

Recovery of Maintenance in the European Union and Worldwide

Conclusions and Next Steps

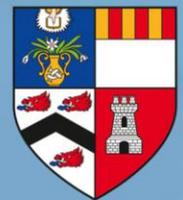
of the Heidelberg Conference from 5 to 8 March 2013



Funded by the European Commission



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UNIVERSITY OF ABERDEEN



Universität Heidelberg



MAX-PLANCK-GESELLSCHAFT

Heidelberg Conference 2013

“Recovery of Maintenance in the European Union and Worldwide”

From 5 to 8 March 2013, **more than 230 experts** representing **key relevant fields**, including politicians and government officials, members of Central Authorities, academics, lawyers, judges, child support administrators, the private sector, and others from **States of every continent** - **Africa**: Namibia, Nigeria, Tunisia; **Asia**: Azerbaijan, Indonesia, Kazakhstan, China (including Hong Kong SAR), Israel, Japan; **Europe**: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Republic of Macedonia, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom; **Australia & Oceania**: Australia, New Zealand; **North America**: Canada, Cuba, United States of America; and, **South America**: Argentina, Brazil, Chile, Colombia met in Heidelberg, Germany, to discuss the “Recovery of Maintenance in the European Union and Worldwide”.

RECALLING that the Heidelberg Conference was the centre piece of a project funded by the European Commission and organised by the German Institute for Youth Human Services and Family Law (DIJuF). **Partners** in the project are the University of Aberdeen (Professor Paul Beaumont) and the University of Heidelberg/Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law (Professor Dr. Burkhard Hess) as well as the National Child Support Enforcement Association (NCSEA), the Hague Conference on Private International Law, the Federal Ministry of Justice of Germany, and the University of Lyon (Professor Frédérique Ferrand).

RECOGNISING that **the project** aims to improve the implementation and application of the new global and regional maintenance instruments¹ and to strengthen cross-border co-operation in Europe and worldwide by establishing a platform for multi-professional international contact and collaboration. The goal of the Heidelberg Conference was to provide an opportunity for participants to share their experience and expertise, increase their mutual knowledge about child support, family maintenance law, procedures and enforcement in their respective countries or organisations, to discuss unresolved issues and to develop models for good practice.

UNDERLINING that in the course of the project **qualitative and quantitative research** was carried out by the Universities of Aberdeen and Heidelberg. All Member States of the European Union were asked via a questionnaire to give feedback as to how the Council Regulation 4/2009 has been implemented and how it has operated in its first year in force. The research identified problems in practice and in jurisprudence, and highlighted the need for further education and training.

¹ The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (the “Hague Convention 2007”), the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (the “Hague Protocol 2007”) and the EC Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations (the “Council Regulation 4/2009”).

The participants of the conference reached the following conclusions and made the following recommendations for next steps:

Implementation of the Hague Convention 2007

1. We look forward to the **speedy implementation** of the Convention in as many States as possible in the near future as a means for States to implement their obligations under Article 27(4) of the 1989 *United Nations Convention on the Rights of the Child*.
2. We are committed to **engaging with the international community** in order to provide support, assistance and information on best practices to States implementing the Convention.

Implementation of Council Regulation 4/2009

3. A coherent set of **statistics, performance indicators, and analytic reports** on the use of the Regulation in all Member States is essential to evaluate the implementation of the Regulation and to support improvements in its use. The use of a common IT system (see C&R 17 below) for keeping statistical data on the operation of Council Regulation 4/2009 (and the Hague Convention 2007) would be a great step forward in improving the enforcement of maintenance and the accountability of Central Authorities. A common IT system with the capability of analytical reporting could periodically assess future opportunities for programme improvement.
4. The right to apply for a review (Article 19 of Council Regulation 4/2009) raises questions regarding the legal situation in Member States and should be more thoroughly analysed, in particular with regard to the procedure to follow and remedies primary to the right to apply for a review. This thorough analysis will permit a determination as to whether the minimum procedural protection of the debtor is sufficiently guaranteed by Council Regulation 4/2009.
5. The initial experience with the implementation and practical operation of the Regulation has exposed certain **problems** that should be addressed including:
 - a. There are indications that the provisions on **data protection** may hinder the sharing of relevant information in situations where confidentiality has been adequately taken into account. If further examination confirms this evaluation, **amendments to Article 62** of Council Regulation 4/2009 should be made at the next possible opportunity.
 - b. In relation to **public bodies** a clarification is needed to provide that jurisdiction under Chapter II lies with the court of the venue where the public body has its administrative centre.
 - c. **Direct applications** under Council Regulation 4/2009 to competent authorities in the requested Member State are allowed. Chapter VII of Council Regulation 4/2009 contains the framework for applications made with the assistance of the Central Authorities in the requested and requesting Member States. This does not exclude direct applications without the assistance of Central Authorities under the substantive scope of Council Regulation 4/2009.

This has caused confusion in certain countries and should be made clearer in a way similar to Article 37 of the Hague Convention 2007.

- d. **Amicable solutions** are mentioned but not facilitated by the procedures set out in Council Regulation 4/2009; incentives to employ amicable solutions are needed in order to receive appropriate support for them from Central Authorities.
- e. Consideration should be given to **amending Article 56(1)(b) and Annex VI** of Council Regulation 4/2009 to reduce the current risk of confusion by **separating applications** for actual enforcement of decisions given in the requested Member State (which apply to all Member States) from: a) applications for actual enforcement of decisions given in other Member States bound by the Hague Protocol 2007 which are automatically recognised in the requested State without a declaration of enforceability; and, b) applications for actual enforcement of decisions given in other Member States not bound by the Hague Protocol which have already been the subject of a declaration of enforceability in the requested State.
- f. **Regular examination of the Annexes** of Council Regulation 4/2009 for any needed updates should be undertaken (e.g., inclusion of Denmark and the United Kingdom in Annexes I to VI).

6. Council Regulation 4/2009 is an essential instrument to enable cross-border recovery of child support and other forms of family maintenance. **Flexible and additional mutual administrative assistance by Central Authorities** is allowed and should be encouraged within national legal frameworks where it is helpful to the families we serve.

7. Consideration should be given to measures **facilitating the location of debtors** throughout the European Union.

8. We look forward to a schedule for the **drafting of a list of difficulties** and obstacles with respect to the implementation of Council Regulation 4/2009, set by the EU Commission, and to participating in the development of such a list.

9. A **guide to good practice**, prepared under the auspices of the EU Commission, would be of great assistance to ensure the coherent and effective implementation and operation of Council Regulation 4/2009. Training programmes for all relevant stakeholders should ensure **continuing capacity building**.

Creation of a Global Network

10. We look forward to and will assist in **establishing a global community** of international child support and family maintenance professionals, including practitioners, academics, legislators, judicial officers, members of the bar and government professionals responsible for maintenance and child support matters.

11. We will encourage the development of a series of **regional networks** in different parts of the world and their merger into a larger **global network** to address the global implications and challenges associated with the implementation and operation of Council Regulation 4/2009, the Hague Convention 2007 and the Hague Protocol 2007.

12. The networks will form the foundation of a **trust- and competence-building forum** to facilitate cross-border cooperation in the recovery of maintenance and child support. As such, they will be open to all interested professionals and organisations involved with maintenance and child support.

13. We believe it is important to encourage and support the networks to

- a. provide a **forum** for dialogue, research, and sharing of expertise within the maintenance and child support community to assist in the implementation and operation of the Hague Convention 2007, Council Regulation 4/2009, and the Hague Protocol 2007;
- b. **connect experts** from different States within and between stakeholder groups and to be the primary facilitator of the exchange of best practices, legal and other expertise and relevant information;
- c. involve and **encourage stakeholders** to use the network, to improve their communications and to challenge their thinking;
- d. **share expertise** between stakeholders of all relevant fields in States across the world.

14. The networks will foster a **global understanding** of the importance of family maintenance, will support the diversity of families and communities and will respect the legal processes that exist in various jurisdictions.

15. **Contributions to the Heidelberg Conference** will be made publically available and will be part of a platform for information sharing. We will plan follow-up events and find opportunities for further dialogue, in person or through other modes of direct communication.

16. The facilitation of **easy access to relevant information and to training programmes** is a core goal for the networks.

Improved cooperation through the use of IT

17. The future of cross border cooperation under Council Regulation 4/2009 and the Hague Convention 2007 lies in the **electronic processing of cases, information and data sharing, and transfer of funds**. The inclusive and transparent development of a common user-friendly application and practical solution, as modelled in the iSupport project of the Hague Conference, cannot be underestimated and is crucial to ensuring accessible, prompt, efficient, cost effective, responsive and consistent recovery of child support and other forms of maintenance worldwide. Such a development deserves broad and strong support.

18. To ensure that fundamental rights and ethical aspects for sharing personal information are sufficiently taken into account in the course of the development of IT-based information sharing solutions, we strongly promote the establishment of a **working group on data protection issues**.

Next steps

19. A book of selected papers from the Conference will be **published** by Hart Publishing in 2014 under the title "Recovery of Maintenance in the European Union and Worldwide".

20. A **space** where materials can be publically accessed and available by way of the Internet will be created.

21. We will plan **follow-up events** and develop opportunities for further dialogue. Another worldwide conference should be held subsequent to the further application of Council Regulation 4/2009 and experiences gained after broader ratification of the Hague Convention 2007.

22. We encourage any and all **implementing strategies** that ensure that the public knows of the existence of Council Regulation 4/2009, the Hague Convention 2007 and the Hague Protocol 2007, so that families in need will receive assistance in recovering child support and other forms of family maintenance in cross-border circumstances.

23. The focus of all of these actions should be to ensure that both governments and the public understand the **importance of child support** and other forms of family maintenance to families around the world, and the positive impact that maintenance has upon the lives of children and their emotional, physical, spiritual and moral well-being.