

**Council on General Affairs and Policy of the Conference – March 2019**

<b>Document</b>	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 11 of December 2018
<b>Title</b>	Research in advance of a possible Experts' Group on international transfers of maintenance funds	
<b>Author</b>	Permanent Bureau	
<b>Agenda item</b>	Item IV-1	
<b>Mandate(s)</b>	C&R No 28 of the 2018 meeting of the Council on General Affairs and Policy	
<b>Objective</b>	To provide updated information on international transfers of child support	
<b>Action to be taken</b>	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/>	
<b>Annexes</b>	n.a.	
<b>Related documents</b>	"Transfer of funds and the use of information technology in relation to the international recovery of child support and other forms of family maintenance", Prel. Doc. No 9 of May 2004 for the attention of the Special Commission of June 2004 on the international recovery of child support and other forms of family maintenance	

## I. Introduction

1. In preparation for the 2004 Meeting of the Special Commission on the international recovery of child support and other forms of family maintenance, the Permanent Bureau drew up a report on the transfer of funds and the use of information technology in that field (hereinafter, the 2004 Report).<sup>1</sup> The 2004 Report was produced in the context of a Working Draft which would eventually become the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (hereinafter, the “2007 Convention”).<sup>2</sup>

2. The 2004 Report mentioned the high cost of processing cheques. It provided an overview of other available transfer means and concluded that Article 24 of the Working Draft was sufficient to encourage States to promote the use of the most cost-effective and efficient methods available to transfer funds. The 2004 Report also invited States to consider the following solutions:

- where there is a high volume of transfers between two States, combining the social insurance and the maintenance payments networks, with transfers in bulk and additional cross-referenced data if necessary, in order to benefit from a reduction in bank fees.
- where the volume of transfers between two States does not warrant the setting up of highly developed electronic systems, using mechanisms such as inter-branch transfers, Credit Unions, the International Remittance Network, ATM Cards (including Internet Banking) and the Mobile Payment Forum.

3. In the 2007 Convention, the transfer of funds is addressed in Article 35, which reads as follows:

“(1) Contracting States are encouraged to promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.

(2) A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention.”

In addition, Article 6, which lists specific functions of Central Authorities, mandates Central Authorities to take all appropriate measures “to facilitate the collection and expeditious transfer of maintenance payments”.

Article 8, which addresses costs of Central Authorities, states that “each Central Authority shall bear its own costs in applying this Convention” and that “Central Authorities may not impose any charge on an applicant for the provision of their services under the Convention save for exceptional costs arising from a request for a specific measure under Article 7”.

4. Since 2004, various developments have taken place in the field of international payments. While technological and regulatory changes have made it easier and less costly to transfer funds abroad, traditional means of transfer have become increasingly costly and cumbersome. For instance, a

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<sup>1</sup> “Transfer of funds and the use of information technology in relation to the international recovery of child support and other forms of family maintenance”, Prel. Doc. No 9 of May 2004 for the attention of the Special Commission of June 2004 on the international recovery of child support and other forms of family maintenance, available on the HCCH website at < [www.hcch.net](http://www.hcch.net) > under the Child Support section then “Preliminary documents” (hereinafter, Prel. Doc. No 9 of May 2004).

<sup>2</sup> “Working draft of a Convention on the international recovery of child support and other forms of family maintenance”, Prel. Doc. No 7 of April 2004 for the attention of the Special Commission of June 2004 on the International Recovery of Child Support and other Forms of Family Maintenance, available on the HCCH website at < [www.hcch.net](http://www.hcch.net) > under the Child Support section then “Preliminary documents”.

growing number of States no longer accept (maintenance) payments by cheque. This significantly affects countries where cheque payments are still relatively common. In recognition of the issue, the 2018 Council on General Affairs and Policy adopted the following Conclusion and Recommendation:

“The Council welcomed the proposal submitted by Switzerland to establish an Experts’ Group regarding the international transfer of maintenance funds. As a first step, the Council mandated the Permanent Bureau, subject to available resources, to update existing research, including information on such transfers. The Permanent Bureau will report its findings to Council at its 2019 Meeting.”<sup>3</sup>

5. To alleviate difficulties linked to international fund transfers, Central Authorities under the 2007 Convention have resorted to a number of practices. The pragmatic solutions they have implemented include opening bank accounts in other States and issuing payment cards to custodial parents residing abroad. Some States have also involved their diplomatic network or have had officials travel periodically to collect funds abroad (incl. transatlantic flights). Although each may differ in practicality, the variety of solutions put forward highlights the present complexity that countries face and have to overcome. This necessitates a discussion of best practices as well as of more practical and long-term suitable solutions.

6. Also since 2004, iSupport has been developed as a complete electronic case management system to service the 2007 Convention and other international instruments for the recovery of maintenance.

7. This present Report will first consider the experience of several Central Authorities, as designated under the 2007 Convention. It will then provide an overview of existing methods for international transfer of funds before offering some conclusions and possible directions for an Experts’ Group on the international transfer of maintenance funds.

## II. Experience of Central Authorities in relation to international payments

8. An analysis of the 29 Country Profiles<sup>4</sup> completed by 28 States (including one with a non-unified legal system) bound by the 2007 Convention shows that different models for the payment of child support exist, as far as payment to the creditor is concerned – this analysis does not include the way in which Central Authorities co-operate between themselves or with banks.

9. The majority of responding States, *i.e.*, 18 States (64%), operate a decentralised model, with payment expected to be made directly by the debtor or other party to the creditor, their representative or a bailiff. Four States (14%) have a highly centralised model, with payments going through the Central Authority (in the case of the United States of America, all IV-D child support agencies have a state disbursement unit (SDU), to which all maintenance payments are made). One additional State indicates that payment through the Central Authority is preferred, while direct payment to the creditor is also possible. Finally, five States (18%) have a hybrid model where payment to the creditor, their representative, the Central Authority or another central location are all possible.

10. For the purpose of this present Report, a series of interviews with Central Authorities – which use all these different models – were conducted between June and August 2018.

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<sup>3</sup> See “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (13-15 March 2018)”, C&R No 28, available on the HCCH website < [www.hcch.net](http://www.hcch.net) > under “Governance” then “Council on General Affairs and Policy”.

<sup>4</sup> < [http://hcch.cloudapp.net/smartlets/sfjsp?interviewID=hcchcp2012&t\\_lang=en](http://hcch.cloudapp.net/smartlets/sfjsp?interviewID=hcchcp2012&t_lang=en) > (last consulted on 20 September 2018).

11. Most Central Authorities mentioned the high cost, not only of processing cheques, but also of international transfers from bank account to bank account in different currencies.<sup>5</sup> While they offer shorter processing time and lower costs, banks typically still charge between € 14 and € 16 (US \$ 16 to US \$ 19) per transaction, which is significant in relation to the value of most child support payments.

12. International bank transfers offer the possibility to include information about the payment (for instance, a reference number). However, the Central Authorities surveyed mentioned that the information which is included by the sender is not always received in full by the beneficiary. As one respondent mentioned, this could be due to incompatibilities between the European SEPA format and the US ACH-IAT format.<sup>6</sup> One public body also indicated at times receiving no reference information at all. In organisational terms, Central Authorities differed as to which information should be included. One mentioned the case number as well as the name and date of birth of both creditor and debtor. For others, a case number would be sufficient, perhaps with the addition of the year of the case as well as of the first and last name of the debtor. In this respect, it can be noted, as an example, that a reference number is currently sufficient to pay by bank transfer for a number of utilities such as water, electricity, gas, cable or internet in various States.

13. Other organisational issues include clarity in relation to establishing to whom the funds should actually be sent, especially in relation to those States which have declared that payments to both a creditor and a Central Authority are accepted. It can be noted that iSupport does contain clear information regarding the actual creditor. Such information could be synchronised with a bank account linked to iSupport, particularly if the creditor is a public body.

14. Finally, issues arise in relation to exchange rates, with fluctuations affecting credit and debit balances for the Central Authorities which handle funds. Some States consider that the amount of maintenance owed in a foreign currency will fluctuate as such, whereas some States register that amount in their own currency at a specific time and do not change the amount based on exchange rate fluctuations. In this respect, the mechanisms to alleviate, in the first instance, exchange rate fluctuations as described in the 2004 Report such as SWAPS are still relevant.<sup>7</sup>

15. In search of practical solutions to these issues, some Central Authorities have opened bank accounts in other States. This allows them to alleviate the impact of bank fees and to ensure that payments are processed more quickly. If the foreign account opened by the Central Authority is located in a branch of the bank with which it works domestically, this will allow it to alleviate bank and transfer fees, as well as shortening the time it takes to process the transfer.<sup>8</sup> There is, however, a cost to be supported by the Central Authority, in terms of opening and maintaining a bank account.

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<sup>5</sup> Some States distinguish bank to bank transfers (similar to a domestic direct deposit or bill payment) from bank account to bank account transfers. The former are known as ACH or IAT (for international transactions) in the United States. Bank account to bank account transfers, also known as wire payments, include SWIFT and IBAN messaging.

<sup>6</sup> For instance, some of the information may be lost when being transformed from the ACH-IAT format to the European SEPA format or to the Canadian CPA format. The issue of the lack of data or information from the sender can be equally problematic in SWIFT or wire transfers. The data that can be included with a SWIFT transmission can be truncated or lost, and there is insufficient space in the SWIFT message format to include payment data if a payment is for more than one case.

<sup>7</sup> See Prel. Doc. No 9 of May 2004, para. 26.

<sup>8</sup> *Ibid.*, para. 12 on inter-branch transfers.

### III. Updated research on means of international transfer of funds

#### A. European framework for international payments

16. Since the 2004 Report, the European Union has been consolidating the framework for a “Single Euro Payment Area” – SEPA (Directive 2007/64/EC). As mentioned in the 2004 Report, the inspiration for this framework was the 1992 UNCITRAL Model Law on Credit Transfers.<sup>9</sup> Further, Regulation (EC) No 924/2009 raised the threshold up to which banks must apply the same charges for domestic and cross-border electronic payment transactions in euros to € 50,000. States outside the euro area may also extend the application of this Regulation to their national currency. Sweden and Romania have chosen this option. The 2007 Directive (since replaced by Directive (EU) 2015/2366)<sup>10</sup> also mandates that a payment transaction in euros or in the currency of an EU State outside the euro area be executed within one working day.

17. For the European Commission, the ambition is to extend these rules to non-euro States and to increase transparency. An April 2018 legislative proposal aims to ensure that all people in the EU will be able to transfer money cross-border, in euros, at the same cost as they would pay for a domestic transaction. The new rules will also require that consumers be informed of the cost of a currency conversion before making a payment abroad in a different currency to their home one.<sup>11</sup>

18. The technical translation of this regulatory framework has been pursued by European banks through EBA CLEARING. While its STEP2 infrastructure<sup>12</sup> allows the requirements of the 2007 and 2015 Directives in terms of execution time to be met, there is a move towards more ambitious real-time transactions. In November 2017, EBA CLEARING, in partnership with SWIFT, launched RT1, an infrastructure solution for the processing of instant SEPA credit transfers at a pan-European level.

#### B. SWIFT payments

19. This move towards real-time transactions is also apparent at the global level. SWIFT is a co-operative owned by world banks and is the leading provider of messaging services for cross-border payments (it is used by 11,000 financial institutions in more than 200 States and territories). SWIFT’s global payment initiative (gpi) involves 160 global banks and aims to be the standard for all cross-border payments by the end of 2020, with payments credited in a matter of minutes. SWIFT gpi also offers traceability and transparency with respect to bank fees and foreign exchange rates.

20. It can also be noted that SWIFT, STEP2 and RT1 provide compliance with regulations on financial crime and money laundering.

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<sup>9</sup> *Ibid.*, para. 20.

<sup>10</sup> In addition to the European Union, these instruments also apply to Iceland, Liechtenstein and Norway as members of the European Economic Area.

<sup>11</sup> < [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/payment-services/single-euro-payments-area-sepa\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/payment-services/single-euro-payments-area-sepa_en) > (last consulted on 21 September 2018).

<sup>12</sup> STEP2 is a central infrastructure for the routing of payment instructions that enables banks to reduce costs related to processing of customer payments. It processes payment orders sent to the system by means of data message through a secure network.

21. Payments processed according to the SEPA and SWIFT processes follow a similar pattern. It rests on banks having an established relationship (*i.e.*, having accounts with each other). To process a cross-border transfer, the sender's bank (bank A) sends a message to the recipient's bank (bank B). The account of the sender is debited, the account held by bank B with bank A is credited, and the account of the recipient is credited. If banks do not have a relationship, they need to use an intermediary bank where they both hold accounts. In this example, bank A must ask the intermediary bank to debit its account and credit bank B's account. This process is longer and more expensive, as the intermediary bank charges a fee for this service.

### C. Other money transfer solutions<sup>13</sup>

22. Various solutions allowing customers not to use their bank's international transfer facilities have proliferated. They advertise lower fees and shorter processing times. Below are examples for transferring 200 euros in US dollars – including some services that are intended for person-to-person transfers.

	Amount received in \$	Amount to pay in €	Spread*	Remark
Transferwise	236.81	200.00	2.47	Amount credited in 1 to 2 business days
Moneygram	233.85	200.99	5.43	Amount to be picked up in cash
Western Union	227.98	209.90	11.30	Delivery in minutes
World remit	235.96	203.99	3.32	

\* Difference between 200 euros converted at middle market rate and the amount received by the final recipient. The exchange rate on 11 May 2018 was €200=\$239.27.

*Table 1 Cost of selected money transfer solutions*

23. In terms of cost, most of these solutions compare favourably to the services offered by high street banks. For instance, the same € 200 transfer with a major European bank will incur a fee of € 14 and no information is provided regarding the amount the recipient will finally receive.

24. It is reported that Transferwise, which is based in the UK, processes £ 3bn worth of payments each month.<sup>14</sup> It cannot yet be fully used for payments to and from the United States.

### D. Blockchain

25. Blockchain technology has received considerable attention. Some claim it has the potential to revolutionise many sectors, including international money transfers. By providing trusted real-time verification of transactions, it would reduce the need for intermediaries such as correspondent banks.

<sup>13</sup> Money transfer solutions using mobile phones such as M-Pesa are not discussed here, because of their current limited geographical reach.

<sup>14</sup> "JPMorgan widens blockchain payments to more than 75 banks", *Financial Times*, 25 September 2018.

Blockchain is a technology that uses cryptography (producing a quasi-unique image of a document using encryption algorithms)<sup>15</sup> and decentralised registers. A block contains data, and cryptography creates a quasi-unique image of the block. The block is inscribed in the blockchain by solving a complex mathematical problem (which unique number, combined with data in the block, gives a specific result?). This is called the “mining”. It is therefore possible to detect any change (as the image becomes different). Blockchain also takes advantage of decentralisation: it is technically possible to “remine” one block to give a new correct image with different data. However, replicating that across many blocks would take enormous resources.

26. Blockchain has been promoted by companies such as Ripplenet to simplify the process of international payments. However, Ripplenet’s technology does not remove the need for correspondent banks. It has been used by Santander since April 2018 for payments for its customers in the United Kingdom, Spain, Brazil and Poland. It promises transparency on costs and same day or next day delivery – payments may still be subject to receiving bank fees if a payment in euros or dollars is sent to an account which uses a different currency.

27. Blockchain has also been tested by SWIFT, which has voiced reservations about the current technology’s ability to handle a significant proportion of world payments: the need for decentralisation and confidentiality of information would entail the creation of a large number of registers, which would in turn require significant resources.<sup>16</sup>

28. At present, blockchain is indeed dependent on vast technical (and energy) resources.<sup>17</sup> Nevertheless, the number of banks that are exploring this technology is increasing: in response to competition from new entrants such as Transferwise, the Interbank Information Network, which includes 75 banks worldwide, is testing a blockchain-based solution to see if problematic cross-border payments (affected for instance by compliance checks, faulty addresses or missing data) can be resolved more quickly.<sup>18</sup> There are also regulatory efforts, such as the 2017 UNCITRAL Model Law on Electronic Transferable Records.<sup>19</sup> The latter could provide a legal framework for blockchain-based transactions, as it makes use of the same solutions as the aforementioned 1992 Model Law. It provides for non-discrimination against the use of electronic means and lays out the conditions for functional equivalence of electronic transferable records.

#### **IV. Conclusions and possible directions for an Experts’ Group**

29. Fourteen years later, the conclusions of the 2004 Report are still relevant: one must take into account the diversity of models for the recovery and disbursement of maintenance funds. Some States have centralised facilities handling large amounts of payments, whereas for the majority of States, creditors receive maintenance directly.

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<sup>15</sup> With current SHA256 cryptographic function, the probability to have the same image for different data is comparable to the probability of choosing twice the same atom in the universe. In 2017, an attack allowed researchers to capture secret keys used to perform that cryptographic function. It was, however, based on physical proximity. Given the rapid state of technological advances, it is nonetheless safe to assume that SHA256 will at some point be undermined – experts reckon within 10 to 20 years.

<sup>16</sup> “Swift says blockchain not ready for mainstream use”, *Financial Times*, 8 March 2018.

<sup>17</sup> Some experts estimate that bitcoin, which uses blockchain, currently uses 0.13% of world electricity (as compared to 2% for the entirety of world IT systems). See report from the French National Assembly, < <http://www2.assemblee-nationale.fr/content/download/69355/707287/version/1/file/Rapport+BLOCKCHAIN.pdf> > (in French only) (last consulted on 21 September 2018).

<sup>18</sup> Art. cit., *Financial Times*, 25 September 2018.

<sup>19</sup> < [https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic\\_transferable\\_records](https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_transferable_records) > (last consulted on 21 September 2018).

30. On the other hand, regulation has made it easier to transfer funds abroad, but this development remains limited to the European Union. In addition to this regulatory pressure, there has also been increased competition, with new entrants forcing banks to renew processes and technology. Consumers have gained in increased transparency and reduced costs. Blockchain is just a new example of external pressure applied on banks. Whether it has the capacity to underpin the global payment system remains to be seen, but there is hope that it will help bring about a reduction in transfer fees. Except for some innovative solutions, it indeed remains expensive to transfer small amounts of money abroad. This is a concern for those States where creditors receive funds directly.

31. Central Authorities also report technical and organisational problems in terms of receipt of information. Practical solutions have been brought forward and would deserve to be discussed within the forum of an Experts' Group, such as opening bank accounts in other States. One HCCH Member is also considering the setting-up of a central disbursement unit for international payments. In view of the present Report, additional topics for discussion could be considered and would include:

- best practices for Central Authorities to facilitate payments to creditors;
- guidelines for the proper allocation of fees charged for international transfers and how to account for those fees in the case balance;
- compliance with international money laundering and terrorism financing guidelines;
- different solutions for high and low volume transfers, in recognition of the relatively small or large number of international child support cases depending on the States concerned;
- possible solutions to alleviate exchange rate fluctuations;
- guidelines for the recognition of debt in foreign currency;<sup>20</sup>
- agreeing on a minimum data set for reference data accompanying international transfers;
- exploring the incompatibilities between the different payment systems and how they could be bridged. This would entail identifying relevant contact points and the use of additional technologies to bridge the gaps.

Some of these topics could be reflected in the elaboration of Country Profiles (or a model form for Country Profiles, to be completed by the Central Authorities of each Contracting State), specifying which means of transferring money are possible, the costs associated with the transfer, and which information has to be transmitted together with the transfer.

32. In application of Article 35 of the 2007 Convention, the Experts Group could also explore ways to promote consistent minimum information of debtors and creditors for the purpose of payment transfers, as well as ways in which fees on individual payments could be reduced.

33. In light of the issues exposed above, that same Article 35, in conjunction with Articles 4 and 27(4) of the *United Nations Convention of 20 November 1989 on the Rights of the Child*, could form a basis for the discussion of a central payment solution that would offer an economical payment facility to parents, including those who have concluded a maintenance arrangement according to Articles 3(e) and 30 of the 2007 Convention.

34. The Expert's Group would ideally include experts from banks and banking associations, as well as experts on money transfer solutions. For instance, SWIFT was approached in the context of this Report, but it was not possible to identify a suitable point of contact. Instructions from the Council on General Affairs and Policy would facilitate such inclusion.

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<sup>20</sup> This was covered in Permanent Bureau of the Hague Conference on Private International Law, *Practical Handbook for Caseworkers under the 2007 Hague Child Support Convention*, The Hague, 2014, at p. 174.



35. While it cannot currently provide a technical solution for international fund transfers, the iSupport system could play a role in facilitating international maintenance transfers. As mentioned, it is a complete case management system of applications to Central Authorities under the 2007 Convention and provides a case number that could be used, as a first step, as reference for transfers in order to facilitate their monitoring. More elaborate solutions would link the bank accounts of Central Authorities, or the central payment solution mentioned above, with iSupport so that a notification is received when a transfer is made under the relevant reference. Such evolutions would, however, necessitate funding beyond what is currently available, covering the 2018-2020 period.

36. Finally, it is to be noted that solutions developed in the context of this Experts' Group would be of wide relevance, as the issues reported in this Report affect not only those States bound by the 2007 Convention, but also parties to the *New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance* and other bilateral instruments.