

<b>Title</b>	<b>Possible Amendments to the 2000 Protection of Adults Convention</b>
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<b>Author</b>	PB
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<b>Mandate(s)</b>	C&R No 34 of the 2019 CGAP; C&D No 31 of the 2020 CGAP
<b>Objective</b>	To facilitate discussions at the SC regarding possible amendments to the 2000 Protection of Adults Convention
<b>Action to be Taken</b>	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input checked="" type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input type="checkbox"/>
<b>Annexes</b>	<p><b>Annex I:</b> C&amp;Rs from the EC-HCCH Joint Conference on the cross-border protection of vulnerable adults <a href="#">of 5-7 December 2018</a></p> <p><b>Annex II:</b> Relevant extracts from <i>Proceedings of the Special Commission of a diplomatic character (1999)</i></p> <p><b>Annex III:</b> Relevant extract from the “European Commission's Public Consultation on the Initiative on the Cross-Border Protection of Vulnerable Adults”, <i>Response of the European Law Institute, ELI, Vienna, 2022</i></p> <p><b>Annex IV:</b> Relevant extracts from the Sonia E. Rolland and Alex Ruck Keene, Study: Interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the 2007 UN Convention on the Rights of Persons with Disabilities, 3 June 2021</p> <p><b>Annex V:</b> Relevant extract from Kolb, Robert, <i>The Law of Treaties: An Introduction</i>, Edward Elgar Publishing Limited, 2016</p>
<b>Related Documents</b>	N/A

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# Possible Amendments to the 2000 Protection of Adults Convention

## I. Introduction

- 1 The *Convention of 13 January 2000 on the International Protection of Adults* (“2000 Protection of Adults Convention”, “2000 Convention” or “Convention”) constitutes an essential building block of the international legal order in respect of ensuring the autonomy and protection of adults in cross-border situations. In the broader context of global human rights law, the 2000 Convention provides the rules on private international law that complement the *United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities* (UNCRPD).<sup>1</sup>
- 2 In recent years, non-governmental organisations, international organisations, academics and Members of the Hague Conference on Private International Law (HCCH) have made some suggestions as to how the effectiveness of the 2000 Convention could be increased, possibly through amendments of its text. Such suggestions were made in relation to the use of the term “guardianship”, the inclusion of a conflict rule regarding representation arising by operation of law (*i.e.*, *ex lege* representation) and the inclusion of a provision dedicated to instructions given and wishes made by the adult. Several documents published by the European Union (EU) have also highlighted the lack of a clause allowing the EU to become a Contracting Party to the 2000 Convention as a regional economic integration organisation (REIO).
- 3 In light of the aforementioned, and following informal consultations with a number of HCCH Members, the Permanent Bureau (PB), with the assistance of the Working Group (WG) tasked with the development of the Practical Handbook on the Operation of the 2000 Protection of Adults Convention (the “2000 Practical Handbook”),<sup>2</sup> prepared this document to facilitate discussions at the First Meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention (SC) regarding possible amendments to the 2000 Convention.
- 4 In preparing this document, the PB has taken into consideration the responses received to [Prel. Doc. No 2 of September 2020](#). Questionnaire on the practical operation of the HCCH 2000 Protection of Adults Convention (the “2020 Questionnaire”). The responses to the 2020 Questionnaire may provide insight as to whether there are any practical challenges to the operation of the 2000 Convention that could inform the necessity and desirability of amending the Convention.
- 5 This document aims to examine all the suggestions for amendments to the 2000 Convention and the possible procedural and practical ways forward, with a view to facilitate discussions at the SC in ascertaining the level of interest in any of the aforementioned amendments. Based on the outcome of such discussions, the SC could make a recommendation to the Council on General Affairs and Policy (CGAP) meeting in 2023 on a proposed way forward.
- 6 It is understood that discussions at the SC may result in a finding that amending the 2000 Convention is not desirable or necessary. If, however, the SC finds that one or more of the possible amendments are desirable and necessary, it should be noted that the prospect and

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<sup>1</sup> When viewed as a complementary unit, the *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* in conjunction with the 2000 Convention and the 2006 *United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities* (UNCRPD) provides for the cross-border protection and autonomy of vulnerable persons throughout their lives. See, also, Annex I, C&R No 2.

<sup>2</sup> “Revised draft Practical Handbook on the Operation of the 2000 Protection of Adults Convention”, Prel. Doc. No 4 of July 2022 (first revised version) for the attention of the First Meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention (9-11 November 2022) (available on the HCCH website at [www.hcch.net](http://www.hcch.net), under “Protection of Adults Section” and “First Meeting of the Special Commission”).

process of amending the 2000 Convention should in no way hinder or decelerate [accessions and ratifications](#) by States which are interested in becoming Contracting Parties to the 2000 Convention. It should be borne in mind that all the possible amendments discussed in this document intend to clarify or facilitate the practical operation of the Convention. Such amendments do not intend to substantively change the contents or operation of the Convention.

## II. Deletion of the terms “guardianship” and “curatorship” from Article 3(c)

7 This section builds on the findings of the revised draft 2000 Practical Handbook.<sup>3</sup>

8 The possible deletion of the terms “guardianship” and “curatorship” from Article 3(c) was discussed at the EC-HCCH Joint Conference on the Cross-border Protection of Vulnerable Adults, held in Brussels from 5 to 7 December 2018. The conference was attended by 130 experts from more than 35 States representing all continents. On this matter, the following Conclusion and Recommendation (C&R) was adopted:

“It was noted that a number of States have put in place guardianship or curatorship institutions based on “supported decision-making” mechanisms.”<sup>4</sup>

9 From the responses received to the 2020 Questionnaire, it appears that no State has reported any concerns with the use of the terms “guardianship” and “curatorship” in the Convention, nor was any recommendation made to delete them.<sup>5</sup> Furthermore, no substantive issues have been brought to the attention of the PB in relation to the use of these terms.

10 Article 3(c) applies to protective regimes established when the adult, due to an impairment of their personal faculties, is in need of continuous representation or simply needs assistance, supervision or advice in relation to acts of civil life.<sup>6</sup> It must be recalled at the outset that the 2000 Convention does not, in and of itself, regulate or establish any protective regime. Rather, it deals with jurisdiction, applicable law, recognition and enforcement as well as cooperation issues that may arise in connection to a protective regime – whatever its denomination and characteristics – where a cross-border element is present. The inclusion of the terms “guardianship” and “curatorship” in the text of the Convention is meant to ensure that the Convention may perform its task – that of bridging different legal systems – whenever the protection of an adult is at issue. Their inclusion is important to ensure the continued protection of adults in a cross-border context, as Contracting Parties do provide for these regimes in their domestic law.<sup>7</sup>

11 At the time the Convention was being drafted and negotiated, “guardianship”, “curatorship” and “analogous institutions” carried connotations of substituted decision-making in most States. Since then, many States have amended their legislation to reflect the notion that such protective institutions are in place in order to support adults in exercising their capacity. This is an area that is changing at varying rates from jurisdiction to jurisdiction and, as such, terms such as “guardianship” and “curatorship” may not always carry the same meaning across jurisdictions.

12 Therefore, instead of removing the terms “guardianship” and “curatorship” from Article 3(c), it is suggested that the SC may consider adopting the following C&R:

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<sup>3</sup> *Ibid.*, paras 3.21 and 3.22.

<sup>4</sup> See Annex I, C&R No 7.

<sup>5</sup> See “Compilation of responses received to the September 2020 Questionnaire on the 2000 Protection of Adults Convention”, Prel. Doc. No 9 of September 2022 for the attention of the First Meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention (9-11 November 2022) (see path indicated in note 2) (hereinafter, “Compilation of responses”), question 3.1.

<sup>6</sup> See P. Lagarde, *Explanatory Report on the HCCH 2000 Protection of Adults Convention*, New and Revised Edition, The Hague, 2017 (available on the HCCH website at [www.hcch.net](http://www.hcch.net), under “Publications” and “Explanatory Reports”) (hereinafter, the “Explanatory Report”), para. 22.

<sup>7</sup> See Annex I, C&R No 7.

“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.”

### III. Addition of a conflict rule regarding representation of the adult arising by operation of law (*i.e.*, *ex lege* representation)

13 This section builds on the findings of Prel. Doc. No 5 of March 2022 – Application of the 2000 Protection of Adults Convention to *ex lege* representation. The discussion and approach to be taken with regard to this possible amendment will be conditional upon the outcome of the discussions on Prel. Doc. No 5.

14 At the SC meeting on the Protection of Adults, which was held from 3 until 12 September 1997, there was debate among the delegates regarding the exclusion of the effects of marriage under Article 4 of the Convention. However, “the [Special] Commission rejected all proposals seeking to exclude them”.<sup>8</sup> This decision was taken in light of domestic law examples of *ex lege* representation arising from marriage, aimed at the protection of the ailing partner. These examples led even the most reluctant delegates to accept that *ex lege* representation related to the effects of marriage ought to be included in the 2000 Convention, insofar as they are aimed at the protection of the ailing partner. The SC also rejected a proposal to provide, in the Convention, a rule determining the law applicable to *ex lege* representation. As a result, Paul Lagarde, in the Explanatory Report, elaborates that while the 2000 Convention does not include a specific provision on *ex lege* representation, it applies in principle to such representation, when it is aimed at protecting the adult, notably where such representation arises as a consequence of marriage.<sup>9</sup>

15 From the *Proceedings of the Special Commission of a diplomatic character*,<sup>10</sup> it appears that consensus could not be reached on what a conflict rule on this matter would look like, and proposals made in this regard were rejected.<sup>11</sup> In view of this past lack of consensus, it is submitted that the chances of arriving at a consensus on this matter today are rather limited.

16 In the context of preparing the 2000 Practical Handbook, the WG tasked with its development discussed the topic of *ex lege* representation. Based on those discussions, the following explanation is provided in the revised draft Handbook:

“*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.<sup>12</sup> 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

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<sup>8</sup> See the Explanatory Report (*op. cit.* note 6), para. 35.

<sup>9</sup> *Ibid.*, para. 90.

<sup>10</sup> HCCH, *Proceedings of the Special Commission of a diplomatic character (1999)*, Protection of Adults, SDU Publishers, The Hague, 2003 (available on the HCCH website at [www.hcch.net](http://www.hcch.net), under “Publications” and “Proceedings of the Diplomatic Sessions”).

<sup>11</sup> See Annex II and “Application of the 2000 Protection of Adults Convention to *ex lege* representation”, Prel. Doc. No 5 of October 2022 (revised version) for the attention of the First Meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention (9-11 November 2022) (see path indicated in note 2).

<sup>12</sup> It is to be noted that a person with *ex lege* representation may also be the representative of the adult, either under Art. 3 when the person with *ex lege* representation is designated as a representative by a competent authority or Art. 15 where the person with *ex lege* representation is appointed as a representative by the adult under a power of representation.

not in a position to protect their interests (Art. 1(1)). Additionally, *ex lege* representation may be, by analogy and where appropriate, subject to the applicable law which determines the representation of the adult (Art. 1(2)(c))<sup>13</sup> or the subject of co-operation between the authorities of Contracting Parties (Art. 1(2)(e)).<sup>14</sup> Competent authorities will give effect to it according to their own domestic legislation, mindful of the fact that, as a matter of general international law, the States parties to a treaty are expected to perform it and interpret it in good faith and should accordingly refrain from acts that would frustrate the object and purpose of the treaty. It is, however, 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. These mandatory laws, which fall under Article 20 of the Convention, may cover *ex lege* representation issues.”<sup>15</sup>

17 Domestic conflict rules in this area may differ from jurisdiction to jurisdiction.<sup>16</sup> The European Law Institute has recently made a suggestion for a possible conflict rule, which would operate in a manner similar to Article 15 of the 2000 Convention, namely that *ex lege* powers would be governed by the law of the State in which the adult has their habitual residence at the time when such powers are exercised.<sup>17</sup>

18 Taking into consideration the past lack of consensus on including a conflict rule in the Convention, coupled with the current divergent treatment of *ex lege* representation at the domestic level and the fact that the responses to the 2020 Questionnaire<sup>18</sup> did not report any practical issues in this area, it is suggested that the SC may consider adopting the following C&R:

“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.”

#### IV. Addition of a provision regarding instructions given and wishes made by an adult (e.g., advance directives)

19 This section builds on the findings of [Prel. Doc. No 6 of September 2022 \(revised version\)](#) - Instructions given and wishes made by the adult within the scope of the 2000 Protection of Adults Convention. The discussion and approach to be taken with regard to this possible amendment will be conditional upon the outcome of the discussions on Prel. Doc. No 6.

20 The issue of advance directives within the scope of the 2000 Convention was first discussed in the context of drafting the 2000 Practical Handbook. The divergence in the way such voluntary, anticipatory acts are regulated at the domestic level, coupled with the divided views of academics as to whether such acts fall within the scope of the Convention, made some members of the WG question whether the language of the Convention was clear in this regard. It was understood that there may be different views among Contracting Parties as to whether instructions given and wishes

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<sup>13</sup> More generally, nothing in the 2000 Convention excludes the application of Art. 15, for instance, by analogy to *ex lege* powers of representation, as it is already the case in some States.

<sup>14</sup> See the Explanatory Report (*op. cit.* note 6), paras 35 and 90.

<sup>15</sup> See Revised Draft Practical Handbook (*op. cit.* note 2), at para. 3.56.

<sup>16</sup> See the Compilation of responses (*op. cit.* note 5), question 6.47.

<sup>17</sup> See Annex III.

<sup>18</sup> See the Compilation of responses (*op. cit.* note 5), question 4.11

made by an adult in voluntary, anticipatory acts such as advance directives fall within the scope of the 2000 Convention and, in particular, Articles 15 and 16.

- 21 During discussions, the WG agreed that the cross-border transportability and operability of all voluntary, anticipatory acts under Articles 15 and 16 is generally desirable, [and that](#) it may be difficult for some States to characterise some of these acts as “powers of representation”, when they only contain instructions and wishes that are not addressed to a particular representative. It was, therefore, agreed that the PB prepare a Prel. Doc. (Prel. Doc. No 6) on this matter with the assistance of the WG.
- 22 In June 2021, a study commissioned by the UN Special Rapporteur on the Rights of Persons with Disabilities was published analysing the interaction of the 2000 Convention with the UNCRPD.<sup>19</sup> The study suggests that unilateral statements (e.g., declarations communicating the choice of the adult to refuse certain medical treatments) do not fall within the scope of the 2000 Convention.<sup>20</sup> In order to resolve this issue, the study recommends, *inter alia*, that the HCCH develop a protocol to the 2000 Convention on the matter.<sup>21</sup> In response to an earlier version of Prel. Doc. No 6 of April 2022 drafted by the PB on this matter,<sup>22</sup> France expressed its support for this suggestion. On the other hand, as stated in the study of the UN Special Rapporteur, the 2000 Convention lends itself to great opportunities for organic growth, in the context of a dynamically evolving legal landscape.<sup>23</sup>
- 23 Furthermore, the need for a protocol to the Convention was not mentioned in the responses to the 2020 Questionnaire.<sup>24</sup>
- 24 It is submitted by the PB that, if the C&Rs proposed in the revised version of Prel. Doc. No 6<sup>25</sup> (as drafted by the PB with the assistance of the WG) were to be adopted by the SC, not amending Articles 15 and 16 of the 2000 Convention would not result in insurmountable difficulties.
- 25 However, if the SC were to find that such an amendment is of high interest and of practical necessity, it is suggested that the SC may consider recommending the following amendment:

“Articles 15 and 16 apply to instructions given and wishes made by an adult, in anticipation of a time when they are not in a position to protect their interests due to an impairment or insufficiency of their personal faculties, whether or not such instructions and wishes are addressed to a specific representative.”

## V. Addition of clauses to allow Regional Economic Integration Organisations (REIOs) to become a Contracting Party

- 26 Responses to the 2020 Questionnaire from Contracting Parties have shown that the most notable deficiency in the practical operation of the 2000 Convention is the small number of Contracting Parties.<sup>26</sup> This Section (V) focuses in particular on the situation regarding the EU and its Member States. Although, since 2008, the EU has been consistently encouraging its Member States to join

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<sup>19</sup> S. Rolland and A. Ruck Keene, *Study: Interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the 2007 UN Convention on the Rights of Persons with Disabilities*, 3 June 2021. See Annex IV.

<sup>20</sup> *Ibid.*, pp. 7 and 8.

<sup>21</sup> *Ibid.*, see item (d) of “Appendix: Action items for securing consistency between the 2000 Convention, the CRPD, and other potential future relevant human rights instruments”, p. 24. See Annex IV.

<sup>22</sup> See “Advance directives within the scope of the 2000 Protection of Adults Convention”, Prel. Doc. No 6 of April 2022 for the attention of the First Meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention (9-11 November 2022) (see path indicated in note 2).

<sup>23</sup> *Ibid.*, p. 13. See relevant extract in Annex IV.

<sup>24</sup> See the Compilation of responses (*op. cit.* note 5).

<sup>25</sup> See “Instructions given and wishes made by the adult within the scope of the 2000 Protection of Adults Convention”, Prel. Doc. No 6 of September 2022 (revised version) for the attention of the First Meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention (9-11 November 2022) (see path indicated in note 2).

<sup>26</sup> See the Compilation of responses (*op. cit.* note 5), question 10.1.

the 2000 Convention,<sup>27</sup> at ~~this~~ the time of printing, only 11 EU Member States are Contracting Parties to the Convention. In order to increase the speed of accession to or ratification of the 2000 Convention by the remaining EU Member States, the European Parliament<sup>28</sup> and the Council of the European Union<sup>29</sup> may wish to consider adopting a measure, in accordance with Article 81 of the TFEU, urging EU Member States to proceed to ratification of the Convention possibly before a date to be determined by such measure.

27 Alternatively, allowing the EU, as an REIO, to become Contracting Party to the 2000 Convention could speed up the implementation of the Convention by EU Member States and rapidly increase the number of States bound by the Convention. Should the EU become a Contracting Party to the Convention as an REIO, the Convention could be integrated in EU law, even in respect of the relations between EU Member States.<sup>30</sup> Such an outcome would offer the advantage of binding all EU Member States *inter se* and, simultaneously, offer the possibility of creating treaty relations between the EU and third States. Having one instrument in the area binding Contracting Parties both within and outside the EU could ensure harmonisation of the rules of private international law as well as increased legal certainty and predictability. It is submitted that, in this case, the task of (competent) authorities, legal professionals, financial institutions, and other relevant actors in this area would be much more straightforward. Most importantly, however, a single international instrument in this area would ensure that the interests and autonomy of the adult are protected and respected in the most efficient and effective way possible. Furthermore, it should be noted that there is nothing preventing the EU from adopting complementary rules to supplement those already provided under the 2000 Convention with a view to further the cross-border cooperation in the EU in this area.<sup>31</sup>

28 The purpose of the HCCH is to work for the progressive unification of the rules of private international law.<sup>32</sup> It is important to note that, when becoming a Member of the HCCH,<sup>33</sup> the EU (at the time referred to as the European Community) made the following declaration: “The European Community endeavours to examine whether it is in its interest to join existing Hague Conventions in respect of which there is Community competence. Where this interest exists, the European Community, in co-operation with the HCCH, will make every effort to overcome the difficulties resulting from the absence of a clause providing for the accession of a Regional Economic Integration Organisation to those Conventions”.<sup>34</sup>

29 In the absence of a clause allowing REIOs to join the 2000 Convention, the EU might consider adopting legislation based on the text of the 2000 Convention.<sup>35</sup> However, such legislation would only be binding as between EU Member States and would not create a treaty relationship between

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27 The EU has funded a number of projects, such as the website providing information on the national law of 22 Member States [CNUe – Vulnerable Persons \(the-vulnerable.eu\)](https://www.vulnerablepersons.eu) and co-organised the EC-HCCH Joint Conference in 2018 which produced a C&R urging all Member States to join [the 2000 Convention](#) (see Annex I). Additionally, the European Parliament (in its resolutions of 2007 and 2018) and the Council of the European Union (in Council Conclusions adopted in 2008, 2021 and 2022) have encouraged EU Member States to ratify the 2000 Protection of Adults Convention. In its [strategy for the rights of persons with disabilities 2021-2030](#), the European Commission committed to work with EU Member States to implement the 2000 Protection of Adults Convention in line with the UNCPRD and work towards its ratification by all EU Member States.

28 The role of the European Parliament will depend on which subject matter this area falls under (*i.e.*, family law or not).

29 Art. 218 of the *Treaty on the Functioning of the European Union* (TFEU), OJ 2008/C 115/01.

30 See, for example, Art. 15 of *Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations* which incorporates by reference into EU law the *Protocol of 23 November 2007 on the law applicable to maintenance obligations* to which the EU is a Contracting Party.

31 This could be done whether or not the EU becomes a Contracting Party to the 2000 Convention.

32 Art. 1 of the Statute of the HCCH.

33 [The Statute of the HCCH entered into force for the EU on 3 April 2007.](#)

34 This Declaration is available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Governance”, then “Statute”, then “Status table”, and “Declaration/Reservation/Notification”.

35 The EU could give force of law to the 2000 Convention between EU Member States, the text of which could be included in an annex to an EU Regulation.



EU Member States and third States. There would, therefore, be two instruments in the area – one operating at EU level (the EU Regulation) and one operating at the international level (the 2000 Convention). This may result in a number of challenges for all actors involved and may lead to conflicts in the area. It is submitted that simplicity and efficiency are in the interests of adults that fall within the scope of the 2000 Convention and who need to rely on its rules.

- 30 In light of the future evolution of the exercise of EU competence in the area, it is suggested that maintaining a certain degree of flexibility would be useful, by amending the 2000 Convention to include a provision allowing REIOs to join the Convention. It is further submitted that such an amendment would not be complex, as it would be limited to the final clauses in Chapter VII of the Convention and could emulate existing provisions that have been included in recent HCCH Conventions.<sup>36</sup> As such, it is suggested that the SC may consider discussing the addition of the following language to the Convention, with the necessary adaptations:<sup>37</sup>

“Article 26

Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.
3. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation declares in accordance with Article 27(1) that its Member States will not be Parties to this Convention.
4. Any reference to a “Contracting State” or “State” in this Convention shall apply equally, where appropriate, to a Regional Economic Integration Organisation.

Article 27

Regional Economic Integration Organisation as a Contracting Party without its Member States

1. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that it exercises competence over all the matters governed by this Convention and that its Member States will not be Parties to this Convention but shall be bound by virtue of the signature, acceptance, approval or accession of the Organisation.
2. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 1, any reference to a “Contracting State” or “State” in this

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<sup>36</sup> See, e.g., Arts 29 and 30 of the *Convention of 30 June 2005 on Choice of Court Agreements* (HCCH 2005 Choice of Court Convention), Art. 18 of the *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary* (HCCH 2006 Securities Convention), Art. 59 of the *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (HCCH 2007 Child Support Convention), [and](#) Arts 26 and 27 of the *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (HCCH 2019 Judgments Convention).

<sup>37</sup> Para. 3 may not be necessary as the Protocol will have triggered the entry into force of the 2000 amended Convention.

Convention shall apply equally, where appropriate, to the Member States of the Organisation.”<sup>38</sup>

## VI. Possible ways forward

31 The HCCH has, on one occasion, experienced an amendment to one of its instruments: the Statute of the HCCH.<sup>39</sup> However, Article 13 of the Statute provides for its own amending formula, not for amending HCCH Conventions generally:

### “Article 13

1. Amendments to the Statute must be adopted by consensus of the Member States present at a meeting concerning general affairs and policy.
2. Such amendments shall enter into force, for all Members, three months after they are approved by two thirds of the Member States in accordance with their respective internal procedures, but not earlier than nine months from the date of their adoption.
3. The meeting referred to in paragraph 1 may change by consensus the periods of time referred to in paragraph 2.”

32 The 2000 Convention does not have any amendment clauses. It is, therefore, suggested that the general rules regarding amendments and modifications of treaties be followed, with the necessary adjustments, which can be found in Article 40 of the *Vienna Convention on the Law of Treaties of 23 May 1969* (the “Vienna Convention”), to be read in conjunction with Article 5:

### “Article 5

Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

### Article 40

#### Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in: (a) the decision as to the action to be taken in regard to such proposal; (b) the negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

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<sup>38</sup> See the HCCH 2019 Judgments Convention, Arts 26 and 27.

<sup>39</sup> See “Note on the admission of the European Community to the Hague Conference on Private International Law – Update to Preliminary Document No 13 of February 2004”, drawn up by the Secretary General, Prel. Doc. No 20 of February 2005 for the attention of the Special Commission of March / April 2005 on General Affairs and Policy of the Conference (available on the HCCH website at [www.hcch.net](http://www.hcch.net), under “Governance” “Council on General Affairs and Policy”, then “Archive (2000-2022)” and “Meeting of March 2015”).

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:
  - (a) be considered as a party to the treaty as amended; and
  - (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.”

## A. Negotiations

- 33 Article 40(2) of the Vienna Convention provides that all Contracting States (*i.e.*, the States that have consented to be bound by the treaty and for which the treaty is in force) must be notified of the proposed amendment and they will all have the right to participate in deciding whether or not to amend the treaty and to participate in negotiations regarding the proposed amendment. The PB submits that, in addition to all Contracting Parties to the 2000 Convention, consideration should also be given to involving the States that were present at the negotiation and adoption of the Convention, as well as any other interested Members of the HCCH.
- 34 If the amendment to the Convention is limited to the addition of REIO provisions to Chapter VII on final clauses, the work required could be carried out by a WG following a mandate from CGAP, without the need to convene an SC of experts in the area of the international protection of adults.
- 35 On the other hand, should the amendments agreed upon involve modifications to other provisions in the Convention, this may require convening a meeting of the SC, in addition to a WG, depending on the provisions to be amended, their complexity and the level of consensus. This will likely prolong the amendment process and involve additional resources.

## B. Policy considerations

- 36 ¶Further to consultations with the depositary of the Convention, the Ministry of Foreign Affairs of the Kingdom of the Netherlands,¶ the way forward could be to adopt a Protocol which would include all the amendments agreed upon and an Annex which would include the text of the 2000 Convention as amended.
- 37 As is the case with some other HCCH Conventions, it is suggested that the Protocol enter into force after a minimum of two Contracting Parties have expressed their consent to be bound by the Protocol.
- 38 According to the rule under Article 40 of the Vienna Convention, the Protocol would be opened for signature, ratification, acceptance, approval or accession by existing Contracting Parties to the 2000 Convention. Therefore, one of the possible amendments to the 2000 Convention (namely the clause allowing REIOs to become Parties to the amended 2000 Convention) will be available to REIOs only once the Protocol has entered into force and the amended Convention has become operative.
- 39 As per Article 40(3) and (4) of the Vienna Convention, every State that would have been entitled to become a Contracting Party to the 2000 Convention will be entitled to become a Contracting Party to the amended 2000 Convention, as well as the EU and other REIOs that have competence over

matters governed by the Convention.<sup>40</sup> The Protocol would not bind existing Contracting Parties which did not sign, ratify, accept, approve or accede to the Protocol.<sup>41</sup>

40 Notwithstanding the possible amendments to the 2000 Convention to be agreed upon, the Protocol could provide that, once in force, States wanting to become Contracting Parties to the Convention can only become party to the 2000 Convention as amended. The Protocol could also include an additional provision stipulating that, after the Protocol becomes open for signature and before its entry into force, any other State shall express its consent to be bound by the Protocol by accession. In this way, States which become Contracting Parties to the 2000 Convention will simultaneously accede to the Protocol.

41 Once the Protocol has entered into force, the text of the 2000 Convention as amended (included in the Annex to the Protocol) would replace the old text of the Convention between the Contracting Parties to the Protocol and the new Contracting Parties to the amended 2000 Convention.

42 The Protocol could also provide that, once all existing Contracting Parties to the 2000 Convention have expressed their consent to be bound by the Protocol, the old version of the Convention will cease to have effect and the amended 2000 Convention will be the only instrument in force.

43 Additional work, within the context of a WG,<sup>42</sup> and consultations will need to take place to examine the issues outlined in this document and any other issues that may arise during the preparatory work for the Protocol.

### **C. Appropriate forum in which to carry out preparatory work and other practical considerations**

44 It is suggested that work related to the amendment of the 2000 Convention should first take place within a WG tasked with the development of a draft Protocol, in which all interested HCCH Members would be invited to participate.

45 Depending on the outcome of the discussions at the SC, and if the amendments were limited to the final clauses in Chapter VII, consideration should be given to carrying out this work following a mandate from CGAP in 2023. In its report to CGAP 2023, the SC may wish to invite CGAP to consider making the creation of the WG and the scope of its mandate conditional upon the responses received to a short questionnaire which would accompany the report. The purpose of this questionnaire would be to assess the interest of HCCH Members in any of the possible amendments. Members will be invited to indicate, using tick boxes, whether they have high, medium, low or no interest in each of the possible amendments described in this document. Based on the responses to this short questionnaire, the WG could start developing a draft Protocol to the 2000 Convention which would only include the amendments for which there was a high interest, as those are the amendments which are most likely to be agreed upon by consensus at CGAP. Once drafted, the text of the Protocol would be circulated to HCCH Members for comments and, following this consultation process, the draft Protocol could be put, [for adoption](#), before the CGAP meeting of 2024 [for adoption convened as an Extraordinary Session](#).<sup>43</sup>

46 As is customary for every HCCH Convention, an explanatory report would accompany this work, to provide context and background information regarding the development of the draft Protocol, starting with the discussions which will take place at the upcoming SC meeting.

47 On the other hand, should the amendments to the 2000 Convention go beyond the final clauses in Chapter VII, consideration should be given to subjecting the work undertaken by the WG to a

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<sup>40</sup> Art. 40(3) of the Vienna Convention.

<sup>41</sup> Art. 40(4) of the Vienna Convention. See, also, Annex V.

<sup>42</sup> See, *supra*, paras 28 and 29.

<sup>43</sup> [Art. 4\(7\) of the Statute of the HCCH](#).

meeting of the SC. Such a decision would have to be taken at the CGAP meeting of 2024, once the work of the WG has been completed and reviewed by CGAP.

## **VII. Final remarks**

- 48 While amending an international instrument offers promising opportunities, it is submitted that a degree of caution must be exercised in amending a Convention which already operates smoothly and is fit for purpose. By amending the text of the 2000 Convention in pursuit of comprehensiveness, the elements of flexibility which allow the Convention to operate smoothly and stand the test of time may be lost. The flexibility of the 2000 Convention emanates from its drafting as well as from its silences. It is, therefore, suggested that only amendments for which there would be a high level of interest and for which there is consensus should be considered.

## **VIII. Proposal from the PB for C&R**

- 1 Based on discussions regarding the possible amendments to the 2000 Convention, the SC noted a low level of interest in the following possible amendment[s]:
- [XX]
- 2 The SC further noted that there was a high level of interest in the following possible amendment[s]:
- [XX]

## **ANNEXES**

## Annex I

### EC-HCCH Joint Conference on the Cross-border Protection of Vulnerable Adults

Brussels, 5-7 December 2018

#### Conclusions and Recommendations

From 5 to 7 December 2018, at a conference organised jointly by the European Commission and the Hague Conference on Private International Law (HCCH), experts from Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, China (Hong Kong SAR), Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Monaco, Montenegro, the Netherlands, Poland, Portugal, Romania, Saudi Arabia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States of America, Zambia, the AGE Platform Europe, Alzheimer's Disease International, the *Conseil Supérieur du Notariat*, the Council of Bars and Law Societies of Europe (CCBE), the Council of Europe (CoE), the General Secretariat of the Council of the European Union, Dementia Alliance International, the European Commission, the European Disability Forum, the European Law Institute, the European Parliament, Notaries of Europe (CNUE), the *Union Internationale du Notariat* (UINL), STEP as well as the Permanent Bureau of the HCCH, met in Brussels, Belgium, to discuss the cross-border protection of vulnerable adults.

The joint conference reached the following Conclusions and Recommendations:

1. States that are not yet Contracting Parties to the *Convention of 13 January 2000 on the International Protection of Adults* (2000 HCCH Adults Convention) are invited to assess the possibility and benefits of joining the Convention.
2. The 2000 HCCH Adults Convention and the *Convention of 13 December 2006 on the Rights of Persons with Disabilities* (2006 UNCRPD) are complementary. As stated in its preamble, the 2000 HCCH Adults Convention affirms that the interests of the adult and respect for his or her dignity and autonomy are to be primary considerations.
3. United Nations institutions concerned with the 2006 UNCRPD, the CoE, the European Union, as well as the HCCH are invited to co-operate, along with interested non-governmental organisations and practitioners, with a view to raising awareness of, and promote, the 2000 HCCH Adults Convention and their respective work to support the implementation and operation of that Convention.
4. It was noted that the implementation of the 2000 HCCH Adults Convention can be undertaken on the basis of reasonable efforts and resources. States having implemented the Convention are invited to share their experience with other interested States.
5. A number of States have shared their valuable experiences in reforming their legislative frameworks in relation to vulnerable adults; these legislative reforms were often carried out in parallel with the implementation of the 2000 HCCH Adults Convention.
6. While stressing the practical usefulness of the 2000 HCCH Adults Convention in general, some Contracting Parties also mentioned that further practical improvements, in particular in relation to the enforceability of measures, would be welcome (e.g., guides to good practice, model forms and direct judicial communications).

7. It was noted that a number of States have put in place guardianship or curatorship institutions based on “supported decision-making” mechanisms.
8. Cross-border measures that the State of enforcement considers not to be in conformity with the 2006 UNCRPD could be subject to adaptation under the law of that State (Arts 13 and 14 of the 2000 HCCH Adults Convention) to ensure that international situations are treated in a manner similar to domestic ones.
9. The cross-border transportability of measures under the 2000 HCCH Adults Convention would be improved by the development of a public Country Profile for each Contracting Party providing, for example, information on the nature, substantive and formal requirements of such measures as well as their conditions for coming into effect.
10. The development of a public Country Profile under the 2000 HCCH Adults Convention would also contribute to the building of mutual trust and confidence between actors, including competent authorities from different Contracting Parties.
11. The cross-border transportability of measures and confirmed powers of representation under the 2000 HCCH Adults Convention can be facilitated by using the recommended Certificate under Article 38 indicating the capacity in which the person entrusted by the vulnerable adult is entitled to act and the powers conferred.
12. The cross-border transportability of powers of representation could be enhanced, for example, by the development and use of model forms (or model provisions), model certificates of powers of representation and access to electronic registries to verify their authenticity and integrity as provided by competent authorities. It was noted that a number of model certificates of powers of representation have been developed over the years.
13. It was further noted that electronic registry systems have been developed with a view to assisting third parties, such as financial, insurance and medical institutions, with the verification of the authenticity and integrity of powers of representation as well as, in certain cases, their coming into effect.
14. The potential of direct judicial communications in the context of vulnerable adults has been underlined.
15. The possibility to develop complementary legal norms, for example in relation to party autonomy, was discussed with the understanding that it should bring real added value and should support the operation of the 2000 HCCH Adults Convention.
16. Support was expressed for the Permanent Bureau’s (*i.e.*, the Secretariat of the HCCH) plan to seek the approval of its governing body, the Council on General Affairs and Policy, to start planning and organising a first meeting of a Special Commission to review the practical operation of the 2000 HCCH Adults Convention, for example by developing a questionnaire addressed to both Contracting Parties and non-Contracting Parties.
17. A wish was conveyed to hold meetings similar to the current one on a regular basis in the future.



## Annex II

### Relevant extracts from Proceedings of the Special Commission of a diplomatic character (1999)

#### Working Group Meeting with a view to preparing the Special Commission on the protection of adults (14- 17 April 1997)

“General agreement appeared to exist to include an express provision in Article 4 of the Convention excluding matrimonial regimes from the Convention's application. There was certain hesitation, however, due to a possible arrangement along the lines of Article 16. A provision could be made in Article 16 which specified that the Convention would respect solutions resulting from domestic matrimonial property law. This specification would apply to internal laws which allow for representation between spouses without the intervention of a legal authority.”<sup>1</sup> [emphasis added]

#### Minutes of the Special Commission on the Protection of adults (3-12 September 1997)

1. The Expert of Finland presented the Working Document No 26 (Work. Doc. No 26).

##### “Proposal of the delegation of Finland

Article 13: Replace paragraph 1 with:

1 The existence, content and extinction of powers of representation **by the operation of law** is governed by the law of the State of the habitual residence of the adult.

2 The existence, content and extinction of powers of representation under a specific agreement or unilateral act, which are in relation to an adult not in a position to protect his or her interests is governed by the law of the State of the adult's habitual residence at the time when the agreement or unilateral act was made, unless another applicable law has been chosen in accordance with the following paragraph.”

“He noted that his proposal included **reference to the applicable law of powers of representation which arose by operation of law** [emphasis added]. Furthermore, in an attempt at simplification it also introduced a distinction between the existence, content and extinction of powers of representation. The word ‘content’ therefore replaced the ‘exercise’ of powers. Several experts voiced their support for this latter change.

A short debate followed on the issue of whether powers of representation which arose *ex lege* could indeed arise independently of a decision being taken on the status of the adult. It was noted that there could possibly be such cases, for example where an adult was in a coma and his relatives were then able to act on his behalf. However, it was decided to leave this question to one side pending further information as to the precise position which existed in Member States. [...]

A vote was then taken on paragraph 1 of Working Document No 26 (Finland) as to whether there should be a measure providing for powers of representation arising *ex lege*.

7 votes were cast in favour, 15 against, with 5 abstentions.”<sup>2</sup>

2. As explained in the Lagarde Report on the Preliminary draft of the Convention, “the exclusion of the effects of marriage in Article 4b make this provision unnecessary”.<sup>3</sup>

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<sup>1</sup> Summary Report of the Working Group Meeting with a view preparing the Special Commission on the protection of adults (14- 17 April 1997), at p. 3.

<sup>2</sup> Report of Meeting of Tuesday 9 September 1997, afternoon (No 11), at pp. 2-3.

<sup>3</sup> See SC with a diplomatic character, at p. 115, para. 83.

**Lagarde Report on the Preliminary draft of the Convention adopted by the Special Commission on the Protection of adults (12 September 1997)**

3. About Article 4, Sub-paragraph c (matrimonial property regimes)<sup>4</sup>:

“34 The exclusion of matrimonial property regimes seemed natural because of the existence of the Convention of 14 March 1978 on the law applicable to Matrimonial Property Regimes. It is also consistent with the exclusion of the effects of marriage and makes it possible to avoid problems of classification between a matter relating to the effects of marriage and a matter concerning matrimonial property regimes.

One expert nevertheless pointed out **that this exclusion could give rise to a conflict between protection under the general law, covered by the Convention, and rules of administration arising from the matrimonial property regime** (or from the '*régime primaire*'), which would be excluded. If two spouses are separated de facto and are living in two different Contracting States, and the husband wishes to enter into a transaction for which the consent of his wife is necessary, but she is not in a condition to give her consent, a conflict will arise between the rules of the matrimonial property regime, which could allow the husband to obtain authorisation from a court to enter into the transaction alone, and those of the general law, which might result in the placing of the wife under a protective regime.” [emphasis added]

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<sup>4</sup> *Ibid.*, at p. 99, para. 34.

## Annex III

### Relevant extract from “European Commission's Public Consultation on the Initiative on the Cross-Border Protection of Vulnerable Adults”, *Response of the European Law Institute, ELI, Vienna, 2022*

Part 2, para. C, p. 18.

The choice-of-law rule concerning *ex lege* powers of representation could state as follows: ‘***Ex lege* powers of representation are governed by the law of the (Member) State in which the concerned adult has their habitual residence at the time when the powers are exercised**’. A rule to this effect would rest on the same assumption as Article 15 of the Hague Convention, *ie*, that it is appropriate in cases of adult protection to refer to the habitual residence of the adult. However, while Article 15 of the Hague Convention refers to the time when the powers are granted, the choice-of-law rule regarding *ex lege* powers of representation rather should take as the relevant point in time the one at which the powers are relied upon. Referring to that moment in time would be consistent with the nature of *ex lege* powers, which are not granted by the adult concerned but which apply automatically when they lose their capacity. For reasons of legal certainty, a choice of law by the interested adult should not be possible. Following the solution in Article 20 of the Hague Convention on Adults, the uniform European choice-of-law rule would be without prejudice to overriding mandatory provisions as they may be in force in the State where the *ex lege* powers of representation are invoked. [emphasis added]

## Annex IV

Relevant extracts from Sonia E. Rolland and Alex Ruck Keene, *Study: Interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the 2007 UN Convention on the Rights of Persons with Disabilities*, 3 June 2021

Section 1, sub-section b, at pages 7-8:

“b. What the 2000 Convention does not do

It is perhaps important to make express, for the sake of clarity, what the 2000 Convention does not do:

- Not being based upon concepts either of mental incapacity or best interests as found in the laws of Contracting States, it does not seek to make such concepts the foundation either for the taking or recognition of protective measures.
- Whilst it mentions guardianship in Article 3 as an example of a protective measure, it does not say that this is the sole type of protective measure that it covers. Nor, in line with the fact that it does not seek to develop substantive international law norms, does it suggest that guardianship (or equivalent measures) should either be adopted or rejected in individual Contracting States: it is entirely neutral on the matter.
- The Convention expressly excludes a range of measures from its scope, including such personal matters as the formation, annulment of marriage or any similar relationship, issues relating to succession, public measures of a general nature in matters of health (for instance vaccination), criminal measures taken against the person, immigration and measures directed solely to public safety.

As noted above, the 2000 Convention excludes – whether by accident or design, it is not entirely clear – the making by a person of a unilateral statement as to what they would wish or not wish (for instance an advance decision to refuse medical treatment). We return to this below, because this appears to us an omission which the Special Rapporteur may wish to take up.”

### **Page 13 - Organic growth versus amending treaties**

Private international law treaties are inherently designed to accommodate a range of domestic substantive laws on the topics they address. In particular, such treaties typically leave a lot undefined, which results in significant room for interpretation. This, in turn, allows dynamic constructions of the text in an evolving legal landscape. The 2000 Convention offers such opportunities for organic growth.

Moreover, the Hague Conference on Private International Law (HCCH), a group of 87 states and the European Union from which most general private international law treaties emanate, hopes that its treaties get more widely adopted. Private international law treaties typically have a very low threshold for the number of state parties required for them to come into force; the strategy is for progressive adoption as members get a chance to observe how the treaty operates in practice, even with very few parties to begin. For instance, the now widely adopted 1980 Convention on the Civil Aspects of International Child Abduction required only three state parties to come into force. It now boasts 101 Contracting Parties. Such aggregation over time is more likely if a treaty is sufficiently flexible to accommodate different domestic regulatory perspectives and to remain relevant in the face of evolving substantive norms.

To put it plainly, the HCCH is not in the business of promoting narrow or rigid frameworks that risk rendering conventions obsolete before they even have a chance to gain widespread recognition.

The 2000 Convention flexibilities transpires from its drafting as well as from its silences.

**Appendix: Action items for securing consistency between the 2000 Convention, the CRPD, and other potential future relevant human rights instruments, at page 24**

**Item (d)**

“Whether at the Special Commission in 2022 or separately, take steps towards proposing a protocol to the 2000 Convention specifically to address statements by individuals to enable them (to use the language of General Comment 1 to the CRPD) to “state their will and preferences which should be followed at a time when they may not be in a position to communicate their wishes to others.” Whilst it would ultimately be for the Hague Conference to determine the precise scope and mechanism to apply to such statements, the most logical approach would be to start with the equivalent framework to those applied in the 2000 Convention to private mandates in Articles 15 and 16. An article within the protocol equivalent to Article 15 would set out which law would govern the existence, extent, modification and extinction of such a statement. An article within the protocol equivalent to Article 16 would then set out (in effect) ‘override’ provisions, potentially also including a provision that such statements would not have to be given effect where to do so would be to conflict with a mandatory provision of the law of the receiving State.”

## Annex V

### Relevant extract from Kolb, Robert, The Law of Treaties: An Introduction, Edward Elgar Publishing Limited, 2016

“In the case of ‘objective’ amendments, the first rule to follow is that all the contracting States (thus including signatory States) must be notified of the proposal to amend the treaty and have a right to participate in the decision as to action to be taken in regard to such proposal and in the negotiation of the amendment, if any (Art 40(2)). Any State entitled to become a party to the first treaty version shall also be entitled to become a party to the revised version (Art 40(3)). Thus, **there is no loss of ‘acquired’ rights**. If a State becomes a party to the treaty after the amended version has entered into force, and failing the expression of a different intention, it shall be considered a party to the amended version in regard to the parties thereto, and party to the non-amended version in relation to any party not bound by the amending agreement (Art 40(5)). **The main substantive rule is that a State party will be bound by the amended agreement only if it accepts and ratifies it.** There will therefore be a split of treaty relations between the States remaining bound only by the non-amended version, and the ones bound by the amended one, unless all the parties ratify the amended version. Article 30, § 4(b), will be applicable to these legal relationships.” [emphasis added]