

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

INTRODUCTION

Objectives of the Questionnaire

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

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

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

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

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

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

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

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

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

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

Scope of the Questionnaire

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

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

Instructions for completion

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

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

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

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

Thank you for your kind co-operation.

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

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

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

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

Name of State or territorial unit: ⁶	Portugal
<i>For follow-up purposes</i>	
Date the Questionnaire was completed:	
Name of contact person:	Miguel Ângelo Carmo, Inês Robalo, Isabel Capela
Name of Authority / Office:	Central Authority - Protection of Adults - Prosecutor General's Office
Telephone number:	+351 213 921 9000
E-mail address:	autoridadecentral.adultos@pgr.pt

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](#)

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

PART II – PRACTICAL OPERATION AND IMPLEMENTATION OF THE 2000 CONVENTION

I – Significant developments in your State

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

No

Yes, please describe:

On 10.02.2019, the regime of the adult accompanied came into force in Portugal, approved by Law No. 49/2018, of 14 August - which aims to guarantee the well-being, recovery, full exercise of the rights of adults, as well as the observance of their duties, focusing on the person, and not only on his /her patrimony. This regime is limited to the minimum necessary so that the beneficiary's self-determination and capacities can, within the circumstances, be ensured.

This regulation eliminated the previous interdiction and disablement institutes, changing the rules that regulated them in the Civil Code, as well as the adjective regime provided for in the Civil Procedure Code and several other laws with reference to the disabled. A legislative change that has long been demanded and that was imposed, both by the evident cultural, demographic and scientific evolution, as well as by the imperatives of the instruments of public international law to which the Portuguese State was linked, revealing the (growing) recognition and effective protection rights of persons (adults) with disabilities or reduced capacity.

The accompaniment must be limited to the minimum necessary. However, depending on each case and regardless of the request, the court can assign the companion the functions associated with the following regimes: the exercise of parental responsibilities or the means to fulfil them; the general representation or special representation with express indication of the categories of acts for which it is necessary; the total or partial administration of assets; prior authorization to practice certain acts or categories of acts and interventions of another type, which are duly explained. The companion must ensure the adult well-being and rehabilitation, maintaining permanent contact with him. Visits must be at least monthly or otherwise deemed appropriate by the court. The accompaniment process is urgent and the rules of voluntary jurisdiction apply, with the necessary adaptations.

The adult can freely exercise his / her personal rights and the conclusion of business in his /her current life, unless there is a legal provision or judicial decision to the contrary. Personal rights are considered, namely, the rights to marry or to constitute situations of union, to procreate, to profile or to adopt, to care for and educate children or adoptees, to choose a profession, to take off in the country or abroad, to establish home and residence and to establish relationships and to make a will. The placement of an adult is dependent on judicial authorization. In case of urgency, placement can be immediately requested by the accompanying person, subject to ratification by the judge.

This legislation is built on the principle of subsidiarity. In order to ensure the well-being and recovery of the adult, to guarantee the full exercise of their rights and the fulfilment of their duties, the accompanying measures are only enacted when the purposes that continue with it are not guaranteed through the general duties of cooperation and assistance, which means that, regardless of the verification of the subjective and objective requirements of the accompanying measure, the appointment of a companion may not be normatively justified. The idea is not to incapacitate the adult, but to help him / her, giving him/her the necessary support, so that he /she can fully exercise his /her legal capacity.

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

The Public Prosecution Service understands that, according to articles 22 to 25 of the Convention, in conjunction with Portuguese law, for foreign decisions to be enforced in Portugal, they will have to be reviewed and confirmed by Portuguese courts.

According to Article 22 (1) of the Convention on the International Protection of Adults, " The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States". Article 23 provides that "any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State".

Article 25 further provides that " If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State. Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure".

In the explanatory report of the Convention, in the notes prepared by Paul Lagarde, it is clear that "if the measures taken and enforceable in a Contracting State are to be carried out in another Contracting State, they must, at the request of any interested party, be declared enforceable or registered for the purposes of enforcement in that other State in accordance with the procedure provided for by the law of that State ". In other words, the Convention does not exclude, for the purposes of implementing measures, the exequatur procedure.

The exequatur procedure provided for by Portuguese law corresponds to the special procedure provided for in article 978.^o of the Portuguese Code of Civil Procedure.

The purpose of the review process is not to obtain a national judgment identical to the foreign judgment, but a national judgment allowing the foreign decision to operate in our legal order. Thus, the decisions taken in other Contracting State must be reviewed and confirmed, by Portuguese Court of Appeal, which will only confirm the decision when there is no doubt as to the authenticity of the document containing the decision, and that it has become final under the law of the country in which it was given.

- 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:

Since the entry into force, in Portugal, of the Convention on the International Protection of Adults, and after having designated the Prosecutor General's Office as the Central Authority, we note the important role it plays in resolving issues that demand an adequate response in the field of rights of adults who are nationals and live in another country and which sometimes imply a quick and effective resolution, namely in the field of the administration of assets belonging to people who suffer from a deficiency or insufficient personal capacity.

In the pursuit of its mission and in the exercise of its powers, the Central Authority has made a special effort to establish efficient forms of communication, both with other central authorities and with Public Prosecution Services. Collaborative relationships were also built with the various services and entities that intervene in these cases, namely with the Social Security Institute and the Ministry of Foreign Affairs.

The Prosecutor General Office has already indicated to the Government and the Portuguese Assembly of the Republic, in an opinion on legislative amendment to the Civil Procedure Code, the need to

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

consider the adoption of a simpler recognition and enforcement mechanism, in accordance with the provided for in Articles 22 to 27 and 41 of the 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:

Since 1 July 2018 and until 31 December 2019, 36 dossiers have been opened. By reporting to the 36 dossiers registered in the referred period, 11 originated in communications received directly from other Central Authorities, namely: from France (3) and Switzerland [8 (1 from the Canton of Schwyz; 3 from the Canton of Vaud; 3 from the Canton of Geneva and 1 of the Canton of St. Gallen)] and 12 started with communications received directly from functional structures of the Portuguese Public Prosecution Service. The other 13 started with communications from other entities (directly from citizens, lawyers, consulates, among others).

In 2020, until 20 november 2020, 26 new files have already been opened. By reporting to the 26 dossiers registered in the referred period, 4 originated in communications received directly from other Central Authorities, namely from Switzerland (1 from the Canton of Vaud; 2 from the Canton of Geneva and 1 of the Canton of Fribourg)] and 19 started with communications received directly from functional structures of the Portuguese Public Prosecution Service.

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

By reporting to the 36 dossiers registered in the period from 1 July 2018 to 31 December 2019, 11 originated in communications received directly from other Central Authorities, namely: from France (3) and Switzerland [8 (1 from Canton Schwyz, 3 from the Canton of Vaud, 3 from the Canton of Geneva and 1 from the Canton of St. Gallen)].

We also receive requests for information from other entities, which are not Central Authorities: from France ("Instance à Sens", "Instance Lorient" and from the "Centre Hospitalier Universitaire de Reims"; from Switzerland (from the Portuguese Consulate)

In 2020, by reporting to the 26 registered files, 4 originated from communications received directly from the Swiss Central Authority: 2 from the Canton of Geneva, 1 from the Canton of Vaud and 1 from the Canton of Friborg

We also receive one request for information from other entities, which are not Central Authorities: for instance, from the Portuguese Consulate in Switzerland.

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

July 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:

Miguel Ângelo Carmo, Prosecutor, Legal Advisor to the Prosecutor General;
Inês Robalo, Prosecutor, Legal Advisor to the Prosecutor General;
Isabel Capela, Senior Legal Official

None of the members works exclusively in the functions of the Central Authority, simultaneously performing other functions.

III – Scope

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

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

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

- Guardianship, please describe:
Please insert text here
- Curatorship, please describe:
Please insert text here
- Analogous institution, please name and describe:
As explained above, in Portugal we have the regime of the adult accompanied - which aims to guarantee the well-being, recovery, full exercise of the rights of adults, as well as the observance of their duties, focusing on the person, and not only in his /her patrimony.

The accompaniment must be limited to the minimum necessary. However, depending on each case and regardless of the request, the court can assign the accompanying person the functions associated with the following regimes: the exercise of parental responsibilities or the means to fulfil them; the general representation or special representation with express indication of the categories of acts for which it is necessary; the total or partial administration of assets; prior authorization to practice certain acts or categories of acts and interventions of another type, which are duly explained. The accompanying person must ensure the adult well-being and rehabilitation, maintaining permanent contact with him /her. Visits must be at least monthly or otherwise deemed appropriate by the court. The accompaniment process is urgent and the rules of voluntary jurisdiction apply, with the necessary adaptations.

The adult can freely exercise his /her personal rights and the conclusion of business in his /her current life, unless there is a legal provision or judicial decision to the contrary. Personal rights are considered, namely, the rights to marry or to constitute situations of union, to procreate, to profile or to adopt, to care for and educate children or adoptees, to choose a profession, to take off in the country or abroad, to establish home and residence and to establish relationships and to make a will. The placement of an adult is dependent on judicial authorization. In case of urgency, placement can be immediately requested by the companion, subject to ratification by the judge. In the case of the sentence provides for this, the granting of a will is prohibited.

⁸ *Ibid.*

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

Please insert text here

- 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):

In Portugal, and under the terms of Law no. 49/2018, of 14 August (which came into force on 1 February 2019), the application of protective measures (due to health, disability or behavior, to exercise their rights fully and consciously or, under the same terms, to fulfill their duties) can be requested by adult himself or, with his / her authorization, by his / her spouse, by his / her unmarried partner, by any successive relative or, regardless of authorization by the Public Prosecutor's Office. Thus, the authorization that a partner may request from the court to accompany the respective partner who is not in a position to exercise his /her rights constitutes a protective measure within the meaning of the Convention, but only on the terms of accompaniment regime.

IV – Jurisdiction

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

- No
 Yes, please specify:
 Please insert text here

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

- No
 Yes, please specify:
 We point out only one case in which the Portuguese citizen previously residing in Switzerland changed her residence to Portugal, before the final curatorial decision applied in Switzerland.

The Public Prosecutor in case decided that there was no reason to review and confirm the Swiss decision because it had been handed down after the change of residence (that is, when the decision was handed down, the Portuguese citizen was no longer resident in Switzerland) and concluded that there was no reasons for applying protection / accompanying measures in Portugal, considering that the situation was safeguarded with the support provided by her son, under the principle of minimum intervention / subsidiarity, in force in Portuguese law.

Although the Swiss decision was given just before the entry into force of the Hague Convention on the International Protection of Adults in Portugal, the Portuguese Central Authority issued an opinion that the foreign decision should be reviewed and confirmed, considering the interests of the Portuguese

citizen in cause. Interests that required, after review and confirmation, that decision be reassessed according to Portuguese law, and as if it were a Portuguese decision (article 27 of the Convention), in particular to adjust the protection / accompanying measures to the current situation of the adult and to the appointment of another accompanying person, taking into account the curators appointed in the Swiss decision were strangers to the personal situation of the accompanying adult (they were social workers).

The Central Authority considers that that decision is not final and that it may still be reconsidered.

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

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

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

No
 Yes, please specify:
[Portuguese Central Authority was faced with a situation of a British citizen, whose specific nationality was difficult to ascertain, since of Great Britain only Scotland is party to the Convention](#)

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

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

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

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

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

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

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

No

Yes, please describe in which situations a competent authority in your jurisdiction has applied **Article 11**:

[Please insert text here](#)

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

No, please explain:

[Although communications under Article 7 of the Convention arose, those forms were not used, communications were made directly to the Portuguese Central Authority, by email.](#)

Yes

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

No

Yes, please describe such guidelines, procedures or protocols and also provide a link or attach them, preferably translated into English or French:

[Please insert text here](#)

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

No

Yes, please specify:

[Please insert text here](#)

V – Applicable law – General

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

No

Yes, please specify:

[Please insert text here](#)

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

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

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

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

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

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

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

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

[Although there are no mandatory provisions or mandatory rules of representation of the adult in the national legal system that fall under the provisions of article 20 of the Convention, it should still be noted that, within the scope of the so-called “mandate for accompaniment”, provided for in article 156 of Portuguese Civil Code, at the moment when the accompaniment is ordered, the court will have to take into account the mandate, in whole or in part, and, in particular, to define the scope of protection and to designate the accompanying person. When it is reasonable to assume that the grantor's wish would be to revoke mandate, the court has the power to cease it.](#)

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

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

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

In the following questions (questions 6.1. to 6.49.) references to powers of representation, as described in Article 15 of the 2000 Convention, mean, and are limited to, “powers of representation granted by an adult, either under an agreement or by a unilateral act, to be exercised when such adult is not in a position to protect his or her interest”. Such powers of representation are also known as “mandate in case of incapacity”, “self-determined guardianship”, “voluntary guardianship”, “living will”, “*mandat de protection future*”, “*mandat extrajudiciaire*”, etc.¹² In a great number of States, such powers of representation are private agreements. They may be witnessed, certified, notarised, or not be subject to any formal requirements. Several States provide for various forms of powers of representation. Any such powers of representation fall under the scope of the 2000 Convention. The availability of powers of representation under the law of Contracting Parties to the 2000 Convention will facilitate implementation of their treaty obligations. However, the absence of such powers should not stop States from becoming Contracting Parties.

Thus, powers of representation may or may not be *available* under the law of your State. Where they are, they may be available *in one or more forms* (see question 6.19. below). To achieve the desired effect, the use of any of these forms of powers of representation may be *optional or mandatory*. Furthermore, powers of representation may or may not be subject to *formal requirements* (such as being notarised, certified, or witnessed) to achieve validity and operability. In addressing the existence, extent, modification and extinction of such powers of representation for the purpose of Article 15, Section VI of this Questionnaire seeks to accommodate *all* these various possibilities with a view to obtaining a better understanding of powers of representation across HCCH Members. **If the**

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

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:
[Please insert text here](#)

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

[Please insert text here](#)

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

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

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

- a. Powers of representation cannot be certified
 b. Yes, it is mandatory
 b.1. Always mandatory
 b.2. Only mandatory for specific purposes, please specify:
[Please insert text here](#)
 c. No, it is not mandatory, but it is an available option

d. Please tick the relevant functions of this formal requirement

- d.1. To establish the capacity of the grantor at the time of granting the powers of representation
- d.2. To verify that the person signing / who signed the powers of representation is / was the grantor
- d.3. To witness the signature of the powers of representation by the grantor
- d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
- d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) 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](#)

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

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

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

d. Please tick the relevant functions of this formal requirement

- d.1. To establish the capacity of the grantor at the time of granting the powers of representation
- d.2. To verify that the person signing the powers of representation is the grantor
- d.3. To witness the signature of the powers of representation by the grantor
- d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
- d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) 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:
[Please insert text here](#)

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

d. Please tick the relevant functions of this formal requirement

- d.1. To establish the capacity of the grantor at the time of granting the powers of representation

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

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

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

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

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

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

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

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

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

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

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

Designation of a representative under such powers of representation

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

- No
 Yes, please explain:

When the accompaniment is ordered, the court use the mandate, in whole or in part, and takes it into account when defining the scope of protection and in the designation of the accompanying person. The court may terminate the mandate when it is reasonable to assume that the principal's wish would be to revoke it.

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

- No
 Yes, please explain:

Please insert text here

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

- No
 Yes, please explain:

Please insert text here

Supervision / control mechanisms of such powers of representation

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

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

The mandate is non-binding, being "controlled" by the court when applying accompanying measures and appointing a companion / accompanying person.

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

- No
 Yes, please explain:

Please insert text here

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

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

Extent of such powers of representation

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

- Yes
 No, please explain:
[The mandate is binding for the the designated representative, but not for the court, in the context of an accompaniment action, although there is an obligation to take it into account](#)

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:

[In any case, the accompanying person must refrain from acting in conflict of interest with the accompanied adult, and the business concluded in conflict of interest is nullable, after decreed accompaniment.](#)

[Portuguese inheritance law prevents the disposition of assets in will from exceeding the reserved portion \(half or two thirds of the inheritance\) of legitimate heirs \(spouse, descendants and ascendants\), if any.](#)

[On the other hand, after decreed accompaniment, any disposal of assets made by accompanied adult in favor of the accompanying person, in will, is void, even if the respective accounts are approved. This rule does not apply when the disposal is made in favor of descendants, ascendants, collaterals up to the third degree, spouse of the testator or his / her unmarried partner.](#)

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

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

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

- No
 Yes, please specify the powers subject to such decision:
[Although any power of attorney does not need to be validated by administrative or judicial decision, the accompaniment itself requires a judicial decision.](#)

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:
[In cases of lack of adult capacity, acts of disposition of real estate require prior and specific judicial authorization.](#)

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):
[Please insert text here](#)

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

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

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

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

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

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

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:
[Advance health / medical directives must correspond to their own form and are subject to registration](#)

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

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

Registration / filing of such powers of representation

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

- Yes, registration with a public registry
 Yes, registration with a private registry (*e.g.*, national associations of notaries)
 Yes, filing with a competent authority
 No, please explain:
[There is only a public register for advance medical directives / vital wills and accompaniment judicial decisions.](#)

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:
[Please insert text here](#)
 Yes, it is an obligation, please explain the effect of the registration and / or filing:
[Please insert text here](#)
 No, please explain:
[Just for "vital wills" \(advance medical directives\).](#)

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

- Yes, it is an option, please explain the effect of the registration and / or filing:
[Please insert text here](#)
 Yes, it is an obligation, please explain the effect of the registration and / or filing:
[Please insert text here](#)
 No, please explain:
[Again, there is only a public register for advance medical directives / vital wills and accompaniment judicial decisions.](#)

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

- Yes, it is an option, please explain the effect of the registration and / or filing:
[Please insert text here](#)
 Yes, it is an obligation, please explain the effect of the registration and / or filing:
[Please insert text here](#)
 No, please explain:
[Again, there is only a public register for advance medical directives / vital wills and accompaniment judicial decisions.](#)

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:
Please insert text here

Coming into effect of such powers of representation

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

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

In the event of disability and the need for accompanying measures, a court decision will always be required.

According to article 156 of the Portuguese Civil Code, preventing an eventual need for accompaniment, the adult can conclude a mandate for the management of their interests, with or without powers of representation. The mandate follows the general regime and specifies the rights involved and the scope of any representation, as well as any other elements or conditions of exercise, being freely revocable by the grantor / principal.

As mentioned above, when the court decrees the accompaniment, the court must take into account the mandate, in whole or in part, and take it into account in defining the scope of protection and in the designation of the accompanying person.

The court may terminate the mandate when it is reasonable to assume that the grantor's wish would be to revoke it

- 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:
Please insert text here
- Yes, please explain:
In the event of disability and \need for accompanying measures, a court decision will always be required.

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:

Please insert text here

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

- No

- Yes, please explain:
[Please insert text here](#)

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

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

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

[Please insert text here](#)

Confirmation of such powers of representation

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

- No
 Yes, please indicate which authority can confirm and explain the effect of confirming or not confirming such powers of representation
[Civil courts.](#)

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

- No, please explain:
[Please insert text here](#)
 Yes, please indicate which authority can confirm and explain the effect of confirming or not confirming such powers of representation:
[Civil courts.](#)

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

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

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

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

Modifications of such powers of representation

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

- No
 Yes, please explain who can modify such powers of representation, for what purpose, in what form, and any related safeguards:

The grantor can modify the powers at all times, provided that it has the capacity.
 The court is not bound by the powers previously conferred, being obliged to take them into account, but always taking into account the current situation.

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

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

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

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

Extinction of such powers of representation

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

Those powers are freely revocable by the grantor.
 The court may make them cease, in the context of the accompaniment action, provided that there are reasons to assume that this was the will of the grantor.

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

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

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

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

Other information concerning such powers of representation

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

Bank accounts may be authorized to operate. And in the case of nursing homes, where there is always a family member who is responsible and with some management powers, such as the responsibility for making payments, communicating clinical information, etc.

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

Please insert text here

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

Please insert text here

VII – Recognition and enforcement

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

No

Yes, please specify:

Please insert text here

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

No

Yes, please describe and also provide a link or attach a copy, preferably translated into English or French:

Please insert text here

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

No

Yes, please specify:

Please insert text here

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

No

Yes, please specify:

Please insert text here

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

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

The system in force in Portugal for the recognition of foreign judgments is the recognition by exequatur, also called review or prior control - the review process consists of obtaining a national sentence that allows the foreign decision to operate in the Portuguese legal order with its own effects, according to the law of the State of origin.

For the review and confirmation is competent the Court of Appeal of the area where the person against whom the sentence is intended to be held. If the person against whom the sentence is intended to be held lives abroad, the Lisbon Court of Appeal will be competent

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

There is no deadline for determining the speed of the process; but it has an influence on the speed of this procedure the fact that the accompaniment action is urgent, which, as a rule, will follow (namely to change the accompanying person/tutor/curator);

c) Is legal representation required?

No

Yes, please describe:

In Portuguese law the obligation to appoint a lawyer has a legal source, it is a right and a duty that assists the subject under the law. Constitutionally "Everyone has the right, under the terms of the law, [...] to be accompanied by a lawyer before any authority" (article 20, paragraph 2, CRP), and by Law 145/2015, of 9 September (Statute of the Portuguese Bar Association), article 66, paragraph 3: "The judicial mandate, representation and assistance by a lawyer are always admissible and cannot be prevented before any public or private jurisdiction, authority or entity, namely for the defence of rights, sponsorship of disputed legal relationships, composition of interests or in cases of investigation, even if administrative, unofficial or of any other nature. "

The mandatory appointment of a lawyer is expressed in various legal instruments that govern our legal system. In the case of actions for reviewing a foreign sentence, the appointment of a lawyer is mandatory, under the terms of article 40, paragraph 1, point c) of the Portuguese Civil Procedure Code: "it is mandatory to appoint a lawyer in appeals and in cases. proposed in the higher courts. " It should be noted that, in Portugal, the Public Prosecutor's Office has legitimacy to, at the levels of the Courts of Appeal and on behalf of the accompanied adult, propose actions to review and confirm a foreign sentence.

Public Prosecution Service has its own legitimacy to request accompanying measures, too.

The law also requires the beneficiary adult to be represented by a lawyer in the accompaniment action, who is appointed unofficially, whenever he is unable to be cited in the initial application or whenever no response is made to it [articles 895 (2) and 896 (2), both of the Civil Procedure Code].

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

No

Yes, please specify:

After reviewing and confirming the sentence, as a rule, the prosecutor must file a new accompaniment action, namely to designate another person as a companion / accompanying person and/or to adapt the protection measures to the current situation of the adult and to the flexibility of the our regime (in contrast to more closed and, as such, more restrictive regimes, such as guardianship and trusteeship).

In fact, this adaptation to the current situation would be much easier and simplified if the exequatur decision were, in these cases, decided by the courts that determine the accompanying measures and designate accompanying person, in an act followed by the exequatur (this as a previous moment or an incident of the accompaniment action).

- 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:

As mentioned in point 7.5. all measures enacted abroad, and relating to the application of protective measures, must be reviewed and confirmed by a Portuguese court.

As also mentioned above, Portuguese law provides for the following measures concerning the person: the exercise of parental responsibilities or the means to fulfil them; the general representation or special representation with express indication of the categories of acts for which it is necessary; prior authorization to practice certain acts or categories of acts and interventions of another type, which are duly explained. The accompanying person must ensure the adult well-being and rehabilitation, maintaining permanent contact with him. Visits must be at least monthly or otherwise deemed appropriate by the court.

The intention of the Portuguese legislator is that the measures must be adapted to each specific person and to their abilities and disabilities.

- 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:

As mentioned in point 7.5. all measures enacted abroad, and relating to the application of protective measures, must be reviewed and confirmed by a Portuguese court.

Portuguese law specifically provides for the following measure concerning the property: total or partial asset management. However, the following measures are also applicable to property deeds: the exercise of parental responsibilities or the means to fulfil them; the general representation or special representation with express indication of the categories of acts for which it is necessary; prior authorization to practice certain acts or categories of acts and interventions of another type, which are duly explained.

- 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:

We point out the constraints caused by the fact that the current process of reviewing and confirming a foreign sentence, despite being merely formal, requires certification of decisions, with the originals being sent, and runs terms in a second instance court that does not have jurisdiction to apply protection/accompaniment measures (just decide on them on appeal).

So we signalled, once again, the need for our legislation to conform to these Convention rules, in particular, by adopting a simple and quick exequatur procedure, in the courts of first instance that are competent to apply accompanying/protection measures.

VIII – Co-operation

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

a. None

b. Assistance in obtaining information on the operation of the 2000 Convention

c. Assistance in obtaining information on the relevant laws and procedures and services available in the requested State

d. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide

e. Transmission of a request to the Central Authority or to the competent authorities in the requested State

f. Assistance in discovering the whereabouts of an adult

g. Assistance in initiating judicial or administrative proceedings

h. Assistance in providing or facilitating the provision of legal aid and advice

i. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State

j. Ensuring separate legal representation for the adult in any proceedings

k. Ensuring support for exercise of capacity in terms of Article 12(3) of the UNCRPD

l. Referral to other governmental and / or non-governmental organisations for assistance

m. Provision of regular updates on the progress of the application

n. Other, please specify:

[Please insert text here](#)

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

a. None

b. Assistance in providing information on the operation of the 2000 Convention

c. Assistance in providing information on the relevant laws and procedures and services available in your State

- d. Establishment of contact with the competent authorities in your State to find out the kind of assistance such authorities could provide
- e. Transmission of a request to the competent authorities in your State
- f. Assistance in discovering the whereabouts of an adult in your State
- g. Assistance in initiating judicial or administrative proceedings in your State
- h. Assistance in providing or facilitating the provision of legal aid and advice in your State
- i. Assistance in obtaining private legal counsel or mediation services, where needed in your State
- j. Ensuring separate legal representation for the adult in any proceedings
- k. Ensuring support for exercise of capacity in terms of Article 12(3) of the UNCRPD
- l. Referral to other governmental and / or non-governmental organisations in your State for assistance
- m. Provision of regular updates on the progress of the application
- n. Other, please specify:
[Please insert text here](#)

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

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

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

[Information with respect the procedures applied under the chapter IV of the Convention.](#)
[In view of the provisions of paragraph 2 of article 13, we suggest that the applicable legislation of each State be provided](#)

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:

[For instance, we point a case of a Portuguese bank that refused to recognize the guardian powers appointed in France to operate the bank account of a Portuguese citizen benefiting from protection measures in that country. The Central Authority, appealing to the rules of the Convention, requested the bank's collaboration, which ended up unblocking the situation.](#)

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

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

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

No
 Yes

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

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

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

[The placement of an accompanied adult depends on express authorization from the court. In case of urgency, placement can be immediately requested by the accompanying person, subject to ratification by the judge.](#)

- 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**:

[As a requested State we would need all the information related to the adult; an updated medical report, with detailed information on the health status of the adult to be protected; information and certified copy of any judicial decision that applies adult protection measures as well as an indication of the reasons for the proposed placement](#)

[In view of our legal requirements, information on the pathology, behaviour or circumstance that determines the need for accompaniment/protection through the placement, as well as on the type of establishment where the adult can be welcomed and what care, clinical or other, that he / she will need \(for example, it is different to receive an elderly person who needs nursing care in a home or to receive an adult who needs mental health care\).](#)

[In case of mental health issues, it will be relevant to indicate whether the adult's behavior is a danger to his own integrity and life, or to another.](#)

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

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

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

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

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

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

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

- No
 Yes, please specify in relation to which specific matters (*e.g.*, transfer of jurisdiction (**Art. 8**), placement of a child (**Art. 33**)):
[Since the beginning of the functions of the Central Authority, we are not aware of any situation in which the Portuguese Courts have used the mechanism of direct communication.](#)

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:

[Portugal has not designated any competent authority for issuing the certificate referred in article 38 of the Convention. However, the decisions handed down by the Portuguese Courts will fulfill this function of certifying the content of the accompaniment and who is the companion / accompanying person.](#)

[Of course, if there is a need to issue a more specific certificate or clarify something that appears in a certificate issued by the Portuguese courts, the Portuguese Central Authority may intervene, clarifying or taking care to issue the certificate, by the competent court.](#)

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:

[None article 38 certificate \(because none was sent to us\).](#)

[Since the entry into force of the Convention in Portugal, nine foreign adult protection decisions have been reviewed and confirmed.](#)

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**?

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

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

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

[Since this designation is optional for the Contracting States, Portugal has not designated any specific authority to whom the requests provided for in article 8 should be addressed.](#)

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:

[Since this designation is optional for the Contracting States, Portugal has not designated any specific authority to whom the requests provided for in article 33 should be addressed.](#)

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:
[Please insert text here](#)

X – Miscellaneous

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

[Please insert text here](#)

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

[The recognition and enforcement of decisions](#)

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:

[Portugal has already guaranteed, in its domestic legislation, measures to protect citizens with disabilities, as well as policies for elderly protection. Guarantees enshrined in Portuguese fundamental law as well as in separate legislation, namely the regime that establishes the legal system of the adult accompanied, approved in 2018 and in force since February 2019.](#)