

Title	Good Practices for Central Authorities under Article 6 of the 2007 Convention
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Mandate(s)	C&D No 22 of the 2020 CGAP and Prel. Doc. No 3 of March 2020
Objective	To seek comments from Members and Contracting Parties by 17 July 2020 . States wishing to include a general description of their Central Authority system under Part II.B. (paras 12 and following) where it would bring added value to the document are invited to provide a succinct paragraph. Alternatively, States can add their State's name to an existing description similar to their system. An amended version of this document will be re-circulated for additional comments.
Action to be taken	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input type="checkbox"/> For Discussion <input checked="" type="checkbox"/>
Annex	Selected statistics under the 2007 Convention and other international instruments for incoming and outgoing cases (based on responses to Questions 1 and 2 of Prel. Doc. No 1 of August 2019)
Related documents	– Prel. Doc. No 1 of August 2019 – Questionnaire on the practical operation of the <i>Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance</i> – Prel. Doc. No 3 of March 2020 – Planning for the First Meeting of the Special Commission

I. Introduction

1. The good practices included in this document are intended to assist Central Authorities in Contracting Parties, or States who are interested in becoming parties, in the practical application and implementation of the HCCH *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (hereinafter the “Convention”) in relation to the obligations of Central Authorities.
2. Information has been drawn from 31 Country Profiles,¹ completed by 30 Contracting Parties,² which have utilised the country profile form under Article 57(2) of the Convention.³ Using both the “check-box” and written answers, the Permanent Bureau has analysed the responses and drawn good practices thereafter.⁴
3. This information is a summary of how States have chosen to operate their own Central Authority(ies). It is important to note that each Contracting State will have limitations in their available resources and domestic law as to how to operate and implement the Convention. This document is intended to provide an overview of examples of good practices and systems, and does not promote any particular one more than the other.
4. Explanations relating to Article 6 are taken directly from the Explanatory Report.⁵ Hence, all necessary information with regard to the implementation of Article 6 can be found in a single document.⁶

II. Overview of Central Authorities

A. Summary from Explanatory Report

5. Effective and efficient administrative cooperation is the cornerstone of the Convention achieving a simple, low-cost and rapid system for the international recovery of child support,⁷ as reflected in Article 1(a) of the objects of the Convention.⁸ The designation of a “Central Authority” to discharge the duties of States is a focal point for international cooperation at the administrative level and plays the primary role in a system of cooperation.⁹
6. The Convention also recognises that Contracting States may have a constitutional division of powers between federal, provincial or autonomous regional governments which necessitates a flexibility in appointing multiple Central Authorities.¹⁰ Where there is more than one Central Authority, a Contracting State must still designate a principal Central Authority to which *any* communication can

¹ Austria, Belarus, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Nicaragua, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom (England and Wales), United Kingdom (Northern Ireland) and United States of America.

² The United Kingdom has a non-unified legal system. While it is considered as one Contracting Party, the United Kingdom (England and Wales) and the United Kingdom (Northern Ireland) have completed separate profiles.

³ These profiles are available on the HCCH website at < www.hcch.net > under the “Child Support” Section.

⁴ A number of States provided written responses which did not necessarily correspond with the check-box activity. The analysis above(?) includes both.

⁵ See A. Borrás and J. Degeling, “Explanatory Report on the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance” available on the HCCH website at < www.hcch.net > under the “Child Support” Section.

⁶ Additional information with regard to the operation of Art. 6 can be found in the *Practical Handbook for Case Workers under the 2007 Child Support Convention*.

⁷ See A. Borrás and J. Degeling *op. cit.* note 5, para. 79.

⁸ *Ibid.*, para. 77.

⁹ *Ibid.*, para. 85.

¹⁰ *Ibid.*, para. 88.

be addressed.¹¹ This designation simplifies, clarifies and expedites the process of communication where a Contracting State has multiple Central Authorities. Where there is any doubt, applications can always be sent to the principal Central Authority.¹²

7. Obligations upon Central Authorities are listed throughout the Convention, though focused in Chapter II on Administrative Co-operation. The operative provisions are Article 5 – General functions of Central Authorities, and Article 6 – Specific functions of Central Authorities. While there are differences in the obligations created by each Article, most importantly, in each, the obligations are mandatory to the extent permitted by the powers and resources of the Central Authorities and the domestic law of the State concerned.¹³

8. Applications may also be made under Article 7. A request for specific measures is a request for limited assistance rather than an application of the kind referred to in Article 10 (Available applications). The request will be made preliminary to, or in the absence of, a formal Chapter III application.¹⁴ At the time of writing this document, the Forms Working Group is finalising a draft recommended Request for Specific Measures and Recommended Response which will be subject to consultation with HCCH Members.¹⁵

9. There are at least three possible situations in which a request for specific measures might be made by a Central Authority:

- a request that is preliminary to an application for the establishment, modification or enforcement of a maintenance decision (Art. 7(1));
- where establishment, modification or enforcement of a maintenance decision is being undertaken in the requesting State and help from the requested State is needed for the proceedings (Art. 7(1)); and
- a request for assistance in the context of a purely internal maintenance matter in which, for whatever reason, there was a need for assistance from another State (Art. 7(2)).¹⁶

10. A request under Article 7 must be made through a Central Authority. It is not the intention to allow applicants to apply directly to a requested State for specific measures.¹⁷

11. A specific measures request, under Article 7(1), will be for “appropriate specific measures”; it must be supported by reasons, it can only be made in relation to one or more of the functions specified in Article 6(2)(b), (c), (g), (h), (i) and (j), and no Article 10 application needs to have been made or be in preparation. The type and extent of assistance to be provided is such as is considered “appropriate” in the requested State. It is for the Central Authority of the requested State to evaluate on the basis of the reasons given which measures are “appropriate” in the circumstances. The Central Authority has discretion to refuse assistance when it is not “satisfied” that the measures are necessary. However, when the Central Authority is “satisfied” it is bound to take appropriate measures.¹⁸

B. Analysis of Country Profiles

12. The Convention was drafted to allow flexibility around how a Central Authority operates, with much discretion left to Contracting States. Naturally, this has led to a number of different systems being employed.

¹¹ Convention, Art. 4(2).

¹² See A. Borrás and J. Degeling, *op. cit.* note 5, para. 89.

¹³ *Ibid.*, para. 96.

¹⁴ *Ibid.*, para. 191.

¹⁵ Recommended forms for Requests for Specific Measures and Response under Article 7(1) of the 2007 Child Support Convention Prel. Doc. No 9 of May 2020.

¹⁶ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 193.

¹⁷ *Ibid.*, para. 194.

¹⁸ *Ibid.*, para. 201.

13. An analysis of the Country Profiles provides an understanding of the different format Central Authorities may take. They are best described as a spectrum from decentralised to highly centralised. In the former case, the Central Authority allocates most tasks to public bodies or other bodies subject to the supervision of the competent authorities of that State.¹⁹ In the latter case, the Central Authority is involved in every aspect of the processing from beginning to end.

14. The following is a brief overview of Central Authorities as they operate in Contracting States, provided as an example of how the obligations under the Convention have been implemented. This information has been taken from the Country Profile as completed by each State.²⁰

15. An example of a highly centralised system is that of Norway. The Central Authority is responsible for all aspects of the process including initiating proceedings, providing (free) legal and administrative assistance, locating a respondent within its territory, accessing and assessing financial circumstances of a debtor within its territory, enforcement, collection and transfer of payments as the requested State, receiving and disbursing payments as the requesting State, and assisting in establishing parentage. In Norway, the Central Authority is also an administrative authority in accordance with Article 19(3) of the Convention which can render decisions in respect of maintenance obligations. Hence, Norway made a reservation in accordance with Article 63 that, per Article 30(7), applications for recognition and enforcement of a maintenance arrangement can only be made through the Central Authority as it is the competent authority under the Convention. Finally, the Central Authority (as the competent authority) is authorised to make decisions as to whether or not a request is eligible for enforcement in Norway.

16. Similarly, in the Netherlands, the Central Authority assists in providing legal assistance, locating a respondent within its territory, accessing and assessing financial circumstances of a debtor within its territory, enforcement, collection and transfer of payments as the requested State, and receiving and disbursing payments as the requesting State. It will seek a legal determination of parentage via a judicial proceeding, but not organise genetic testing. However, contrary to Norway, in the Netherlands the Central Authority is not an administrative authority in accordance with Article 19(3) of the Convention which can render decisions in respect of maintenance obligations. Furthermore, it defers some powers to the Legal Aid board to assist.

17. In Germany, the Central Authority assists in initiating and facilitating proceedings (including for provisional measures), providing legal assistance (if and when it is required), searching the civil register to locate a respondent (with its mandate limited by data protection law), collection and transfer of payments as the requested State, receipt of payments as the requesting State, and coordination of genetic testing or seeking a legal determination in a judicial proceeding. Enforcement is referred to another public body.

18. The United States of America is an example of a federal system with more than one Central Authority. The Office of Child Support Enforcement (“OCSE”) is the primary Central Authority, a federal institution based in Washington, DC. Each individual state within the United States of America then operates an independent child support programme, each of which has delegated authority to perform functions under Article 6. The first step upon the OCSE receiving an application is to forward the application to the appropriate interstate registry. As such, the Country Profile does not provide extensive information, as the operations are different in each state. The OCSE will assist in conducting searches using government databases. The state central authorities are responsible for providing legal and administrative assistance, local location services, enforcement, collection and transfer of payments, and assisting in establishing parentage. Importantly, as each state is different, some may then defer these responsibilities to a third party, while others may take a centralised role. Based on

¹⁹ See Convention, Art. 6(3).

²⁰ At this point in the implementation of the Convention the examples of Central Authorities provided in this document are mainly from Western States. It is hoped that a later publication of this document will reflect a wider geographical representation.

information on the OCSE website on how states operate, it appears many take a centralised approach to payment. However, issues such as the handling of legal aid and court costs vary considerably.

19. In the United Kingdom, England and Wales and Northern Ireland operate separate systems under the Convention, however they largely follow the same pattern regarding the role of the Central Authority. The Central Authority will provide administrative assistance, and legal assistance is provided (as required) by private lawyers funded by the State. Under both systems, the Central Authority refers locate requests and financial requests to other bodies, as it does with enforcement, collection of maintenance, establishment of parentage, proceedings for provisional measures. In England and Wales, the Central Authority will assist in transferring maintenance, whereas in Northern Ireland it will not. In Northern Ireland, the Central Authority will further assist in seeking a legal determination of parentage.

20. France has a system of cooperation with public bodies. While it refers a number of functions to the relevant public body – for example, database searches to locate a respondent will be conducted by the Ministry of the Economy and Finances (*Ministère de l'économie et des finances*), the Prosecutor of the Republic (*Procureur de la République*), social organisations, etc. – each process refers *back* to the Central Authority to act upon the response received, and assist the applicant. The Central Authority will facilitate the granting of legal aid, and conducts manual searches for a respondent using the telephone directory. It refers most functions, including more extensive locate requests, accessing and assessing the financial circumstances of a debtor, enforcement, collection and transfer of payments, and establishment of parentage to the relevant public body. The Central Authority is thus a useful information source and coordination point.

21. Poland has a rather unique structure where the Central Authority is designated for incoming applications while more than 40 regional courts have been designated to deal with outgoing applications. In Poland, the Central Authority provides only administrative assistance, with the substantive applications adjudicated within the judicial system. The Central Authority lacks authority to initiate proceedings, and will refer matters to be performed to another relevant public body. It also refers locate requests, searches concerning financial information, enforcement, collection, establishment of parentage, and proceedings for provisional measures.

22. At the other end of the spectrum, Portugal operates what can be described as a decentralised model. Upon receiving an application, the Central Authority will encourage an amicable solution by voluntary payment. If this is unsuccessful, the role of the Central Authority effectively ends. As it lacks authority to initiate legal proceedings, it will defer to the Public Prosecutor the institution of such proceedings in the courts. It also defers location requests, enforcement, collection and transfer of payments, and establishing parentage to other public bodies.

III. Article 5: General Functions of Central Authorities

A. Summary from Explanatory Report

23. Article 5 lays down what must be done by Central Authorities in a general sense to achieve the objects of, and ensure compliance with, the Convention. Article 5 contains general functions which are imposed directly on Central Authorities, and cannot be performed by or delegated to other bodies.²¹

24. This Article requires both international and intra-national cooperation, that is, cooperation between the Central Authorities of Contracting States, as well as the promotion or encouragement of cooperation between authorities within each State. The nature of the cooperation envisaged by the words of this Article is not specified and may be anything that achieves the purposes of the Convention.²²

²¹ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 96.

²² *Ibid.*, para. 98.

25. Examples of the difficulties arising in the application of the Convention which Central Authorities could assist in resolving include: identifying legal or procedural problems within their own systems and proposing solutions to the appropriate authority; resolving problems within or between Central Authorities; resolving communication or liaison problems between national agencies or competent authorities; promoting more consistent application of the Convention through information sessions for judges, lawyers, administrators and others in the operation of the Convention.²³

B. Examples

26. Domestic practice and domestic law in each State will determine domestic case management practices, as the Convention covers only the international elements of child support. What is important, and required, is that the coordination elements required by Article 5 are tasked to the Central Authority.

27. Broadly, the role of the Central Authority should cover (1) communication between Contracting Parties, and (2) communication with the individual who filed the application. The former is regulated by the Convention, whereas the latter is a more personal choice of how to provide information and assistance to applicants and potential applicants. This may include mechanisms to follow up cases (Art. 12 being one example) and a central tracking system.

28. Examples of the role of the Central Authority in this context are largely driven by the centralised versus decentralised nature of the body. For example, in Norway, as the Central Authority is the body that holds responsibility for all stages of the process, its obligations under Article 5 are easily fulfilled as there is a clear system in place.

29. The United States of America, which defers much of the Article 6 obligations to state Central Authorities, has the OCSE which provides regulatory and programmatic oversight to the child maintenance programme.

30. In terms of coordination between States, some Contracting Parties will utilise the iSupport system which has been developed in line with the Convention requirements to facilitate cross-border case management and secure communications between States.

IV. Article 6: Specific Functions of Central Authorities

31. In Article 6(1), the obligations upon Central Authorities are specific, but may be performed by Central Authorities, public bodies or by other bodies. In Article 6(2) the obligations are less specific, and allow Central Authorities or bodies more flexibility as to how the functions will be performed.²⁴ Despite this flexibility as regards the level of services, there is an obligation to provide all types of services mentioned in sub-paragraphs (a) to (j) and thereby to do everything possible within the powers and resources of the Central Authority to provide the assistance requested.

32. This document will address Article 6(1) briefly, then focus primarily on Article 6(2). It will consider each sub-paragraph in turn, including an analysis of Central Authorities' operation and implementation of the Convention based on Country Profiles.

²³ *Ibid.*, para. 104.

²⁴ *Ibid.*, para. 105.

Article 6, Paragraph 1 – Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall –

A. Sub-paragraphs (a) and (b) – transmit and receive such applications and initiate or facilitate the institution of proceedings in respect of such applications.

1. Extract from Explanatory Report

33. The placement of the mandatory functions of transmitting and receiving applications and initiating or facilitating proceedings in Article 6(1) is intended to give Contracting States the freedom to decide by which bodies these responsibilities should be carried out within their State, including the possibility that these tasks might be performed by bodies other than the Central Authority.²⁵

34. Paragraph 1 imposes two obligations. The first is an obligation on Central Authorities to provide general assistance with any of the categories of applications in Article 10 and any other procedures described in Chapter III. The second is an obligation to provide the specific forms of assistance which are listed in paragraph 1.²⁶ It is intended that assistance from Central Authorities under Article 6 be restricted to those cases where requests (in Art. 7) or applications (in Art. 10) are made through Central Authorities.²⁷

35. In some States, the Central Authority itself has the power to commence the legal proceedings (“initiate”). In States the authorities of which do not have this power, the Central Authority or designated authority or body must take steps to ensure that legal proceedings are initiated (“facilitate”).²⁸ When the Central Authority “facilitates” a function it means the Central Authority helps to bring it about or to make it happen by taking whatever steps are necessary, but does not usually perform the function itself. Some other person or body performs the function, usually upon the request of the Central Authority.²⁹

36. The phrase “initiate or facilitate the institution of proceedings” creates the obligation on the Central Authority or designated body to act upon the applications received, subject to the procedural requirements of Article 12. In a court-based system, if an amicable solution has not been reached, judicial proceedings may have to be instituted. The Central Authority may facilitate this process by requesting the appropriate body or person to initiate the proceedings. In an administrative system, the procedure in response to the application under Chapter III must be commenced. The obligation here is specifically to institute whatever proceedings are necessary, whether judicial or administrative, for the particular application in question.³⁰

2. Analysis of Country Profiles

37. The Country Profile questionnaire does not pose a question relating to Article 6(1)(a), and as such there is insufficient information to undertake any analysis.

38. States were asked how they initiate or facilitate the institution of proceedings in respect of applications under Article 6(1)(b) of Chapter III (Chapter III being the operative Chapter under which applications are made through Central Authorities).

²⁵ *Ibid.*, para. 110.

²⁶ *Ibid.*, para. 111.

²⁷ *Ibid.*, para. 112.

²⁸ *Ibid.*, para. 116.

²⁹ *Ibid.*, para. 117.

³⁰ *Ibid.*, para. 118.

a. *Who is responsible for applications?*

39. In half of the States – 15 States³¹ – the Central Authority has authority to initiate proceedings. In six States,³² the Central Authority lacks authority, and will refer the matter to an appropriate public body. Finland has a hybrid system where the Central Authority will initiate proceedings in applications concerning recognition, recognition and enforcement, or enforcement (Art. 10(1)(a), (b) and 10(2)(a)); and will refer the matter to the appropriate public body in applications concerning establishment or modification (Art. 10(1)(d), (e), (f), 10(2)(b) and(c)).

40. Of the States the processes of which did not fit into either category, six States referred to some form of legal aid or *pro bono* lawyer service.³³ The United Kingdom (England and Wales) will facilitate the application by providing the applicant with information, and in the United States of America, the matter will be referred to the appropriate state body to initiate proceedings.

Article 6, Paragraph 2 – In relation to such applications they shall take all appropriate measures –

B. Sub-paragraph (a) – where the circumstances require, to provide or facilitate the provision of legal assistance;

1. Extract from Explanatory Report

41. When the circumstances do so require, the Central Authority or designated body must take steps to ensure that legal assistance is provided. If the Central Authority itself does not provide the service, it must take all appropriate measures to help to obtain it or to ensure that this service is provided by another body or person, to the extent permitted by the laws and procedures in the requested State.³⁴

42. “Legal assistance” is defined in Article 3(c). It is intended to be an all-encompassing term that may include any kind of legal help, advice or representation that will “enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State”. Such help, advice or representation may include any legal steps needed in relation to functions listed in Article 6(2) such as locating a debtor’s assets, the taking of evidence and establishing parentage, including genetic testing if necessary, or in relation to enforcement measures referred to in Article 34.³⁵

43. The means of providing “legal assistance” may include as necessary “legal advice, assistance in bringing a case before an authority, legal representation and exemption from cost of proceedings”. “Legal assistance” of a general nature provided by a Central Authority could, for example, include:

- assistance in preparing an application or obtaining documents;
- assistance to the applicant in responding to requests from the requested State for more legal information;
- liaising with the applicant's legal representative in the requested State;
- exemption from court fees; and
- access to mediation services.³⁶

³¹ Bulgaria, Croatia, Czech Republic, Estonia, Germany, Italy, Latvia, Malta, Netherlands, Nicaragua, Norway, Slovakia, Slovenia, Spain and Sweden.

³² Belarus, Cyprus, Lithuania, Poland, Portugal and United Kingdom (Northern Ireland).

³³ Austria, Belgium, France, Greece, Hungary and Luxembourg.

³⁴ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 127.

³⁵ *Ibid.*, para. 128.

³⁶ *Ibid.*, para. 129.

44. Provision of “legal assistance” may also include helping to obtain “legal representation”. This could mean having a lawyer, attorney or solicitor in the requested State to represent the applicant in and out of court; in legal proceedings in negotiations with the other party; or to provide legal advice specifically in relation to the conduct of the applicant’s case in the requested State.³⁷

2. Analysis of Country Profiles

45. The Country Profile asks States to explain how Central Authorities provide or facilitate the provision of legal assistance in their jurisdiction.

a. Who provides legal assistance?

46. There are two common categories of assistance:

- i. in six States legal assistance is provided in all proceedings, including appeals.³⁸
- ii. in 17 States administrative assistance is provided in all cases,³⁹ and legal assistance only when required, noting this is usually not necessary.⁴⁰

b. How is legal assistance provided?

47. Six countries specifically mentioned the provision of legal aid in some circumstances.⁴¹ A large majority – 19 in total, or 63% of responses⁴² – have legal assistance provided by private lawyers and funded by the State. In Austria, Belgium, Hungary and Lithuania, this means legal assistance is provided in all proceedings, including appeals, and it is provided by private lawyers funded by the State.

48. Of the remaining States, five employ lawyers within the Central Authority to provide legal assistance,⁴³ and three offer legal assistance by lawyers employed in State legal assistance bodies.⁴⁴

49. In addition to these categories, in Belarus, legal assistance is provided by the employees of the Central Authority within the scope of their competence. Similarly, in Latvia, the Netherlands, and the United States of America,⁴⁵ legal assistance can be provided by advisers of the Central Authority acting as caseworkers.

C. Sub-paragraph (b) – to help locate the debtor or the creditor;

1. Extract from Explanatory Report

50. When an application is received, and the debtor’s or creditor’s whereabouts is not known, the requested Central Authority must do everything possible to locate the debtor or creditor. Whether or not the Central Authority has access to databases of information is irrelevant. The Central Authority knows, in its own country, whether public records such as telephone lists or population registers with

³⁷ *Ibid.*, para. 130.

³⁸ Austria, Belgium, Hungary, Lithuania, Netherlands, Nicaragua and Spain. Finland and Malta also answered affirmatively but suggested in written answers that it is generally not required.

³⁹ “Administrative assistance” includes all the services under Art. 6 where legal advice, assistance or representation are not required.

⁴⁰ Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Latvia, Luxembourg, Malta, Norway, Poland, Portugal, Slovenia, Sweden, United Kingdom (both England and Wales and Northern Ireland), and United States of America (though managed separately through IV-D support agencies in each state).

⁴¹ Bulgaria, Finland, France (by transmitting a request to the legal aid office), Italy (where a legal aid application is submitted to the competent bar association), Netherlands (in modification proceedings) and Romania (in enforcement proceedings only).

⁴² Austria, Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Norway, Portugal, Romania, Slovenia, Sweden, and United Kingdom (both England and Wales and Northern Ireland).

⁴³ Czech Republic, Finland, Malta, Slovakia and Spain.

⁴⁴ Croatia, Finland and Nicaragua.

⁴⁵ Noting any assistance is provided by the IV-D agency in the relevant state, rather than the national Central Authority.

personal contact details can be searched, and if not, which public bodies store information about a person's address.⁴⁶

51. If the information about the debtor's or creditor's location may not be released because of privacy laws, the requested Central Authority will need to consider what steps could be taken to obtain the information needed to locate the debtor or creditor. It must be emphasised that the information referred to here is obtained for the purpose of legal or administrative proceedings in the requested State, and not for disclosure to the other parent or the requesting Central Authority. In its implementing measures, a Contracting State will need to balance a child's right to financial support against an adult's right to privacy. However, the *UN Convention on the Rights of the Child* implies that the rights of the child, by virtue of his / her vulnerability, should take precedence.⁴⁷

52. A situation where a request is made before sending an application to establish if the debtor or creditor is in the requested State is covered by a specific measures request under Article 7(1).⁴⁸ A specific measures request guarantees that the applicant or the requesting State does not spend time and money on preparing an application and paying for translations if the respondent is not in the State addressed.⁴⁹

2. Analysis of Country Profiles

53. States were asked how their Central Authorities help locate a debtor or a creditor resident in their territory. In practice, a wide range of methods are being used to satisfy this obligation.

54. Only five Central Authorities proceed with a manual search to locate a debtor or a creditor. In Finland, France and Norway, Central Authorities can refer to the telephone directory. In Malta and Nicaragua, the Central Authority can refer to the telephone directory, or review the electoral roll.

55. Most States will undertake some form of automated search. It is unclear in individual cases whether this authority to search is within the Central Authority, or if assistance is provided from a government network. The Country Profile questionnaire canvassed databases relating to social security (to which 11 States⁵⁰ responded in the affirmative), taxation (eight States⁵¹), employment (six States⁵²) and transportation (three States⁵³).

56. In addition to these commonly used databases, States are using a variety of other sources for information. The Italian Central Authority investigates the Database of the State Penitentiary (DSP); Latvia uses the Enterprise Register; and Lithuania the Real Estate Cadastre or Arrest Registry Database.

57. It appears in States where public bodies perform the functions of the Central Authority, such as Norway or the United States of America, that these Central Authorities can more easily make use of automated search systems.

58. Thirteen Central Authorities can access a population registry history,⁵⁴ with an additional four referring the matter to population services to complete the check.⁵⁵ Most Central Authorities are able

⁴⁶ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 137.

⁴⁷ *Ibid.*, para. 138. In Europe, the *General Data Protection Regulation (EU) 2016/679* (GDPR) provides that obligations and rights under the Regulation may be restricted to safeguard the enforcement of civil claims (Art. 23).

⁴⁸ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 139.

⁴⁹ *Ibid.*, para. 140.

⁵⁰ Austria, Czech Republic, Lithuania, Malta, Nicaragua, Norway, Portugal, Slovakia, Sweden, United Kingdom (Northern Ireland) and United States of America. Finland may also use this method as a secondary source.

⁵¹ Latvia, Lithuania, Netherlands, Nicaragua, Norway, Sweden, United Kingdom (both England and Wales and Northern Ireland) and United States of America. Finland may also use this method as a secondary source.

⁵² Malta, Netherlands, Norway, Slovakia, United Kingdom (both England and Wales and Northern Ireland) and United States of America.

⁵³ Latvia, Lithuania and Nicaragua. Germany may also use this method as a secondary source.

⁵⁴ Austria, Czech Republic, Estonia, Finland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Nicaragua, Norway, Slovakia and Sweden.

⁵⁵ Italy (Local Registry Office), Poland (General Electronic Population Registration System) and Portugal (*Instituto dos Registos e Notariado*) and Slovenia (Ministry of the Interior).

to refer a locate request to an appropriate public entity to assist with location services. In Belgium, Finland, Lithuania and Portugal, police authorities may assist in locating a debtor or a creditor, and in Spain, the Central Authority seeks help from Interpol. Requests are also commonly made to the Ministry of the Interior, as is the case in Bulgaria, Croatia, Hungary and Slovenia, as these entities have access to their own population register.⁵⁶

59. Only Nicaragua uses a private entity to locate a debtor or a creditor.

D. Sub-paragraph(c) – to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;

1. Extract from Explanatory Report

60. Information sought must be relevant to the purpose of the recovery of maintenance. Such information may not be necessary in every case, and there should be no obligation on a Central Authority to obtain it when it is not necessary.⁵⁷

61. In some countries, the income of the debtor is only one of the relevant details needed to assess the amount of the debtor’s obligation to pay maintenance, and information about other financial circumstances will be necessary.

62. The requested Central Authority might fulfil this obligation by:

- contacting the debtor to request the information voluntarily;
- referring the request to another body to perform the function; or
- referring the request to the Public Prosecutor / State Attorney’s Office / Legal Aid Board if legal proceedings are necessary to obtain the information.⁵⁸

63. Information about the creditor’s financial circumstances may be requested if a decision is to be established in the debtor’s jurisdiction, or if the debtor seeks modification of a decision.⁵⁹ Assistance may also be sought to establish whether it is worth pursuing a claim for maintenance.⁶⁰ For example, it is preferable to know in advance if a debtor is receiving welfare or unemployment payments, as it is likely that she or he would not be ordered to pay maintenance. In such a case, it may not be worth the cost of preparing and translating an application.⁶¹

64. If the assistance under sub-paragraph (c) is successful, the requesting State may then seek assistance under sub-paragraph (i) to freeze the debtor’s assets in the requested State if, for example, recognition and enforcement of a maintenance decision is pending in the latter country. Requests for assistance under sub-paragraphs (c) and (i) could be made simultaneously under Article 7.⁶²

65. It is emphasised that sub-paragraph (c) does not impose an obligation on the Central Authority itself to gather the evidence and does not permit Central Authorities to exercise powers which can only be exercised by judicial authorities. It may be necessary to apply the *HCCH Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (hereinafter the “1970 Evidence Convention”), the *HCCH Convention of 1 March 1954 on civil procedure* (hereinafter the “1954 Civil Procedure Convention”), or other internal legal rules. But each Contracting State or Central Authority must take steps to help obtain the information as quickly as possible.⁶³

⁵⁶ Which is certainly the case in Slovenia.

⁵⁷ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 142.

⁵⁸ *Ibid.*, para. 142.

⁵⁹ *Ibid.*, para. 142.

⁶⁰ In that case a specific measures request would be made in accordance with Art. 7(1).

⁶¹ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 143.

⁶² *Ibid.*, para. 144.

⁶³ *Ibid.*, para. 147.

2. Analysis of Country Profiles

66. States were asked how their Central Authority(ies) can help to obtain within its territory relevant information concerning the income and, if necessary, other financial circumstances including the location of assets of resident debtors or creditors.

67. In eight States, the Central Authority has direct access to information through different databases.⁶⁴ Most commonly, this is a land and title registry (six States⁶⁵), receipt of public assistance database (five States⁶⁶) or tax information database (five States⁶⁷). Other examples include where the Central Authority has access to information through databases for salaries (four States⁶⁸), other income (two States⁶⁹), financial institution records (two States⁷⁰), ownership of motor vehicles (four States⁷¹), or moveable property registry (two States⁷²).

68. A large majority of requested Central Authorities – 21 States, or 70% of responses⁷³ – will refer the application to an appropriate public entity that can obtain relevant financial and asset information. Such public entity is not part of the Central Authority; it will obtain the relevant information in its own databases and transfer this knowledge back to the requested Central Authority. Of these public entities, most are financial or taxation bodies.⁷⁴

69. In 11 States, the Central Authority will contact the debtor or creditor directly and request that they provide information about their financial circumstances.⁷⁵

70. In six States,⁷⁶ the Central Authorities will exercise legal powers to require that information be provided by persons or bodies, where applicable.

⁶⁴ Croatia, Latvia, Lithuania, Netherlands, Norway, Slovakia, Sweden and United States of America.

⁶⁵ Croatia, Latvia, Lithuania, Netherlands, Norway and Sweden.

⁶⁶ Netherlands, Norway, Slovakia, Sweden and United States of America.

⁶⁷ Lithuania, Netherlands, Norway, Sweden and United States of America.

⁶⁸ Lithuania, Netherlands, Norway and Slovakia.

⁶⁹ Lithuania and Slovakia.

⁷⁰ Lithuania and United States of America.

⁷¹ Latvia, Netherlands, Norway and Sweden.

⁷² Latvia and Norway.

⁷³ Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Nicaragua, Poland, Portugal, Romania, United Kingdom (both England and Wales and Northern Ireland) and United States of America. In addition, Germany will refer to public bodies if the individual declines to provide information voluntarily.

⁷⁴ Such as the *Service Public Fédéral Finances* in Belgium, the Tax and Customs Board in Estonia, the *Ministère de l'Économie et des Finances* in France, the State Revenue Service in Latvia, the State Tax Inspectorate under the Ministry of Finance in Lithuania, the *Autoridade Tributária e Aduaneira* in Portugal and Her Majesty's Revenue and Customs Department in England and Wales.

⁷⁵ Finland, France, Germany, Malta, Netherlands, Nicaragua, Norway, Romania, Slovenia, Spain and United Kingdom (England and Wales).

⁷⁶ Austria, Czech Republic, Lithuania, Malta, Norway and United Kingdom (Northern Ireland).

E. Sub-paragraph (d) – to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;

1. Extract from Explanatory Report

71. Central Authorities are required to actively promote or encourage the use of methods or procedures to achieve amicable solutions. Voluntary compliance is a desirable outcome in child support cases. It results in fewer demands on the Central Authority for enforcement measures, and avoids the costs and delays involved in judicial proceedings.⁷⁷

72. Mediation, conciliation and similar processes were included in the list of Central Authority functions to encourage the consideration of other forms of dispute resolution, especially in intractable cases, that did not involve judicial or legal proceedings. An important condition on the use of mediation, conciliation and similar processes is created by the use of the words “where suitable”. For instance, if a creditor’s opposition to contact or visitation between the debtor and his or her children results in the debtor defaulting on maintenance payments, this situation could be assisted by mediation. Not all cases will be suited to a voluntary resolution or the use of mediation.⁷⁸

73. Mediation and conciliation may present some logistical difficulties in the context of international child support. Although the possibility of bringing parties together for mediation may be remote, the use of audio-visual technology may be explored.⁷⁹

74. The minimum requirements in this function would be to obtain advice about mediation facilities for the parties. Other possibilities include enlisting the aid of an external mediator in an intractable case, or referring the parties to an international mediation service. Sub-paragraph (d) in no way obligates the Central Authority personnel to conduct or be responsible for the mediation.⁸⁰

2. Analysis of Country Profiles

75. States were asked how their Central Authorities, where appropriate, encourage amicable solutions with a view to obtaining voluntary payment of maintenance, by use of mediation, conciliation, or similar processes.

76. The overwhelming majority – 23 States, or 77% of responses⁸¹ – will seek, as a general rule, an amicable solution with the debtor to make voluntary payments *before* introducing any enforcement procedures. In the United States of America, individual IV-D child support agencies attempt amicable solutions based on local law with the majority of states offering some form of mediation services.⁸²

77. Only in Malta is it mandatory to use mediation, conciliation or similar processes in every case. Estonia, Portugal, and Romania will encourage the use of these processes. In Bulgaria, Italy, Lithuania, Luxembourg and the United Kingdom, the use of mediation, conciliation, or similar processes will depend on the facts of the case. For instance, in Lithuania, where there is a risk that such processes would prejudice the effective recovery of a maintenance claim, it will not be used. Similarly, in the United Kingdom (England and Wales), mediation is not encouraged where inappropriate for family safety reasons, and in the United Kingdom (Northern Ireland), the discretion for considering whether it is appropriate is referred to a public body other than the Central Authority.

⁷⁷ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 148.

⁷⁸ *Ibid.*, para. 150.

⁷⁹ *Ibid.*, para. 151.

⁸⁰ *Ibid.*, para. 152.

⁸¹ Austria, Belarus, Belgium, Croatia, Czech Republic, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Nicaragua, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

⁸² Information is available on the OCSE website at < <https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=3&selProfileQuestion=5> >.

78. Norway provides the debtor with an opportunity to pay voluntarily before enforcement measures are effectuated, but does not appear to have other processes in place. Cyprus is the only State that does not offer mediation or other similar processes at the current time.

F. Sub-paragraph (e) – to facilitate the ongoing enforcement of maintenance decisions, including any arrears;

1. Extract from Explanatory Report

79. Central Authorities have a general obligation to take appropriate steps to guarantee the regularity of maintenance payments to creditors. They should ensure the initial measures to collect payments or to enforce the maintenance decision will be effective.⁸³

80. The Convention seeks ways to avoid requiring a creditor to submit frequent applications for enforcement. “Ongoing enforcement” implies a resumption of enforcement measures or efforts should the debtor default on the maintenance payments. The assistance provided by Central Authorities might include:

- providing advice or assistance to a creditor about enforcement measures;
- providing closer supervision of problem cases in the Central Authority; or
- removing the debtor’s option of voluntary payment and instituting wage withholding.

81. Arrears are included in this provision for two reasons. First, it emphasises that a maintenance decision may be either a decision for arrears only, or a decision for ongoing maintenance and an arrears component. Secondly, the existence or accrual of arrears means the debtor has already defaulted on the maintenance payments and enforcement is or may be a problem in the particular case.⁸⁴

82. Some countries have computerised case management systems which allow faster, more efficient review of case records. Where maintenance payments are being collected and distributed by a public authority, any occurrences of non-payment will be apparent immediately through a computerised system. A record of recurring non-payments can be created to assist decision-making on appropriate enforcement measures. Ongoing enforcement can also be improved through the availability of a range of enforcement measures, of increasing severity, possibly to be implemented administratively, and without the delays common to some court-based systems.⁸⁵

2. Analysis of Country Profiles

83. States were asked how their Central Authorities facilitate the ongoing enforcement of maintenance decision including any arrears.

84. Only five Central Authorities are responsible for enforcement of maintenance decisions: Luxembourg, Malta, the Netherlands, Nicaragua and Norway. The majority – 18 States, or 60% of responses⁸⁶ – refer the application to the appropriate public body.

⁸³ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 155.

⁸⁴ *Ibid.*, para. 156.

⁸⁵ *Ibid.*, para. 159.

⁸⁶ Belarus, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom (both England and Wales and Northern Ireland) and United States of America.

85. When neither the Central Authority nor a public body is responsible for the enforcement of the decisions, the Central Authority can transmit the request to another enforcement authority. For example, in France, a bailiff is responsible for the recovery of maintenance payments, and in Cyprus, the Central Authority will refer the matter to a Registrar of a competent court. In other States, the matter will be referred to a judicial authority.⁸⁷

G. Sub-paragraph (f) – to facilitate the collection and expeditious transfer of maintenance payments;

1. Extract from Explanatory Report

86. If collection methods are not effective, there will be no funds to transfer, regardless of how expeditious the transfer procedures may be. Inefficiencies may result in reduced payments to creditors after bank charges and currency conversion fees have been deducted. Inefficiencies may also result in delays for creditors receiving payments, even if debtors make regular payments.⁸⁸

87. Electronic banking is now the norm in many countries, and the Convention recognises and encourages the benefits that new technologies can bring to expedite child support or other maintenance payments.⁸⁹

2. Analysis of Country Profiles

88. States were asked how their Central Authority facilitates the collection and expeditious transfer of maintenance payments.

a. Who is responsible for collection of payments?

89. States were asked who is responsible for collection of maintenance payments if acting as the requested State. The analysis of the Country Profile identified three different methods.

90. First, among the responding States, there are four where the Central Authority is responsible for the collection of maintenance payments.⁹⁰

91. Secondly, and forming the majority – 17 States, or 57% of responses⁹¹ – are States where the Central Authority is not responsible for the collection of maintenance, and the application for ongoing collection is referred to an appropriate public body.

92. Thirdly, there are nine States where collection of maintenance payments is handled privately.⁹² Unfortunately not much further information is provided on what is meant by “privately”.

b. How are payments collected?

93. Next, States were asked the method of collection of payments.

94. In four cases,⁹³ payments must be made to a central location. In Lithuania, the United Kingdom and the United States of America, payment may also be made at a local location.

⁸⁷ As is the case in Italy, Greece and Spain.

⁸⁸ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 160.

⁸⁹ *Ibid.*, para. 161.

⁹⁰ Czech Republic, Germany, Netherlands and Norway.

⁹¹ Belarus, Bulgaria, Croatia, Estonia, Finland, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom (both England and Wales and Northern Ireland) and United States of America.

⁹² Austria, Belgium, Cyprus, France, Greece, Italy, Luxembourg, Nicaragua and Malta.

⁹³ Lithuania, Netherlands, Norway and United States of America.

95. Across the Profiles, there are diverse methods of collecting payments. As expected, the most popular form of payment is via electronic funds, which is available in 26 States, or 87% of responses.⁹⁴ Other popular means include payroll deduction (20 States⁹⁵), and by cheque or warrant (18 States⁹⁶). Cash also remains prevalent (14 States⁹⁷) despite the move to electronic options.

c. How are payments transferred to the requesting State?

96. Finally, States were asked, when transferring the payments to the requesting State, who is responsible and how is the payment made. For the eight States where the collection is handled privately, no response was provided.

97. Of those remaining, in 10 States the requested Central Authority or public body is responsible for transferring maintenance payments.⁹⁸ All of these, excluding Portugal and the United Kingdom (Northern Ireland), allow for transfer via electronic funds. Eight States allow payment by cheque.⁹⁹

98. In situations where the Central Authority is not responsible for transferring maintenance payments – that is, it is a public body which is responsible – in 11 States,¹⁰⁰ the Central Authority will obtain and provide information from the public body concerning transfer of payments.

99. In Estonia, Slovakia and the United States of America, both scenarios are possible.

H. Sub-paragraph (g) – to facilitate the obtaining of documentary or other evidence;

1. Extract from Explanatory Report

100. A Central Authority may be requested to facilitate the obtaining of evidence in two situations:

- The first situation may arise where, for example, a creditor applies for establishment of a decision in the debtor's jurisdiction to facilitate the taking of evidence from the debtor in accordance with the internal laws of that jurisdiction.¹⁰¹
- The second situation may arise where, for example, a creditor seeks to obtain an increase in maintenance in the debtor's jurisdiction where the original order was made. In such a case, the Central Authority in the debtor's jurisdiction may require the Central Authority in the creditor's jurisdiction to facilitate the taking of evidence in the creditor's jurisdiction to the extent that such information has not already been submitted by the creditor.¹⁰²

101. In the first situation, the evidence is taken in the Central Authority's own jurisdiction; in the second situation, the evidence is taken abroad. In both cases, the procedural rights and interests of

⁹⁴ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom (England and Wales) and United States of America. Belarus and Finland did not respond to this question.

⁹⁵ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Portugal, Slovenia, United Kingdom (both England and Wales and Northern Ireland) and United States of America.

⁹⁶ Austria, Bulgaria, Croatia, Cyprus, Czech Republic, France, Germany, Greece, Lithuania, Malta, Netherlands, Norway, Portugal, Romania, Slovakia, Sweden, United Kingdom (both England and Wales and Northern Ireland) and United States of America. This is despite a finding by the Experts' Group (see Prel. Doc. No 11 of November 2019 "Report of the Experts' Group on international transfers of maintenance funds" to the attention of CGAP) that a growing number of States no longer accepts this as payment.

⁹⁷ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Lithuania, Malta, Poland, Romania, Sweden, United Kingdom (both England and Wales and Northern Ireland) and United States of America.

⁹⁸ Czech Republic, Estonia, Germany, Netherlands, Norway, Portugal, Slovakia, Slovenia, United Kingdom (both England and Wales and Northern Ireland) and United States of America.

⁹⁹ Czech Republic, Germany, Netherlands, Norway, Portugal, Slovakia, United Kingdom (England and Wales) and United States of America.

¹⁰⁰ Belarus, Bulgaria, Croatia, Estonia, Finland, Latvia, Lithuania, Poland, Slovakia, Sweden and United States of America.

¹⁰¹ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 164.

¹⁰² *Ibid.*, para. 165.

the parties must be protected. The distinction is all the more important as in the second case the taking of evidence abroad may be subject to another treaty.¹⁰³

102. The term “evidence” should be interpreted broadly. It could be any data that is publicly available in the requested State, it could be a document obtainable upon request, or it could be evidence that can only be obtained through a judicial process.¹⁰⁴

2. Analysis of Country Profiles

103. States were asked about obtaining evidence in the two situations outlined above, domestically and abroad.

a. How does the Central Authority obtain evidence domestically?

104. States were asked how their Central Authority(ies) facilitates the obtaining of documentary or other evidence *domestically*.

105. In Croatia, Malta and Romania, the Central Authority is responsible for issuing an administrative subpoena to obtain documentary or other evidence.

106. In 15 States,¹⁰⁵ the Central Authority will seek voluntary submission of documentary or other evidence, and in 21 States,¹⁰⁶ the Central Authority will refer the matter to the appropriate competent authority to obtain documentary or other evidence. Of these, 10 States will do both.¹⁰⁷

107. Of those States which did not respond in the categories provided, Austria defers responsibility to the *pro bono* lawyer to obtain the necessary document, and the United States of America defers to the individual state agency.

b. How does the Central Authority obtain evidence abroad?

108. States were then asked how their Central Authority(ies) facilitates the obtaining of documentary or other evidence abroad. This included a question as to which international instruments they are Contracting Parties which would assist when obtaining documentary or other evidence abroad.

109. Twenty-six States – or 87% of responses¹⁰⁸ – are Contracting Parties to the 1970 Evidence Convention. Eighteen States¹⁰⁹ are Contracting Parties to the 1954 Civil Procedure Convention, with a total of 16 being Party to both.

110. Eight States also referred to EU Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.¹¹⁰ These provisions would extend to all EU Member States, with the exception of

¹⁰³ *Ibid.*, para. 166.

¹⁰⁴ *Ibid.*, para. 168.

¹⁰⁵ Croatia, Czech Republic, France, Germany, Latvia, Lithuania, Luxembourg, Malta, Nicaragua, Norway, Romania, Slovakia, Slovenia, Sweden and United Kingdom (both England and Wales and Northern Ireland).

¹⁰⁶ Belarus, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Netherlands, Nicaragua, Poland, Portugal, Romania, Slovakia, Sweden and United Kingdom (both England and Wales and Northern Ireland).

¹⁰⁷ Croatia, Latvia, Lithuania, Malta, Nicaragua, Romania, Slovakia, Sweden and United Kingdom (both England and Wales and Northern Ireland).

¹⁰⁸ Belarus, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Nicaragua, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom (both England and Wales and Northern Ireland) and United States of America.

¹⁰⁹ Austria, Belarus, Belgium, Croatia, Czech Republic, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Romania, Slovenia, Spain and Sweden.

¹¹⁰ Bulgaria, Cyprus, Estonia, Germany, Italy, Luxembourg, Netherlands and United Kingdom (both England and Wales and Northern Ireland).

Denmark. A number of States also referred to bilateral agreements and specific multilateral agreements which would apply.

111. Finally, where no international instrument is available, 12 States will apply rules for the obtaining of evidence abroad under domestic law, or under an instrument of a Regional Economic Integration Organisation.¹¹¹

I. Sub-paragraph (h) – to provide assistance in establishing parentage where necessary for the recovery of maintenance;

1. Extract from Explanatory Report

112. In many countries, the establishment of parentage has become so inextricably linked to the establishment of child support that it was felt that its omission from the Convention would be a failure to live up to the objective of developing a forward-looking instrument. The establishment of parentage must be to recover maintenance.¹¹²

113. Sub-paragraph (h) does not in any way oblige the Central Authority to undertake, for example, genetic testing, but instead to provide assistance to the applicant to have the necessary genetic testing procedures performed.¹¹³

114. When an application is submitted under Article 10(1)(c), a Central Authority's obligation under sub-paragraph (h) will be to take "all appropriate measures" to "provide assistance in establishing parentage".¹¹⁴

115. When a request for specific measures to establish parentage is submitted under Article 7(1), assistance under Article 6(2)(h) must be offered by such measures "as are appropriate" and if they "are necessary to assist a potential applicant in making an application under Article 10 or in determining whether such an application should be initiated".¹¹⁵

116. The words "proving assistance" could mean, at a minimum:

- providing the contact details of the laboratories qualified to undertake genetic testing in the requested State;
- providing advice to the creditor or the requesting Central Authority about internal laws; or
- referring the creditor to the proper authorities.

117. At a higher level of service, it could mean:

- providing assistance in obtaining relevant documents in relation to the establishment of parentage by presumption;
- acting on a request to contact the putative father to obtain a voluntary acknowledgement of paternity;
- initiating judicial proceedings for the establishment of parentage; or
- assisting with arrangements for a voluntary DNA test of the presumed parent.¹¹⁶

118. Internal laws and procedures vary considerably on this question. In some countries, the establishment of parentage is for the "purpose of recovery of maintenance". In other countries, determination of parentage for the "limited purpose" of child support would be impossible due to the "erga omnes" effect ("for all purposes") of any such determination.

¹¹¹ Estonia, France, Hungary, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Spain, Sweden and United States of America.

¹¹² See A. Borrás and J. Degeling, *op. cit.* note 5, para. 170.

¹¹³ *Ibid.*, para. 171.

¹¹⁴ *Ibid.*, para. 172.

¹¹⁵ *Ibid.*, para. 173.

¹¹⁶ *Ibid.*, para. 174.

2. Analysis of Country Profiles

119. States were asked how their Central Authority(ies) assists in establishing parentage, where necessary, for the recovery of maintenance.

120. In most cases, the Central Authority itself will assist, when needed, in establishing parentage. In seven States,¹¹⁷ this involves coordinating the genetic testing. Other assistance includes, in 11 States,¹¹⁸ the Central Authority seeking voluntary acknowledgment of parentage, and 11 States¹¹⁹ which will seek a legal determination of parentage through a judicial proceeding. In addition to those States which stated that the Central Authority will seek a legal determination, a number also refer to courts. This brings the total number of States that will assist in a determination of parentage through at least one mechanism to 18.¹²⁰ Similarly, the Maltese and Norwegian Central Authorities will seek a legal determination of parentage through administrative proceedings.

121. In Croatia, the Central Authority will refer an application to the Centre of Social Welfare or advise an applicant to engage a representative. In Finland, it is possible to issue a voluntary statement of acknowledgement of paternity at a local welfare authority; otherwise judicial enforcement is available.

122. In the United States of America, each IV-D child support agency will coordinate genetic testing, seek a voluntary acknowledgment of paternity, or seek a legal determination of parentage through an administrative or a judicial proceeding. A number of these methods are the same as those already discussed.

123. Finally, where a State is a Contracting Party to the 1954 Civil Procedure Convention or the 1970 Evidence Convention (or another international instrument), in 19 States the Central Authority is able to provide advice on the appropriate procedures.¹²¹

J. Sub-paragraph (i) – to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;

1. Extract from Explanatory Report

124. A provisional measure referred to in this sub-paragraph might be sought in the State to which an application for the recovery of maintenance has been made, or in another Contracting State in which the assets of the debtor are located. Provisional measures include measures to prevent the dissipation of assets, or measures to prevent the debtor leaving the jurisdiction to avoid legal proceedings. The freezing of the debtor's assets may be the measure most frequently requested under this provision.¹²²

125. The measures requested must be both "provisional", meaning interim or temporary, and "territorial in nature", meaning that their effect must be confined to the territory of the requested State (the State which takes the measures) or of several States in accordance with the applicable rules.¹²³

126. The measure must also be "necessary" to "secure the outcome of a pending maintenance application". This requirement implies that the requesting State must justify the request by showing

¹¹⁷ Germany, Hungary, Lithuania, Malta, Nicaragua, Norway and Sweden.

¹¹⁸ Czech Republic, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Nicaragua, Norway, Romania and Slovenia.

¹¹⁹ Bulgaria, Czech Republic, Germany, Luxembourg, Malta, Netherlands, Nicaragua, Norway, Slovenia, Sweden and United Kingdom (Northern Ireland).

¹²⁰ Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Malta, Netherlands, Nicaragua, Norway, Poland, Portugal, Slovenia, Sweden, United Kingdom (both England and Wales and Northern Ireland) and United States of America.

¹²¹ Austria, Belarus, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Greece, Latvia, Luxembourg, Malta, Nicaragua, Norway, Poland, Portugal, Romania, Slovakia, Spain and Sweden.

¹²² See A. Borrás and J. Degeling, *op. cit.* note 5, para. 176.

¹²³ *Ibid.*, para. 177.

that the measures are indeed necessary for the recovery of maintenance. A maintenance application must be “pending” at the time when assistance under sub-paragraph (i) is sought.¹²⁴

127. The provisional measures taken in the requested State are intended to help the creditor to eventually recover some maintenance in a “pending maintenance application”. The words of sub-paragraph (i) leave open the possibility that a maintenance application could be purely domestic in nature or it could be an international case. For example, a typical situation might begin with a creditor seeking recognition and enforcement of a maintenance decision in the debtor’s jurisdiction, where it is known the debtor has assets. In order that enforcement of the maintenance decision results in the recovery of maintenance, the creditor needs to be sure the debtor will not spend, hide or move the assets to avoid his or her maintenance liability.¹²⁵

128. It is recalled that the Central Authority itself is not required to take the provisional measures. The Central Authority function is to take all appropriate measures to initiate, or facilitate the initiation of, legal proceedings, to obtain the necessary protection for the applicant. The nature of this obligation is no different from the obligation under Article 6(1)(b).¹²⁶

2. Analysis of Country Profiles

129. States were asked how their Central Authorities initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature.

130. Two opposite models exist in this space. First, States where the Central Authority has authority to initiate such proceedings, which is the case in seven States;¹²⁷ and secondly, where the Central Authority lacks such authority and refers the matter to the appropriate public body to initiate any proceedings, which is the case in 13 States.¹²⁸ Norway is the only jurisdiction for which provisional measures are not available under domestic law.

131. Of the remaining Country Profiles, six States¹²⁹ (including Romania which simultaneously refers the application to the relevant public body) offer some form of legal assistance to the applicant. The United Kingdom (Northern Ireland) will advise the applicant to seek legal representation, and Greece and Spain will refer it directly to the competent judicial authority. In Finland, when provisional measures are deemed to be necessary, they are initiated by the attorney representing the applicant. In France, Greece and Spain, the Central Authority is not entitled to initiate such proceedings and instead refers to the judicial authorities.

132. Other forms of non-legal assistance, best described as advice, are offered in Belgium, where the Central Authority will provide the requesting Central Authority with all information regarding the initiation of proceedings, and in France, where the Central Authority will inform the applicant about procedural possibilities under French law.

K. Sub-paragraph (j) – to facilitate service of documents.

1. Extract from Explanatory Report

133. A Central Authority may be requested to facilitate service:

- within its own jurisdiction – this may arise where, for example, a creditor applies in the debtor’s jurisdiction to establish or modify a decision. In such a case, the creditor may

¹²⁴ *Ibid.*, para. 178.

¹²⁵ *Ibid.*, para. 179.

¹²⁶ *Ibid.*, para. 180.

¹²⁷ Croatia, Czech Republic, Estonia, Germany, Latvia, Malta and Netherlands.

¹²⁸ Belarus, Bulgaria, Cyprus, Italy, Nicaragua, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom (England and Wales) and United States of America.

¹²⁹ Austria, Finland, Hungary, Lithuania, Luxembourg and Romania.

require the Central Authority in the debtor's jurisdiction to facilitate service of process on the debtor in accordance with legal requirements in the Central Authority's jurisdiction;¹³⁰

- abroad – this may arise where, for example, a creditor applies to establish or modify a decision in her or his own jurisdiction, and service must be effected on the debtor in another jurisdiction. In this case, the Central Authority in the creditor's jurisdiction may be required to facilitate the transmission of the documents abroad so that they can be served on the debtor in accordance with legal requirements in the debtor's jurisdiction.¹³¹

134. It is important that Central Authorities carefully distinguish between these two situations. In the first situation, the documents do not have to be transmitted abroad for service; in the second situation, the law of the Central Authority's jurisdiction (law of the forum) is likely to require that documents be transmitted abroad for service. In both cases, the procedural rights and interests of the parties must be protected. The distinction is all the more important as in the second situation, the transmission of the documents for service abroad may be subject to another treaty.¹³²

2. Analysis of Country Profiles

135. States were asked how they facilitate service of documents under the Convention, both domestically and abroad, to fit the categories discussed.

a. Service under Domestic Law

136. First, States were asked how their Central Authority(ies) facilitates the service of documents domestically.

137. The majority of States – 19 States, or 63% of responses¹³³ – will forward documents to the appropriate public body. In Malta and the United Kingdom (Northern Ireland), Central Authorities may also be responsible for the service of documents (both options appear available). Only in Sweden will the Central Authority forward the documents to a private contractor.

138. Other answers included:

- Cyprus and Slovenia, where the Central Authority has no responsibility for domestic service;
- France and Poland, where the Central Authority will provide advice to an applicant about service under domestic law, but is not involved in the service of documents;
- Germany, where the Central Authority may appear, on request, before German courts to represent an applicant residing abroad so that the German court can serve the Central Authority with effect for the applicant;
- Greece, where the documents are forwarded to a judicial authority;
- Nicaragua, where service can be actioned by the Central Authority or a judicial authority, depending on the specific case; and
- the United States of America, which defers the question of service to the state IV-D agency responsible.

139. In Italy and Malta, the Central Authority will provide notification in lieu of service.

b. Service under International Law

¹³⁰ See A. Borrás and J. Degeling, *op. cit.* note 5, para. 182.

¹³¹ *Ibid.*, para. 183.

¹³² *Ibid.*, para. 184.

¹³³ Austria, Belarus, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania, Malta, Netherlands, Norway, Portugal, Romania, Slovakia, Sweden and United Kingdom (both England and Wales and Northern Ireland).

140. Secondly, States were asked about how their Central Authority(ies) facilitates the service of documents abroad, including to which international instruments the State is a Contracting Party.

141. Twenty-seven States¹³⁴ – or 90% of responses – are a Contracting Party to the 1965 Service Convention. As such, it is expected that this is the primary method used by States. Eighteen States are Party to the 1954 Civil Procedure Convention.¹³⁵ Nine States referred to *EU Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters*,¹³⁶ which is applicable to all EU Member States, with the exception of Denmark. Five States also referred to bilateral and multilateral treaties.

142. Finally, in 13 States, where no international instrument applies, rules for service abroad will be governed by domestic law or an instrument of a Regional Economic Integration Organisation.¹³⁷

¹³⁴ Belarus, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom (both England and Wales and Northern Ireland) and United States of America.

¹³⁵ Austria, Belarus, Belgium, Croatia, Czech Republic, Finland, France, Germany, Hungary, Lithuania, Luxembourg, Netherlands, Norway, Poland, Romania, Slovenia, Spain and Sweden.

¹³⁶ Bulgaria, Cyprus, Estonia, Germany, Italy, Latvia, Luxembourg, Netherlands and United Kingdom (both England and Wales and Northern Ireland).

¹³⁷ Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Luxembourg, Norway, Poland, Portugal, Romania, Sweden and United States of America.

ANNEX

Selected statistics under the 2007 Convention and other international instruments for incoming and outgoing cases¹
(Based on responses to Questions 1 and 2 of Prel. Doc. No 1 of August 2019²)

	Number of active cases under 2007 ³	Number of new cases under 2007			FTEs	Number of active cases under other instruments ⁴	Number of new cases under other instruments			FTEs
		2018	2017	2016			2018	2017	2016	
France ⁵	164	n/a	n/a	n/a	9	2,187	n/a	n/a	n/a	9
Germany ⁶	933	442	299	23	70	9,181	1,665	1,699	1,786	70
Netherlands ⁷	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Norway ⁸	273	250	210	170	27 ⁹	1,151 ¹⁰	180	280	260	3
Poland	278	236	96	82	30 ¹¹	5,609	1,567	2,066	1,588	20 ¹²
Portugal	112	147	24	10	9	1,209	604	514	461	8
UK ¹³	198	244	325	97	21	10,036	2,965	2,994	3,277	21
USA ¹⁴	n/a	n/a	n/a	n/a	3	n/a	n/a	n/a	n/a	3

¹ Unless otherwise stated, statistics are based on calendar years.

² Prel. Doc. No 1 of August 2019, "Questionnaire on the practical operation of the *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*" available on the HCCH website at < www.hcch.net > under "Child Support" then "Special Commission meetings".

³ As at the date of submitting Prel. Doc. No 1.

⁴ Other international and regional instruments for the recovery of maintenance obligations include the *New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance*, the 2009 EU Maintenance Regulation and any bilateral agreement to which the State would be Party.

⁵ The French Central Authority is responsible for cases under all other international instruments. The FTEs cover all instruments.

⁶ The German Central Authority is responsible for cases under all other international instruments. The FTEs cover all instruments.

⁷ As at 25 May 2020, the Netherlands had not responded to Prel. Doc. No 1 of August 2019.

⁸ The statistics for Norway are approximate. Statistics under other instruments include cases for enforcement only.

⁹ Including the Central Authority and the transmitting agency.

¹⁰ Outgoing cases only. Norway *does not* have proper statistics for establishment.

¹¹ In addition, there are two part-time workers.

¹² In addition, there is one part-time worker.

¹³ Statistics for the UK are based on fiscal years starting on 1 April and ending on 31 March. The UK Central Authority is responsible for cases under all other international instruments. The FTEs cover all instruments.

¹⁴ The OCSE is responsible for cases under all other international instruments. The FTEs cover all instruments.