

Distribution: 15 November 2022

## Conclusions & Recommendations

The First Meeting of the Special Commission (SC) on the practical operation of the *Convention of 13 January 2000 on the International Protection of Adults* (the 2000 Protection of Adults Convention or the 2000 Convention) was held in The Hague from 9 to 11 November 2022. It was attended by a total of 112 delegates, with 44 delegates attending in person, at the Sound & Vision Museum in The Hague, and 68 delegates attending remotely, via videoconference. Delegations represented Contracting Parties, HCCH Members, and Observers from intergovernmental and international non-governmental organisations, as well as members of the Permanent Bureau (PB).<sup>1</sup>

The SC witnessed the signature of the 2000 Convention by Malta. Delegates welcomed the signature and congratulated Malta on this occasion.

The SC adopted the following Conclusions and Recommendations (C&R):

### I. Contracting Parties to the 2000 Convention

- 1 Endeavours should continue to be made to encourage ratifications of, and accessions to, the 2000 Convention by States willing and able to undertake the Convention obligations. Contracting Parties are encouraged to arrange meetings at the regional level for this purpose.

### II. General operation of the 2000 Protection of Adults Convention

#### 1. General assessment of the operation of the 2000 Convention

- 2 The SC recalled the core purpose of the 2000 Convention which is to promote, through rules of private international law, the dignity, autonomy and protection of adults in cross-border situations who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.
- 3 The SC acknowledged the responses to the Questionnaire of September 2020 on the practical operation of the 2000 Protection of Adults Convention<sup>2</sup> which confirm that, in general, the Convention is operating smoothly and that it is fit for purpose.
- 4 The SC recalled C&R No 2 of the [December 2018 EC-HCCH Joint Conference on the Cross-Border Protection of Vulnerable Adults](#) that the 2000 Protection of Adults Convention and the *Convention*

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<sup>1</sup> The following Members of the HCCH were represented: Argentina, Armenia, Austria, Belgium, Canada, Cyprus, Czech Republic, El Salvador, Estonia, European Union, Finland, France, Germany, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Netherlands, Paraguay, Poland, Portugal, Republic of Korea, Slovakia, Slovenia, Sweden, Switzerland, Ukraine and United Kingdom, in addition to the following intergovernmental organisations: CARICOM (Caribbean Community and Common Market) and CIEC (*Commission internationale de l'état civil*) and the following international non-governmental organisations: CNUC (*Conseil des Notariats de l'Union Européenne*), DAI (Dementia Alliance International), EAPIL (European Association of Private International Law), EGPII (European Group for Private International Law), ELI (European Law Institute), FI-eur (Family Law in Europe), IAFL (International Academy of Family Lawyers), ICFLPP (International Centre for Family Law, Policy and Practice), STEP (Society for Trust and Estate Planning) and UINL (International Union of Notaries).

<sup>2</sup> "Questionnaire on the practical operation of the HCCH 2000 Protection of Adults Convention", Prel. Doc. No 2 of September 2020, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Protection of Adults Section" then "Questionnaires & Responses".

of 13 December 2006 on the Rights of Persons with Disabilities (UNCRPD) are complementary instruments.

## **2. Interpretation issues, including the interpretation of the term “habitual residence” (Arts 5, 6, 8, 10, 11, 15(a) and 49(2))**

- 5 The SC highlighted that the 2000 Convention should be interpreted having regard to its autonomous nature and in the light of its objects.
- 6 The SC noted that habitual residence is an autonomous concept that should be interpreted in light of the objectives of the Convention rather than under domestic law constraints. The issue of habitual residence is factual in nature and is to be determined by the relevant competent authorities on a case-by-case basis.
- 7 The SC reminded Contracting Parties that, in the interpretation of the 2000 Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

### **III. Jurisdiction issues**

#### **1. The rules on jurisdiction form a complete and closed system which applies as an integral whole to Contracting Parties**

- 8 The SC noted that the rules on jurisdiction contained in Chapter II of the 2000 Protection of Adults Convention form a complete and closed system, which applies as an integral whole to Contracting Parties. This “complete and closed system” does not allow for conflicting jurisdictions among Contracting Parties and, as an “integral whole”, may necessitate coordination between competent authorities when taking, assuming or transferring jurisdiction under the Convention.
- 9 The SC recalled that, under the 2000 Convention, through coordination, only one competent authority may take jurisdiction at a given time, over a specific matter, thus avoiding conflicting decisions being issued on matters falling under its scope.

#### **2. Change of habitual residence (Arts 5(2), 32(1) and 34)**

- 10 The SC recalled that the change of habitual residence is a question of fact which will be assessed by the competent authorities called upon to make a decision on this matter. The competent authority seised is the only one that has to determine the habitual residence of the adult and whether it has jurisdiction under the 2000 Convention. In this regard, the competent authority seised could consult, if necessary, the competent authorities of the former State of habitual residence, to obtain relevant information. For example, the competent authority seised can request information relevant to assess whether the habitual residence has changed, in order to determine if it can take jurisdiction under Article 5(2), or whether the former competent authority would continue to exercise jurisdiction under other grounds (e.g., Art. 7) or if it would be appropriate to request a transfer of jurisdiction under Article 8. Recalling Articles 32 and 34, the SC noted that cooperation can take place with a view to sharing information regarding the adult’s change of habitual residence. The SC further noted that this process should be conducted diligently and without delay. The SC reminded Contracting Parties that Article 29 generally provides Central Authorities with an opportunity to exchange information, including such information as may be relevant for the purposes of Article 5(2).
- 11 The SC noted that, where the habitual residence of the adult changes to another Contracting Party, the competent authorities of the new habitual residence will have primary jurisdiction. Through the exchange of information under Articles 29 and 34, a competent authority may be alerted to the change of residence of an adult, in order for this authority to determine whether it has jurisdiction to take measures of protection.

### **3. Jurisdiction based on nationality in the case of multi-unit States where the Convention is not in force in every unit (Arts 7 and 45(d))**

12 The SC recalled Article 45(d) of the 2000 Convention which provides that “[i]n relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units [...] any reference to the State of which the adult is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the adult has the closest connection”.

### **4. Party autonomy – choice of forum / jurisdiction (Art. 8(2)(d))**

13 The SC underlined that the 2000 Convention promotes party autonomy, while ensuring the protection of the adult. In particular, Article 8(2)(d) allows the adult to choose in writing the State the competent authorities of which are to take measures of protection in the context of a possible transfer.

14 The SC recalled the clarification in paragraph 66 of the Explanatory Report that Article 8 of the 2000 Convention combines two procedures for the transfer of jurisdiction to Contracting Parties the competent authorities of which might be better placed. On the one hand, competent authorities that have primary jurisdiction under Article 5 or 6 may request the competent authorities of one of the Contracting Parties listed in Article 8(2) to take measures of protection. On the other hand, the competent authorities of the Contracting Parties listed in Article 8(2) may ask the competent authorities that have primary jurisdiction under Article 5 or 6 to make a request for a transfer of jurisdiction to them.

### **5. Coordination of jurisdiction issues & direct judicial communications (Arts 5-11)**

15 To facilitate communications relating to jurisdiction issues, the SC strongly encouraged competent authorities to make use of the Model Form regarding “Measures of protection concerning the adult” and the Model Form regarding “Information relating to measures of protection concerning the adult”.

16 The SC recalled C&R No 14 of the December 2018 EC-HCCH Joint Conference on the Cross-Border Protection of Vulnerable Adults which underlines the potential of direct judicial communications in this area.

17 The SC recalled the General Principles for Judicial Communications within the context of the International Hague Network of Judges (IHNJ) and noted that, for the purposes of the 2000 Convention, these principles would be equally applicable to both judicial and administrative authorities:

“In Contracting Parties where direct judicial communications are practised, the following are commonly accepted overarching principles (Principles 6.1-6.3):

- Every judge engaging in direct judicial communications must respect the law of his or her own jurisdiction.
- When communicating, each judge seised should maintain his or her independence in reaching his or her own decision on the matter at issue.
- Communications must not compromise the independence of the judge seised in reaching his or her own decision on the matter at issue.

In Contracting Parties where direct judicial communications are practised, the following are commonly accepted procedural safeguards (Principle 6.4):

- Except in special circumstances, parties are to be notified of the nature of the proposed communication.
- A record is to be kept of communications and it is to be made available to the parties.
- Any conclusions reached should be in writing.
- Parties or their representatives should have the opportunity to be present in certain cases, for example via conference call facilities.

In Contracting Parties where direct judicial communications are practised, the following information is usually included in the initial communication (Principle 7.5):

- The name and contact details of the initiating authority;
- The reference number of the case;
- The nature of the case (with due regard to confidentiality concerns);
- The issue on which the communication is sought;
- Whether the parties concerned have consented to the communication taking place;
- When the communication may occur (with due regard to any time differences);
- Any specific questions which the initiating authority would like answered;
- Any other pertinent matters.”

## IV. Applicable law issues

### 1. Impact of changed circumstances on existing measures (Arts 13 and 14)

- 18 The SC noted that the domestic laws of Contracting Parties to the 2000 Convention do not have to provide for all types of measures of protection that fall under the scope of the Convention and acknowledged that some measures, taken in one State, may be unknown in another.
- 19 The SC recalled Article 12 of the 2000 Convention which provides that a measure taken under Articles 5 to 9 remains in force even when the ground of jurisdiction upon which the measure was taken has subsequently ceased to exist due to a change of circumstances (e.g., a change of habitual residence). The SC also recalled Article 14 of the 2000 Convention which provides that, when a measure of protection ordered in one Contracting Party is to be implemented in another, the conditions of its implementation are governed by the law of that other Contracting Party.
- 20 In this regard, the SC noted that, in the case of a change of habitual residence, the measures already taken in the former State of habitual residence will remain in force unless and until the competent authorities of the new State of habitual residence modify, replace or terminate them (Art. 12). In the interim, the conditions of implementation of the measures already taken and implemented in the new State of habitual residence will be governed by the law of that State (Art. 14). The competent authorities of the new State of habitual residence may modify or replace any existing measures (Art. 5(2)). This may occur, *inter alia*, where the measures taken in the former State of habitual residence prove difficult to implement, for example, because they are unknown in the State of the new habitual residence. Doing so, they would apply their own law (Art. 13(1)) or they could apply or take into consideration the law of another State with which the situation has a substantial connection (Art. 13(2)).

## 2. *Ex lege* representation (Art. 1 and Chapter V)

21 The SC welcomed the work completed by the PB, with the assistance of the Working Group (WG) on the development of a draft Practical Handbook under the 2000 Protection of Adults Convention, on the application of the 2000 Protection of Adults Convention to *ex lege* representation.

22 The SC adopted the following version of paragraph 3.56 of the draft revised Practical Handbook, which provides additional information regarding the application of the 2000 Convention to *ex lege* representation, to supplement what is already provided for in paragraph 90 of the Explanatory Report:

“3.56 *Ex lege* representation is not, as such, a measure of protection under Article 3 because it is not put in place by a competent authority, nor is it a power of representation under Article 15 because it has not been granted by the adult. *Ex lege* representation is a representation that arises by operation of law, for which there is no specific conflict rule in the Convention. While there is no provision in the Convention that deals with *ex lege* representation *per se*, such representation falls under the scope and object of the Convention by virtue of Article 1 when it is aimed at the protection of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests (Art. 1(1)). Thus, *ex lege* representation may be the subject of cooperation between the authorities of Contracting Parties (Art. 1(2)(e) and Chapter V). In general, competent authorities will give effect to *ex lege* representation in accordance with their own law, including, where appropriate, their rules of private international law.

Moreover, it is important to note that a number of States may provide mandatory laws that require the authorisation of the spouse (*i.e.*, a spouse covered by the marital *ex lege* representation) or next of kin for certain medical treatments for the adult or their placement in a health institution.”

## 3. Instructions given and wishes made by the adult, e.g., advance directives (Arts 15 and 16)

23 The SC noted that instructions given and wishes made by an adult, in anticipation of a future impairment of their personal faculties, fall within the general scope of the 2000 Convention under Article 1 and are subject to the cooperation provisions in Chapter V.

24 The SC also noted that instructions given and wishes made by an adult can be found in various types of voluntary, anticipatory acts such as advance directives, advance arrangements, advance healthcare decisions or (continuing) powers of attorney. The SC agreed that unilateral acts containing instructions and wishes without necessarily designating an individual to carry them out are important tools in ensuring the exercise of the adult’s autonomy.

25 The appreciation of whether or not a particular voluntary anticipatory act constitutes a power of representation under Articles 15 and 16 could be undertaken by competent authorities on a case-by-case basis.

26 The SC further noted that the Country Profile (Prel. Doc. No 7 of October 2022 (first revised version)) will be extremely helpful in bringing to the attention of competent authorities and other interested parties the various types and forms of voluntary, anticipatory acts containing the instructions and wishes of the adult in different jurisdictions.

## 4. Choice of law in the case of powers of representation (Art. 15(2))

27 The SC recalled the choice of law provision under Article 15(2) and highlighted the utility of aligning the choice of forum under Article 8(2)(d) with the choice of law.

## V. Recognition and enforcement issues

### 1. Measure shall be recognised by operation of law (Art. 22(1))

28 The SC recalled that the provision under Article 22(1) entails that the effects of a measure, as they exist in the domestic legal system of the Contracting Party where the measure was taken, may be relied upon in another Contracting Party without the need for any further action or special processes (*i.e.*, automatically). Such a measure could include the designation of an individual to represent or assist the adult.

29 The SC noted that the use of the certificate under Article 38 will facilitate the recognition of measures by operation of law under Article 22(1).

### 2. Opportunity of the adult to be heard (Art. 22(2)(b))

30 To facilitate the recognition and enforcement of measures, the SC encouraged competent authorities to incorporate a record of whether the adult was heard into their orders for measures. If a decision is made not to hear the adult, the SC encouraged competent authorities to indicate that consideration was given to doing so and the reasons for the decision not to hear the adult.

### 3. Preventive action for recognition or non-recognition (advance recognition) (Art. 23)

31 The SC recalled that Article 23 provides a legal basis for any interested party to seek, in advance, the recognition or non-recognition of a measure, before it is invoked or relied upon in another State. To this end, the SC highlighted the utility of Article 23 in ensuring the advance recognition of measures to guarantee their cross-border recognition.

### 4. Simple and rapid procedure for declaration of enforceability or registration (Art. 25)

32 The SC recognised the great importance of simple and rapid procedures to be employed for the recognition and / or declaration of enforceability or registration for the purposes of enforcement of measures from other Contracting Parties, as required by Article 25(2). To this end, the SC encouraged States to consider implementing legislation providing for stipulated time frames, the use of specialised judges or registrars and the concentration of jurisdiction for procedures in certain courts, among others.

### 5. Enforcement in accordance with the law of the requested State to the extent provided by such law (Art. 27)

33 The SC recalled Article 25(1) of the 2000 Convention which provides that, where measures taken in one Contracting Party require enforcement in another Contracting Party, such measures shall, upon request of an interested party, be declared enforceable or registered for the purpose of enforcement in that other Contracting Party, in accordance with the procedures foreseen by its domestic law. The SC noted that measures for the protection of an adult only exceptionally require enforcement under Article 25. This may occur, for instance, where a decision is taken by a competent authority to place the adult in an establishment or to authorise a specific intervention by health care practitioners or medical staff (*e.g.*, tests or treatments).

34 In the context of requests for declarations of enforceability or registrations for the purpose of enforcement, the SC invited Contracting Parties (in relation to their laws) and competent authorities (in relation to their procedures) to differentiate between those measures that require enforcement and those that do not.

35 The SC also recalled Article 27 of the 2000 Convention which provides that, once a measure taken in one Contracting Party has been declared enforceable or has been registered for the purpose of

enforcement in another Contracting Party, the measure shall be enforced in the other State as if it had been originally taken there, in accordance with its domestic law.

## **VI. Cooperation & general provisions issues**

### **1. Central Authority resources, contact details and general information**

36 The SC noted that Central Authorities play an important role in making the 2000 Convention function. To this end, they should be given a mandate which is sufficiently broad, qualified personnel and resources, including modern means of communication, all of which are necessary to carry out their functions effectively. Central Authorities should have a regular staff, able to develop expertise in the operation of the 2000 Convention.

37 Contracting Parties should inform the PB promptly of the contact details of their Central Authority(ies), and Central Authorities should inform the PB promptly of the names of contact persons, of the means by which they may be contacted and of their language(s) of communication. Central Authorities should promptly inform the PB of any changes in these details.

38 Each Central Authority is encouraged, where feasible, to establish and regularly update their website, details of which should be furnished to the PB for the purpose of establishing a link with the HCCH website.

### **2. General obligation of Central Authorities to cooperate with each other (Art. 29)**

39 The SC strongly encouraged Central Authorities to cooperate closely and respond promptly to requests for cooperation. To this end, the SC recommended that they should, as far as possible, use rapid means of communication, bearing in mind the need for confidentiality.

40 In addressing any practical problems concerning the proper functioning of the 2000 Convention, the SC strongly encouraged Central Authorities to engage in dialogue and noted that, where a group of Central Authorities share a common problem, consideration should be given to having joint meetings which might, in some cases, be facilitated by the PB.

41 The SC noted that in addition to cooperating in relation to matters provided for under Articles 30 to 34, Central Authorities are also strongly encouraged to cooperate regarding other matters, under Article 29, to achieve the purposes of the 2000 Convention.

### **3. Confirmation of powers of representation (Art. 38(1))**

42 Bearing in mind that the 2000 Convention does not prescribe a process for confirmation, the SC reminded Contracting Parties that confirmation of powers of representation, as a prerequisite for the delivery of the certificate, must give “every guarantee of reliability”.

43 The SC highlighted that, for a power of representation to be confirmed and to benefit from the certificate under Article 38, it must be in force and in conformity with the law applicable.

44 The SC noted that it is for each Contracting Party to entrust the task of confirmation to a judicial or administrative authority, a public body or an appropriate professional, and stressed that, in any case, safeguards should be in place to avoid conflicts of interest.

45 The SC strongly encouraged Contracting Parties to provide, in their domestic legislation, a procedure for confirmation of powers of representation and for the delivery of certificates under Article 38, in order to facilitate their cross-border transportability and operability.

#### **4. Promoting the use of the model certificate (Art. 38)**

46 The SC underlined that the use of the certificate under Article 38 could facilitate the cross-border circulation of measures of protection and confirmed powers of representation by increasing legal security, certainty, and predictability.

47 The SC recommended the use of the model form certificate (Art. 38) adopted by the 1999 Special Commission of a Diplomatic Character.

#### **5. Designation of the authorities competent to draw up the certificate (Art. 38(3))**

48 The SC further encouraged Contracting Parties that have not yet done so to designate the authorities competent to draw up the certificate in accordance with Article 38(3) of the 2000 Convention.

#### **6. Communications to be accompanied by a translation (Art. 51)**

49 The SC recalled Article 30 which provides that, either directly or through public authorities or other bodies, Central Authorities shall facilitate communications, by every means, between the competent authorities in situations to which the 2000 Convention applies.

50 The SC recalled Article 51 of the 2000 Convention which provides that any communications, including attachments, between authorities must be in their original language and accompanied by a translation into the official language or one of the official languages of the other Contracting Party. Where that is not feasible, the communication must be translated into either French or English, keeping in mind that a Contracting Party may make a reservation, under Article 56, to the use of either French or English, but not both.

### **VII. Tools to assist with the implementation of the 2000 Convention**

51 The SC recalled C&R Nos 6, 9 and 10 of the December 2018 EC-HCCH Joint Conference on the Cross-Border Protection of Vulnerable Adults, which highlighted the utility of developing and promoting practical tools to further facilitate the implementation of the 2000 Convention.

52 The SC also acknowledged the responses to the Questionnaire of July 2019<sup>3</sup> wherein States expressed an interest in the development of tools to assist in the operation of the 2000 Convention.

#### **1. Improving access to the existing Model Forms**

53 The SC noted the benefits of using the existing recommended Model Forms adopted by the 1999 Special Commission of a diplomatic character and acknowledged the views expressed by some States that the recommended Model Forms could be more easily available on the HCCH website. The SC invited the PB to place the Model Forms available under the Convention in a more prominent area of the Protection of Adults specialised section on the HCCH website.

54 To this end, the SC recommended that the PB, subject to available resources, begins working on improving the user-friendliness of the recommended Model Forms under the 2000 Convention, for example by making them fillable.

55 The SC invited the Council on General Affairs and Policy (CGAP) to consider the issue of accessibility to HCCH documents by individuals with impairments, in particular to documentation pertaining to the 2000 Convention.

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<sup>3</sup> "Questionnaire to assess the need to convene a possible meeting of the Special Commission in 2022 to review the practical operation of the 2000 Protection of Adults Convention", Prel. Doc. No 1 of July 2019, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Protection of Adults Section" then "Questionnaires & Responses".



## **2. Direct judicial communications and a possible network of judges under the 2000 Protection of Adults Convention**

56 The SC recalled C&R No 14 of the December 2018 EC-HCCH Joint Conference on the Cross-Border Protection of Vulnerable Adults which underlines the potential of direct judicial communications in this area.

57 The SC invited Contracting Parties to consider designating one or more members of the judiciary for the purpose of judicial communications under the 2000 Convention, with a view to, in the future, organise such members of the judiciary into a network. Designated members of the judiciary should be sitting judges, or members of the judiciary bound by the same standards of independence and impartiality as a sitting judge, with authority and, ideally, with experience in the area of protection of adults.

58 The SC recommended that the 2023 meeting of CGAP give consideration to extending, with the necessary adaptations, the Emerging Guidance on Direct Judicial Communications to the 2000 Protection of Adults Convention.

59 The SC recommended that the meeting of CGAP in 2023 give consideration to extending the scope of the IHNJ to matters relating to the 2000 Protection of Adults Convention. To this end, the SC invited the PB to prepare a document outlining the practical considerations pertaining to such an extension.

60 The SC welcomed the work completed by the PB and the WG in finalising Prel. Doc. No 8 of July 2022 on Direct Judicial Communications and a possible network of judges under the 2000 Protection of Adults Convention.

## **3. Finalisation and adoption of the Practical Handbook on the Operation of the 2000 Protection of Adults Convention**

61 Recalling the strong support by States for developing a Practical Handbook on the 2000 Convention, as well as the mandate from CGAP in March 2021 (C&D No 26), the SC welcomed the work completed by the PB and the WG in finalising the draft Practical Handbook.

62 The SC thanked the PB and the WG for the progress achieved on the draft Practical Handbook and approved, in principle, Prel. Doc. No 4 of July 2022 (revised version). The SC invited the PB and the WG to review the draft in light of the latest comments received from HCCH Members (Prel. Doc. No 13 of October 2022), the discussions that took place at the SC and their outcome, with a view to circulate the second revised version to HCCH Members for comments on the amendments. HCCH Members and Observers present at the SC will be invited, on that occasion, to provide comments on existing examples and suggestions for additional examples. The SC invited the PB, in consultation with the WG, to finalise the draft Practical Handbook accordingly, before submitting the final draft for endorsement by CGAP. The SC noted that, for publication purposes, the draft Implementation Checklist will appear as an Annex to the draft Practical Handbook.

## **4. Finalisation and adoption of the Implementation Checklist under the 2000 Protection of Adults Convention**

63 The SC acknowledged the role that an Implementation Checklist is likely to play as a tool to provide guidance to States prior to, or upon, their implementation of the 2000 Convention.

64 The SC recognised the efforts made by the PB and the WG, thanked them for their work on the draft Implementation Checklist under the 2000 Protection of Adults Convention and approved, in principle, Prel. Doc. No 3 of September 2020. The SC invited the PB and the WG to review the draft Implementation Checklist, in the light of the discussions that took place at the SC and their

outcome, with a view to circulate it to HCCH Members for comments before submitting the final draft for endorsement by CGAP.

#### **5. Finalisation and adoption of the 2000 Protection of Adults Convention Country Profile**

65 The SC acknowledged the role that a Country Profile is likely to play as a tool for Contracting Parties to provide information regarding their implementation of the 2000 Convention.

66 The SC recognised the effort made by the PB and the WG, thanked them for the progress achieved on the draft Country Profile under the 2000 Protection of Adults Convention and approved, in principle, Prel. Doc. No 7 of October 2022 (first revised version). The SC invited the PB and the WG to review the draft Country Profile in light of the latest comments received from HCCH Members, the discussions that took place at the SC and their outcome, with a view to circulating it to HCCH Members for comments on the amendments before submitting the final draft for endorsement by CGAP.

### **VIII. Possible amendments to the 2000 Convention**

67 The SC welcomed the work completed by the PB, with the assistance of the WG, on Prel. Doc. No 12 of October 2022 (revised version) on the possible amendments to the 2000 Protection of Adults Convention.

68 The SC acknowledged the views of several delegations that there was insufficient time to review Prel. Doc. No 12 of October 2022 (revised version). In this regard, the SC noted that the discussions on the possible amendments to the 2000 Convention are preliminary and simply intended to assess, in the first instance, whether there is a need and an interest to amend the 2000 Convention and whether that is feasible. The Secretary General confirmed that the decision whether or not to amend the 2000 Convention is for CGAP to make. The PB indicated that a report will be prepared before the end of the year on the possible amendments to the 2000 Convention for the purpose of the meeting of CGAP in 2023 and will reflect the discussions that took place at the SC. HCCH Members were invited to share any additional developments pertaining to this issue with the PB, with a view to circulate them before the meeting of CGAP in 2023.

#### **1. Interest in deleting the terms “guardianship” and “curatorship” (Art. 3(c))**

69 The SC recalled that the 2000 Convention does not, in and of itself, regulate or establish any protective regime. Noting that, in some States, the institutions of guardianship and curatorship are now based on supported decision-making regimes, the SC recommended keeping the terms “guardianship” and “curatorship” in the text of the Convention.

#### **2. Interest in adding a new conflict rule for “ex lege representation”**

70 Recalling the past lack of consensus regarding the inclusion of a conflict rule on *ex lege* representation in the text of the 2000 Convention and taking into consideration that States have not reported any practical issues in this area, the SC noted that the absence of such a conflict rule from the Convention would not create insurmountable difficulties.

71 The SC acknowledged the views expressed by delegations that there is currently no need or interest in adding a new conflict rule for *ex lege* representation.

#### **3. Interest in adding a provision on “instructions given and wishes made by the adult, e.g., advance directives”**

72 Considering the outcome of the discussions (see, *supra*, paras 23 – 26), the SC acknowledged that the absence of a specific conflict rule that covers instructions given and wishes made where no powers of representation have been conferred does not appear to create practical difficulties.

73 The SC took note of the views expressed by delegations that there is currently no need or interest in adding a provision regarding instructions given and wishes made by the adult.

#### **4. Interest in adding final clauses allowing Regional Economic Integration Organisations (REIOs) to join the 2000 Convention**

74 During the course of discussions on this matter, the SC recalled that the 2000 Convention functions well and is fit for purpose. As such, it acknowledged the desirability and practical necessity for more States to be bound by the 2000 Convention as soon as possible and in the most efficient manner. The SC noted that there are several ways in which EU Member States can be bound by the 2000 Convention, which is a matter to be determined by the EU at the regional level.

75 The SC took note of the wish expressed by several delegations to have more time to discuss the inclusion of an REIO clause and that discussions on this matter are better suited to take place at the meeting of CGAP in 2023.

#### **5. Possible mechanisms to amend the 2000 Convention**

76 The SC noted that the mechanism concerning a possible amendment to the 2000 Convention is to be discussed and decided by CGAP.