

**Experts' Group on international transfer of maintenance funds
The Hague, 7-9 February 2022**

**Report and Conclusions & Recommendations
for the attention of the 2022 Meeting of the Special Commission**

I. Introduction

At its meeting of March 2019, the Council on General Affairs and Policy (CGAP) of the Hague Conference on Private International Law (HCCH) approved the establishment of an Experts' Group (EG) on international transfer of maintenance funds (see Conclusion & Recommendation No 30 of CGAP 2019).

The EG was established in recognition of persisting challenges to the smooth transfer of international maintenance funds, such as high transfer costs and other difficulties of an organisational nature.

It was noted that the *HCCH Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (hereafter the 2007 Child Support Convention) states in its Article 35:

- “(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.”

The first meeting of the EG took place in September 2019 at the Permanent Bureau of the HCCH in The Hague and was attended by experts from 12 Members and one Observer. It was followed in February 2021 by an online meeting, which was attended by experts from 17 Members and one Observer. The third and most recent meeting of the Group took place from 7 to 9 February 2022 and was attended by 33 experts representing 14 Member States, one Member Regional Economic Integration Organisation and one Observer.

The EG elected Mr Arnaldo José Alves Silveira, General Coordinator for International Legal Cooperation at the Ministry of Justice and Public Security in Brazil, as Chairperson. He was joined as Co-chair by Dr Sarah Gerling-Stock, Head of Division II 4 (Cross-border Recovery of Maintenance) at the Federal Office of Justice of Germany, at the February 2022 meeting of the EG.

II. Background to the discussions

A. Members of the EG came together to learn from each other and identify good practices regarding the cross-border transfer of funds. Members of the EG also discussed different ways to facilitate the cross-border transfer of funds with a view to identifying possible solutions that are low cost, cost-effective, transparent, prompt, efficient and accessible. Discussions at the February 2021 and 2022 meetings of the EG were informed by States' responses to [Prel. Doc. No 11 of October 2020](#) and [Prel. Doc. No 17 of November 2021](#), Questionnaires in preparation of the EG meetings of February 2021 and 2022 (see [Prel. Doc. No 12 of February 2021](#) and [Prel. Doc. No 19 of February 2022](#) for compilation of responses to the Questionnaires).

B. The EG acknowledged the diversity of models for child support recovery such as direct transfers from the debtor to the creditor, transfers through an institution in the requested State (*e.g.*, bailiff and other enforcement authorities, court and / or Central Authorities) and sometimes through an institution in the requesting State (*e.g.*, public body and / or Central Authorities). It was recognised that the involvement of Central Authorities and the degree of centralisation of payments vary according to different legal systems, domestic and regional banking systems and available means.

C. In that context, the EG discussed the implementation and operation of Articles 6(2)(d)-(f), 8, 35 and 43 of the 2007 Child Support Convention.

D. It was recognised that large amounts of child support are currently transferred internationally but also that difficulties persist related to high and non-transparent bank fees and / or currency conversion costs, loss of payment data between different payment formats, occasional communication problems between Central Authorities and lack of payments monitoring. In particular, it was underlined that the use of cheques is a major problem. However, good progress towards a gradual elimination of the use of cheques has been made since the inception of the EG.

E. It was noted that the solutions and good practices discussed in the context of the 2007 Child Support Convention are equally relevant to the *United Nations Convention of 1956 on the Recovery Abroad of Maintenance Obligations*, Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, other regional or bilateral instruments.

F. It was underlined that effectively implementing the 2007 Child Support Convention would help States reach the United Nations Sustainable Development Goal No 16.3 (Rule of Law) as it assists parents with meeting their child support obligations in a cross-border context.

III. Conclusions and Recommendations

The EG agreed by consensus on the following Conclusions and Recommendations¹ for the attention of the 2022 Meeting of the Special Commission:

Cheques

1. Experts acknowledged that eliminating the use of cheques was a worthwhile goal, after an appropriate transition period, considering that certain States can no longer receive cheques or are under time constraints to stop using them. The EG agreed that electronic transfer of funds² was the way forward. In line with Article 35 of the 2007 Child Support Convention, in addition to multilateral solutions, States are encouraged to discuss bilateral solutions for the elimination of cheques.

Transfer costs

2. All participants agreed that there is a need to find solutions for the international transfer of funds which would result in increased transparency and cost reduction. Creditors should not bear the costs related to the transfer of funds and should receive the full amount in accordance with the maintenance decision. Since the ultimate objective is to eliminate all costs relating to the transfer of maintenance funds, an interim solution could be for courts to stipulate, where possible, in their maintenance decisions, whether the creditor or the debtor is to cover these costs. When these costs are stipulated in the decision, they should be reflected under item 5.1.1. of the Abstract of the Decision.

¹ These Conclusions and Recommendations (C&Rs) are based on the [C&Rs](#) adopted by the ITMFEG at its September 2019 Meeting and the [Aide-mémoire](#) adopted at its February 2021 Meeting both available in [Prel. Doc. No 15 of June 2021](#) - 2007 Child Support Convention and Maintenance Protocol: Report of the Experts' Group on International Transfers of Maintenance Funds, meeting of 8 to 11 February 2021.

² The expression "electronic transfer of funds" should be understood as broadly as possible.

3. A good practice is for the requested Central Authority to have arrangements with their bank to cover the fees (“details of charges: OUR”) and for the requested Central Authority to obtain confirmation from the requesting Central Authority that the amount received is the same as the amount sent and, where applicable, information on the reasons for any difference. The EG also noted that some States have made arrangements with government financial institutions for the cost-free transfer of funds. Members of the EG recalled Article 35 of the 2007 Child Support Convention and noted that both the Requesting and Requested States should work bilaterally to reduce the transfer costs.

Centralised point for international transfers

4. Consideration should be given by each Contracting Party to establish a centralised point for international transfers dedicated to both incoming and outgoing transfer of funds. Such centralised point could be as basic as a bank account. When possible, this bank account could be held with a public institution such as a central bank. In this respect, Members of the EG also noted the possibilities afforded by the *Universal Postal Union Postal Payment Services Agreement of 6 October 2016*,³ in particular in terms of cost of transfer. Members of the EG are encouraged to enquire about the status of implementation of this Agreement in their respective States.

5. The value of such centralised point was underlined, as it could:

- help with the standardisation of the international transfer of funds;
- increase transparency with regard to the costs of such transfers;
- reduce the costs associated with such transfers;
- assist the Central Authority in the monitoring of payments;
- simplify and accelerate the transfer of funds where payments are limited or need to be screened for regulatory purposes.

Consideration should be given also to providing payment transfer services to any debtors transferring payments within the scope of the 2007 Child Support Convention.

Monitoring of payments

6. The monitoring of payments could:

- ensure an accurate payment record;
- assist with the enforcement of payments;
- support communication between Central Authorities to reconcile the amounts sent and received;
- help establish statistical reports, *e.g.*, to measure efficiency and increase understanding about money flows.

Experts acknowledged that not all Central Authorities are directly involved with the transfer of maintenance payments and, therefore, may not have systematic monitoring or communication in place. They noted, however, that another option in this situation would be to adopt a system where the provision of the collection and expeditious transfer of maintenance payments could be delegated to public bodies and / or other bodies, in accordance with Article 6(3) of the 2007 Child Support Convention. Experts also noted the possibilities afforded by the iSupport software in terms of monitoring of payments.

³ The text of which is available under the UPU website at < <https://www.upu.int> > under “Activities” then “Postal Payment Services” then “Postal Payment Services Agreement (PPSA)” or more specifically at the following address: < <https://www.upu.int/UPU/media/upu/files/UPU/activities/PostalFinancialServices/Key%20documents/ppsaAgreementEn.pdf> >.

Data accompanying the transfer

7. Consideration should be given to using unique case references, known to both the requesting and requested State, attached to each transfer of funds. Such unique case references would link the transfer to an existing case. Consideration should be given, where possible, to use the iSupport case number. This number will be evaluated against banking norms. Experts encouraged the evaluation and adoption of standards which allow for more information to be sent with each payment, such as the ISO-20022 format for electronic data interchange between financial institutions.

Currency conversion

8. Reference was made to the *Practical Handbook for Caseworkers under the 2007 Child Support Convention*⁴ (hereinafter Caseworkers Practical Handbook) which states that a good practice is for the currency conversion of payments to be done by the relevant authority in the requested State at the time of transfer. Members of the EG agreed that over time, due to exchange rate fluctuations, paying the amount stated in a maintenance decision in a different currency may result in under or over payment. To address this, one option could be that the enforcement authority notifies the debtor that the amount to be paid in the debtor's currency will vary from one month to another, based on the exchange rate. Another option could be that, when the maintenance decision is registered for enforcement in another State in that State's currency, the State in question may periodically adjust the amount to be paid by the debtor, in order to avoid the build-up of arrears, which may lead to improper enforcement. The EG also noted that consideration could be given to obtaining the agreement of the debtor (e.g., via a monthly notification) that the amount owed in the foreign currency be directly withdrawn from the debtor's account, with the objective of ensuring the amount paid matches the amount owed. In some cases, this could be the subject of a court decision.

9. Reference was also made to the Caseworkers Practical Handbook in which it is stated that "[t]he maintenance debt is not paid in full until the full amount owing in the currency set out in the maintenance decision has been paid".⁵

10. A good practice should be to promote transparency of currency conversion costs.

Bundled payments

11. It was noted that bundled payments do result in savings on transfer costs, but may involve some delay resulting from processing time. It was noted that automation, also in the context of single payments, can alleviate these delays and could require fewer resources.

Current and future developments

12. It was agreed that it is a good practice for Central Authorities to provide information about international banking to creditors and debtors.

13. The merits of having the Central Authorities involved in the handling of the transfer of funds was discussed, as a means to be proactive. It was agreed that a legal framework, with the appropriate safeguards, enabling requested and requesting Central Authorities to handle the transfer of funds in an automated manner, would assist in this area. It was also highlighted that iSupport could be a solution in the future. The interpretation and extent of the obligations under Articles 6(2)(f) and 11 of the 2007 Child Support Convention were mentioned. To that effect, paragraphs 105-108, 116-117, 154 and 160-161 of the [Explanatory Report](#) were recalled.

⁴ Permanent Bureau of the Hague Conference on Private International Law, *Practical Handbook for Caseworkers under the 2007 Child Support Convention*, 1st ed., The Hague, 2013, at p. 174. Available at < www.hcch.net > under "Child Support Section", then "HCCH publications".

⁵ *Ibid.*

14. The EG noted that, while there is currently no known commercial solution that would suit the needs of Central Authorities, advantage should be taken of the possibilities offered by centralised points, whether they are accounts held with a Central Bank, a commercial or a postal bank. It was agreed that a good practice would be for States to make arrangements with banks that are transparent in relation to their fees and / or are part of the SWIFT GPI (global payment initiative), which enables the tracking of fees arising along the way. The experts noted the advances of Central Bank Digital Currencies (CBDC).

Further steps and follow-up

15. It was recommended that the EG continue its work and meet on a regular basis through video and / or teleconference to share good practices, experiences implementing the above good practices and solutions and to continue the exploration and implementation of additional solutions.

16. Contracting Parties to the 2007 Child Support Convention should ensure that their Country Profile is up to date in relation to payment information (Part V, 1.) and their implementation of Article 6(2)(d)-(f) (Part I, 6.).

17. The membership of the EG remains open. Any contributions or proposals from States which have not yet participated in the work of the EG are always welcome.

18. The Permanent Bureau will continue to monitor innovations in this area.