . the word "*paternity*" should be substituted by "*parentage*".

**Page 29 - Phase 1. III. 2 / Stage 1. III. 2****Canada**

This part of the Country Profile should be dependent on whether a country has extended the scope of the Convention under Article 2. We suggest an additional possible response provided for a state to indicate that it has not extended scope to cover any other family relationships.

Even though maintenance obligations may arise in a state from relationships other than parent-child, that state may choose not to extend the scope of the Convention to include those other forms of family maintenance. Page 29 of the Country Profile seems to presume that a state will extend the scope of the Convention to all forms of family maintenance that may arise under internal law, but this will not always be the case.

(\*We may have missed this section, but we didn't see a section that asks about declarations or reservations concerning scope.)

If a state checks off more than one of the items under (a), but the responses in b – e would be different for different types of relationships, the way the questions and responses are set up in this section do not allow for different responses depending on the type of relationship.

**Page 30 - Phase 1. III. 3. / Stage 1. III. 3.****Canada**

The question set out at page 30, #3 (a) of the Country Profile is not consistent with the wording in Art 36.

This part of the Profile only covers one of the specified "criteria" for a public body to be an applicant.

Paragraph 591 of the Explanatory Report addresses Art 36 - Public Bodies as Applicants. Public bodies can be applicants if they "act in the place of an individual to whom maintenance is owed" OR if they are a public body "to which reimbursement is owed for benefits provided in place of maintenance".

Also, the terminology used in Question 3(a) is not entirely consistent with Art 36, particularly use of "in lieu of", but also by asking if the public body pays "maintenance" to the person entitled to maintenance.

We suggest the following possible wording for question 3(a) on page 30:

"Does your State have any public bodies that act in place of a person to whom maintenance is owed or any public bodies to which reimbursement is owed for benefits paid in place of maintenance?"

**Page 30 - Phase 1. III. 3. a / Stage 1. III. 3. a****Communauté européenne / European Community**

Page 30 : tableau 3 a) « votre État a-t-il **un** quelconque organisme public... » : il manque « un » ;

**Page 30 - Phase 1. III. 4. a-c / Stage 1. III. 4. a-c****Communauté européenne / European Community**

In item 4 a. the word "*treaties*" could be replaced by "*international instruments*" as this would cover better the instruments of the European Community. This item should also include a separate tick box for the 1965 Hague Service Convention.

In item 4 c. "*debtor*" should be replaced by "*debtor/creditor*" or possibly "*respondent*" since also the creditor can be the respondent in certain cases.

Page 30 tableau 4 c), il conviendrait d'indiquer « ....**quelles** sont les exigences .... et non « quels sont les exigences ».

**Page 31 - Phase 1. IV. 3. a / Stage 1. IV. 3. a****Australie / Australia**

Regarding item 3. a, in providing the overview of process(es), Australia suggests inclusion of what bodies enforce decisions eg Judicial or Administrative, Government or Private Agency.

**Page 32 - Phase 1. IV. 4/ Stage 1. IV. 4****Communauté européenne / European Community**

Page 32, tableau 4, il conviendrait d'indiquer «poursuite **pénale** . . .» au lieu de « criminelle » car l'infraction concernée n'est pas nécessairement un crime selon les États, elle peut être un délit.

**Page 33 - Phase 1. V.1. a / Stage 1. V.1. a****Suisse / Switzerland**

Il conviendrait d'indiquer que dans certains pays (comme la Suisse), le lieu où les paiements doivent être effectués peut varier dans chaque cas.

Une case supplémentaire devrait donc être ajoutée, avec le texte suivant :

«  A une autre autorité »

**Page 33 - Phase 1. V.1. b / Stage 1. V.1. b****Australie / Australia**

Consideration of inclusion of words in italics under item 1. b. as follow:

"When you are the requesting State and receive maintenance payments at a centralized location *or at a different address from* ~~other than~~ the Central Authority, please provide the following information."

**Page 35 - Phase 2. I : Commentaires Généraux / Stage 2. I : General Comments****Suisse / Switzerland**

Il sera sans doute difficile de donner des indications précises concernant les délais requis pour les procédures.

**COMPLIATION DES COMMENTAIRES  
RELATIFS AUX DOCUMENT PRÉLIMINAIRE NO 4**

\* \* \*

**COMPILATION OF COMMENTS  
ON PRELIMINARY DOCUMENT NO 4**

## **I. COMMENTAIRES GÉNÉRAUX /GENERAL COMMENTS**

### **Australie / Australia**

Australia would firstly like to take this opportunity to thank the rapporteurs, the Permanent Bureau and in particular Hannah Roots, on the outstanding efforts in the development of the Draft Caseworker Practical Handbook.

Hannah has done a tremendous job creating a simple, practical guide that will be an invaluable tool for caseworkers interpreting the Convention and putting it into operation.

Thank you for the opportunity to provide further comments on the Handbook. Australia has some relatively minor comments and suggestions to make in regard to the Handbook. These are detailed below, by chapter.

### **États-Unis d'Amérique / United States of America**

We would like to express our appreciation to Hannah Roots and the Permanent Bureau for the outstanding job they have done in drafting the Caseworkers' Handbook. This current version is much improved, having benefited from the comments received on the previous draft, as well as the discussions during the June review session at the Permanent Bureau. For the most part our comments and suggestions are to make technical corrections for consistency throughout the document, and to clarify language that was revised or added in the current draft. This document will be invaluable to caseworkers around the world who are not as familiar with the Convention language as we all are; in the end, they are the ones we and our children will rely upon the most. Thank you for the opportunity to review this draft.

### **Malasie / Malaysia**

La Malaisie dans sa réponse à la consultation a informé le Bureau Permanent qu'ils n'avaient pas de commentaire à formuler concernant le projet Manuel pratique. / Malaysia in its response to the consultation informed the Permanent Bureau that they had no comments on the Draft Practical Handbook.

## **DIJuF**

### **Declaration of enforceability**

For caseworkers who will implement the 2007 Child Support Convention it is important to realise that the mechanism to recognise and enforce foreign maintenance decisions may be different from the mechanism in their own State. Therefore, we appreciate that throughout the text not only the term "registration" but also the term "declaration of enforceability" (exequatur) is used. However, it is vital that the explanation for the term "declaration of enforceability" is more precise (see comment on para. 93).

### **Direct request**

It is also important for caseworkers to realise that direct requests to competent authorities will also be possible under the 2007 Child Support Convention. Therefore, we appreciate that a separate chapter on direct requests has been integrated into the handbook. However, the text of this new chapter is partly unclear and needs to be modified (see comments on para. 1115 et seq.).

### **Encouraging amicable solution**

Pursuant to Art. 6 Para. 2 d) of the Convention, the Central Authorities shall take all appropriate measures to encourage amicable solutions with a view to obtaining voluntary payment of maintenance. Caseworkers in Central Authorities of the requesting State as well as the requested State should be encouraged to find such solutions. The handbook should emphasise this more often.

### **Level of details of the Recommended Forms**

Throughout the Handbook questions on how caseworkers should handle applications to ensure that these reflect the precise claims of the applicants are not discussed. For caseworkers in requesting as well as in requested States it is important to realise that applications will not in all cases be detailed enough to enable the other Central Authority to implement the claims of the applicant, if the recommended forms are used.

Example: A US decision includes the obligation to pay current and outstanding child support. Due to the financial circumstances of the respondent, the applicant is only interested in implementing current child support. The receiving Central Authority would supposedly apply/arrange for recognition and enforcement of the entire decision.

### **Ascertaining the application's claim**

Without any further concretisation of the applicant's claim the parties' interests would be infringed in this example. Furthermore, it will be necessary in many States to specify the claims raised in an application under national procedural law to make sure the competent authority is able to process the application under the Convention in the best interest of the (minor) applicant. Otherwise the application would not be justified. Consequently, time-consuming correspondence between the Central Authorities would be necessary to ascertain the applicant's claim.

### **References to the Country Profile**

The caseworker should be made aware of the necessity to be provided with or to provide precise information on the claim raised in an application according to Art 10 of the 2007 Child Support Convention. As the procedural methods of the different States vary significantly, a reference to the Country Profiles with corresponding explanations would further assist the caseworker. The Handbook should provide instructions on how caseworkers can gather all the information needed for ascertaining the applicant's claims.

## **II. COMMENTAIRES SPÉCIFIQUES / SPECIFIC COMMENTS**

### **Page xiv\* – paragraphe 10 / paragraph 10**

#### **Australie / Australia**

There is a typographical suggestion in the first sentence. "Applications or requests" should be "application or request".

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\* Les références aux numéros de page dans cette section font référence aux numéros de page du Doc. pré-l. No 4 /  
References to page numbers in this section make reference to page numbers of Prel. Doc. No 4.

**Page xiv – paragraphe 14 / paragraph 14****Australie/Australia**

There is a typographical suggestion in the third sentence. “Provides that” should be “providing that” or “and provides that”.

**Page xv – paragraphe 17 / paragraph 17****Australie / Australia**

There is a typographical suggestion in the second sentence. “Application” should be “applications”.

**Page xv – note de bas de page 3 / footnote 3****Australie / Australia**

There is a typographical suggestion in the second sentence. Either “also” or “as well” should be removed.

**Page 1 – case d’information au paragraphe 27 / information box at paragraph 27****États-Unis d’Amérique / United States of America**

A direct request is described as a request, such as a request for establishment of spousal support, “where neither of the Contracting States has extended the application of the Convention to those requests.”

Revise to read: “**where the requested State has not extended** the application of the Convention to those requests.”

**Page 1 – paragraphe 27 / paragraph 27****États-Unis d’Amérique / United States of America**

The discussion of “request” is unclear. The text box speaks of both types of requests, i.e., direct requests to a competent authority, and requests for specific measures, which are made through Central Authorities; yet the narrative within para. 27 seems only to address requests for specific measures. It is a bit confusing.

Revise to read: “...and requests **through Central Authorities** (requests for specific measures)....”

**Page 2 – 2<sup>ième</sup> point – paragraphe / 2<sup>nd</sup> bullet – paragraph 29****États-Unis d’Amérique / United States of America**

Revise to read: “application for enforcement of a maintenance decision made **or recognized** in the requested State.”



**Page 2 – paragraphe 30 / paragraph 30****États-Unis d'Amérique / United States of America**

The final sentence correctly states that both States must be Contracting States. However, the important fact about the decision itself is missing.

Revise to read: "Both States must be Contracting States to the Convention, **and the decision must be made in a Contracting State.**"

**Page 3 – paragraphe 34 / paragraph 34****États-Unis d'Amérique / United States of America**

Revise to read: "This is the simplest of all applications under the Convention. The application requests that a Contracting State enforce **a decision it has previously made or recognised** and assist in transmitting payments to a creditor."

Rationale for change: The decision may not have been made by the requested State.

**Page 3 – paragraphe 36 / paragraph 36****États-Unis d'Amérique / United States of America**

Revise first sentence to read: "This application will be made where the applicant has a maintenance decision made **or recognised** in the State where the respondent resides or has assets or income."

Revise second sentence to read: "The applicant can request that State to enforce **the decision it has made or recognised.**"

**Page 5 – paragraphe 44 – 2<sup>ième</sup> phrase / paragraph 44 - 2<sup>nd</sup> sentence****Australie / Australia**

The words in the second set of brackets should be 'where the modification is to be made' rather than 'where the application is to be made'.

**Page 5 – paragraphe – 2<sup>ième</sup> phrase / paragraph 44 - 2<sup>nd</sup> sentence****États-Unis d'Amérique / United States of America**

Revise to read: "... (or where the **modification** is to be made)."

**Page 5 – paragraphe 46 et 47 / paragraph 46 and 47****Australie / Australia**

The example in paragraphs 46 and 47 has been amended due to comments made in the meeting in June. However, Australia believes it may still be misleading as it refers to a situation that is not expressly covered by the convention. We are not sure why the example says that the application for modification would be heard in country B. It also implies that this is the only correct process, where as many countries may view the jurisdiction for these applications differently, and they are not bound by the convention in these circumstances.

Australia suggests that the example, especially for the purpose of the overview, should be the simplest one, and refer to a case covered by the Article 18 restriction. (For example, J could remain in State A and her husband could be in State B, and her husband could seek to modify the order – in which case he must do so in State A).

**Page 5 – paragraphe 47 / paragraph 47**

**États-Unis d'Amérique / United States of America**

Revise to read: "If J chooses to make an application for modification under the Convention, the Central Authority in State B will forward an application for modification of an existing decision on behalf of J to the Central Authority in State A. The former husband will be notified and the matter heard in State **A [not B]**. The modified decision can be enforced in State A once it has been made."

**Page 8 – figure 2**

**États-Unis d'Amérique / United States of America**

In the second row from the bottom, second box from the left, revise to read: "Applicant State (requesting State) or other **Contracting** State."

**Page 9 – figure 3**

**États-Unis d'Amérique / United States of America**

Title should be corrected since establishment is not limited to where no maintenance decision exists.

Revise to read: "Possible Applications Where No **Enforceable** Decision Exists."

**Page 11 – figure 4**

**Australie / Australia**

This flowchart seems to suggest that the only action a creditor may take is to seek a modification in the State where the debtor resides. This is a possible option, but not the only one. It may be that it is more appropriate to modify the decision in the State where the creditor resides, especially if that is the State where the original decision was made.

Also, in the red bordered box in the centre, 2<sup>nd</sup> to the bottom of the flowchart, Australia believes that the difference between options 1) and 3) should be made clearer.

**Page 14 – figure 6:**

**Australie / Australia**

The flow chart should make clearer that spousal maintenance only applications do not allow special measures applications. The box for spousal maintenance refers to chapter 3 for exceptions, but in the end they are all excluded, unless they are in conjunction with child support. Australia would suggest that the child support box be 'child support (or spousal maintenance and child support together)' or similar, then the spousal maintenance box could be 'spousal maintenance only', leading to the same box as the 'other forms of family maintenance' box.

**Page 16 – note de bas de page 14 / footnote 14****États-Unis d'Amérique / United States of America**

Delete the footnote. Paragraph 252 of the Explanatory Report is not relevant to paragraph 71.

**Page 18 – paragraphe 81 / paragraph 81****États-Unis d'Amérique / United States of America**

Text now reads: "The Country Profile will also indicate what reservations or declarations a State has made under the Convention."

NOTE: The Country Profile will need to identify the entirety of each country's reservations and declarations. **Bring to attention of PB.**

**Page 18 – note de bas de page 17 / footnote 17****États-Unis d'Amérique / United States of America**

Revise to read: "See Explanatory Report, para. 637."

**Page 20 – paragraphe 93 / paragraph 93****DIJuF**

The explanation of the term "declaration of enforceability" should be more precise. We suggest the following wording:

"Basically, there are two possible mechanisms to grant that a foreign decision has the same effects in the State where enforcement takes place as decisions made in this State:

1. the mechanism of recognition and registration as well as
2. the mechanism of recognition and declaration of enforceability (exequatur).

These mechanisms differ concerning the proceeding on how a decision of one State can be made enforceable in the other State."

**Page 23 – paragraphe 111 / paragraph 111****États-Unis d'Amérique / United States of America**

Revise to read: "A child-centred means test is permitted by Article 16 for certain applications, and considers the means or financial circumstances of the child, rather than the parent, and may be used by some States to determine whether to provide cost-free legal assistance.

"See Articles 16 – 17"

**Page 23 – paragraphe 112 / paragraph 112****États-Unis d'Amérique / United States of America**

Revise to read: "See Articles 15.2 and 17 a)."

**Page 24 – note de bas de page 31 / footnote 31****États-Unis d'Amérique / United States of America**

Revise to read: "See Explanatory Report, para. 590."

**Page 27 – paragraphe 134 / paragraph 134****États-Unis d'Amérique / United States of America**

"This document is required in an application for recognition or recognition and enforcement where the respondent (often the debtor) did not appear **and was not represented in the proceedings in the State of origin....**" Also see para. 283.

**Page 27 – paragraphe 135 / paragraph 135****États-Unis d'Amérique / United States of America**

Revise final sentence to read: "The Convention covers vulnerable persons only if a declaration has been made by **both the requesting and requested States** to extend its application."

**Page 31 – paragraphe 156 / paragraph 156****États-Unis d'Amérique / United States of America**

Text now reads: "The Country Profile completed by a State will indicate whether any reservations to restrict the application of Convention have been made by a Contracting State."

NOTE: The Country Profile will need to identify all reservations. **Bring to PB's attention.**

**Page 34 – paragraphe 173 / paragraph 173****États-Unis d'Amérique / United States of America**

"The applicant for a remedy under the Convention may be a creditor, a debtor or a public body...."

Rationale for change: A public body cannot be an applicant for modification. Nor can a debtor bring an establishment application.

**Page 35 – paragraphe 179 / paragraph 179****États-Unis d'Amérique / United States of America**

Revise third line to read: "Chapter 3, Part 2, III"

**Page 39 – paragraphe 201 / paragraph 201****États-Unis d'Amérique / United States of America**

Text now reads: "Under the Convention a State may also specify that it will, in all cases, require a certified copy of any document. The Country Profile will indicate if a State has made that specification for all cases."

If this language remains, the Country Profile will need to identify this information. **Bring to PB's attention.**

**Page 41 – paragraphe 210 / paragraph 210**

**DIJuF**

Reference to Art. 43 should be added.

**Page 43 – paragraphe 224 / paragraph 224**

**DIJuF**

Reference to Art. 43 should be added.

**Page 44 – figure 8**

**États-Unis d'Amérique / United States of America**

Revise the box discussing 'manifestly unfounded' to read: "Is application **on the merits** manifestly unfounded?"

**Page 45 – paragraphe 225 / paragraph 225**

**États-Unis d'Amérique / United States of America**

Revise to read: "Where the application concerns child support for a child **21 years of age or older**, . .

**DIJuF**

Reference to Art. 43 should be added.

**Page 46 – figure 9**

**Australie / Australia**

Boxes at bottom of chart, second from left and at right. There are typographical suggestions – should say 'as is necessary' rather than 'as necessary'.

**États-Unis d'Amérique / United States of America**

In box on third row, revise to read: "Spousal Support **only**."

**Page 51 – paragraphe 234 / paragraph 234****États-Unis d'Amérique / United States of America**

"Where the application is for child support for a child under 21 years, the general rule is that unless the application **on the merits is** manifestly unfounded, the creditor will not have to pay for the costs of the parentage testing."

**Page 51 – note de bas de page 46 / footnote 46****États-Unis d'Amérique / United States of America**

"Explanatory Report, para. 392."

**Page 51 – note de bas de page 47 / footnote 47****États-Unis d'Amérique / United States of America**

"Explanatory Report, para. 390."

**Page 51 – paragraphe 235 / paragraph 235****États-Unis d'Amérique / United States of America**

In those States that have made a declaration to use a child-centred means test, the costs of parentage testing will be covered as part of the legal assistance available unless the child does not pass the means test." Deleted the qualifying term "only" before "be covered."

**Page 52 – paragraphe 239 / paragraph 239****Australie et DIJuF / Australia and DIJuF**

Reference to Art. 50 should be added.

**Page 53 - organisation du chapitre / how to use this guide****Australie / Australia**

Typographical suggestion – under "Section IV covers", "exception" should be "exceptions".

**Page 53 – paragraphe 241 / paragraph 241****DIJuF**

The second sentence should include the term "declaration of enforceability": "The purpose of recognition and declaration of enforceability is to allow a decision made in one State ..."

**Page 54 – case d’information / information box****États-Unis d’Amérique / United States of America**

The text box still refers to where the applicant lives. To be consistent with changes elsewhere in Handbook, revise to read: “The requesting State is the Contracting State that is initiating an application and making the request on behalf of an applicant who **resides** in that State.”

**Page 55 – paragraphe 250 / paragraph 250****États-Unis d’Amérique / United States of America**

**In text box**, suggest making definition of creditor consistent with definition of debtor by adding something similar to the following: “In some States this person is called a maintenance payee, an obligee, or a custodial or resident parent.”

OR, suggest making them consistent by deleting last sentence in definition of debtor.

**Page 56 – liste récapitulative / checklist****Australie / Australia**

In the 3<sup>rd</sup> box, there is a question “is the application for maintenance?” Australia believes this should be “is the decision for maintenance”, as an applicant is not making an application for maintenance, they already (presumably) have a maintenance decision. This decision may then actually be covered by the 3<sup>rd</sup> question in this box. Please reconsider these questions to include only what is necessary.

In the 4<sup>th</sup> box, the second dot point says ‘application can proceed’. The application is proceeding regardless, so Australia suggests that this be ‘make application for recognition and enforcement’.

In the 7<sup>th</sup> box, the question mark is not needed after ‘necessary’.

In the final box, there is a typographical suggestion. The word ‘up’ should be inserted after ‘follow’.

**Page 57 – étape 2 / step 2****Australie / Australia**

These steps are generally directed at the case worker who is actioning the transmittal of the applicant’s request for recognition and enforcement to the Central Authority of another Contracting State – generally this is ‘you’, as the reader of the handbook. In this step, it is a little unclear who it is addressed to. In the first sentence, the Contracting State where he/she resides could be ‘your Contracting State’. In the third sentence, ‘the representative of the Central Agency’ could be ‘you’, as it is the case worker who will be completing the documents on the applicant’s behalf.

**Pages 57 – 59****Australie / Australia**

These steps should correspond with the steps in the checklist on page 56. One example of where this is not achieved is that step 5 on the checklist is missing from the description.

**Page 59 – paragraphe 267 / paragraph 267****DIJuF**

Reference to Art. 50 should be added.

**Page 59 – case de bonne pratique / good practice box****Australie / Australia**

This box should be located under the next step – ‘provide follow-up documents...’ Also, the text in the box is incomplete.

**Page 61 – paragraphe 283 / paragraph 283****États-Unis d’Amérique / United States of America**

In order for text to accurately reflect Article 25(1)c), revise to read: “If the respondent appeared in the proceedings – that should be indicated in section 7 of the Application Form. If the respondent did not appear **and was not represented in the proceedings**, a Statement of Proper Notice is required.”

**Page 63 – paragraphe 296 / paragraph 296****États-Unis d’Amérique / United States of America**

Revise to read: “Under **Article 25(2) a certified copy may be required upon request of a competent authority or upon challenge or appeal. Under 25(3)....**”

Rationale: It is necessary to add a new sentence and reference to Article 25(2), or else the last sentence (“In all other cases...”) is incorrect.

**DIJuF**

Translations should be added to the last sentence: The Country Profile will indicate if certified copies and translations are necessary.

**Page 64 – paragraphe 303 / paragraph 303****États-Unis d’Amérique / United States of America**

Revise last sentence to read: “**Article 30(5)** lists the Articles of the Convention **that apply and do not apply** to the recognition and enforcement of maintenance arrangements”.

**Page 65 – paragraphe 312 / paragraph 312****Australie / Australia**

The words in brackets ‘see discussion above’ could make it clearer where the reader should go within the document to read this discussion.



**Page 66 – paragraphe 317 / paragraph 317****Australie / Australia**

There is a typographical suggestion in the second sentence – ‘State’ should be ‘States’.

**Page 68 – après le paragraphe 328 / after paragraph 328****DIJuF**

The possibility of amicable solutions should be stressed more strongly. Caseworkers in Central Authorities of the requesting State as well as the requested State should be encouraged to look for such solutions.

Reference to Art. 44 should be added.

**Page 75 – paragraphe 359 / paragraph 359****DIJuF**

The description on how the application works under the Convention is rather short. It should at least be mentioned that the Central Authority in State B will encourage an amicable solution in order to make the debtor pay voluntarily.

If negotiations with the debtor fail, enforcement measures can be applied for.

**Page 76 – figure 14****Australie / Australia**

In many cases, the final step of acknowledgement may need to be earlier in the process, for example step 2 on page 77 or step 4 on page 78.

**États-Unis d’Amérique / United States of America**

As well as an examination of the application to determine that it is “within (the) scope of the Convention,” there should be a brief preliminary review to satisfy the requested State that it is “manifest that the requirements of the Convention” are fulfilled.

Revise the second box, left side to read: “Is it within scope of Convention **and manifest that requirements of Convention are fulfilled.**”

**Page 78 – paragraphe 365 / paragraph 365****États-Unis d’Amérique / United States of America**

This could be expanded slightly to note that the requirement placed upon the requested State is more restrictive than that placed upon the requesting authority. “Manifest” implies that it is “clear on the face of the documents received” that the requirements of the Convention are not met. Another example might be to refuse an application where a previous application by the same party on the same grounds had already failed.

**Page 80 – paragraphe 371 / paragraph 371****Australie / Australia**

Refers to two additional forms, but only goes on to describe one.

**États-Unis d'Amérique / United States of America**

Speaks of two additional documents that may be necessary for recognition and enforcement, but only specifies one – Proof of benefits by public body. Missing the Legal Assistance Statement. "Legal Assistance Statement" was included in the prior draft (pp. 73-74) and the omission here appears to be inadvertent. **Revise to include reference to Legal Assistance Statement.**

**Page 82 – figure 16****États-Unis d'Amérique / United States of America**

The last box indicates it is only after a decision has been registered or declared enforceable and "further appeal" has been commenced, that the Central Authority is advised to "complete the Acknowledgment Form or Status Update" and send it to the requesting State. However, the Acknowledgment Form is required to be sent within "six weeks from the date of receipt of the application." Therefore, the Acknowledgment Form should have been sent prior to any appeal. The Status Update is required within three months thereafter.

Revise the last box to read: "Advise Central Authority **to complete Status Update** and send to requesting State."

**Page 83 – paragraphe 385 / paragraph 385****Australie / Australia**

There is a typographical suggestion in paragraph 385 – there should be a 'the' before 'respondent' in the first sentence.

**Page 84 – note de bas de page 69 / footnote 69****États-Unis d'Amérique / United States of America**

Revise the final sentence to read: "See Explanatory Report, **para 443** for a discussion of this issue."

**Page 86 – paragraphes 406 – 407 / paragraphs 406 - 407****Australie / Australia**

These paragraphs should be merged. The beginning of paragraph 407 needs to flow straight from the dot points in paragraph 406, so that paragraph 406 makes sense and the first sentence of that paragraph is completed.

**Page 87 – paragraphe 413 / paragraph 413****États-Unis d'Amérique / United States of America**

Text now reads: "Although in many cases, these communications will be by mail, a State may indicate that it is prepared to accept communication using electronic means. The Country Profile for each State will indicate any preferences in this respect."

Will need to ensure that the Country Profile does include this information. **Bring to PB's attention.**

**Page 91 – paragraphe 431 / paragraph 431****États-Unis d'Amérique / United States of America**

Revise to read: "The competent authority will consider the issues noted above and any objections raised by the respondent **(or which arise from the face of the documents), in accordance with Articles 20, 22, 23(7)c)**, and then determine whether the decision should be recognized and enforced."

**Page 93 – paragraphe 440 / paragraph 440****États-Unis d'Amérique / United States of America**

Revise the last sentence to read: "However, if a **challenge is pending**, in the case of a maintenance arrangement, unlike the process for recognition and enforcement of a maintenance decision, that **appeal** of the recognition of **the** arrangement will suspend any enforcement of the arrangement (Article 30(6))." Rationale: This is the first review of a challenge on the law or merits. It is not a "further appeal" as that term is used in Article 23(10) for instance.

**Page 94 – après le paragraphe 451 / after paragraph 451****DIJuF**

Art. 44 and 50 should be added to the relevant Convention Articles.

**Page 97 – paragraphe 456 / paragraph 456****États-Unis d'Amérique / United States of America**

Revise the response to the question to read: "Yes – but there must be a translation of the decision or a translated extract or abstract of the text into the language of the requested State or into **another language which the requested State has indicated it will accept**. See Chapter 3 for a discussion of the requirements for translations of documents and decisions."

In accordance with the Convention, other communications between the Central Authorities can be in English or French.

**Page 97 – paragraphe 457 / paragraph 457**

États-Unis d'Amérique / United States of America

It is unclear what sort of "decision" could be made that would be "of a type that could not be made in the (requested) State." This is, apparently, not a maintenance decision and some further explanation is warranted.

**Page 97 – la question pour les paragraphes 458 – 459 / question for paragraphs 458-459**

États-Unis d'Amérique / United States of America

Revise the question to read: "Why **does the form Application for Recognition and Enforcement have no signature line?**"

Rationale: The prohibition against challenge in Article 13 only restricts the respondent. The Convention is "medium neutral" and electronic transmission of documents is encouraged as a matter of Good Practice, but there is nothing to prevent the competent authority in a requested State from insisting upon a signed application.

**Page 98 – paragraphe 464 / paragraph 464**

Australie / Australia

This chapter refers to a caseworker sending a decision to a requested State, whereas chapter 5 is about incoming applications. This answer should be reworded.

**Page 99 – case d'information / information box**

Australie / Australia

There is a typographical suggestion. The word 'is' in the first line should be removed.

**Page 100 – paragraphe 470 / paragraph 470**

États-Unis d'Amérique / United States of America

This paragraph has new text, which discusses **recognition by operation of law**, under domestic law. Please explain the concept of "recognition by operation of law" or delete it.

**Page 100 – note de bas de page 78 / footnote 78**

États-Unis d'Amérique / United States of America

"The Country Profile of the requested State will indicate what types of foreign decisions do not need to be recognised."

The main text is discussing decisions that, under domestic law, may be recognized by operation of law. **Bring to PB's attention.**

**Page 103 – case d’information / information box****États-Unis d’Amérique / United States of America**

“The requesting State is the Contracting State that is initiating an application and making the request on behalf of an applicant who **resides** in that State.”

**Page 106 – paragraphe 499 / paragraph 499****États-Unis d’Amérique / United States of America**

Revise to read: “Unless both the requested and requesting Contracting States have extended the full application of the Convention (including Chapters II and III) to spousal support there is no obligation on the requesting Central Authority to assist in the transmission of the request for enforcement of a decision for spousal support only (see Chapter 3). The Central Authority in the requested State also will not be involved in the receipt or processing of the **request**. The request for enforcement of the decision will have to be made directly to the competent authority responsible for enforcement in the requested State.”

**Page 106 – après le paragraphe 502 / after paragraph 502****DIJuF**

It should be added that the caseworkers should attempt to contact the debtor to seek voluntary compliance with the decision.

**Page 109 – case d’information / information box****États-Unis d’Amérique / United States of America**

Revise to read: “The requesting State is the Contracting State that is initiating an application and making the request on behalf of an applicant who **resides** in that State....”

**Page 109 – paragraphe 510 / paragraph 510****États-Unis d’Amérique / United States of America**

In order to be consistent with language in para. 514, revise the second sentence to read: “The Central Authority in State A will receive the application, ensure that it is complete, **refer** the decision to the competent enforcement authority for enforcing, and assist in transmission of payments to M as required.”

**Page 111 – figure 19****Australie / Australia**

The two boxes about locating the respondent are a little confusing. For an application to be valid initially, the documents should always indicate that the respondent resides or has assets or income in the requested State. The answer to that question should never be no (or if it is, the application should be returned).

Perhaps the question should be rephrased, to indicate that, if the application indicates that the respondent resides, or has assets or income, in your state, but there is not enough information to show you exactly where, you should initiate the search or locate request.

The search may also result in the requested State being unable to confirm that the respondent does, in fact, reside (or have assets or income) in their State. In this scenario, the application should be returned (or at the very least the requesting State should be asked for more information to help the requested State to locate the person.

**Page 117 – paragraphe 536 / paragraph 536**

**États-Unis d'Amérique / United States of America**

Revise the paragraph to read: "If the establishment of a decision is required because a decision exists but recognition or enforcement was refused because of a reservation under the Convention (Article 20(2)), **the requested Central Authority will proceed to seek a new order without the need for a new application from the creditor if the debtor is habitually resident in the requested State.**"

Rationale: In discussing the consequences of a reservation under Article 20(2), Article 20(4) allows the Central Authority to proceed without a new application so long as the debtor is habitually resident in the State.

**Page 118 – paragraphe 541 / paragraph 541**

**États-Unis d'Amérique / United States of America**

Revise the first sentence to read: "If an application is made under the Convention for the establishment of a maintenance decision for child maintenance for a child under the age of 18 years, the applicant is always entitled to cost-free legal services, unless **the application is manifestly unfounded on the merits** or the requested State has chosen to use a child-centred means test (see Chapter 3)...."

**Page 118 – paragraphe 545 / paragraph 545**

**États-Unis d'Amérique / United States of America**

Revise the last sentence to read: "Importantly, in establishing a new decision under this Article, the eligibility of the child or children (if under the age of 18 years) to bring the application for maintenance will not have to be established, as the existing decision must be accepted as establishing the eligibility of that child **to seek** maintenance in the requested State (Article 20(5))."

Rationale: The second clause is inconsistent with the first clause of the sentence. The box referencing Article 20(5) in Figure 22 correctly describes the requirement. **The United States has pointed out that a corresponding technical change is essential in paragraph 471 of the Explanatory Report.**

**Page 120 – figure 21**

**Australie / Australia**

Where this flowchart refers to 'see detailed flowchart', I suggest that it be made clear that this is referring to figure 22. Where the flowchart refers to 'see detailed diagram', I suggest that this specifically refer to figure 23.

**Page 121 – paragraphe 549 / paragraph 549****Australie / Australia**

This paragraph refers to 'the flowchart on the following page'. In fact, this flowchart is now on the same page.

**Page 121 – figure 22****Australie / Australia**

It is suggested that some changes be made to the boxes flowing from the box 'is applicant asking for child support'. Firstly, the two options should be worded more consistently, eg. 'Is the application for spousal support?' and 'is the application for other forms of family maintenance?'. Then, in the case of both spousal support and other forms of family maintenance, the requested and requesting States may extend the convention to these cases. Therefore, the box flowing from the spousal support box should mention that an application could be brought under the Convention if both States have extended the scope.

**États-Unis d'Amérique / United States of America**

There is a box stating that one cannot use the Central Authority to seek spousal maintenance. Revise to read: "Cannot use Central Authority to seek spousal maintenance **unless both requested and requesting States have extended the Convention to this.**"

**Page 122 – paragraphe 552 / paragraph 552****États-Unis d'Amérique / United States of America**

Revise to read: "If the applicant has a decision, but recognition or enforcement of that decision has been refused because of a reservation under Article 20(2), a new decision will have to be established. However, as noted above, a new application does not need to be made (the recognition and enforcement application will be treated as if it were an application for establishment) and there will be a presumption that the child or children are eligible **to bring an action** for maintenance. The role of the Central Authority in the requesting State therefore, is to assist in obtaining and transmitting any additional documentation required for the establishment application."

Rationale: The Convention does not create a presumption that the children are eligible for maintenance per se. There may have been no hearing on the merits where the respondent had an opportunity to appear and present defenses. The language in this paragraph needs to be consistent with earlier language, which talks about eligibility to bring an establishment proceeding. See para. 327, comment above re: para. 545 and Figure 22.

**Page 127 – paragraphe 567 / paragraph 567****États-Unis d'Amérique / United States of America**

The information is incorrect regarding current forms. The Forms Working Group redesigned the Establishment Application. Now, by ticking a box, an applicant can indicate whether he or she seeks enforcement of the decision once established without the need to transmit an additional application for enforcement.

Please delete the second sentence and revise the first sentence to read: "If the creditor wishes to have the maintenance decision, once it is established, enforced by the requested state, **the**

creditor needs only to check the appropriate tick box on the Application for Establishment, which indicates that desire to the requested State.”

**Page 127 – paragraphe 571 / paragraph 571**

**États-Unis d’Amérique / United States of America**

Revise to read: “Within three months of the date of acknowledging the application, the **Central Authority in the** requested State must provide a status report.

**Page 129 – liste récapitulative / checklist**

**Australie / Australia**

It is suggested that step 1(i) should also include ‘or their maintenance decision is unable to be enforced’ – or similar.

Step 2(ii) could include which form is the recommended form i.e. application for establishment.

**Page 129 – paragraphe 574 / paragraph 574**

**États-Unis d’Amérique / United States of America**

To be consistent with changes elsewhere in the Handbook, revise to read: “The maintenance decision will be **referred for enforcement** to the appropriate authority in the State where the respondent resides or has assets or income, if the creditor has **checked the appropriate tick box on the Application for Establishment, requesting** that the decision be enforced.”

**Page 130 – paragraphe 577 / paragraph 577**

**États-Unis d’Amérique / United States of America**

“The **Central Authority in the** requested State will send a status update . . . .”

**Page 130 – paragraphe 578 / paragraph 578**

**Australie / Australia**

There is a typographical suggestion in the second sentence. The word ‘prove’ should be ‘provide’.

Also, the status report is required within 3 months of the date the requested State acknowledged the application, not within 3 months of receipt of the application.

**Page 131 – paragraphe 582 / paragraph 582**

**États-Unis d’Amérique / United States of America**

Revise the second sentence to read: “Therefore the applicant cannot be required to pay for the parentage testing.” If it is considered necessary to explain that the application cannot be manifestly unfounded in order for the proceeding to commence, this could be noted (as in the prior draft) in a footnote.



Rationale: The reference to an “application (which) is manifestly unfounded” is inappropriate in the text of the answer. If the application is manifestly unfounded, i.e. if there is no legal justification (see ER 390), it most certainly will not proceed to the stage where testing is ordered by the competent authority.

**Page 131 – note de bas de page 90 / footnote 90**

**États-Unis d’Amérique / United States of America**

Revise to read: “See Explanatory Report, para 390....”

**Page 131 – paragraphe 585 / paragraph 585**

**États-Unis d’Amérique / United States of America**

Revise to read: “A Central Authority is not required to assist in establishing a maintenance decision for spousal support. The applicant will need to **send a direct request** to the competent authority in the other State to have a decision established unless both the requesting and requested States have agreed to extend the Convention to cases concerning the establishment of spousal maintenance.” The Country Profile will indicate if this extension has been made.

Rationale: The current language confuses Convention applications with direct requests.

**Page 134 – paragraphe 601 / paragraph 601 ; page 140 - paragraphe 634/ paragraph 634 ; page 143 - paragraphe 644 *passim* / Paragraphe 644 *passim***

**États-Unis d’Amérique / United States of America**

Consistent with the comments to para 567 and 574 on the inclusion of a tick box in the Application for Establishment Form, revise the last sentence (and make appropriate changes to other paragraphs as necessary) to read: “Once the decision has been made, **if the applicant has indicated by marking the tick box** that enforcement is requested, the decision will be enforced by a competent authority in the requested State.”

**Page 136 - case d’information - paragraphe 604 / information box - paragraph 604**

**États-Unis d’Amérique / United States of America**

In text box defining requesting State, revise to read: “The requesting State is the Contracting State that is initiating an application and making the request on behalf of an applicant who **resides** in that State.”

**Page 139 – paragraphe 628 / paragraph 628**

**États-Unis d’Amérique / United States of America**

Same comment as made to para. 582. Revise the last sentence to read: “Effectively this means that the creditor should not have to pay the costs associated with parentage testing.”  
Rationale: If it is considered necessary to note that the application will not even proceed if, on the merits, it is manifestly unfounded, this could be noted in a footnote.

**Page 140 – paragraphe 633 / paragraph 633****États-Unis d'Amérique / United States of America**

Revise the first sentence to read: "In the event that legal assistance is required for the appeal, the above discussion also applies to the requirement of the **Central Authority in the requested State** to provide assistance to the creditor/applicant on a cost-free basis."

**Page 140 – paragraphe 634 / paragraph 634****États-Unis d'Amérique / United States of America**

To be consistent, revise to read: "Once the decision has been finalised, if the applicant has requested enforcement of the decision (this will be indicated on the Application Form), the decision should be **referred** to the competent authority for enforcement."

**Page 140 – paragraphe 635 / paragraph 635****Australie / Australia**

Step 10 (status update) should also refer to notifying the parents, if required. The checklist on page 142 refers to this, and back to this explanation (with an incorrect handbook reference – see next comment), but there is no reference in this paragraph to notifying the parties. That being said, the first frequently asked question on page 142 provides that there should be no direct contact with the applicant. One way or the other, there should be consistency throughout the chapter on this point.

**États-Unis d'Amérique / United States of America**

Revise to read: "It is important that the requesting State be advised as to progress on the establishment application. In addition to the initial acknowledgement of receipt of the application, the Convention requires that **the Central Authority in the requested State provide** a status update to the **Central Authority in the** requesting State within three months of the acknowledgement of the receipt of the application."

**Page 142 – liste récapitulative / checklist****Australie / Australia**

The handbook references in this checklist have not been updated to refer to the correct section of the handbook. In addition, it is suggested that the procedure steps more closely align to the steps described in the previous pages.

**Page 143 – paragraphe 644 / paragraph 644****États-Unis d'Amérique / United States of America**

Revise to read: "The applicant will indicate on the application form whether he or she wishes to have the decision enforced. If so, it will be sent to the competent authority in the requested State to be enforced and **payments collected will be forwarded to the maintenance creditor.**"

Rationale: The first sentence is now correct, given the current draft of the Establishment application, which has a tickbox to indicate that enforcement is desired. However, the last sentence would not be accurate for some States as drafted.

**Page 144 – paragraphe 647 / paragraph 647**

**DIJuF**

The first sentence should be amended: "Enforcement of a maintenance decision will take place once there is a valid, enforceable decision and the attempts to reach an amicable solution with the debtor have failed."

**Page 144 – paragraphe 651 / paragraph 651**

**Australie / Australia**

Article 6(2) f) does refer to Central Authorities being required to facilitate the collection and transfer of maintenance payments, however, most of what is provided in this paragraph more closely relates to the requirements of Contracting States under Article 35. Article 35 should be the reference here, but there should be a separate sentence referring to the requirements of a Central Authority under article 6(2) f).

**Page 149 – paragraphe 673 / paragraph 673**

**États-Unis d'Amérique / United States of America**

Text now reads: The Country Profile will indicate what processes the State responsible for enforcement will use to send payments to the creditor, and the currency the payment will be sent in. Will need to ensure that the Country Profile contains this information. **Bring to the PB's attention.**

**Page 150 – durée de l'obligation alimentaire / duration of maintenance obligation**

**Australie / Australia**

It is suggested that a point be made that the limitation period (eg. where a child has turned 18) does not mean that any arrears that have accrued during the enforcement period should not still be enforced by the requested State.

Also, there is a typographical suggestion in paragraph 685. The words 'more than' should be removed.

**Page 150 – paragraphe 685 / paragraph 685**

**États-Unis d'Amérique / United States of America**

Revise to read: "A Contracting State may make a declaration under the Convention that it will extend the application of the Convention to children **who are 21 years of age or older**, or make a reservation limiting the application of the Convention to children who are less than 18 years old."

**Page 154 – paragraphe 698 / paragraph 698****DIJuF**

First of all, it should be mentioned that the Central Authorities should encourage amicable solutions to make the debtor pay voluntarily and that this will speed up proceedings.

**Page 154 – paragraphe 700 / paragraph 700****Australie / Australia**

It is suggested that more gender neutral language be used here.

**Page 156 – paragraphe 709 / paragraph 709****Australie / Australia**

There is a typographical suggestion in the second sentence. The word 'to' should be inserted between the words 'other' and 'promote'.

**Page 157 – case de recommandation et/ou paragraphe 712 / tip box and/or paragraph 712****Australie / Australia**

It may be useful, somewhere on this page, to refer case workers to chapter 16 in respect of direct requests. This comment could apply throughout this chapter, where direct requests are referred to.

**Page 157 – paragraphe 713 / paragraph 713****États-Unis d'Amérique / United States of America**

Revise the 4th bullet to read: "Whether the law in the State where the application or request will be brought allows for the type of modification sought...."

Rationale: consistent with 3d bullet.

**Page 157 – note de bas de page 108 / footnote 108****États-Unis d'Amérique / United States of America**

Suggest deletion of the footnote. Rationale: The Convention does not speak of cases where the presence of the applicant WILL be required, and the footnote seems to imply that this may be a common occurrence, whereas it should be practically unheard of in normal practice.

**Page 162 – paragraphe 739 / paragraph 739****États-Unis d'Amérique / United States of America**

See discussion below under paras. 757 and 770. The language in paragraph 739 is worth repeating elsewhere: "...in many States as a matter of good practice, the Central Authority will assist under Article 10(2)a)."

**Page 162 – paragraphe 741 / paragraph 741****États-Unis d'Amérique / United States of America**

Revise to read: "It is always open to the debtor to return to State A and bring the modification **request** directly to the competent authority in State A. This **request** would proceed under domestic law in State A."

Rationale: As written, the paragraph confuses Central Authority applications with direct requests.

**Page 162 – paragraphe 744 / paragraph 744****Australie / Australia**

This example refers to the exception in Article 18(2) a). It should be made clear that this exception does not apply in respect of maintenance obligations for children (which will exclude most modification proceedings from this exception). This is noted in the dot points in paragraph 745, but this should be clarified in the example, also.

**États-Unis d'Amérique / United States of America**

Same problem as noted with Para. 741. Revise to read: "A **request** may be made in State B, for example, where the parties agree that it would be more expeditious to proceed in State B because that State is better able to make a determination of the debtor's income and ability to pay for the purpose of spousal maintenance. In this situation, the parties have consented to the matter proceeding in State B. That **request** would proceed entirely under domestic law (if allowed) with notice to the creditor as provided by the law of that State."

**Page 163 – paragraphe 745 / paragraph 745****États-Unis d'Amérique / United States of America**

Revise the 3<sup>d</sup> and 4<sup>th</sup> bullets to read:

- Where the competent authority in the State of origin **cannot or** refuses to modify the decision and,
- Where the State cannot recognize **or declare enforceable** the initial decision from the State of origin.

Rationale: The bullets summarize Article 18, but in doing so, make some significant modifications. The third and fourth bullets should track the language of the Convention. As currently written, the third bullet deletes important language from the Convention, and the clause at the end of the fourth bullet, while generally true, is not in the Convention. It is conceivable that the original decision might, for instance, have a jurisdictional defect; whereas the modified decision may cure the defect and thus be recognized.

**Page 164 – paragraphe 750 / paragraph 750****États-Unis d'Amérique / United States of America**

Same point as made in para. 741 and 744. Revise to read: "The creditor always has the option of returning to State A and bringing the modification **request** directly in the State where the initial decision was made."

**Page 164 – paragraphe 753 et note de bas de page 110/ paragraph 753 and footnote 110**

**États-Unis d'Amérique / United States of America**

Add a clause at the end to read: "...it can be enforced in a State that has made a reservation under the Convention excluding the residence of the creditor as a basis for recognition and enforcement of a decision (see Chapter 5) **or in a State which retains continuing exclusive jurisdiction over the order so long as one of the parties (e.g. the debtor) remains in the state of origin.**"

Also, delete FN 110. Inability to recognize the order may not be wholly a matter of whether or not the requested State has taken a reservation. Some States may retain jurisdiction to modify their own orders, so long as a party remains in the State, regardless of whether another State has jurisdiction over the parties.

**Page 164 – paragraphe 754 / paragraph 754**

**États-Unis d'Amérique / United States of America**

Revise to read: "Therefor the creditor may wish to determine **whether the order is likely to be recognized** by State A, where the debtor resides, as the modified decision will, in most cases, have to be recognized before it can be enforced in State A. If so, it would be preferable for the creditor to bring the modification application using Article 10 of the Convention as described above."

**Page 165 – paragraphe 757 / paragraph 757**

**États-Unis d'Amérique / United States of America**

Revise the penultimate sentence to read: "If it is the debtor who requires recognition, in many States, as a matter of good practice, the Central authority will assist in that process **under Article 10(2)a** as it is the final step in the modification request." **See para. 739. Delete the final sentence.**

**Page 165 –paragraphe 758 / paragraph 758**

**Australie / Australia**

It may be useful to include a suggestion that, despite the fact that the decision may not need to be recognised and enforced in State B, it is good practice to notify the Central Authority in State B of the modified decision. This is because that Central Authority may have their own records of payments made and owed, so it is important that the decisions recorded in State A and Stage B are the same.

**Page 166 – paragraphe 760 / paragraph 760**

**États-Unis d'Amérique / United States of America**

Revise to read: "However, given the limitations that may be present in the domestic law when **a request** proceeds directly in State A, in many cases it may be preferable for the debtor to use the Convention processes to apply to have the decision modified by State B."

**Page 168 – paragraphe 770 / paragraph 770****États-Unis d'Amérique / United States of America**

Revise first sentence to read: "If the debtor has to apply for recognition, as a matter of good practice, the Central authority in his or her own State may assist **under Article 10(2)a**), as this is the final step in the modification application.

**See comment to para. 757.** Article 10(2)a appears to provide an exception to the general rule that matters which are wholly domestic are not covered by the Convention rules. If the debtor needs to have an order recognized in his/her own state, to defend an action to enforce, Article 10(2)a) appears to provide a Convention remedy. **See para. 739 above and Explanatory Report, para. 268.**

**Page 168 – paragraphe 776 / paragraph 776****États-Unis d'Amérique / United States of America**

"Whether this will be allowed in any given situation will be governed entirely by domestic law. In many jurisdictions this will not be possible as the administrative or judicial authority would be unlikely to allow an application **or request** to proceed where neither the creditor nor the debtor had any ties to the State."

**Page 168 – paragraphe 777 / paragraph 777****États-Unis d'Amérique / United States of America**

Revise to read: "However, if the application **or request** does proceed, the comments in each of the previous scenarios would apply equally to the modified decision that might result from such an application **or request**."

**Page 168 – paragraphe 778 / paragraph 778****États-Unis d'Amérique / United States of America**

Revise to read: "Unless there is some compelling reason to return to the State of origin, it will always be more practical to have the modification application **or request** proceed in a State where one of the parties resides."

**Page 169 – titre de la figure 31 / title of figure 31****États-Unis d'Amérique / United States of America**

Revise Title to read: "Modification request where both have left state of origin and are in same state"

**Page 170 – paragraphe 782 / paragraph 782****États-Unis d'Amérique / United States of America**

Last line, revise to read ". . . and it will in many cases be much less costly than travelling to the other State to bring the **request** directly in the State where the other party resides."

**Page 173 – figure 32****Australie / Australia**

The box on the top right ('Review country profile...') is not complete.

**Page 174 – paragraphe 798 / paragraph 798****États-Unis d'Amérique / United States of America**

Revise to read: "On an application by the debtor, the place where the decision was made (the State of origin) and whether the creditor is habitually resident in that State **may** determine whether the modification decision that results from this application can be recognised or enforced."

**Page 175 – paragraphe 807 / paragraph 807****Australie / Australia**

This should refer to chapter 15, rather than chapter 3, for instructions on completing the transmittal form.

**Page 175 – paragraphe 808 / paragraph 808****États-Unis d'Amérique / United States of America**

Text now reads: "In most cases, the documents will be sent by ordinary mail to the Central Authority in the requested State. Use the address shown on the Country Profile. Check the Country Profile to see if any other means of transmission, such as electronically or by fax is acceptable."

Need to ensure that the Country Profile provides such information. Bring to PB's attention.

**Page 177 – paragraphe 822 / paragraph 822****États-Unis d'Amérique / United States of America**

Revise to read: "Although the provisions of the Convention dealing with requests for certified copies of decisions (Article 25(3)) are only applicable to recognition and enforcement applications, . . ." Rationale: Article 25(3) is the provision related to certified copies; Article 57 is the provision requiring a State to notify the Permanent Bureau of its specification regarding certified copies.

**Page 178 – paragraphe 827 / paragraph 827****États-Unis d'Amérique / United States of America**

Revise second sentence to read: "The creditor may be subject to a means or merits test before the assistance is made available."



**Page 178 – paragraphe 834 / paragraph 834****Australie / Australia**

This should refer to chapter 15, rather than chapter 3, for instructions on completing the transmittal form.

**Page 179 – liste récapitulative / checklist****Australie / Australia**

The handbook reference on item 5 of the checklist is incorrect; it should refer to I(C)(10).

**Page 181 – paragraphe 840 / paragraph 840****Australie / Australia**

There is a typographical suggestion in the 5<sup>th</sup> dot point. The word 'of' should be removed or the sentence reworded.

**Page 181 – paragraphe 844 / paragraph 844****Australie / Australia**

It is suggested that a note be made that the country profile will indicate if a State's domestic law does not permit the cancellation or reduction of arrears.

**Page 182 – liste récapitulative / checklist****Australie / Australia**

The handbook references in this checklist are all incorrect, apart from item 4. There is no part II(A), so reference should be to II(1), II(2) etc.

More generally, I think the numbering/lettering in this chapter could be a bit confusing, as you have parts I, II and III, and each part has sections numbered in the same way.

**Page 187 – paragraphe 864 / paragraph 864****États-Unis d'Amérique / United States of America**

There is a mandatory element in Article 7(1) which should be reflected in this discussion.

Revise to read: "Unlike applications for recognition and enforcement, enforcement, establishment or modification, the provision of services in response to the request is **somewhat** discretionary. If the request is made under Article 7(1) and concerns a potential application under Article 10 of the Convention, the requested Central Authority will first determine if the services are necessary. **If satisfied that they are, it must** then provide such measures as are appropriate, based on the resources available to the Central Authority and the internal law of the State. The request under Article 7(1) must be for one of the measures listed under that Article."

**Page 188 – paragraphe 870 / paragraph 870****Australie / Australia**

There is a typographical suggestion in the 2<sup>nd</sup> sentence. The word 'made' should be inserted between the words 'be' and 'directly'.

**Page 188 – note de bas de page 121 / footnote 121****États-Unis d'Amérique / United States of America**

Revise to read: "Explanatory Report, para. 194."

**Page 189 – figure 35****États-Unis d'Amérique / United States of America**

Add a new box in the lower right-hand corner to read: **"Assistance shall be provided by requested State as necessary to make an application or determine if an application should be initiated."**

**Page 190 – paragraphe 872 / paragraph 872****Australie / Australia**

It is suggested that the word 'pending' be removed from the first sentence, as Article 7 only applies where an application is contemplated, not pending.

**Page 191 – note de bas de page 125 / footnote 125****États-Unis d'Amérique / United States of America**

Revise to read: "For additional examples, see Explanatory Report, para. 193."

**Page 193 – note de bas de page 126 / footnote 126****États-Unis d'Amérique / United States of America**

Revise to read: "See Explanatory Report, para 223."

**Page 194 – paragraphes 897 – 899 / paragraphs 897 – 899****Australie / Australia**

It may be useful to make particular reference to Article 40(3), which provides that the Article is not intended to impede the sharing of information between authorities where necessary to carry out the obligations under the Convention.

**Page 194 – IV. A. 2<sup>ième</sup> puce / IV. A. 2<sup>nd</sup> bullet****États-Unis d'Amérique / United States of America**

In the first sentence of the final bullet at the bottom of the page, revise to read: "The measures taken by the Central or competent authority in the requested State in response to the request for specific measures will be **largely** discretionary."

**Page 197 – paragraphe 905 / paragraph 905****États-Unis d'Amérique / United States of America**

Revise the third sentence to read: "If the request concerns a potential application under Article 10 of the Convention, the requested Central Authority will first determine if the services are necessary, and then **shall** provide such measures as are appropriate, based on the resources available to the Central Authority and the internal law of the State."

**Page 198 – paragraphe 909 / paragraph 909****Australie / Australia**

There is a typographical suggestion in the 2<sup>nd</sup> sentence. The word 'made' should be inserted between the words 'be' and 'directly'.

**Page 199 – figure 36 / figure 36****Australie / Australia**

It is suggested that the two boxes 'will the Central Authority impose any costs...' make clear that this is the Central Authority of the requested State.

**États-Unis d'Amérique / United States of America**

Change the 4<sup>th</sup> box down in the 3d column to read: "**Are there any exceptional costs for providing specific measures?**"

**Page 199 – figure 36 et paragraphe 912 / figure 36 and paragraph 912****Australie / Australia**

Paragraph 912 on page 200 states that this section follows the steps in the flowchart in figure 36. However, the flowchart includes the first step: Acknowledge receipt as part of the final box with the status report. It is suggested that an additional box be included in the flowchart up front, and the final box be amended accordingly

**Page 202 – paragraphe 928 / paragraph 928****États-Unis d'Amérique / United States of America**

Revise to add at the end: "**As a matter of good practice, provision of assistance in response to such a request may eliminate the need to refer the case to the requested State. For example, assisting in what may appear to be a purely domestic matter,**

such as establishment of an order in the requesting State, may obviate the need to make an application to establish an order in the requested State.”

**Page 202 – note de bas de page 133 / footnote 133**

**États-Unis d’Amérique / United States of America**

Revise to read: “Explanatory Report, para 215.”

**Page 202 – paragraphe 932 / paragraph 932**

**États-Unis d’Amérique / United States of America**

Revise to read: “**Exceptional costs are explained in the Explanatory Report at paragraph 223. They are considered to be ‘unusual, out of the ordinary or making an exception to the general rule.’** The general costs associated with processing a request would not likely be considered exceptional.” **Delete** the final sentence.

Rationale: Costs of genetic testing, in particular, are extremely common and, in many States would be considered as ordinary expenses of bringing an action to establish paternity.

**Page 203 – note de bas de page 134 / footnote 134**

**États-Unis d’Amérique / United States of America**

Revise to read: “Subject to any declaration that a State may have made to use a child-centred means test.” Rationale: The possible merits determination will establish whether or not the application may be brought at all.

**Page 205 – paragraphe 938 et suiv. / paragraph 938 et seq.**

**DIJuF**

The instructions for completing the forms would be easier to understand if examples were provided on how to fill in the forms (e.g. a standard application where the applicant is the representative of a person for whom maintenance is sought or a more complicated application made by a debtor).

**Page 205 – paragraphe 944 / paragraph 944**

**États-Unis d’Amérique / United States of America**

Revise the second sentence to read: “The language of communication between Central Authorities will be the language of the requested State, **another agreed upon language**, or English or French, **unless the requested state has made a reservation regarding the use of English or French.**”

**Page 209 – paragraphe 969 / paragraph 969**

**Australie / Australia**

There is a typographical suggestion. The work ‘that’ should be inserted between the words ‘documents’ and ‘should’.

**Page 210 – point d) et paragraphe 979 / point d) and paragraph 979****Australie / Australia**

It is suggested that the wording aligns with exactly that on the form. The words 'or payable' should be added to the title, 'd) Particulars of those for whom maintenance is sought or payable'. Similarly the word 'sought' should be inserted between the words 'is' and 'payable'.

**Page 211 – paragraphe 981 / paragraph 981****Australie / Australia**

For ease of reference, it is suggested that the dot points be re-ordered to match the form itself. That is, Parentage; Marriage; Affinity; Grandparent; *In loco* parentis; Analogous relationship.

**Page 213 – point i) et paragraphes 991 - 994 / point i) and paragraphs 991 - 994****Australie / Australia**

The title and references to 'basis' or 'bases' between paragraphs 991 to 994.

The word 'Bases' is used in the title and in paragraph 993. 'Basis' is used in 992 and 994. Suggest that 'Basis' is correct.

**Page 214 – paragraphe 1007 / paragraph 1007****Australie / Australia**

There is a typographical suggestion in the first line. The word 'as' should be replaced with 'if', or alternatively delete the word 'is'.

**Page 216 – paragraphe 1016 / paragraph 1016****Australie / Australia**

For ease of reference, it is suggested that the dot points be re-ordered to match the form itself. That is, Parentage; Marriage; Affinity; Grandparent; *In loco* parentis; Analogous relationship.

**Page 217 – paragraphe 1020 / paragraph 1020****Australie / Australia**

There is a typographical suggestion in the third line. Insert the word 'services' after the word 'search', alternatively, the word 'to' should be inserted between the words 'undertake' and 'locate'.

**Page 218 – paragraphe 1028 / paragraph 1028****Australie / Australia**

There is a typographical suggestion in the first line. The word 'as' should be replaced with 'if', or alternatively delete the word 'is'.

**Page 219 – paragraphe 1036 / paragraph 1036****Australie / Australia**

For ease of reference, it is suggested that the dot points be re-ordered to match the form itself. That is, Parentage; Marriage; Affinity; Grandparent; *In loco* parentis; Analogous relationship.

**Page 224 – paragraphe 1056 / paragraph 1056****Australie / Australia**

For ease of reference, it is suggested that the dot points be re-ordered to match the form itself. That is, Parentage; Marriage; Affinity; Grandparent; *In loco* parentis; Analogous relationship.

**Page 236 – paragraphe 1101 / paragraph 1101****Australie / Australia**

Please clarify whether the word is 'bases' or 'basis'.

**Page 237 – paragraphe 1111 / paragraph 1111****États-Unis d'Amérique / United States of America**

To be consistent with paras. 1106 and 1114, revise to read: "In a challenge to recognition or recognition and enforcement, the respondent will have to establish that the agreement should not be used as a basis for recognition and enforcement of the decision in the requested State, **unless the requested State has made a reservation on that basis.**"

**Page 238 – paragraphe 1115 / paragraph 1115****États-Unis d'Amérique / United States of America**

Revise the last sentence to read: "A direct request will be made in situations where the applicant cannot go through Central Authority of one or both of the States involved since either the provisions of Chapter II or III have not been extended in that State to the type of matters that the applicant is pursuing, or because the application must be made outside the Central Authority system, **but the applicant still wishes to take advantage of the provisions of the Convention which do apply.**"

**DIJuF**

The text of this para. does not comply with Art. 37 of the Convention: Nothing in this Art. precludes "direct requests" (see para. 600 of the Explanatory Report). Therefore, the text needs to be reworded:

"This Handbook deals ~~primarily~~ with applications and requests processed through Central Authorities. However, there may be cases, as has been noted in other chapters, when an applicant will make a direct request. There are two situations where a direct request is possible:

1. A direct request **has to be made** because the application does not come within the scope of the Convention (example: The application is for spousal support only and both of the Contracting States have not made a declaration to extend chapters II and III of the Convention to some or all applications involving spousal support).

2. The application comes within the scope but the applicant **chooses** to make a direct request to a competent authority (example: The application is for child support and the mother of the child chooses to mandate a law firm which is specialised on international child support cases). In this case, the applicant will not have the assistance of the Central Authority."

**Page 238 – après le paragraphe 1115 / after paragraph 1115****DIJuF**

The handbook should include information about the possible situation that a direct request is sent to a Central Authority of the requesting or the requested State by mistake. The Central Authority should inform the applicant accordingly and forward the request to the competent authority.

**Page 238 – paragraphe 1116 / paragraph 1116****États-Unis d'Amérique / United States of America**

Revise to read: "Although a direct request does not go through a Central Authority, the matter must still come within the scope of the Convention (see Chapter 3) in both the requested and requesting States **for Article 37 to apply.**"

**Page 238 – paragraphe 1117 / paragraph 1117****États-Unis d'Amérique / United States of America**

Revise the second bullet to read: "the provision that, **in a matter governed by the Convention, and subject to Article 18, a direct request may be made to the competent authority for the purpose of establishing or modifying a maintenance decision.**"

**Page 239 – paragraphe 1123 / paragraph 1123****DIJuF**

The word "also" should be deleted in this sentence.

**Page 239 – paragraphe 1124 / paragraph 1124****États-Unis d'Amérique / United States of America**

Revise the third bullet to read: "• a statement of proper notice where the respondent did not appear **and was not represented in the proceedings in the State of origin**, or did not challenge the maintenance decision"

**Page 240 – paragraphe 1126 / paragraph 1126****DIJuF**

Reference to the specific section of the Country Profile should be added where the caseworker can check if the competent authority has its own form which should be used.

**Page 240 – figure 43****États-Unis d'Amérique / United States of America**

In first box, revise to read: "Is **request** for recognition or recognition and enforcement?"

Because Article 17 a) does not apply to direct requests, **delete** the references to a means or merits test and all four of the corresponding boxes on the right side of the chart. As noted in the title to the figure, only Article 17 b) applies.

**Page 240 – paragraphe 1130 / paragraph 1130****DIJuF**

The para. should be deleted since the flow chart on the same page provides more detailed information.

**Page 240 – paragraphe 1131 / paragraph 1131****Australie / Australia**

There is a typographical suggestion in the 1<sup>st</sup> sentence. It should refer to chapters II and III, it currently refers to chapters II and II.

**États-Unis d'Amérique / United States of America**

Revise the last sentence to read: "However the documentary requirements set out in Article 25 are the same." Rationale: There are no "documentary requirements and procedures set out in Article 19(5)" per se. Article 19 deals with Scope, and paragraph 19(5) makes the provisions of Chapter V applicable to direct request proceedings. The reference should be to Article 25, as in paragraph 1124, and should be to documentary requirements only and not "procedures."



**Page 241 – paragraphe 1132 / paragraph 1132****Australie / Australia**

The list of documents for incoming direct requests should be the same as for outgoing requests (paragraph 1124). Also, if the recommended application form cannot be used for direct requests, this should be clearer in paragraph 1132 (eg. a note in brackets could be included after 'application' in the first dot point).

**États-Unis d'Amérique / United States of America**

Revise to read: "In addition to the request, the following documents will always be required:...."

Rationale: This list should be the same as in paragraph 1124.

**Delete the first bullet** "Application" and **delete the fifth bullet** "Financial Circumstances Form." It is also necessary to **add a bullet** "Legal Assistance Statement" in that section II.B does not include a paragraph equivalent to paragraph 1127 in section II.A.

**Page 241 – paragraphe 1134 / paragraph 1134****États-Unis d'Amérique / United States of America**

Revise the last sentence to read: "It will either be declared enforceable or registered and the respondent **and applicant** given notice (Article 23(5)), or the respondent will be given notice and **both parties will have opportunity to be heard before** the competent authority will decide whether to recognize the decision. Article 24(3)."

**Page 241 – paragraphe 1135 / paragraph 1135****États-Unis d'Amérique / United States of America**

Revise the citation at the end of the paragraph to read: "(Article **17 b**)".

**Page 241 – paragraphe 1136/ paragraph 1136****DIJuF**

The para. should be deleted:

The wording of the text is likely to be misunderstood. Even if an application has been made through a Central Authority, enforcement must not follow automatically from the application for recognition and enforcement. There may be situations where an applicant only wants a maintenance decision to be registered or declared enforceable without subsequent enforcement proceedings. In this context, the application forms have a tick box included which can be checked if the applicant only wishes to apply for the recognition and not for the enforcement of a maintenance decision (e.g. No 6 on Form for Application for Recognition and Enforcement).

**Page 241 – paragraphes 1137 -1138 / paragraphs 1137 -1138****Australie / Australia**

This paragraph provides that there is no requirement that a maintenance decision for a child that is more than 21 is enforced, even where the law of the State of origin allows for maintenance to be paid beyond this date. It may be true that the Convention does not apply in these cases, but a person may still be able to apply directly and this may be accepted and enforced. It may be useful to add a note to this effect.

**Page 241 – paragraphe 1137 / paragraph 1137****États-Unis d'Amérique / United States of America**

Revise the title of subsection b) and the accompanying text to read: "**Children 21 years of age or older.**"

**Page 241 – paragraphe 1138 / paragraph 1138****États-Unis d'Amérique / United States of America**

Same comment as in paragraph 1137. Revise to read: "Note that this will apply even where the law of the State of origin allows maintenance to be paid for children who are **21 years of age or older,....**"

**Page 242 – paragraphe 1141 / paragraph 1141****États-Unis d'Amérique / United States of America**

Revise the first sentence to read: "Direct requests to a competent authority for the establishment or modification of a decision coming within the scope of the Convention will be governed, **subject to Article 18**, entirely by internal law."

**Page 242 – paragraphe 1143 / paragraph 1143****États-Unis d'Amérique / United States of America**

Text now reads: "The Country Profile for the requested State will indicate what procedures are applicable to direct requests in that State, or provide information concerning how to contact a competent authority to obtain that information."

**Bring to PB attention.**

**DIJuF**

Reference to the specific section of the Country Profile should be added where the caseworker can check if the competent authority has its own form which should be used.

**Page 242 – paragraphe 1144 / paragraph 1144****États-Unis d'Amérique / United States of America**

Revise to read: "Refer to the Country Profile for the requested State to determine what will be required for the direct request. Although the documentation used for recognition and enforcement **requests** may be the same as used for applications through Central Authorities, the documentation for other types of requests may be very different than that used for Convention applications."

**Page 242 – paragraphe 1145 / paragraph 1145****Australie / Australia**

It may be useful to also note that applying through a Central Authority reduces the risk of duplicate requests and decisions.

**DIJuF**

The para. should be deleted since it does not have any practical impact for caseworkers.

**Page 242 – paragraphe 1146 / paragraph 1146****États-Unis d'Amérique / United States of America**

Add a bullet: "A Legal Assistance Statement where necessary"

**Page 242 – c. Articles applicables / c. Relevant Articles****États-Unis d'Amérique / United States of America**

Relevant Articles Change : "Article 17" to "Article 17 b)".

**Page 243 – paragraphe 1152 / paragraph 1152****États-Unis d'Amérique / United States of America**

Revise to read: "For all other **requests**, consult the competent authority to determine the forms or documents required for the request."

**Page 243 – paragraphe 1154 / paragraph 1154****États-Unis d'Amérique / United States of America**

Revise to read: "In all other **requests**, if legal assistance is required, the person making the request will be responsible for covering those costs unless the law of the requested State provides otherwise."

**COMMENTAIRES RELATIFS  
AU DOCUMENT PRÉLIMINAIRE NO 5**

\* \* \*

**COMMENTS ON  
PRELIMINARY DOCUMENT NO 5**

**COMMENTAIRES GÉNÉRAUX /GENERAL COMMENTS****Malaisie / Malaysia**

La Malaisie dans sa réponse à la consultation a informé le Bureau Permanent qu'ils n'avaient pas de commentaire à formuler concernant le Projet de plan d'affaires pour le développement de iSupport. / Malaysia in its response to the consultation informed the Permanent Bureau that they had no comments on the Draft Business Plan for the Development of iSupport.

**Norvège / Norway**

The Norwegian Ministry of Labour and Social Inclusion is positive towards the continuation of the Business Plan for the Development of iSupport, provided that iSupport does not compromise Norway's rules regarding professional secrecy and is compatible with Norway's current computer-system for child maintenance cases, "BiSys".

**COMMENTAIRES RELATIFS  
AU DOCUMENT PRÉLIMINAIRE NO 6**

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**COMMENTS ON  
PRELIMINARY DOCUMENT NO 6**

## I. COMMENTAIRES GÉNÉRAUX /GENERAL COMMENTS

### Australie / Australia

We would like to thank the Permanent Bureau for its excellent work in preparing the Implementation Checklist.

### Malaisie / Malaysia

La Malaisie dans sa réponse à la consultation a informé le Bureau Permanent qu'ils n'avaient pas de commentaire à formuler concernant le projet de liste récapitulative pour la mise en œuvre. / Malaysia in its response to the consultation informed the Permanent Bureau that they had no comments on the Draft Implementation Checklist.

### Monaco

Monaco dans sa réponse à la consultation a informé le Bureau Permanent qu'ils n'avaient pas de commentaire à formuler concernant le projet de liste récapitulative pour la mise en œuvre. / Monaco in its response to the consultation informed the Permanent Bureau that they had no comments on the Draft Implementation Checklist

### Suisse / Switzerland

Nous avons certaines réserves à l'égard de cette liste :

1. On ne voit pas sur quelle disposition précise elle se fonde. En tout état de cause, elle ne saurait avoir une portée impérative pour les Etats contractants, ce qui, du même coup, amène à se demander quel est son objet. On doit la considérer comme une simple « suggestion ». Par ailleurs, en tant qu'instrument d'information, elle n'est pas optimale. En décrivant quelques phases de manière détaillée, elle éveille l'impression d'être complète, ce qui n'est pas et ne saurait être le cas puisque les régimes (juridiques) varient d'un Etat à l'autre.

2. Cette liste soulève des questions fondamentales telles que celle de l'incorporation des conventions internationales dans le droit interne (monisme ou dualisme, ch. 2), sans pouvoir expliciter de manière approfondie les conséquences de ces deux méthodes. Sur la question d'un éventuel conflit entre la convention et le droit interne, une telle liste ne peut pas apporter non plus de réponses. En outre, le document manque, notamment, d'explications sur les questions relatives à la discrimination qui peuvent découler de la ratification et de la mise en œuvre de la convention.

Tous ces éléments font que nous nous demandons quel est l'objet de cette liste. A la rigueur on pourrait en conserver les annexes qui fournissent des indications pouvant se révéler utiles.

## II. COMMENTAIRES SPÉCIFIQUES /SPECIFIC COMMENTS

### Page 5\* – Note de bas de page No. 7 / Footnote No. 7

#### Australie / Australia

It appears that footnote 7 is incorrect as Articles 14-17 relate to effective access to procedures and legal assistance.

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\* Les références aux numéros de page dans cette section font référence aux numéros de page du Doc. pré-l. No 6 / Reference to page numbers in this section makes reference to page numbers of Prel. Doc. No 6.

**Page 5 – 3. Devenir État partie / 3. Becoming a State Party****Australie / Australia**

First tick box, first sentence, the term “an” should be added before the word “Observer”.

**Page 5 – Note de bas de page No. 15 / Footnote No. 15****Australie / Australia**

It appears that footnote 15 is incorrectly referenced. Footnote 15 refers to article 60(2) a), which refers to article 59(1). Article 59(1) relates to Regional Economic Integration Organisation (REIO).

We envisage that this paragraph will relate to States which are not an REIO.

**Page 6 – Questions Préliminaires, 3. Devenir Etat partie / Preliminary Questions, 3. Becoming a State Party****Australie / Australia**

At the last paragraph of Section 3, the term “of” should be added after the word “Ratification”.

**Page 8 – Chap. I - Champ d’application (art. 2) / Scope (Art. 2)****Australie / Australia**

Second tick box: As Article 63 relates to “Declarations”, reference to Article 63 should be replaced by a reference to Article 62 dealing with “reservations”.

**Page 10 – Chap. II – Introduction de procédure relatives aux demandes / Institution of proceedings in respect of applications****Australie / Australia**

Referring to article 6(1) b), this paragraph should read: “initiate or facilitate the institution of proceedings in respect of such application”.

**Page 12 – Chap. V – Procédure pour une demande de reconnaissance et d’exécution (art. 23) / Procedure on an application for recognition and enforcement (Art. 23)****Australie / Australia**

First tick box, second line: the term “the” should be added after the word “motion”.

Second tick box, second bullet: “funded” should be read “founded”



**Page 15 – Chap. VIII – Non divulgation des renseignements (art. 40) / Non-disclosure of information (Art. 40)**

**Australie / Australia**

First tick box, first bullet: According to Article 40(1), the determination for the Central Authority should be whether it should disclose or confirm information gathered or transmitted in application of the Convention, not whether it should transmit or gather information. Therefore, we suggest the following amendment: "if the Central Authority determines that disclosing or confirming information, gathered or transmitted in application of the Convention, it could jeopardize the health, safety or liberty of a person, it must not disclose or confirm this information".

**Page 16 – Chap. VIII – Après Système juridique non unifié (art. 46 et 47) / After Non-unified legal system (Arts 46 and 47)**

**Suisse / Switzerland**

Dans l'hypothèse où l'on conserverait la liste, il y aurait lieu d'y apporter l'adjonction suivante:

Après les art. 46 et 47, il y a lieu d'ajouter l'art. 50 avec le texte suivant :

« Dans l'hypothèse où les conventions de La Haye de 1954, 1965 ou 1970<sup>1</sup> seraient en vigueur dans votre Etat, déterminez les incidences que cela a sur l'accomplissement des tâches découlant de la Convention sur le recouvrement des aliments. »

**Page i – Annexe I – 1<sup>re</sup> tableau / Annex I – 1<sup>st</sup> table**

**Australie / Australia**

In the last box (Article 57), third bullet, the terms "as required under article 14" should be added after the word "procedures".

**Page iii - Annexe II – 3<sup>e</sup> tableau / Annex II – 3<sup>rd</sup> table**

**Suisse / Switzerland**

Il faut, sous le 3e titre du tableau (« Autres fonctions obligatoires... »), ajouter un intertitre (nouvelle ligne du tableau) ayant le libellé suivant : « Prendre toutes les mesures appropriées concernant les demandes présentées par l'intermédiaire des Autorités centrales pour : » ...

**Page iv - Annexe II – 4<sup>e</sup> tableau / Annex II – 4<sup>th</sup> table**

**Suisse / Switzerland**

A la page iv, sous le 4 e titre du tableau, s'agissant des art. 23 (2) et 24 (2), il convient de mentionner (par exemple dans une note de bas de page) que dans certains Etats, il y a lieu tout d'abord de rechercher un accord amiable avec le débiteur (v. également notre commentaire relatif au paragraphe 490 du Projet de Rapport explicatif révisé concernant la Convention de La Haye du 23 novembre 2007).

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<sup>1</sup> Convention du premier mars 1954 relative à la procédure civile, Convention du 15 novembre 1965 relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, Convention du 18 mars 1970 sur l'obtention des preuves à l'étranger en matière civile ou commerciale

**Page iv - Annexe II – 5<sup>e</sup> tableau / Annex II – 5<sup>th</sup> table****Australie / Australia*****Article 23(5) et/ and article 23(9)***

Referring to Article 23(5), this sentence should also include a reference to the requirement under this article that the applicant and respondent be promptly notified of the declaration or registration or refusal of the decision.

Referring to article 23(9), this sentence should also include the requirement to promptly notify the application and the respondent of the decision following the challenge or the appeal.

**Suisse / Switzerland*****Articles 20, 22, 23, 24 et/and 25***

Au dernier titre figurant à la page iv, on ne voit pas très bien pourquoi l'on parle de « ... décisions *rendues en application* de la Convention » (« decisions *made* under the Convention ») en ce qui concerne les art. 20, 22, 23, 24 et 25.

***Article 23(5) et/ and article 23(9)***

Il y a eu interversion des textes entre l'art. 23(5) et l'art. 23(9).

***Article 36(1)***

Nous relevons une différence entre la version anglaise et la version française dans le dernier titre du tableau et dans le texte relatif à l'article 36(1). Le texte anglais est incompréhensible.