



**COUNCIL OF
THE EUROPEAN UNION,**

Brussels, 1 March 2013

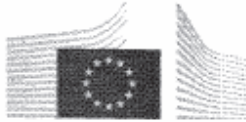
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COVER NOTE

from : General Secretariat of the Council
to Working Party on Civil Law Matters (General Questions)
Subject: Revised draft Practical Handbook for Caseworkers under the 2007 Hague
Convention on the International Recovery of Child Support and Other Forms of
Family Maintenance
– Letter and comments sent to the Permanent Bureau of the Hague Conference

Delegations will find attached a copy of the letter which has been sent to the Permanent Bureau of the Hague Conference along with the comments of the European Union to the revised draft Practical Handbook for Caseworkers.



EUROPEAN COMMISSION
DIRECTORATE GENERAL JUSTICE

Directorate A: Civil Justice
The Director

20 FEB. 2013

Brussels,
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Hague Conference on Private
International Law
Mr Hans Van Loon
Secretary General
Scheveningseweg 6
2517 KT Den Haag

e-mail: secretariat@hcch.net

Subject: **Follow-up to Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations – revised draft Practical Handbook for caseworkers**

Dear Secretary General,

The European Union is grateful to the Permanent Bureau of the Hague Conference for giving the Conference members the opportunity to comment on the revised version of the Practical Handbook for caseworkers and would like to thank the Permanent Bureau for its work. The comments of the European Union are attached.

Yours faithfully,

Paraskevi MICHOU



The Hague 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance – Draft Practical Handbook for Caseworkers

Comments of the European Union¹

General comments:

The Practical Handbook is a welcome document which provides guidance to caseworkers in the actual management of cases under the Convention. It is comprehensive, helpful and user friendly and provides a practical and operational explanation of the Convention.

The European Union thanks the Permanent Bureau for having taken into account the comments made during the Special Commission of 2009. We understand that, in the light of Conclusion n.6 of the Special Commission, the aim of this revision is to check the accuracy of amendments, format, consistency, style and grammar. However, we would like to submit also suggestions/questions that may go beyond the mandate agreed by the Special Commission and let the Permanent Bureau assess whether they can be still considered in the draft.

The European Union believes in particular that the possibility for the Central Authority to contact the debtor immediately after the receipt of the application in order to explore the feasibility of a voluntary settlement should be more emphasised (for instance, at paragraph 366 page 75; Heading A. Practical advice page 96; Heading A. Practical advice page 154).

Specific comments:

Chapter 1

Page 2 Figure 1: Table of applications-We would suggest reversing the order of the first and second box in both columns so as to make them correspond with the order in the following paragraph (paragraph 29, cf. Article 10).

Page 13 Figure 5: Applications for modification made by debtor-Is the second box from the top on the right side (Make application for establishment) appropriate/relevant in the context?

Chapter 3

Page 36 paragraph 184 – Is it possible to provide one or more examples of a maintenance arrangement (other than a private agreement between the parties) which would not be recognised as a decision?

¹ Please note that the EU comments have been made on the "clean" version included in L.c. ON No 49(12) of 23.11.2012.

Page 37 paragraphs 197/198 –When or why would it not be possible for the requesting State to translate documents into the language of the requested State? Also, if translation had to be carried out by the requested State, would it be possible to invoice the requesting State?

Page 39 paragraph 202 –A note could be added to highlight that in some States it is not the Central Authority that represents the applicant.

Page 46 Figure 9: Legal assistance: applications by creditor – non child support–It seems to us that the wording of the second and fourth box in the bottom row should be adjusted to the wording of the boxes in the bottom row of figure 10 (page 48).

Page 47 paragraph 230–It seems to us that the reference to the Explanatory Report in footnote 47 should be to paragraph 384.

Chapter 4

Page 65 paragraph 310 -The paragraph may need to be adjusted so as to reflect Article 25(3) as well.

Page 66 paragraph 318–It seems to us that the reference in the last sentence should be to Article 30(5) instead of Article 30(3).

Page 67 paragraph 325–Given that the Financial Circumstances Form is not mandatory and that it is not always necessary or appropriate to use this extensive form, we would suggest replacing “should be included” by “may be included”. This comment also applies to **paragraph 389 a** (page 81) and **paragraph 1102** (page 228). We would also suggest that “as needed” is added regarding this form in **figure 20** (page 114) and **figure 33** (page 179), and that “always include” is replaced by “include where necessary” in **figure 39–42** (page 232–235). Furthermore, in **paragraph 1027** (page 215), “will be necessary” should be replaced by “may be necessary”. Corresponding adjustment should also be made regarding **paragraph 1165** (page 240).

Page 69 paragraphs 342/343 – *‘The application for recognition or recognition and enforcement can be made, and if it is refused on the basis of the reservation, the applicant will have the benefit of Article 20(4). That Article requires the requested State to take all appropriate measures to establish a new decision under these circumstances. In this situation, under Article 20(5), the competent authority must accept the eligibility of the child to bring the proceedings for maintenance....’* In this circumstance, does it mean that the child is to become the applicant – if so, how would that work in practice, does there not have to be an adult acting in their interest? Would any payment still be made to the parent who made the original application? Could this be further explained?

Page 71 paragraph 344 – *‘If the applicant is a child...’* – as above, how can an applicant be a child without an adult acting in their interest?

Pages 71-72 paragraph 345 - The text should reflect more accurately Article 40(2), i.e. that the Central Authority in the requested State is not bound by the determination made by the Central Authority in the requesting State (cf. Explanatory Report, paragraph. 611). The third and fourth sentences of the paragraph could be reworded as follows: *“Therefore, the recommended application forms have a box where the requesting Central Authority can note that a determination of non-disclosure has been made, and such a determination should be taken into account by the requested Central Authority. If the requesting Central Authority checks that box, it can provide restricted information about the applicant on a separate form.”* This comment also applies to **paragraph 347**(page 72), where the second sentence should be deleted, to **paragraph 605** (page 131), where the last subordinate clause in the third sentence should be deleted.

Page 72 paragraph 346 – *‘Can the address of the Central Authority be used instead of the applicant’s address? Yes ...However, in such a case the Central Authority must be prepared to accept service of any documentation on behalf of the applicant’* Would there be a point (e.g. where enforcement is taking place) where it would be more expeditious for the competent authority in the requested State to accept service on behalf of the applicant rather than the Central Authority?

Chapter 5

Page 77 paragraph 376-It seems to us that “request” should be replaced by “application” in footnote 78. This comment also applies to paragraph 484, third sentence (page 101), heading B.2 (page 105), heading C (page 112) and paragraph 531, first sentence (page 112).

Pages 82-83 - Headings 6. and 7. It seems to us that it would be more appropriate to reverse the order of Heading 6 (*If the documentation is incomplete*) and Heading 7 (*Does a search need to be done for the respondent’s location*). This comment also applies to the checklist, points 4 and 5 (page 98).

Page 97 Heading C.: Related forms

Transmittal form is indicated twice. There is no recommended form regarding Statement of Legal Assistance.

Page 99 paragraph 474- We would suggest to further clarify the given example, as the medical insurance premiums are for certain EU Member States clearly outside the scope of the Convention as defined in Article 2.

Chapter 7

Page 112 paragraph 529

In the last subordinate clause of the second sentence the letter “r” seems to be missing (*though* instead of *through*).

Chapter 8

Page 124 paragraph 579

Regarding footnote 109, we would suggest adding also a reference to the Explanatory Report, paragraph 590.

Chapter 9

Page 138 figure 26: Initial considerations: establishment application We would suggest placing the fourth box (*Is it from a Contracting State?*) as the third box.

Page 152 paragraph 711 –It may be useful to include information on the rules concerning the duration in the Country Profile - if this is not already the case.

Chapter 10

Pages 152-153 paragraph 717-We would suggest to redraft the paragraph in order to further clarify the relationship between the initial request for recognition and enforcement and the enforcement proceedings concerning the arrears, also in the light of Article 23(8) and Article 32(1). It would also be useful to give an example of the mentioned "*unusual circumstances*".

Chapter 15

Page 181 paragraph 858

We would suggest adding a reference also to the Application for Modification of a Decision Form in the last sentence, as it is possible to include some information in this form.

Page 207 paragraph 968

In order to better reflect Articles 38 and 39, as well as the Explanatory Report, the first sentence could be reworded as follows: "*The confidentiality of information included in any document sent to another Central Authority shall be ensured in accordance with the law of the State of the authority processing the information and shall only be used for the purposes of the maintenance application under the Convention.*"

Page 237 paragraph 1143 – In line 3, we would suggest to add a reference to Article 20(1)e) in brackets after "*child maintenance*".

Chapter 16

Pages 239, 241 and 243

In the header it says Chapter 15 instead of Chapter 16.

It would be helpful to have the recommended forms included at the end of the document.
