

Title	Comments of Italy on Prel. Doc. No 6 of April 2022 – Advance Directives within the scope of the 2000 Protection of Adults Convention
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Author	Italy
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Annexes	N/A
Related Documents	Prel. Doc. No 6 of April 2022 – Advance Directives within the scope of the 2000 Protection of Adults Convention

Dear PB,

with reference to the request for comments on the draft “Advance Directives within the scope of the 2000 Protection of Adults Convention”, please find below the comments provided by the Italian Ministry of Justice:

“Italy considers that Prel. Doc. No. 6 on Advance Directives provides a thorough and appropriate analysis of the relevance of the Hague Adults Convention to the regulation of advance directives in cross-border scenarios.

Aware that the legislation of States in this area has significantly evolved since the Convention was negotiated and adopted, Italy believes that reasonable efforts should be deployed, through interpretation, to ensure that the Convention remains useful and operational despite social and legislative changes.

One crucial element in this respect is that the Convention aims to promote the self-determination of adults, especially through Article 15. Advance directives are, by their nature, an expression of self-determination, and represent a way to realise the rights enshrined in the United Nations Convention on the Rights of Persons with Disabilities, notably under Article 12. Against this background, looking at advance directives through the prism of Article 15 of the Convention appears to be consistent with the object of the Convention, and helps ensure that the potential of the Convention is exploited in full without the need of new rules, be they domestic or uniform.

Of course, advance directives raise extremely delicate issues. Cases exist, in this area, where States should be in a position to disregard any otherwise applicable foreign law and enforce their own (fundamental) policies.

Italy understands that the interpretation of the Convention endorsed in Prel. Doc. No. 6 does in no way undermine the ability of a Contracting State to rely on Article 20 or Article 21 of the Convention, depending on the circumstance, as a means to ensure that the adult concerned is accorded, as regards the pertinent aspects, the protection devised by that State’s mandatory rules, or a protection consistent with that State’s ordre public”.

Best regards,



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