

Title	Questionnaire on the practical operation of the HCCH 2000 Protection of Adults Convention
Document	Prel. Doc. No 2 of September 2020
Author	PB
Agenda item	TBD
Mandate(s)	C&R No 34 of the 2019 CGAP; C&D No 31 of the 2020 CGAP
Objective	<ul style="list-style-type: none"> – To seek information as to the implementation and practical operation of the 2000 Convention in Contracting Parties; – To identify challenges or questions that have arisen in the practical operation of the 2000 Convention in Contracting Parties; – To seek information as to the implementation of the 2000 Convention in non-Contracting Party Members of the HCCH; – To assist with the preparation of a draft Country Profile under the 2000 Convention in advance of the SC; – To assist with the drawing-up of a draft Practical Handbook on the Operation of the 2000 Convention in advance of the SC; and – To obtain views and comments about other issues for discussion at the upcoming meeting of the SC. <p>Replies to the Questionnaire should be provided no later than 4 December 2020.</p>
Action to be taken	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input type="checkbox"/> For Action <input checked="" type="checkbox"/>
Annexes	
Related documents	<ul style="list-style-type: none"> – Prel. Doc. No 1 of July 2019 – Questionnaire to assess the need to convene a possible meeting of the Special Commission in 2022 to review the practical operation of the <i>Convention of 13 January 2000 on the International Protection of Adults</i> – Prel. Doc. 10 of December 2019 – Report on the planning for a first meeting of the Special Commission to review the practical operation of the HCCH 2000 Adults Convention

INTRODUCTION

Objectives of the Questionnaire

This Questionnaire is being circulated in preparation for a possible meeting of the Special Commission (SC) on the practical operation of the *HCCH Convention of 13 January 2000 on the International Protection of Adults*¹ (hereinafter, the “2000 Convention”) to be held in The Hague in May / June 2022 (dates to be confirmed).

A first questionnaire was circulated in July 2019 to assess the need for a possible meeting of the Special Commission to review the practical operation of the 2000 Convention. Responses from 27 Members were collated and formed Prel. Doc. 10 of December 2019² for the attention of the 2020 Council on General Affairs and Policy (CGAP). The Conclusion & Decision³ No 31 from that meeting reads as follows:

“CGAP noted the progress made in organising the first meeting of the SC on the practical operation of the 2000 Protection of Adults Convention, to be held in May / June 2022. CGAP noted the possible topics recommended by HCCH Members in their responses to the questionnaire on this matter and encouraged the PB to focus its preparations on those topics identified as being of high interest, including by developing a Practical Handbook and, resources allowing, a Country Profile.”

This Questionnaire is addressed primarily to Contracting Parties to the 2000 Convention, but certain questions (appearing in **grey highlights**) at the beginning of the Questionnaire and on powers of representation are also addressed to Members of the HCCH that are non-Contracting Parties.

After more than 10 years of operation of the 2000 Convention, the Questionnaire has the following broad objectives:

- a. To seek information as to the implementation and practical operation of the 2000 Convention in Contracting Parties;
- b. To identify challenges or questions that have arisen in the practical operation of the 2000 Convention in Contracting Parties;
- c. To seek information as to the implementation of the 2000 Convention in non-Contracting Party Members of the HCCH;
- d. To assist with the preparation of a draft Country Profile under the 2000 Convention in advance of the SC;
- e. To assist with the drawing-up of a draft Practical Handbook on the Operation of the 2000 Convention in advance of the SC; and
- f. To obtain views and comments about other issues for discussion at the upcoming meeting of the SC.

The Questionnaire is designed to facilitate an efficient exchange of information on these matters prior to the meeting of the SC and also assist with the drawing up of an agenda for the meeting.

¹ The text of the 2000 Convention is available at: < <https://assets.hcch.net/docs/c2b94b6b-c54e-4886-ae9f-c5bbef93b8f3.pdf> >.

² The text of Prel. Doc. No 10 of December 2019 is available at: < <https://assets.hcch.net/docs/d0d3112b-56c1-42d4-b19a-a04beee01dc7.pdf> >.

³ The Conclusions and Decisions of CGAP 2020 are available at: < <https://assets.hcch.net/docs/70458042-f771-4e94-9c56-df3257a1e5ff.pdf> >.

Scope of the Questionnaire

The Questionnaire covers all the provisions of the 2000 Convention with the exception of the final clauses (Arts 53-59). Where relevant, reference is made to the *United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities* (hereinafter the “UNCRPD”) which the 2000 Convention may assist implementing for matters which may have cross-border implications.

In considering the questions that follow, Contracting Parties and non-Contracting Parties may find it useful to refer in particular to the new and revised edition of the Explanatory Report⁴ (ER) on the 2000 Convention drawn up by Professor Paul Lagarde.

Instructions for completion

The Questionnaire is being sent to Central Authorities designated under the 2000 Convention as well as to National and Contact Organs. Central Authorities as well as National and Contact Organs are invited to co-ordinate as appropriate with competent authorities⁵ in their respective States as well as stakeholders in this field (*e.g.*, guardians, curators and analogous institutions, notaries, lawyers, research / academic institutions, long-term care establishments, health care providers, financial institutions). For Contracting Parties to the Convention, Central Authorities are ultimately responsible for submitting the completed Questionnaire to the Permanent Bureau (PB).

In order to allow the PB to extract parts of the Questionnaire for a compilation and analysis of the responses, please use **this Word Version** of the document, and please **do not return a PDF version** of the completed Questionnaire.

We kindly request that replies to the Questionnaire be sent to the PB by e-mail to < secretariat@hcch.net > **no later than 4 December 2020** with the following subject matter captioned in the heading of the e-mail: “[name of State] Response to the 2000 Convention Questionnaire – 2022 Special Commission”. Any questions concerning the Questionnaire may be directed to < secretariat@hcch.net >.

The PB intends, except where expressly asked not to do so, to place all replies to the Questionnaire on the HCCH website (< www.hcch.net >). Please therefore clearly identify any responses which you do not want to be placed on the website.

Thank you for your kind co-operation.

⁴ The text of the Explanatory Report is available at: < <https://assets.hcch.net/docs/1509ab33-c2fe-4532-981c-7aa4dad9ba45.pdf> >.

⁵ The term “competent authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 2000 Convention. Whilst in the majority of States Parties such “authorities” will be courts (*i.e.*, judicial), in some States Parties administrative authorities are responsible for decision making in Convention cases.

**QUESTIONNAIRE ON THE PRACTICAL OPERATION OF
THE HCCH CONVENTION OF 13 JANUARY 2000 ON THE INTERNATIONAL PROTECTION OF ADULTS**

Wherever the responses to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 2000 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit: ⁶	The Netherlands
<i>For follow-up purposes</i>	
Date the Questionnaire was completed:	March 2021
Name of contact person:	Jeanneke Vink
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Please do not place personal details on the website	

Please note:

- Non-Contracting Parties to the 2000 Convention are requested to respond to all questions appearing under Part I as well as questions in Part II which numbers appear in **grey highlight**.
- Contracting Parties to the 2000 Convention are requested to complete all questions under Part II.

PART I – QUESTIONS FOR NON-CONTRACTING PARTY MEMBERS OF THE HCCH

1. Is your State considering joining the 2000 Convention?

Yes

No, if possible please explain:

There is no urgent need to become a Contracting Party. The rules of the treaty are applied in practice.

2. In considering how your State would implement the 2000 Convention, have you encountered any issues of concern?

No

Yes, please explain:

Please see the precedent response.

3. Is your State considering joining the 2000 Convention with a view to implementing its obligations under the UNCRPD, e.g., Articles 12 and 16 of the UNCRPD?

Yes

No, please explain:

The Netherlands is since 2016 a party to the Convention on the Rights of Persons of Disabilities (UNCRPD).

⁶ The term "State" in this Questionnaire includes a territorial unit, where relevant.

PART II – PRACTICAL OPERATION AND IMPLEMENTATION OF THE 2000 CONVENTION

I – Significant developments in your State

- 1.1. Have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases, including in international situations, of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests? Where possible, please state the reason for the development in the legislation / rules (*e.g.*, in connection with the implementation of the UNCRPD), and, where possible, the results achieved in practice:

- No
 Yes, please describe:
[Please insert text here](#)

- 1.2. Please provide a brief summary of any significant decisions concerning the interpretation and / or application of the 2000 Convention rendered by the competent authorities⁷ in your State, including in the context of the UNCRPD and other relevant instruments:

[Please insert text here](#)

- 1.3. Please provide a brief summary of any other significant relevant developments in your State since it became a Contracting Party to the 2000 Convention:

[Please insert text here](#)

II – General operation information

- 2.1. Please indicate the number of cases handled by your Central Authority since the 2000 Convention came into force for your State:

[Please insert text here](#)

- 2.2. Please indicate, if possible, the names of the Contracting Parties involved in the cases referred to in question 2.1.:

[Please insert text here](#)

- 2.3. Please indicate the month and year when the 2000 Convention came into force for your State:

[Please insert text here](#)

- 2.4. Please indicate the number of Full Time Equivalents (FTEs) employed at this moment by your Central Authority dedicated to the operation of the 2000 Convention:

[Please insert text here](#)

⁷ The term “competent authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 2000 Convention. Whilst in the majority of States Parties such “authorities” will be courts (*i.e.*, judicial), in some States Parties administrative authorities are responsible for decision making in Convention cases.

III – Scope

3.1. Have competent authorities⁸ in your State experienced any challenges, or have questions arisen, in determining the scope of the Convention under **Article 1** (meaning of “adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests”), **Article 2** (meaning of “adult”) or **Article 3** (meaning of “measures”)?

- No
- Yes, please describe:
- Article 1** (meaning of “adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests”), please specify:
Please insert text here
- Article 2** (meaning of “adult”), please specify:
Please insert text here
- Article 3** (meaning of “measures”), please specify:
Please insert text here
- Other, please specify:
Please insert text here

3.2. Please indicate whether the following measures are available in your State and describe their fundamental features including the conditions that must be met for an adult to be subject to such measures (tick more than one box if applicable):

- Guardianship, please describe:
A guardianship for adults does not exist in the Netherlands. For vulnerable adults exist three kinds of legal protection measures: curatorship (curatele), fiduciary administration (bewindvoering) and protective mentorship (mentorscap).
- Curatorship, please describe:
A curator may be appointed by the Subdistrict Court if an adult is temporary or permanently not looking properly after his interests or when he is temporary or permanently endangering his own safety or that of others, as a result of his physical or mental condition or a habit of alcohol or drugs abuse. A curatorship may not be imposed if a more suitable and less intrusive measure is sufficient to protect the vulnerable adult. From the day the curatorship takes effect, the adult misses the legal capacity to perform juridical acts.
- Analogous institution, please name and describe:
A less intrusive measure is fiduciary administration or protective mentorship. A legal administrator and the mentor are also appointed by the Subdistrict Court. Fiduciary administration is established if an adult is temporarily or permanently unable to look after his own interests in property due to his physical or mental condition or reckless spending or the presence of problematic debts. A mentorship is established if an adult is temporarily or permanently unable or hindered to look after his own non-financial interests due to his physical or mental condition.

3.3. Please list and describe measures available under the law of your State that are not listed in **Article 3** but that would nevertheless fall under **Article 3** (e.g., “guardian *ad litem*”, “advanced health / medical decisions”, “*Betreuer*” (under German law), “*un placement sous sauvegarde de justice*” (under French law)):

Please insert text here

⁸ *Ibid.*

- 3.4. While the formation, annulment and dissolution of marriage or any similar relationship, as well as legal separation are excluded from the scope of the 2000 Convention in accordance with **Article 4(1)(b)**, please list and describe the possible powers of representation between partners available in your State resulting from the effects of marriage, and similar relationships, that fall under the scope of the 2000 Convention “insofar as they are aimed at the protection of the ailing partner” (see paras 35 and 90 of the ER):

According to Dutch law a marriage may not be entered into when the mental capacity of one of the parties is disturbed in such a way that he is not able to determine his will or to understand the significance of his declaration. An adult who is placed under curatorship due to a habit of alcohol or drugs abuse, needs the approval of his legal representative (the curator) before he can enter into a marriage. If the approval of the curator cannot be obtained, the adult may request the Subdistrict Court to grant him a substitute authorisation. Adults who are placed under curatorship because of their physical or mental condition need the authorisation of the Subdistrict Court before they can enter into a marriage.

In the situation of a curatorship due to a physical or mental condition, the annulment of a marriage may be requested by the legal representative (the curator), unless the curator has explicitly or tacitly approved the marriage or when three months have passed since he became aware of the contracting of the marriage.

IV – Jurisdiction

- 4.1. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction based on the “**habitual residence**” of the adult under **Article 5(1)**?

- No
 Yes, please specify:
[Please insert text here](#)

- 4.2. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction in the case of a “**change of the habitual residence**” of the adult under **Article 5(2)**?

- No
 Yes, please specify:
[Please insert text here](#)

- 4.3. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction based on the “**presence**” of the adult under **Articles 6, 10 and 11**?

- No
 Yes, please specify:
[Please insert text here](#)

- 4.4. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction based on the “**nationality**” of the adult under **Article 7**?

- No
 Yes, please specify:
[Please insert text here](#)

4.5. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to transfer jurisdiction based on the “**interests**” of the adult under **Article 8**?

- No
 Yes, please specify:
[Please insert text here](#)

4.6. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction based on the “**situation of the property**” of the adult under **Article 9**?

- No
 Yes, please specify:
[Please insert text here](#)

4.7. Have competent authorities in your State had experience with urgent measures of protection taken under **Article 10**?

- No
 Yes, please describe in which situations a competent authority in your jurisdiction has applied **Article 10**:
[Please insert text here](#)

4.8. Have competent authorities in your State had experience with temporary and limited measures of protection taken under **Article 11**?

- No
 Yes, please describe in which situations a competent authority in your jurisdiction has applied **Article 11**:
[Please insert text here](#)

4.9. Have competent authorities in your State had experience using the Measures of Protection Concerning an Adult recommended form⁹ for the purpose of **Article 8** and the Information relating to Measures of Protection concerning an Adult recommended form¹⁰ for the purpose of **Articles 7, 10 and 11**?

- No, please explain:
[Please insert text here](#)
 Yes

4.10. Has your State taken appropriate steps (*e.g.*, guidelines, procedures, protocols) in accordance with **Article 30(a)** to facilitate communications between competent authorities of different Contracting States concerning the coordination of jurisdictions issues arising under **Articles 5-12**?¹¹

⁹ The Measures of Protection Concerning an Adult recommended form is available at: < <https://assets.hcch.net/upload/form35b.pdf> >.

¹⁰ The Information relating to Measures of Protection concerning an Adult recommended form is available at: < <https://assets.hcch.net/upload/form35c.pdf> >.

¹¹ See, *e.g.*, Direct Judicial Communications - Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges available at: < <https://assets.hcch.net/docs/62d073ca-eda0-494e-af66-2ddd368b7379.pdf> >.

- No
 Yes, please describe such guidelines, procedures or protocols and also provide a link or attach them, preferably translated into English or French:
[Please insert text here](#)

4.11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter II**?

- No
 Yes, please specify:
[Please insert text here](#)

V – Applicable law – General

5.1. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying or taking into consideration the law of another State with which the situation has a substantial connection in accordance with **Article 13(2)**?

- No
 Yes, please specify:
[Please insert text here](#)

5.2. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying their own law, in accordance with **Article 14**, to the conditions of implementation of foreign measures, whether these are known or unknown to their own law?

- No
 Yes, please specify:
[Please insert text here](#)

5.3. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 17**?

- No
 Yes, please specify:
[Please insert text here](#)

5.4. Please list and describe specific rules of representation of the adult which your State would regard as part of the mandatory law under **Article 20**:

[Please insert text here](#)

5.5. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter III**?

- No
 Yes, please specify:
[Please insert text here](#)

VI – Applicable law – Powers of representation (including advance directives)

In the following questions (questions 6.1. to 6.49.) references to powers of representation, as described in Article 15 of the 2000 Convention, mean, and are limited to, “powers of representation

granted by an adult, either under an agreement or by a unilateral act, to be exercised when such adult is not in a position to protect his or her interest". Such powers of representation are also known as "mandate in case of incapacity", "self-determined guardianship", "voluntary guardianship", "living will", "*mandat de protection future*", "*mandat extrajudiciaire*", etc.¹² In a great number of States, such powers of representation are private agreements. They may be witnessed, certified, notarised, or not be subject to any formal requirements. Several States provide for various forms of powers of representation. Any such powers of representation fall under the scope of the 2000 Convention. The availability of powers of representation under the law of Contracting Parties to the 2000 Convention will facilitate implementation of their treaty obligations. However, the absence of such powers should not stop States from becoming Contracting Parties.

Thus, powers of representation may or may not be *available* under the law of your State. Where they are, they may be available *in one or more forms* (see question 6.19. below). To achieve the desired effect, the use of any of these forms of powers of representation may be *optional or mandatory*. Furthermore, powers of representation may or may not be subject to *formal requirements* (such as being notarised, certified, or witnessed) to achieve validity and operability. In addressing the existence, extent, modification and extinction of such powers of representation for the purpose of Article 15, Section VI of this Questionnaire seeks to accommodate *all* these various possibilities with a view to obtaining a better understanding of powers of representation across HCCCH Members. **If the actual position in your State does not fit easily within the alternatives offered, please use "other" at the end of any relevant question to explain the position of your State.** Responses to Section VI will be particularly relevant for drawing up a draft Country Profile and draft Practical Handbook on the operation of the 2000 Convention.

Availability of such powers of representation (as described above in the introduction to Section VI for the purposes of questions 6.1. to 6.49.) under your domestic law and related safeguards

6.1. Does the law of your State provide for such powers of representation?

Yes

No, if possible please explain or provide further background:

In the Netherlands, there is no legislation providing expressly for such powers of representation as referred to in this Section. Dutch law only provides for general rules on powers of attorney. However, adults may draw up a living will in a notarised form ("een levenstestament"). This "levenstestament" is not regulated by law. It is a special power of attorney in which an adult may appoint a representative and give him instructions in advance in both economic and financial matters, and in health, welfare and other personal matters in the event of future incapacity.

6.2. If yes to question 6.1., the following questions are designed to address the various possibilities outlined in the second paragraph of the Introduction to this Section VI (above) in relation to *formal requirements* that may be applicable in your State and their respective functions (in relation to each question, tick more than one box if applicable):

[Please insert text here](#)

6.2.1. Is it mandatory in your State to have such powers of representation notarised?

a. Powers of representation cannot be notarised

b. Yes, it is mandatory

b.1. Always mandatory

¹² Such "powers of representation" under Art. 15 of the 2000 Convention are not to be confused with "general powers of attorney" or "ordinary powers of attorney" under civil or commercial law.

- b.2. Only mandatory for specific purposes, please specify:

There are no special provisions regarding the form and content of a power of representation. In this regard, the general rules regarding the powers of attorney are applicable. However, in order to facilitate the acceptance of a power of representation ("levenstestament") as much as possible, a notarisation of a power of representation is certainly an option and generally recommended. Third parties such as credit institutions may ask for a notarial deed before they accept the representation in financial matters. From that point of view, a powers of representation is mandatory in practice.

- c. No, it is not mandatory, but it is an available option

d. Please tick the relevant functions of this formal requirement

- d.1. To establish the capacity of the grantor at the time of granting the powers of representation
- d.2. To verify that the person signing the powers of representation is the grantor
- d.3. To witness the signature of the powers of representation by the grantor
- d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
- d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) UNCRPD)
- d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCRPD)
- d.7. To confirm the absence of undue influence (Art. 12(4) UNCRPD)
- d.8. Other, please specify:

[See the answer to question b.2.](#)

6.2.2. Is it mandatory in your State to have such powers of representation certified?

- a. Powers of representation cannot be certified
- b. Yes, it is mandatory
- b.1. Always mandatory
- b.2. Only mandatory for specific purposes, please specify:
[Please insert text here](#)

- c. No, it is not mandatory, but it is an available option

d. Please tick the relevant functions of this formal requirement

- d.1. To establish the capacity of the grantor at the time of granting the powers of representation
- d.2. To verify that the person signing / who signed the powers of representation is / was the grantor
- d.3. To witness the signature of the powers of representation by the grantor
- d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
- d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) UNCRPD)
- d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCRPD)
- d.7. To confirm the absence of undue influence (Art. 12(4) UNCRPD)
- d.8. Other, please specify:

[Please insert text here](#)

6.2.3. Is it mandatory in your State to have such powers of representation witnessed?

- a. Powers of representation cannot be witnessed
- b. Yes, it is mandatory
- b.1. Always mandatory

- b.2. Only mandatory for specific purposes, please specify:
[Please insert text here](#)
- c. No, it is not mandatory, but it is an available option
- d. Please tick the relevant functions of this formal requirement
- d.1. To establish the capacity of the grantor at the time of granting the powers of representation
- d.2. To verify that the person signing the powers of representation is the grantor
- d.3. To witness the signature of the powers of representation by the grantor
- d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
- d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) UNCRPD)
- d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCRPD)
- d.7. To confirm the absence of undue influence (Art. 12(4) UNCRPD)
- d.8. Other, please specify:
[Please insert text here](#)

6.2.4. Is it mandatory in your State to have such powers of representation subject to another formal requirement?

Please specify the name of the formal requirement:

- a. Powers of representation are not subject to another formal requirement
- b. Yes, it is mandatory
- b.1. Always mandatory
- b.2. Only mandatory for specific purposes, please specify:
[Please insert text here](#)
- c. No, it is not mandatory, but it is an available option
- d. Please tick the relevant functions of this formal requirement
- d.1. To establish the capacity of the grantor at the time of granting the powers of representation
- d.2. To verify that the person signing the powers of representation is the grantor
- d.3. To witness the signature of the powers of representation by the grantor
- d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
- d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) UNCRPD)
- d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCRPD)
- d.7. To confirm the absence of undue influence (Art. 12(4) UNCRPD)
- d.8. Other, please specify:
[Please insert text here](#)

6.3. If yes to question 6.1., are such powers of representation in the form of a private agreement without any formal requirements (e.g., notarised, certified or witnessed) available under the law of your State?

- No, please explain:
[See the answer to question 6.1.](#)
- Yes

6.4. Have issues arisen in your State with regard to the existence of such powers of representation governed by the law of another State?

- No
 Yes, please explain:
[Please insert text here](#)

6.5. If no to question 6.1., does the law of your State prohibit such powers of representation, or contain provisions rendering them ineffective?

- No
 Yes, please explain:
[Please insert text here](#)

6.6. If no to question 6.1., does your State intend to legislate in the near future to provide for such powers of representation?

- No, please explain:
[In the Netherlands there is no legislation pending in Parliament nor in preparation. As indicated above, a living will \("levenstestament"\) is a special, in most cases notarised form of a powers of attorney. The professional association of notaries \(KNB\) is working on a greater publicity to the possibility to give advances directives in a continuing power of attorney \("levenstestament"\).](#)
 Yes

6.7. If yes to question 6.6., please indicate which form of powers of representation your State is likely to provide for (tick more than one box if applicable):

- a. **notarised** powers of representation
 b. **certified** powers of representation
 c. **witnessed** powers of representation
 d. **private agreements** without any formal requirements
 e. Other form, please specify:
[Please insert text here](#)

Designation of a representative under such powers of representation

6.8. Are there conditions / limitations (e.g., to provide safeguards with regard to conflicts of interests) as to who can be designated as a representative under such powers of representation governed by the law of your State (e.g., limitation to natural persons, or a further limitation to persons with specified relationships to the grantor)?

- No
 Yes, please explain:
[Please insert text here](#)

6.9. Does your response to question 6.8. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

- No
 Yes, please explain:

Please insert text here

6.10. Have issues arisen in your State with regard to the capacity of the person designated as a representative under such powers or representation governed by the law of another State?

- No
 Yes, please explain:
 Please insert text here

Supervision / control mechanisms of such powers of representation

6.11. Are such powers of representation governed by the law of your State subject to some supervision / control mechanisms / reporting (*e.g.*, a person or authority designated (on a mandatory or voluntary basis) under such powers or by operation of law to which the person designated as the representative is to report to)?

- No, please explain:
 The power of representation in the Netherlands ("levenstestament") is not subject to some form of supervision, control mechanism or reporting. However, the grantor may ensure in his living will ("levenstestament") that the execution of his instructions given in advance is supervised by other persons than the representative, for example in certain cases like the sale of his house or major medical decisions. The grantor may also appoint an examiner to whom the representative must periodically report to or must give account or must give information on the measures taken.

In case close relatives of the grantor request for a legal protection measure, such as curation, fiduciary administration or protection mentorship, the Subdistrict Court may appoint another person than the representative in the living will if the Subdistrict Court has doubts about the ability of the representative. The Subdistrict Court may deviate from the living will in the interest of the grantor (the vulnerable adult for whom a protection measure is necessary). The same applies in the situation that the representative has seriously abused or neglected his assignment.

- Yes, please explain:
 Please insert text here

6.12. Does your response to question 6.11. differ whether such powers of representation are subject to a formal requirement (*e.g.*, notarised, certified, witnessed) or not subject to any formal requirements?

- No
 Yes, please explain:
 Please insert text here

6.13. Have issues arisen in your State with regard to the control mechanism to which such powers of representation governed by the law of another State are subject to?

- No
 Yes, please explain:
 Please insert text here

Extent of such powers of representation

6.14. Are such powers of representation (and wishes expressed therein) governed by the law of your State legally binding on the designated representative?

- Yes

No, please explain:

The representative is not obliged to accept the assignment in the living will ("levenstestament"). If the representative accepts the assignment, he must act in accordance with the interests of the grantor and, if it is possible, consult with the grantor on important issues. In case of abuse or neglect the grantor or his relatives may request the Subdistrict court to appoint a legal representative.

6.15. Are there any limitations under the law of your State on such powers of representation that can be conferred upon a designated representative *e.g.*, are certain acts or categories of acts excluded such as disposal of specified categories of assets, gifts, personal and family matters, medical related decisions (generally, or particular categories such as those involving hospitalisation), etc.?

No

Yes, please explain:

A legal representative or person appointed in a living will ("levenstestament") is not allowed to take highly personal decisions for the grantor, for example the drafting of a last will.

6.16. Are there particular powers and duties automatically given to such representatives (*e.g.*, powers and duties in relation to the tax affairs of the grantor)?

No

Yes, please explain:

[Please insert text here](#)

6.17. Are certain powers subject to a judicial or administrative decision in order for them to be either conferred or exercised?

No

Yes, please specify the powers subject to such decision:

[Please insert text here](#)

6.18. Are there particular matters which, in accordance with the law of your State, a designated representative cannot be authorised to do or decide on behalf of the grantor?

No

Yes, in which case please specify the excluded powers:

[See comment on question 6.15: highly personal affairs such drafting a last will.](#)

6.19. Which of the following forms of document are available in your State to confer powers of representation (tick more than one if applicable)?

a. A document simply conferring on the designated representative all powers that can by law be conferred.

b. A document containing "tick-box" lists of powers.

c. A document setting out, in the grantor's choice of words, all the powers that the grantor wishes to confer.

d. Separate documents for (a) health and welfare powers and (b) property and financial powers.

e. Separate listing in the same document of (a) health and welfare powers and (b) property and financial powers.

f. Other possibilities or combinations (please explain):

[a power of attorney is not subject to any formal requirement, this is also the case for such powers of representation although a notarised deed is recommended.](#)

6.20. Can advance health directives be included in powers of representation governed by the law of your State?

Yes

No, please explain:

[With the footnote that the Netherlands does not provide for legislation, but for the possibility to lay down health directives in a living will \("levenstestament"\).](#)

6.21. Can advance medical directives be included in powers of representation governed by the law of your State?

Yes

No, please explain:

[See comment on question 6.20.](#)

6.22. Are such advance health / medical directives governed by the law of your State binding on medical professionals?

Yes

No, please explain:

[See comment on question 6.20.](#)

6.23. Do your responses to questions 6.14.-6.22. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

No

Yes, please explain:

[with the footnote that a notarial deed can be required in some cases for reasons of legal certainty.](#)

6.24. Have issues arisen in your State with regard to the scope of such powers of representation governed by the law of another State?

No

Yes, please explain:

[Please insert text here](#)

Registration / filing of such powers of representation

6.25. Please indicate whether your State provides for the registration of such powers of representation and / or their filing with a competent authority:

Yes, registration with a public registry

Yes, registration with a private registry (e.g., national associations of notaries)

Yes, filing with a competent authority

No, please explain:

[Please insert text here](#)

6.26. Can / must such powers of representation governed by the law of your State be registered or filed with a competent authority before they come into effect?

Yes, it is an option, please explain the effect of the registration and / or filing:

There is an arrangement for the registration of the living will in the form of notarial deed in the Central Register of Levenstestamenten. This is a database in which notaries register who has drawn up a living will, what moment and which notary. The Central Register does not offer information about the content of the living will, but only about the existence of a living will and the notary who was involved. Registration of the living will is not mandatory.

- Yes, it is an obligation, please explain the effect of the registration and / or filing:
Please insert text here
- No, please explain:
Please insert text here

6.27. Can such powers of representation governed by the law of **your** State be registered or filed with a competent authority after they come into effect?

- Yes, it is an option, please explain the effect of the registration and / or filing:
Please insert text here
- Yes, it is an obligation, please explain the effect of the registration and / or filing:
Please insert text here
- No, please explain:
A living will can only be drawn up as long as the grantor is able to independently give instructions in advance and understands the consequences of the powers of representation.

6.28. Can such powers of representation governed by the law of **another** State be registered or filed with a competent authority after they come into effect?

- Yes, it is an option, please explain the effect of the registration and / or filing:
Please insert text here
- Yes, it is an obligation, please explain the effect of the registration and / or filing:
Please insert text here
- No, please explain:
There is no such provision.

6.29. Do your responses to questions 6.25. and 6.28. differ whether such powers of representation are subject to a formal requirement (*e.g.*, notarised, certified, witnessed) or not subject to any formal requirements?

- No
- Yes, please explain:
The registration of living wills in the Central Register is the responsibility of notaries.

Coming into effect of such powers of representation

6.30. Can such powers of representation governed by the law of your State come into effect at a moment determined by the grantor (*e.g.*, when certain conditions are met)?

- No, please explain:
Please insert text here
- Yes, please explain:
A power of representation like a living will enters into force when the grantor no longer has the ability to take care of the matters covered in the living will. However, the grantor may determine an earlier moment on which the power of representation takes effect, for example when certain conditions in the living will are met.

6.31. In the absence of an explicit coming into effect provision by the grantor, can such powers of representation governed by the law of your State come into effect on the sole decision of the person(s) to whom they are conferred?

No, please any safeguards:
 If the grantor has not laid down an explicit provision that determines the coming into effect of the living will, the power of representation will generally come into effect when the grantor is no longer able to take care of the matters covered in his living will.

Yes, please explain:
 Please insert text here

6.32. In the absence of an explicit coming into effect provision by the grantor, can such powers of representation governed by the law of your State come into effect upon the decision of a competent authority?

No, please any safeguards:
 There is no provision for a judicial decision of incapacity or such a decision by another competent authority, except for medical professionals.

Yes, please explain:
 Please insert text here

6.33. Please explain how the coming into effect of such powers of representation governed by the law of your State affect the legal capacity of the grantor:

A power of representation does not as such affect the legal capacity of the grantor. A power of representation comes into effect in the event of legal capacity. Only the placement under curatorship affect the legal capacity to perform judicial acts.

6.34. Do your responses to questions 6.30.-6.33. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

No
 Yes, please explain:
 Please insert text here

6.35. Have issues arisen in your State with regard to the coming into effect of such powers of representation governed by the law of another State?

No
 Yes, please explain:
 Please insert text here

6.36. Please share other information (e.g., concerns, good practices) with regard to the coming into effect of such powers of representation governed by the law of your State (e.g., the explicit provision (permitted by law) in the powers of representation that they come into effect immediately upon signature):

Please insert text here

Confirmation of such powers of representation

6.37. Can a competent authority in your State confirm powers of representation?

No
 Yes, please indicate which authority can confirm and explain the effect of confirming or not confirming such powers of representation

Please insert text here

6.38. If yes to question 6.37., can confirmation take place whether such powers of representation are governed by the law of your State or the law of another State?

- No, please explain:
Please insert text here
- Yes, please indicate which authority can confirm and explain the effect of confirming or not confirming such powers of representation:
Please insert text here

6.39. If yes to question 6.37., can confirmation take place whether the powers of representation have come into effect or not?

- Yes
- No, please explain:
Please insert text here

6.40. Do your responses to questions 6.37.-6.39. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

- No
- Yes, please explain:
Please insert text here

Modifications of such powers of representation

6.41. Is it possible for the grantor or a competent authority to modify powers of representation governed by the law of your State after they have come into effect?

- No
- Yes, please explain who can modify such powers of representation, for what purpose, in what form, and any related safeguards:
As long as the grantor is able to give instructions in advance and is able to understand the consequences of a power or representation, the grantor can change or revoke his living will ("levenstestament").

6.42. Does your response to question 6.41. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

- No
- Yes, please explain:
Please insert text here

6.43. Have issues arisen in your State with regard to the modification of such powers of representation governed by the law of another State?

- No
- Yes, please explain:
Please insert text here

Extinction of such powers of representation

- 6.44. Please explain the conditions for the extinction of powers of representation governed by the law of your State:

A power of representation ceases to have effect when it is effectively revoked by the grantor, on the death of the grantor or other circumstances described in the power of representation.

A power of representation may also cease to have effect when the representative abuse or neglect his assignment and/or the Subdistrict establishes a legal protection measure under the appointment of a curator, fiduciary administrator or mentor.

- 6.45. Does your response to question 6.44. differ whether such powers of representation are subject to a formal requirement (*e.g.*, notarised, certified, witnessed) or not subject to any formal requirements?

- No
 Yes, please explain:
[Please insert text here](#)

- 6.46. Have issues arisen in your State with regard to the extinction of such powers of representation governed by the law of another State?

- No
 Yes, please explain:
[Please insert text here](#)

Other information concerning such powers of representation

- 6.47. Please list and describe *ex lege* powers of representation resulting from a unilateral act or an agreement that arise by reference to a relationship or other status in connection with the adult (including but not limited to those arising from a contract of marriage, and similar relationships):

[Please insert text here](#)

- 6.48. Please provide any additional information with regard to such powers of representation (as described above in the introduction to Section VI) governed by the law of your State:

[Please insert text here](#)

- 6.49. Please provide any additional information with regard to issues that may have arisen in your State with regard to such powers of representation (as described above in the introduction to Section VI) governed by the law of another State:

[Please insert text here](#)

VII – Recognition and enforcement

- 7.1. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 22** from the perspective of the requested State?

- No
 Yes, please specify:
[Please insert text here](#)

7.2. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Article 23**?

- No
 Yes, please describe and also provide a link or attach a copy, preferably translated into English or French:
[Please insert text here](#)

7.3. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 23** (e.g., in terms of procedure, formalities, time frames, etc.)?

- No
 Yes, please specify:
[Please insert text here](#)

7.4. Are you aware of any challenges, or have questions arisen, in applying **Article 25** in your State?

- No
 Yes, please specify:
[Please insert text here](#)

7.5. Please describe the “simple and rapid procedure” (see **Art. 25(2)**) in place in your State for declaring enforceable or registering for the purpose of enforcement measures of protection taken in another State Party and enforceable there, in particular:

a) Which authority declares enforceable or registers a measure of protection taken in another State Party?

[Please insert text here](#)

b) What time frames are applied to ensure that the procedure is rapid?

[Please insert text here](#)

c) Is legal representation required?

- No
 Yes, please describe:
[Please insert text here](#)

7.6. Are you aware of any challenges, or have questions arisen, in applying **Article 27** in your State?

- No
 Yes, please specify:
[Please insert text here](#)

7.7. Under **Article 27**, are **measures concerning the person** of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests subject to *exequatur* in accordance with the law of your State?

- No
 Yes, please list and describe such measures:
[Please insert text here](#)

7.8. Please indicate how often measures referred to in question 7.7. are subject to *exequatur* under the law of your State in accordance with **Article 27**:

- Never
- Rarely
- Sometimes
- Very often
- Always

7.9. Under **Article 27**, are **measures concerning the property** of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests subject to *exequatur* in accordance with the law of your State?

- No
- Yes, please list and describe such measures:
[Please insert text here](#)

7.10. Please indicate how often measures referred to in question 7.9. are subject to *exequatur* under the law of your State in accordance with **Article 27**:

- Never
- Rarely
- Sometimes
- Very often
- Always

7.11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter IV**?

- No
- Yes, please specify:
[Please insert text here](#)

VIII – Co-operation

8.1. With the understanding that services provided by Central Authorities under the 2000 Convention may vary, does your Central Authority provide assistance, either directly or through other authorities in your State, to an **individual habitually resident in your State** who made a request for assistance in connection with a matter falling under the scope of the Convention in a requested State? If so, please indicate the nature of the assistance provided.

- a. None
- b. Assistance in obtaining information on the operation of the 2000 Convention
- c. Assistance in obtaining information on the relevant laws and procedures and services available in the requested State
- d. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- e. Transmission of a request to the Central Authority or to the competent authorities in the requested State
- f. Assistance in discovering the whereabouts of an adult
- g. Assistance in initiating judicial or administrative proceedings

- h. Assistance in providing or facilitating the provision of legal aid and advice
- i. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State
- j. Ensuring separate legal representation for the adult in any proceedings
- k. Ensuring support for exercise of capacity in terms of Article 12(3) of the UNCRPD
- l. Referral to other governmental and / or non-governmental organisations for assistance
- m. Provision of regular updates on the progress of the application
- n. Other, please specify:
[Please insert text here](#)

8.2. With the understanding that services provided by Central Authorities under the 2000 Convention may vary, does your Central Authority provide assistance, either directly or through other authorities in your State, to authorities from a requesting State on behalf of an **individual residing abroad** who made a request for assistance in connection with a matter falling under the scope of the Convention? If so, please indicate the nature of the assistance provided.

- a. None
- b. Assistance in providing information on the operation of the 2000 Convention
- c. Assistance in providing information on the relevant laws and procedures and services available in your State
- d. Establishment of contact with the competent authorities in your State to find out the kind of assistance such authorities could provide
- e. Transmission of a request to the competent authorities in your State
- f. Assistance in discovering the whereabouts of an adult in your State
- g. Assistance in initiating judicial or administrative proceedings in your State
- h. Assistance in providing or facilitating the provision of legal aid and advice in your State
- i. Assistance in obtaining private legal counsel or mediation services, where needed in your State
- j. Ensuring separate legal representation for the adult in any proceedings
- k. Ensuring support for exercise of capacity in terms of Article 12(3) of the UNCRPD
- l. Referral to other governmental and / or non-governmental organisations in your State for assistance
- m. Provision of regular updates on the progress of the application
- n. Other, please specify:
[Please insert text here](#)

8.3. Are you aware of any challenges, or have questions arisen, in applying **Article 29** in your State (*e.g.*, in relation to the timeliness of responses to requests)?

- No
- Yes, please specify:
[Please insert text here](#)

8.4. With a view to facilitate the task of Central Authorities under **Article 29(2)**, please describe the type of information that would be useful to include in a Country Profile published on the HCCH website (*e.g.*, information with respect to the availability of certain measures under internal law (*e.g.*, in relation to **Art. 3(e)**), or the procedures applied under, *e.g.*, **Article 22, 23, 25, 30, 31 or 33**, or information on Central Authority services provided (see questions 8.1. and 8.2. above):

[Please insert text here](#)

- 8.5. How does your Central Authority (either directly or through public authorities or other bodies) take appropriate steps under **Article 31** to facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the adult in situations to which the 2000 Convention applies? Please explain:

[Please insert text here](#)

- 8.6. Have authorities in your State experienced any challenges, or have questions arisen, in providing or obtaining information under **Article 32(1) or 34**?

- No
 Yes, please describe:
[Please insert text here](#)

- 8.7. Have authorities in your State experienced placements in accordance with **Article 33** either as a requesting or a requested State?

- No
 Yes

- 8.8. Have authorities in your State experienced any challenges, or have questions arisen, in applying **Article 33** (e.g., has your State been requested to accept an adult under a certain type of placement or institutional care that is not available under your internal law, or was insufficient information provided to you as the requested State)?

- No
 Yes, please describe:
[Please insert text here](#)

- 8.9. Please list and describe the procedures and conditions for the placement of an adult in your State in accordance with **Article 33**:

[Please insert text here](#)

- 8.10. As a requested State, please describe the information you would expect to receive from a requesting State with regard to the placement of an adult in your State in accordance with **Article 33**:

[Please insert text here](#)

- 8.11. Does your State impose charges, as provided under **Article 36(1)**, for the provision of services under **Chapter V** (Co-operation)?

- No
 Yes, for the following types of services (e.g., translation, legal assistance):
[Please insert text here](#)

- 8.12. As a requesting State, have authorities in your State experienced any challenges, or have questions arisen, with regard to charges provided under **Article 36(1)**?

- No

- Yes, please explain:
Please insert text here

8.13. Are you aware of any challenges, or have questions arisen, in applying any other provisions under **Chapter V** in your State?

- No
 Yes, please describe:
Please insert text here

8.14. Have judges in your State used direct judicial communications in cases falling under the 2000 Convention (where applicable, please consult your Member of the International Hague Network of Judges¹³)?

- No
 Yes, please specify in relation to which specific matters (*e.g.*, transfer of jurisdiction (**Art. 8**), placement of a child (**Art. 33**)):
Please insert text here

IX – General provisions

9.1. Has your State experienced any challenges, or have questions arisen, in relation to requests under **Article 38** for the delivery of a certificate indicating the capacity in which a person entrusted with protection of the adult’s person or property is entitled to act and the powers conferred upon him or her?

- No
 Yes, please describe:
Please insert text here

9.2. Which authority(ies) designated by your State in accordance with **Article 38(3)** is competent to draw up the **Article 38(1)** certificate? Please specify:

Please insert text here

9.3. If possible, please indicate the number of certificates that have been delivered by authorities in your State since the 2000 Convention came into force for your State:

Please insert text here

9.4. Has your State experienced any challenges, or have questions arisen, in relation to the implementation and / or operation of **Articles 39 and 40**?

- No
 Yes, please describe:
Please insert text here

9.5. Which authority(ies) has your State designated in accordance with **Article 42** to which requests under **Article 8** are to be addressed? Please specify:

Please insert text here

¹³ The List of Members of the International Hague Network of Judges is available at: <https://assets.hcch.net/docs/665b2d56-6236-4125-9352-c22bb65bc375.pdf>.

- 9.6. Which authority(ies) has your State designated in accordance with **Article 42** to which requests under **Article 33** are to be addressed? Please specify:

[Please insert text here](#)

- 9.7. Please list international instruments to which your State is a Party in accordance with **Article 49** which contain provisions on matters governed by the 2000 Convention:

[Please insert text here](#)

- 9.8. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other Articles in **Chapter VI**?

No

Yes, please specify:

[Please insert text here](#)

X – Miscellaneous

- 10.1. Is there any other comment that your State wishes to make relating to the practical operation of the 2000 Convention? If so, please specify:

[Please insert text here](#)

- 10.2. Are there any particular issues that your State would like the Special Commission meeting to discuss in relation to the 2000 Convention? Please specify and list in order of priority:

[Please insert text here](#)

- 10.3. Is your State of the view that having joined the 2000 Convention will assist with the implementation of its obligations under the UNCRPD *e.g.*, Articles 12 and 16 of the UNCRPD?

Yes

No, please explain:

[Please insert text here](#)