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| 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 | Germany |
| <i>For follow-up purposes</i> | |
| Date the Questionnaire was completed: | 30 November 2020 |
| Name of contact person: | Barbara Henneberger |
| Name of Authority / Office: | Federal Ministry of Justice and Consumer Protection |
| Telephone number: | + 49 30 18580 9148 |
| E-mail address: | IA5@bmjv.bund.de |

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 UNCPRD, e.g., Articles 12 and 16 of the UNCPRD?

- 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:

1. Third law amending the law on "Betreuung" of 29 July 2009 (Bundesgesetzblatt I 2009, p. 2286) - introduction of legal provisions on advance health directives and their legal effect into the German Civil Code* (Sections 1901a und 1901b German Civil Code), accompanied by the change of related procedural rules

2. Law to strengthen the functions of the "Betreuungsbehörde" of 28 August 2013 (Bundesgesetzblatt I 2013, p. 3393) - strengthening of the (mainly advisory) functions of the competent local authorities ("Betreuungsbehörden") before the appointment of a "Betreuer" and during the decisionmaking-process of the court ("Betreuungsgericht") by revision of the provisions of the "Betreuungsbehördengesetz" and of procedural rules

3. Law amending the material admissibility requirements for coercive medical measures and strengthening the right of self-determination of the "betreute" persons of 17 July 2017 (Bundesgesetzblatt I 2017, p. 2426) - revision of the provision on coercive medical treatment (now Section 1906a German Civil Code) and related procedural rules: In order to close a protection gap determined by the Federal Constitution Court in July 2016 the legal admissibility of coercive medical treatment is no longer linked to the placing and detaining of a person in a closed institution but linked to an in-patient treatment in hospital.

4. Draft law on the reform of guardianship law and "Betreuungsrecht" (Bundesrat-Drucksache 564/20). The proposed revision of the existing legislative provisions including procedural rules is focused on autonomy and self-determination of vulnerable adults and the improvement of the quality of "Betreuung" in practice

*German Civil Code: https://www.gesetze-im-internet.de/englisch_bgb/ (translation of version dated October 2013)

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

German competent authorities state with regard to the Convention that, in general, they have little practical experience applying it. Thus, there are no significant decisions to provide in a brief summary.

- 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:

The German Federal Ministry of Justice has from July 2018 until the end of 2019 conducted a comprehensive process of discussion on the reform of the "Betreuungsrecht" which

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.

included all relevant stakeholders as well as self-advocates (e.g. persons for whom a "Betreuer" is appointed). The main focus of this process was how to improve the implementation of the UNCRPD. Subsequent to this process a draft law was prepared and is currently going through the legislative process, see above point 4 under 1.1.

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 the Convention entered into force (1 January 2009) the Central Authority handled 132 cases in total, thereof 67 outgoing and 65 incoming cases.

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

The Central Authority handled cases with Switzerland, France, Czech Republic, Scotland, Austria, Finland, Portugal and Monaco.

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

January 2009

- 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:

0,5

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):

⁸ *Ibid.*

Guardianship, please describe:

Comment: In German law a guardianship ("Vormundschaft") for adults does not exist. For matters of translation in this questionnaire the term "adult guardianship" is hereinafter used for translating the German "Betreuung" for adults, see answer to 3.3. However, mostly the German term "Betreuung" is used in order to make clear that is a special form of court-appointed representation for adults which has to be clearly differentiated from the guardianship for minors.

Curatorship, please describe:

In German law several forms of curatorship ("Pflegschaft") are available but none of them aims to protect adults for the reason of a physical or mental deficit.

Analogous institution, please name and describe:

Please insert text here

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)):

If an adult cannot manage his or her affairs in whole or in part due to a mental illness or a physical, mental or psychological disability, the competent adult guardianship court ("Betreuungsgericht") will appoint a "Betreuer" for him or her at his or her request or ex officio (Section 1896 German Civil Code).

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):

Each spouse is entitled to enter into transactions to appropriately provide the necessities of life of the family, also binding the other spouse. Such transactions entitle and oblige both spouses, unless it appears otherwise from the circumstances (Section 1357 German Civil Code). This provision applies to transactions that are intended to cover life's necessities, i.e. transactions that concern the family as a consumption unit.

German law does not recognise any other general legal power of representation of one spouse for the other.

With the draft law mentioned under 1.3 (Bundesrat-Drucksache 564/20), the federal government proposes introducing spouse representation in matters of healthcare and associated matters for the care of property for a period of three months if one spouse is temporarily unable to manage his or her affairs due to unconsciousness or illness (draft of Section 1358 German Civil Code). This has not yet become law.

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:

1 competent authority: uncertainties about the "habitual residence", in particular if there are indications that the person concerned has been taken abroad against or without his/her will

- 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:

With a change of the habitual residence the procedure remains pending in Germany, until a procedure is introduced in the host country. In practice, the "transmission" does not work properly. After a certain point in time, the persons concerned can no longer be reached by the German authorities.

- 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:

Central Authority: In practice it might be difficult for the competent authority under Art. 9 of the Convention to have knowledge about any measures already taken by competent authorities under Art. 5-8 of the Convention. Thus, the question arises how the conflict about parallel measures taken by competent authorities under Art. 5-8 of the Convention and those under Art. 9 of the Convention (not having knowledge of other measures) can be solved. Article 9 of the Convention is less detailed and specific in comparison with Article 10 of the Convention regarding information.

- 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**:

Central Authority: There have been a small number of cases in connection with the Covid 19 Pandemic where foreign citizens suffering from Covid 19 needed urgent medical treatment in Germany and a "Betreuer" had to be appointed by the German authorities ("Betreuungsgericht"). The foreign authorities in the state of habitual residence where then notified according to Art. 10 sec 4. of the Convention.

1 competent authority: comatose patients after accidents/surgeries - temporary appointment of a "Betreuer"; securing the treatment of mentally acute patients at the Department of Psychiatry

1 competent authority: detention measures and short-term fixation in hospitals for foreigners visiting Germany

- 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**:
 competent authorities refer to cases described in 4.7.

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

- No, please explain:
 Please insert text here
 Yes

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

- No
 Yes, please describe such guidelines, procedures or protocols and also provide a link or attach them, preferably translated into English or French:
 Assistance of Central Authority in accordance with implementing law (see 1.3 above, Section 4 Law to Implement the Hague Convention of 13 January 2000 on the International Protection of Adults (Implementing Act) of 17 March 2007
https://www.gesetze-im-internet.de/englisch_erws_ag/englisch_erws_ag.html); declaration under Article 42 regarding Articles 8 and 33 of the Convention

- 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:

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> >.

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:

- 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:

- 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**:

[In German law the following specific rules have to be regarded as part of the mandatory law under Article 20:](#)

- [a\) the necessity of a prior approval by the court \("Betreuungsgericht"\) with regard to medical measures and the compulsory placement and detention of a person in a closed institution according to Sections 1904, 1905, 1906 and 1906a German Civil Code,](#)
- [b\) the binding effect of an advanced health directive on the representative according to Sections 1901a, 1901b German Civil Code and](#)
- [c\) the central provision on the actions of the "Betreuer" vis-a-vis the vulnerable adult \("Betreuter"\) in Section 1901 German Civil Code, especially the principles of necessity \(Section 1901 subsection 1 German Civil Code\) and of the respect for self-determination \(Section 1901 subsections 2 and 3 German Civil Code\).](#)

- 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 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:

[In order to facilitate the granting of a power of representation \("Vorsorgevollmacht"\) as much as possible, there are no special provisions regarding the form and content of a power of representation; the general provisions regarding the law of representation are applicable. Only in exceptional cases the notarization of the power of representation is required \(e.g. for the raising of a consumer credit and for certain real estate operations\). Apart from that, notarisation of a power of representation is an available option.](#)

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.

Comment: We have not ticked and answered d. in 6.2.1 to 6.2.4 in this questionnaire as we consider this question to refer to mandatory formal requirements which in all cases apply.

- 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:

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) UNCRPD)
- d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCRPD)
- d.7. To confirm the absence of undue influence (Art. 12(4) UNCRPD)
- d.8. Other, please specify:
[Please insert text here](#)

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

Please specify the name of the formal requirement:

- a. Powers of representation are not subject to another formal requirement
- b. Yes, it is mandatory
 - b.1. Always mandatory
 - b.2. Only mandatory for specific purposes, please specify:

[In order to facilitate the granting of a power of representation \("Vorsorgevollmacht"\) as much as possible, there are no special provisions regarding the form and content of a power of representation; the general provisions regarding the law of representation are applicable.](#)

[This does not apply to powers of representation referring to highly sensitive issues that may affect fundamental rights as the consent of the representative to medical treatment with grave risks, to coercive medical treatment of the grantor and to the involuntary detention of the grantor by the representative in a closed institution. In these cases the power of representation has to be granted in writing and expressly include these measures \(Sections 1904 subsection 5, 1906 subsection 5 and 1906a subsection 5 German Civil Code\).](#)

- 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 note that the comments in Chapter VI referring to practical issues are made by the German Federal Office of Justice in its function as the Central Authority and thus reflect experiences taken from cases that were processed through the Central Authority.

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:

Persons who are in a situation of dependence or in another close connection to an institution, a home or another establishment to which the grantor has been committed or in which he/she lives: Although such persons may not be appointed as “Betreuer” (Section 1897 subsection 3 German Civil Code), they can in principal be appointed as a representative. However, it might be necessary in such a case to additionally appoint a “Betreuer” whose function would be the assertion of rights of the grantor vis-à-vis the person authorised by him/her.

•In case the representative does not act for free his activities have to be allowed according to the provisions of the Law on Legal Services (Rechtsdienstleistungsgesetz).

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:
[See comment to 6.4](#)

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:
[In general powers of representation are not subject to specific supervision or control mechanisms. However, there are matters that can be dealt with in a power of representation but which additionally require the approval of the competent court \("Betreuungsgericht"\): coercive medical treatment with grave risks, involuntary placement and detention and medical treatment. Furthermore, Section 1896 subsection 3 German Civil Code provides for the possibility of an additional appointment of a "Betreuer" by the competent court \("Betreuungsgericht"\) whose function would be the assertion of rights of the grantor vis-à-vis the representative if the grantor is not capable to exercise these rights effectively and the appointment of a "Betreuer" is therefore necessary. If necessary, the court can enable the "Betreuer" to revoke the power of representation.](#)

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:
[See comment to 6.4](#)

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:
[Please insert text here](#)

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:
[There are no matters specifically excluded from those which may be dealt with in a power of representation. However, there are certain legal acts that have to be carried out in person and thus cannot be dealt with in any kind of power of representation, e.g. getting married or drafting a last will.](#)

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

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

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

- No
 Yes, please specify the powers subject to such decision:
[The exercise of the following powers additionally require the approval of the competent court \("Betreuungsgericht"\): medical treatment with grave risks, involuntary placement and detention and coercive medical treatment](#)

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:
[Highly personal affairs such as getting married or drafting a last will.](#)

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

- a. A document simply conferring on the designated representative all powers that can by law be conferred.
 b. A document containing "tick-box" lists of powers.
 c. A document setting out, in the grantor's choice of words, all the powers that the grantor wishes to confer.
 d. Separate documents for (a) health and welfare powers and (b) property and financial powers.

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

f. Other possibilities or combinations (please explain):

There is no standard document prescribed or required by law. Therefore, lots of different forms of documents exist in practice according to the specific needs of the person concerned. They can have the forms that have been ticked above. The Federal Ministry of Justice offers a document to be filled out (online or by hand in a brochure) which includes typical elements of a "lasting power of attorney" ("Vorsorgevollmacht") and which is widely used. See

https://www.bmjv.de/SiteGlobals/Forms/Suche/Publikationensuche_Formular.html?nn=6425014

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 medical directives have to be declared in writing \(Section 1901a subsection 1 BGB.\)](#)

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:

[With regard to Art. 38 of the Convention we consider it a rather common issue as there is a need for a certificate outlining the powers.](#)

Registration / filing of such powers of representation

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

Yes, registration with a public registry

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

Yes, filing with a competent authority

- No, please explain:
Please insert text here

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

- Yes, it is an option, please explain the effect of the registration and / or filing:
The Federal Chamber of German Civil Law Notaries maintains the so called Central Register of Lasting Powers of Attorney (www.vorsorgeregister.de). Grantors can apply to have their power of representation registered in the Central Register. The registration is not mandatory and the validity of the power of representation is not checked by the Central Register. However, registration ensures that in case that judicial proceedings in order to appoint a “Betreuer” are initiated the competent court can take note of the existence of the power of representation and thus avoid unnecessary “Betreuungen”.
- Yes, it is an obligation, please explain the effect of the registration and / or filing:
Please insert text here
- No, please explain:
Please insert text here

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

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

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:
See answer to 6.27

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:

In default of further statements/determinations by the grantor, the power of representation enters into force immediately. However, often powers of representation are granted with regard to the case of a future incapacity of the grantor. The document does not have to state explicitly that it shall enter into force or remain in force in the event of the grantor's incapacity.

It is actually recommended not to link the entry into force of the power of representation to the loss of capacity in the document itself (i.e. vis-à-vis third parties). This would cause considerable problems in practice, as the representative would always have to prove that the prerequisite was (still) fulfilled.

Separately from the power of representation, the grantor and the representative can agree on the specific terms of the power of representation (e.g. by means of a mandate) and here especially on the fact that the representative is allowed to make use of the power of representation solely in the event of the grantor's incapacity.

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:
[Please insert text here](#)
- 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:
[Please insert text here](#)

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

[The coming into effect of a power of representation does not as such affect the legal capacity of the grantor. This is not explicitly provided for but results from the application of the provisions of the General Part of the German Civil Code.](#)

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:
[See comment to 6.4](#)

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

[Please insert text here](#)

Confirmation of such powers of representation

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

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

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

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

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

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

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

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

Modifications of such powers of representation

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

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

[A competent authority cannot modify powers of representation of a private person. The grantor herself or himself can modify a power of representation as long as he or she still has the legal capacity to do it.](#)

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:

[Unless otherwise stated by the grantor, a power of representation ceases to have effect when it is effectively revoked by the grantor \(or the specific "Betreuer" appointed by the "Betreuungsgericht" to control the representative\) or on the death 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:
[See comment to 6.4](#)

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):

[not applicable](#)

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:

[not applicable](#)

- 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:

Issues mainly concern the scope of representation. Recognition may be problematic not for formal reasons but for insecurity on the material scope of presentation ordered/agreed. Cases relating to monetary and financial issues are quite common in that regard (e.g. bank accounts).

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:

Central Authority: Although Art. 22 of the Convention stipulates that measures taken in one Member State are recognized by operation of law in another Member State, a formal procedure of recognition is often required in practice.

- 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:

Law to Implement the Hague Convention of 13 January 2000 on the International Protection of Adults (Implementing Act) of 17 March 2007

https://www.gesetze-im-internet.de/englisch_erws_ag/englisch_erws_ag.html

- 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:

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

No

Yes, please specify:

- 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?

Regarding the declaration of enforceability under Article 25 of the Convention, the local court (adult guardianship court ("Betreuungsgericht")) in whose district a higher regional court has its seat has jurisdiction over the district of that higher regional court (concentration of jurisdiction).

The Schöneberg local court in Berlin has jurisdiction over the district of the higher regional court of Berlin. The Karlsruhe local court has jurisdiction over the districts of the higher regional courts of Stuttgart and Karlsruhe.

Local jurisdiction lies with the adult guardianship court ("Betreuungsgericht") responsible for the area where the requesting authority recommends the adult be placed.

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

No specific time frames are applied but procedure in place which meets the requirements (see statement on Implementing Act (Bundestag Drucksache 16/3251, p. 16)

See also Section 4 para 2 Implementing Act: Notification from another Contracting State shall immediately be forwarded by the Central Authority to the competent German authority.

c) Is legal representation required?

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

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

- No
 Yes, please specify:

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:
[All measures must be recognized and declared enforceable in accordance with Art. 25 of the Convention in conjunction with Section 8 Implementing Act, such as detention in a closed institution or other measures involving deprivation of liberty, a health examination, medical treatment](#)

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:
[Section 1903 German Civil Code: order of a reservation of consent](#)

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 UNCPRD
- 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):

[No specific requests, but in general, country profiles are a very good tool and should include as much information as suitable in this format.](#)

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:

[not applicable](#)

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**:

[Under certain circumstances \(for instance, when the danger of substantial self-inflicted injury or suicide exists\), a person can be placed and detained in a closed institution \(for example, in a mental hospital\) or in the closed section of a hospital or nursing home for the elderly. The decision on the necessity of placing a person in a closed institution can only be taken by the court-appointed representative \("Betreuer"\) with the prior approval of the competent Court \("Betreuungsgericht"\). Detention in a closed institution has to be ended when the presupposition that gave rise to it no longer applies - for example, when an earlier risk of suicide no longer exists.](#)

- 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**:

[Section 12 para 1 and para 2 Implementing Act \(Objection in the consultation procedure\)](#)

[\(1\) The court should object to placement in Germany pursuant to Article 33, para. 2 of the Convention in particular where](#)

- [1. carrying out the intended placement is contrary to the best interests of the person concerned, especially because he or she has no particular link with Germany,](#)
- [2. the foreign authority has not submitted any expert report establishing the necessity of the intended placement,](#)
- [3. a reason for refusing recognition under Article 22, para. 2 of the Convention is apparent,](#)
- [4. the person concerned was not granted an opportunity to be heard in accordance with the law in the foreign proceedings,](#)
- [5. reasons exist that represent a hindrance to a necessary authorisation of the aliens authority, or](#)
- [6. there is no arrangement regarding assumption of the costs for placement.](#)

[\(2\) In the event of placement involving deprivation of liberty or a measure within the meaning of section 1906, subsection \(4\) or section 1906a, subsections \(1\) or \(4\) of the Civil Code, the court shall, without prejudice to subsection \(1\), indicate its opposition to the request in accordance with Article 33, para. 2 of the Convention where](#)

- [1. in the requesting State, no court decides on the requested measure, or](#)
- [2. on the basis of the communicated facts of the case, an order for the requested measure would not be admissible under national law.](#)

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

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

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

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

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

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

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

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

IX – General provisions

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

- No
 Yes, please describe:
[Most States have yet refrained from implementing Art. 38 of the Convention by their national implementing law and thus have not designated competent authorities to draw up the certificate according to Art. 38 para 3 of the Convention.](#)

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:

[Germany so far only provides for a certificate for an official protective measure. In accordance with Section 13 Implementing Act, the registrar of the office of the adult guardianship court \("Betreuungsgericht"\) is responsible for issuing the certificate. If the proceedings are pending in a higher instance, the clerk of the registry of this court is responsible](#)

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 data available](#)

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:

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>.

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:

Germany has refrained from making special provisions with regard to requests under Art. 8 of the Convention, so that these can be addressed directly to the respective competent adult guardianship courts ("Betreuungsgericht")

Thus, the court that has jurisdiction is:

- a) the adult guardianship court ("Betreuungsgericht") responsible for the appointment if a guardian has already been appointed for the adult in Germany, otherwise
- b) the adult guardianship court ("Betreuungsgericht") in whose district the adult has his or her habitual residence*, otherwise
- c) the adult guardianship court ("Betreuungsgericht") in whose district the need for assistance arises;
- d) if jurisdiction cannot be determined according to a), b) or c) above and the adult is German, then Schöneberg local court in Berlin has jurisdiction.

If proceedings are pending before an adult guardianship court ("Betreuungsgericht") regarding a decision on the recognition or non-recognition of a measure under Art. 23 of the Convention, a declaration of enforceability of a measure under Art. 25 of the Convention or consultations under Art. 33 of the Convention, then this adult guardianship court ("Betreuungsgericht") will as a rule also have jurisdiction over further proceedings regarding the protection of the adult in question.

* Since Art. 8 of the Convention pertains to cases where the adult has his or her habitual residence or is present in the requesting State, the preconditions in letter b) will usually not be met.“

- 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:

Regarding the consultation procedure under Article 33 of the Convention, the local court (adult guardianship court ("Betreuungsgericht")) in whose district a higher regional court has its seat has jurisdiction over the district of that higher regional court (concentration of jurisdiction).

The Schöneberg local court in Berlin has jurisdiction over the district of the higher regional court of Berlin. The Karlsruhe local court has jurisdiction over the districts of the higher regional courts of Stuttgart and Karlsruhe.

Local jurisdiction lies with the adult guardianship court ("Betreuungsgericht") responsible for the area where the requesting authority recommends the adult be placed.

- 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:

In relations with Iran, the German-Iranian Settlement Agreement of 17 February 1929 must be observed.

- 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:

The Convention is from the perspective of the German Central Authority a helpful tool and works well within the current framework. The number of cases is still rather small, though. Hence, cooperation between Competent Authorities works but is limited to a case by case basis due to the small number of cases. Further promotion for the Convention as such as well as signatures by additional states would help to establish routines.

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:

1. Most States have yet refrained from implementing Art. 38 of the Convention by their national implementing law and thus have not designated competent authorities to draw up the certificate according to Art. 38 para 3 of the Convention.
2. Change of the habitual residence: Better "transmission" of the pending procedure in the initial state to the newly introduced procedure in host state.

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

Yes

No, please explain:

[Please insert text here](#)