

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

## 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*<sup>1</sup> (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 2019<sup>2</sup> for the attention of the 2020 Council on General Affairs and Policy (CGAP). The Conclusion & Decision<sup>3</sup> 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.

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

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

<sup>3</sup> 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 Report<sup>4</sup> (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 authorities<sup>5</sup> 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](mailto: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](http://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.

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

<sup>5</sup> 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.

<b>Name of State or territorial unit:</b> <sup>6</sup>	Latvia
<i>For follow-up purposes</i>	
Date the Questionnaire was completed:	15.04.2021.
Name of contact person:	Arta Poiša; Linda Strazdiņa; Anastasija Jumakova
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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:  
[Please insert text here](#)

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

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

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

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

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<sup>6</sup> 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:

Major improvements in legislation concerning the protection of vulnerable adults in Latvia took place since 2010. Two international conventions (UNCRPD and 2000 Convention) became binding in Latvia in 2010 and 2018 respectively.

- The civil law reform on legal capacity followed the judgment of the Constitutional Court (adopted on 27 December 2010 in the case No. 2010-38-01, entered into force on 30 December 2010; <http://www.satv.tiesa.gov.lv/en/press-release/norms-of-the-civil-law-on-recognition-of-a-person-as-lacking-the-capacity-to-act-do-not-comply-with-the-satversme/>; [\) where the Court recognized that the norms of the Civil Law on recognition of a person as lacking the capacity to act do not comply with Article 96 of the Constitution \(Satversme, right to inviolability of private life; <https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia>\).](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2010/04/2010-38-01_Spriedums_ENG.pdf#search=)

- As a result, in 2013 three new legal instruments were introduced replacing the former regulation on legal incapacity, i.e.,:

(a) restricted legal capacity (Sections 355 – 364.1 of Civil Law; Sections 264 – 270.6 of the Civil Procedure Law) - based upon individual assessment of the person, the civil court can restrict his or her legal capacity to act in particular financial matter, also determining to what extent the person can act himself/herself, together with a guardian or a guardian can act independently; the restrictions must be reviewed at least once in seven years,

(b) temporary guardianship without restriction of the capacity to act (*pagaidu aizgādība bez rīcībspējas ierobežošanas*) (Sections 364.2 – 364.3 of Civil Law; Sections 270.7-270.14 of the Civil Procedure Law) – in urgent cases civil court, when establishing temporary guardianship that must not exceed two years, determines the duty of a guardian to conduct only certain matters, e.g. making regular payments to service providers while the person is in a hospital, and

(c) continuing powers of attorney (*nākotnes pilnvarojums*, future authorisation) (Sections 2317.1 – 2317.7 of Civil Law; Sections 277.1-277.6 of the Civil Procedure Law) - a voluntary measure in the form of a notarial deed by which everyone can appoint an attorney who can act for the granter in all types of matter in the event of the granter's incapacity).

Latvian Civil Law: Civillikums. <https://likumi.lv/ta/id/225418> in Latvian;

<https://likumi.lv/ta/en/en/id/225418-the-civil-law> in English ;

Latvian Civil Procedure Law: Civilprocesa likums. <https://likumi.lv/ta/id/50500-civilprocesa-likums> in Latvian; <https://likumi.lv/ta/en/en/id/50500-civil-procedure-law> in English

- 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 authorities<sup>7</sup> in your State, including in the context of the UNCRPD and other relevant instruments:

<sup>7</sup> 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.

Until 2021 there has been only one case in Latvia that has been considered in the court according to the 2000 Convention. The case is not yet finished, the appeal proceeding is initiated. The essence of the case is the issue of reviewing the restriction of a person's legal capacity.

- 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:

Until 2021 there are no significant developments since Latvia became a Contracting party to the 2000 Convention

## **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:

So far only two cases; one in 2019 and one in 2020.

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

In both cases Scotland, the United Kingdom.

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

March 1, 2018

- 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:

Issues with the operation of the 2000 Convention are mostly dealt with the International Cooperation Department of the Ministry (also the Central Authority under a number of international conventions and EU legal acts), which consists of 8 lawyers, yet in particular cases the assistance of other departments (e.g. Department of Civil law (2 lawyers are usually involved), Department of Law Politics, etc.) has been also sought, if relevant. However, there are no employees designated only for the operation of the 2000 Convention.  
Might be approximately 0,5 FTEs.

## **III – Scope**

- 3.1. Have competent authorities<sup>8</sup> 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:

**Article 2** (meaning of “adult”), please specify:

**Article 3** (meaning of “measures”), please specify:

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<sup>8</sup> *Ibid.*

Not always the foreign measures of protection are known and their basic nature and consequences are not always clear.

Other, please specify:

**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:

- Restricted legal capacity (Sections 355 – 364.1 of Civil Law; Sections 264 – 270.6 of the Civil Procedure Law)

If a person has health disorders of mental nature or other, his/ her capacity to act may be restricted, if it is necessary in the interests of such person and it is the only way how to protect them. The civil court can restrict somebody's legal capacity to act, based upon individual assessment of the person, only in economic and financial matters if it is the only way how to protect the adult. In determining the extent of restriction of the capacity to act the court may consider restricting of the capacity to act in such areas as: 1) making and receiving of payments; 2) entering into transactions; 3) action involving property and management thereof, particularly alienation, pledging and encumbering of immovable property with property rights; 4) conducting of commercial activity and economic activity. A court may assess the extent of restriction of the capacity to act also in other field, except in personal non-financial rights (e.g., to give an informed consent for a treatment, to marry, to divorce, to meet other people, to vote, to make a will, to submit an application or request information to state institutions, and others), as well as to defend his/her rights and lawful interests in institutions and court in relation to his or her restrictions for the capacity to act and freedom, disagreements, disputes with guardian and appointment and removal of the guardian. In this case, the court restricts the legal capacity to act in specific areas and establishes guardianship, also determining whether and to what extent the person acts herself/himself, whether a guardian acts with the person together or to what extent a guardian acts independently. Bāriņtiesa (the Orphan's and Custody Court - administrative institution in adult guardianship cases) appoints one or several guardians who are assigned to act to the extent determined by the court. The court's determined restrictions must be reviewed at least once in seven years.

- Temporary adult guardianship without restriction of the capacity to act (Sections 364.2 – 364.3 of Civil Law; Sections 270.7-270.14 of the Civil Procedure Law)

Temporary adult guardianship without restriction of the capacity to act can be used in exceptional and urgent cases (e.g. if a person is in coma or had a stroke) to protect a person's interests.

For a person who has health disorders of mental nature or other and who cannot understand the meaning of his or her action or cannot control his or her action, a civil court may establish temporary adult guardianship without restriction of the capacity to act, if: 1) it is urgently necessary in the interests of a person; 2) disorders are temporary; and 3) a person cannot cause damage to himself or herself by his or her active action. Temporary adult guardianship shall be established if it is the only way to protect a person's interests.

In this case, the civil court determines the duty of a guardian to conduct only certain matters. The conduct of certain matters shall be related to conducting of urgent matters of the person or ensuring of basic needs or care for the person. (e.g. to allow a guardian to pay a mortgage while a person is in a hospital). When establishing temporary adult guardianship, it must not exceed two years.

Comment: In Latvian law a guardianship ("aizbildnība" in Latvian) is for children. However, "adult guardianship (trusteeship)" ("aizgādība" in Latvian) is for adults.

Curatorship, please describe:

Analogous institution, please name and describe:

**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)):

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- 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):

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#### **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:

So far, the Ministry of Justice has not received any information on such or related challenges.

We are aware of only one court case in which the court has referred to the 2000 Convention, and such or related challenges have not been addressed there.

- 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:

- 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:

- 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:

- 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:

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:

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**:

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**:

4.9. Have competent authorities in your State had experience using the Measures of Protection Concerning an Adult recommended form<sup>9</sup> for the purpose of **Article 8** and the Information relating to Measures of Protection concerning an Adult recommended form<sup>10</sup> for the purpose of **Articles 7, 10 and 11**?

- No, please explain:  
*So far, such a need has not arisen.*  
 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**?<sup>11</sup>

- No  
 Yes, please describe such guidelines, procedures or protocols and also provide a link or attach them, preferably translated into English or French:

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

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

<sup>11</sup> 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> >.

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:

### **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:

*So far, the Ministry of Justice has not received any information on such or related challenges.*

*We are aware of only one court case in which the court has referred to the 2000 Convention, and such or related challenges have not been addressed there.*

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:

*We are not aware of any questions.*

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

- No  
 Yes, please specify:

*So far we are not aware of any challenges.*

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**:

*Precise list of such rules cannot be given. The following rules could be considered, in particular, rules on conditions for limitation of individual's rights, e.g., prohibition of complete deprivation of legal capacity, impossibility of restricting legal actions in ordinary matters of everyday life, the maximum duration of the limitation of legal capacity, the conditions for limitation of legal capacity and the requirements for the guardian. Furthermore, there also could be rules for setting the standards of protection of person's rights in court procedures - requirement of personal visit of the person by the court, the appropriate communication of the court's decision. Also requirement that the powers of representation shall be made in the form of a notarial deed and shall be registered.*

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:

*So far we are not aware of any challenges.*

## **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.<sup>12</sup> 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 HCCH 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:

Only sworn notaries are entitled to make these kind of powers of representation. The main problem is that people do not plan in advance about protecting their rights. Only when a situation has arisen and persons are looking for a help there are no longer possibility to help because a person has allready lost his or her capacity. Consequently, responsibility, awareness and education is important.

**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):

Continuing powers of attorney (in Latvian - *nākotnes pilnvarojums*, future authorisation) (Sections 2317.1 – 2317.7 of Civil Law; Sections 277.1-277.6 of the Civil Procedure Law).

Another legal instrument, which came into force on 1st July 2013, was the regulation on continuing powers of attorneys. This instrument was introduced following the Council of Europe Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity (Recommendation (2009)11 of the Council of Europe). It is a

<sup>12</sup> 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.

voluntary measure in the form of a notarial deed by which everyone can appoint a representative who can act for the grantor in all types of matters (economic and financial matters, as well as health, welfare and other personal matters) in the event of the grantor's incapacity. It is up to a person to decide in what types of matters his/her attorney will act. Therefore, a person might decide to include matters concerning his/her treatment but not necessarily. A continuing powers of attorney are drafted by a sworn notary at the presence of the grantor and representative. All continuing powers of attorney are registered at the special registry kept by the Notary.

**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
- b.2. Only mandatory for specific purposes, please specify:
- 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](#)

**6.2.2. 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:
- 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:
- 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) UNCPRD)
- d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCPRD)
- d.7. To confirm the absence of undue influence (Art. 12(4) UNCPRD)
- 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:  
[Yes, all such powers of representation shall be in writing. It can be drafted by parties themselves or by a sworn notary. According to the legal framework the powers of representation shall be made in the form of a notarial deed and shall be registered in the Continuing Powers of Attorney Register. Parties shall be personally present at the notary's office.](#)
- 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) UNCPRD)
- d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCPRD)
- d.7. To confirm the absence of undue influence (Art. 12(4) UNCPRD)
- 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:

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:

*We are not aware of the existence of such powers of representations governed by the law of another State.*

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:

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:

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:

### 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:

*There is no specific limitation on the range of persons or entities. Persons or entities appointed need to have capacity to act. Additionally, more than one representative may be appointed. There is no*

regulation concerning the extent to which the designated representative may act. It is the grantors' right to decide whether there are several representative and to what extent they act (jointly, concurrently, separately, or as substitutes). It should be mentioned that it is forbidden to transfer the powers of representation to another person. The designated representative is not allowed to assign his/her powers to a substitute.

- 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:

- 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:  
 We are not aware of any issues.

### 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:  
 There is no specific requirement to a designated representative to report to any authority.  
 Yes, please explain:  
 However, according to Section 2305 of the Civil law a designated representative shall provide an accounting to his or her grantor regarding the performance of the assignment, and particularly, regarding all related income and expenditures in connection therewith.

Moreover in Latvia the public prosecutor's one of the functions is the supervision of the rights of vulnerable persons. That means, the public prosecutor may bring an application before the court in case the public prosecutor is aware of the fact that the designated representative does not perform his/her duties in accordance with the powers of representation or acts contrary to the interests of the grantor. The grantor's children, brothers, sisters, parents and spouse also have the same rights to go to court if they can prove that the designated representative does not perform his/her duties in accordance with the powers of representation or acts contrary to the interests of the grantor. The court may suspend the powers of representation to act.

- 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:

- 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:  
 We are not aware of any issues.

### 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:

There is not such direct obligation provided by law. However, it is an agreement between the parties based on their free will (e.g. Section 1587 of the Civil Law provides: "a contract legally entered into shall impose on a contracting party a duty to perform that which was promised, and neither the exceptional difficulty of the transaction, nor difficulties in performance arising later, shall give the right to one party to withdraw from the contract, even if the other party is compensated for losses").

The designated representative shall act in accordance with the agreement. Section 2317.1 of the Civil Law provides that the designated representative shall act in the interests of the grantor. Additionally, according to the Civil Law (Sections 2295, 2296, 2300, 2301) the designated representative shall not exceed the limits of the assignment given to him or her, and firstly shall act in compliance with the instructions of the grantor. If there are no specific instructions, the designated representative shall act not solely according to his or her will, but in such a way as it could be expected the grantor would act in the relevant situation in order to complete the matter in the most advantageous way. Furthermore, the designated representative shall act with utmost care. The designated representative shall be liable for any negligence. If an authorised person has not performed the assignment, but no losses have been caused thereby to the authorising person, the failure to perform such duties shall not give the latter the right to any claims.

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:

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:

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:

Although the powers are not subject to a judicial or administrative decision in order for them to be exercised, everything depends on scope of the powers of representation that



the grantor has provided. There might be situations when the law requires a special mandate to be included in the powers of representation. For example, if a grantor wants to give a permission to receive mail, then a representative needs a special mandate for that. A special mandate is needed for a representative in order to perform alienation, pledge or encumbering of immovable property with property rights, conduct court proceedings, make novations, as well as make and receive payments.

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:  
 Very personal non-material rights would not be possible to be authorised to a designated representative. For instance, these are matters of highly personal nature, e.g. getting married, making one's will, voting and other acts specifically stated in law.

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):

The powers of representation shall be in writing. They shall be made in the form of a notarial deed and shall be registered. Additionally, a grantor and a designated representative shall be personally present at the notary when agreeing on the content of the powers of representations.

Only form is specified by law and grantor is not free to determine his/her own individual form.

Whereas a grantor is free to determine the content (certainly within the framework of legal system of Latvia). One power of representation can contain different kinds of mandates in many areas. It all depends on the will of the grantor. The notary in conversation with the grantor discusses the scope of the powers of representation.

The powers of representation is considered as a contract and one of the forms of the power of attorney. Furthermore, the main purpose of the power of attorney is to regulate situations when grantor wants to authorise other person to perform particular matter on behalf of the grantor. Therefore, the grantor is free to determine the content of the power of attorney. Concerning the form as a notarial deed, it was chosen to ensure grantor's rights and interests, as well as ensure legal certainty.

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

- Yes
- No, please explain:  
 Theoretically, it is possible to include advance health instructions in the powers of representation. However, advance health instructions currently are not regulated by our law. It might be considered as instructions or will of the grantor.

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

Yes

No, please explain:

Theoretically, it is possible to include advance medical instructions in the powers of representation. However, advance medical instructions currently are not regulated by our law. It might be considered as instructions or will of the grantor.

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

Yes

No, please explain:

Currently the law does not regulate advance health/medical instructions. However, Section 6(7) of the Law On the Rights of Patients provides that a patient can authorise another person to agree on his or her behalf to medical treatment at large or to any method used in the medical treatment or to refuse medical treatment at large or any method used in the medical treatment, as well as to receive information. Therefore, this mandate can be included in powers of representation. Furthermore, Section 7(2) of the Law On the Rights of Patients states that a person authorised by the patient, when taking a decision on medical treatment or refusal thereof, shall observe the wish previously expressed by the patient in relation to medical treatment.

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:

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:

We are not aware of any issues.

### 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:

As soon as such powers of representation are notarized by a sworn notary (in other words made in the form of a notarial deed), it shall be registered in the Continuing Powers of Attorney Register (Nākotnes pilnvarojumu reģistrs) by the same notary. Continuing Powers of Attorney Register is kept by the Council of Sworn Notaries of Latvia.

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:
- Yes, it is an obligation, please explain the effect of the registration and / or filing:  
 According to Section 2317.2 of the Civil Law such powers of representation (a future authorisation agreement) shall be made in the form of a notarial deed and it shall be registered. At the same time, all powers of representation made by notaries are registered. Furthermore, according to Section 2317.3 of the Civil law such powers of representation (a future authorisation agreement) shall come into effect on the day of entering therein, but the designated representative shall be authorised to commence his or her activity at the time when in accordance with the procedures laid down in special laws such status or legal fact of the grantor is detected and registered due to which he or she is unable temporarily or permanently to understand the meaning of his or her action and is unable to control his or her action.
- No, please explain:

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:
- Yes, it is an obligation, please explain the effect of the registration and / or filing:  
 Please insert text here
- No, please explain:  
 It happens simultaneously: a sworn notary makes such powers of representation in the form of a notarial deed and registers in the Continuing Powers of Attorney Register. Furthermore, the power of representation comes into effect on the day when this agreement is concluded.

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:
- Yes, it is an obligation, please explain the effect of the registration and / or filing:
- No, please explain:  
 So far, such question has not arisen, also it is not regulated directly. The powers of representation performed by a Latvian notary shall be registered. The purpose of registration is to ensure transparency and the ability to find powers of representation. The law and the regulations of the Cabinet of Ministers do not resolve the issue of whether powers of representation made abroad could be entered in the Register of Future Power of Representations of Latvia.

It could be a problem if powers of representation made in another State are not notarized, but according to Latvian law they must be notarized, that is, in Latin-type notarial countries, notaries will issue public documents, but in non-Latin-type notarial countries, documents issued by a notary do not always acquire the force of a public document.

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:

### 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:

According to Section 2317.3 of the Civil law such powers of representation (a future authorisation agreement) shall come into effect on the day of entering thereinto, but the designated representative shall be authorised to commence his or her activity at the time when in accordance with the procedures laid down in special laws such status or legal fact of the grantor is detected and registered due to which he or she is unable temporarily or permanently to understand the meaning of his or her action and is unable to control his or her action.

Yes, please explain:

Please insert text here

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:

According to Section 2317.3 of the Civil law such powers of representation (a future authorisation agreement) shall come into effect on the day of entering thereinto, but the designated representative shall be authorised to commence his or her activity at the time when in accordance with the procedures laid down in special laws such status or legal fact of the grantor is detected and registered due to which he or she is unable temporarily or permanently to understand the meaning of his or her action and is unable to control his or her action.

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:

It is not upon the decision of a competent authority. Additionally, powers of representation come into effect once concluded.

Yes, please explain:

According to Section 2317.3 of the Civil law such powers of representation (a future authorisation agreement) shall come into effect on the day of entering thereinto.

A designated representative becomes entitled to act at the time when the status or legal fact of the grantor is determined and registered due to which the grantor is unable temporarily or permanently to understand the meaning of his or her action and is unable to control his or her action. This status is determined by medical practitioners. A designated representative requests to the medical institution or a general practitioner to issue a statement concerning the grantor's incapacity for the powers of representation, presenting the powers of representation.

The commission of medical practitioners (consists at least of 3 medical practitioners) shall be established. The commission provides an opinion on whether a grantor has lost the ability to understand the meaning of his or her actions and to control them due to mental or health disorders. The commission bases its opinion on the grantor's diagnosis and the evaluation of grantor's state of health. Whereas the head of the health institution issues a statement on the basis of the opinion provided by the commission.

After receiving the statement that confirms the grantor's incapacity the designated representative goes to any sworn notary who registers that the designated representative is entitled to act. The necessary information is registered in the Continuing Powers of Attorney Register based on the statement.

When the necessary information is registered, the sworn notary shall make a respective notation on the extract from the notarial deed book (the powers of representation) presented to him or her. Such notation shall also be made on the original of the notarial deed.

- 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:

The grantor retains his/her legal capacity. However, there is no provision that explicitly states that the legal capacity of the grantor is not affected. The legal framework provides that the legal capacity of the grantor might be restricted only by the court and only as an exception if there are no alternatives. The powers of representation are considered as an alternative measure in order not to affect the grantor's legal capacity.

- 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:

- 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:  
 We are not aware of any issues.

- 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):

#### Civil Law

2317.2 A future authorisation agreement shall be made in the form of a notarial deed at the personal presence of an authorising person and authorised person and it shall be registered in accordance with the procedures laid down in the Notariate Law.

2317.3 A future authorisation agreement shall come into effect on the day of entering thereinto, but an authorised person shall be authorised to commence his or her activity at the time when in accordance with the procedures laid down in special laws such status or legal fact of the authorising person is detected and registered due to which he or she is unable temporarily or permanently to understand the meaning of his or her action and is unable to control his or her action.

#### 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

No authority approves such powers of representation or any powers of representation. The sworn notary merely certifies the powers of representation and gives them public credibility.

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:
- 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:

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:

#### 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:  
[Only the grantor has the right to modify his/her powers of representation any time based on his/her wishes. There is no specific procedure for the modification, only all requirements on such powers of representation provided by the law shall be observed.](#)

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:

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:  
[We are not aware of any issues.](#)

#### 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:

The Civil Law (Sections 2317.5 and 2312) states that such powers of representation terminate:

- 1) by mutual agreement;
- 2) upon completion of the particular assignment given;
- 3) when the grantor withdraws his or her powers of representation;
- 4) when the representative gives notice regarding authorisation;
- 5) upon the death of either party; and
- 6) upon expiration of the period of powers of representation.

Nevertheless, it should be kept in mind that such powers of representation is in the form of notarial deed and in order to protect the grantor's rights and the third person's rights, the grantor shall revoke the powers of representation in the form of notarial deed also. A grantor shall go to notary in case of willingness to revoke his/her powers of representation. A sworn notary makes the revocation of this powers of representative in the form of a notarial deed and announces the revocation of it in the official gazette Latvijas Vēstnesis, as well as the information is registered in the Continuing Powers of Attorney Register. The representative shall be notified of the revocation of the powers of representation if his/her place of residence is known.

Additionally, Section 2317.4 of the Civil Law states: "A court may suspend the right of an authorised person to represent an authorising person if it is detected that the authorised person does not perform his or her duties at all or perform them in the contradiction of the interests of the authorising person. The suspension of the right of the authorised person shall be registered in accordance with the procedures laid down in the Notariate Law." The grantor's children, brothers, sisters, parents, spouse and a public prosecutor have the right to submit application before the court requesting to suspend the rights of the representative. According to the Civil Procedure Law (chapter 34.1) the public prosecutor shall participate in any court hearing. The grantor shall be invited to the court hearing. The application shall be sent to the representative determining a time period of not more than 30 days for him or her for submitting explanations. After a judgment has entered into lawful effect the court shall send a true copy of the judgment to the grantor, the representative, public prosecutor and the Council of Sworn Notaries of Latvia. The Council of Sworn Notaries of Latvia in turn registers the data in the Continuing Powers of Attorney Register.

- 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:

- 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:  
 We are not aware of any issues.

#### 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):

The only similar to *ex lege* powers of representation exist in health care matters. According to Section 7(1) of the Law on the Rights of Patients if a patient is unable to take a decision

himself or herself regarding medical treatment due to his or her state of health or age, the spouse of the patient has the right to take a decision on medical treatment at large or any method used in the medical treatment or refusal from medical treatment at large or any method used in the medical treatment, but if such does not exist, an adult closest relative with capability to act in the following order: the children of the patient, the parents of the patient, the brother or sister of the patient, the grandparents of the patient or the grandchildren of the patient.

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:

-

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:

There might be practical problems of the use of such powers of representation governed by the law of another State.

## **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:

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:

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:

In Latvia courts are competent to decide on the recognition or non-recognition of a measure taken in another Contracting State, and so far no such case has been brought in our courts under the 2000 Convention.

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

- No  
 Yes, please specify:

In Latvia courts are competent to declare decision taken in another Contracting State enforceable, and so far no such case has been brought in our courts under the 2000 Convention.



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?

[In Latvia courts are competent to declare decision enforceable. The application shall be submitted to a district \(city\) court based on the place of enforcement of the decision or also based on the declared place of residence of the defendant, but if none, place of residence or legal address of the defendant.](#)

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

[The judge shall make a decision on enforcement or refusal of enforcement within 10 days after the initiation of the case.](#)

c) Is legal representation required?

- No  
 Yes, please describe:

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

- No  
 Yes, please specify:

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:  
[Any kind of such measures under 2000 Convention that need to be enforced.](#)

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:  
[Any kind of such measures under 2000 Convention that need to be enforced.](#)

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:

### 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:

[The assistance with obtaining legal counsel/ legal aid and advise can be only arranged through the transmission of the relevant request to the competent authority in Latvia \(Legal Aid Administration\).](#)

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 UNCPRD
- 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:

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:

The provided information in particular cases might be available only in Latvian, e.g. living conditions inspection report, adults welfare checks etc.

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):

Acceptable language for the communication is English or Latvian. Acceptables means for accepting new referrals preferably - emails.

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:

The same can be arranged by transmitting the request to the competent authority in Latvia, namely, the Council of Certified Mediators.

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:

- 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:

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

A placement of an adult plan must be notified to the Ministry of Justice of Latvia which will communicate with the competent Orphan's and Custody court regarding the issue of consent.

- 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**:

The Ministry of Justice of Latvia is the central contact point to handle placement of an adult referred to in Article 33 and to forward them to a competent authority in Latvia which issues placement decisions.  
 List of required documents:

1. Information about the adult's legal status and copies of all relevant court decisions, and a Latvian translation thereof;
2. Information about the reasons for the placement and a Latvian translation thereof;
3. Copy of the adult's birth certificate;
4. Information about the adult's needs (health condition, education, emotional needs, and the languages which can be used to communicate with the adult), and a Latvian translation thereof;
5. medical records (medical examinations, vaccinations and diagnoses), and a Latvian translation thereof;
6. Information about the person or family the adult is being placed with Latvian translation thereof.

- 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):

- 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:

- 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:

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 Judges<sup>13</sup>)?

- No  
 Yes, please specify in relation to which specific matters (*e.g.*, transfer of jurisdiction (**Art. 8**), placement of a child (**Art. 33**)):  
*So far no such a need has arisen.*

### **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:

*The authority where a measure of protection has been taken or powers of representation confirmed may be requested to issue a certificate. However, there is no obligation under national law to issue it.*

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:

*No such information.*

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:

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:

*No special authority designated. Requests may be sent to the central authority.*

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:

*The central authority.*

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<sup>13</sup> 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>.

- 9.7. 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:

UN Convention on the Rights of Persons with Disabilities.

- 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:

### **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:

The more States will join the Convention, the more cases will be and the challenges will become more and more visible.

- 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:

- 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:

This is because the domestic legislation on legal capacity and different measures is country-specific and not necessarily comply with the UNCRPD. At the same time, it does not preclude to join the 2000 Convention.