

First Meeting of the Special Commission to review the practical operation of the 2000 Protection of Adults Convention

9 – 11 November 2022

9.30 a.m. – 5.30 p.m. (CET)

REVISED DRAFT ANNOTATED AGENDA

*The draft agenda will be treated with some flexibility
and may need to be modified in the light of ongoing discussions.*

Wednesday 9 November 2022	
Time	Item
9.30 a.m.	Registration of participants
10.00 a.m.	<p>I. Opening of the Special Commission</p> <ol style="list-style-type: none"> 1. Opening of the meeting by Mr Paul Vlas, President of the Netherlands Standing Government Committee on Private International Law 2. Election of the Chair of the Special Commission 3. Welcome remarks by Dr Christophe Bernasconi, Secretary General 4. Introduction to the draft agenda by Mr Philippe Lortie, First Secretary, and documentation by Ms Nietta Keane, Assistant Legal Officer 5. Adoption of the agenda 6. Practical announcements by Ms Anna Koelewijn, Head of Administration
10.45 a.m.	<p>II. General operation of the 2000 Protection of Adults Convention</p> <ol style="list-style-type: none"> 1. General assessment of the operation of the 2000 Convention <i>Prel. Doc. No 9 of September 2022:¹ Responses to Questions 3.1, 4.11, 5.5, 7.11, 8.13, 9.8 and 10.1: “Are you aware of any challenges, or have questions arisen, in applying any [...] provisions of the 2000 Convention” at pp. 19, 50-51, 56, 167, 183, 192 and 193.</i> 2. Interpretation issues, including the interpretation of the term “habitual residence” (Arts 5, 6, 8, 10, 11, 15, 45 and 49)² <i>Prel. Doc. No 9: Responses of Finland and Germany to Question 4.1 at pp. 40-41.</i>

¹ Prel. Doc. No 9 of September 2022 – Compilation of responses received to the September 2020 Questionnaire on the 2000 Protection of Adults Convention, hereinafter referred to as Prel. Doc. No 9.

² Unless otherwise specified, referenced articles are from the 2000 Protection of Adults Convention.

	<p>See para. 49 of the ER³ and Prel. Doc. No 4⁴ at paras 1, 2, 4.13-4.14 and 13.19. ⇒ Work. Doc. No 1.</p>
11.15 a.m.	<i>Break</i>
11.30 a.m.	<p>III. Jurisdiction issues</p> <ol style="list-style-type: none"> 1. The rules on jurisdiction form a complete and closed system which applies as an integral whole to Contracting Parties See <i>Prel. Doc. No 4 at para. 4.2 and note 121.</i> ⇒ Work. Doc. No 2. 2. Change of habitual residence (Arts 5(2), 32(1) and 34) <i>Prel. Doc. No 9: Response of Czech Republic to Question 4.2 at pp. 41.</i> See <i>Prel. Doc. No 4 at paras 4.15-4.18 and 13.4-13.8.</i> ⇒ Work. Doc. No 3. 3. Jurisdiction based on nationality in the case of multi-unit States where the Convention is not in force in every unit (Arts 7 and 45(d)) <i>Prel. Doc. No 9: Response of Portugal to Question 4.4 at p. 44.</i> ⇒ Work. Doc. No 4. 4. Party autonomy - choice of forum (Art. 8(2)(d)) See <i>paras 66 and 71 of the ER and Prel. Doc. No 4 at para. 5.6.</i> ⇒ Work. Doc. No 5. 5. Coordination of jurisdiction issues & direct judicial communications (Arts 5-11 and 42) <i>Prel. Doc. No 9: Responses from Czech Republic, Germany and Switzerland to Questions 3.1, 4.6 and 4.9 at pp. 19, 21, 45-46 and 49.</i> See <i>Prel. Doc. No 4 at Chapters 4-7, Model Forms “Measures of protection concerning the adult” and “Information relating to measures of protection concerning the adult”, Prel. Doc. No 8,⁵ and General Principles for Judicial Communications.⁶</i> ⇒ Work. Doc. No 6.
1.00 p.m.	<i>Lunch break</i>
2.00 p.m.	<p>IV. Applicable law issues</p> <ol style="list-style-type: none"> 1. Adaptation of measures (Arts 13 and 14) See C&R No 8 of the Brussels 5-7 December 2018 Joint EC-HCCH Conference on the Cross-border Protection of Vulnerable Adults, and Prel. Doc. No 4 at para. 9.4. ⇒ Work. Doc. No 7. 2. <i>Ex lege</i> representation (Art. 1 and Chapter V)

³ P. Lagarde, [Explanatory Report](#) on the HCCH 2000 Protection of Adults Convention, New and Revised Edition, 2017, hereinafter referred to as ER.

⁴ Prel. Doc. No 4 of July 2022 (first revised version) – Revised draft Practical Handbook on the Operation of the 2000 Protection of Adults Convention, hereinafter referred to as Prel. Doc. No 4.

⁵ Prel. Doc. No 8 of July 2022 – Direct judicial communications and a possible network of judges under the 2000 Protection of Adults Convention, hereinafter referred to as Prel. Doc No 8.

⁶ See [“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”](#).

	<p>See <i>Prel. Doc. No 4 at para. 3.56, and Prel. Doc. No 5.</i>⁷</p> <p>3. Instructions given and wishes made by the adult e.g., advance directives (Arts 15 and 16) See <i>Prel. Doc. No 4 at paras 9.8-9.9, Prel. Doc. No 6 of April 2022,</i>⁸ <i>Info. Docs Nos 1-5 of June 2022 (Comments from Canada, France, Germany, Italy and Switzerland on Prel. Doc. No 6), Prel. Doc. No 6 revised of October 2022,</i>⁹ and <i>Prel. Doc. No 10.</i>¹⁰</p> <p>4. Choice of law in the case of powers of representation (Art. 15(2)) See <i>Prel. Doc. No 4 at paras 9.12, 9-13, 9.15-9.17.</i> ⇒ Work. Doc. No 8.</p>
3.45 p.m.	Break
4.00 p.m.	<p>V. Recognition and enforcement issues</p> <p>1. Measure shall be recognised by operation of law (Art. 22(1)) <i>Prel. Doc. No 9: Response of Germany to Question 7.1 at p. 156. See para. 116 of the ER and Prel. Doc. No 4 in the Glossary and at paras 10.2, 10.3, 10.5, 10.12, and 10.23.</i> ⇒ Work. Doc. No 9.</p> <p>2. Opportunity of the adult to be heard (Art. 22(2)(b)) <i>See para. 120 of the ER and Prel. Doc. No 4 at para. 10.18.</i> ⇒ Work. Doc. No 10.</p> <p>3. Preventive action for recognition or non-recognition (advance recognition) (Art. 23) <i>See para. 124 of the ER and Prel. Doc. No 4 at paras 10.23-10.26.</i> ⇒ Work. Doc. No 11.</p> <p>4. Simple and rapid procedure for declaration of enforceability or registration (Art. 25) <i>Prel. Doc. No 9: Responses of France, Latvia and Portugal to Questions 7.4 and 7.5 a) and b) at pp. 159-161. See para. 126 of the ER and Prel. Doc. No 4 at paras 10.27-10.35.</i> ⇒ Work. Doc. No 12.</p> <p>5. Enforcement in accordance with the law of the requested State to the extent provided by such law (Art. 27) <i>Prel. Doc. No 9: Responses of France, Germany, Portugal and Switzerland to Questions 7.7, 7.9 and 7.11 at pp. 164-168. See para. 128 of the ER and Prel. Doc. No 4 at paras 10.27-10.35.</i> ⇒ Work. Doc. No 13.</p>
5.30 p.m.	Welcome reception

⁷ Prel. Doc. No 5 of October 2022 (revised version) – Application of the 2000 Protection of Adults Convention to *ex lege* representation.

⁸ Prel. Doc. No 6 of April 2022 – Advance Directives within the scope of the 2000 Protection of Adults Convention.

⁹ Prel. Doc. No 6 of October 2022 (revised version) – Instructions given and wishes made by the adult within the scope of the 2000 Protection of Adults Convention.

¹⁰ Prel. Doc. No 10 of October 2022 – Toolkit on the law applicable to the Existence, Extent, Modification, Withdrawal and Extinction of Powers of Representation (former Annex 1 to the February 2022 draft Practical Handbook on the Operation of the 2000 Protection of Adults Convention).

Time	Item
9.30 a.m.	<p>VI. Cooperation & General provisions issues</p> <ol style="list-style-type: none"> 1. Central Authority resources, contact details and general information <i>See paras 129 and 131 of the ER and Prel. Doc. No 4 at paras 11.1, 11.2 and 11.8.</i> ⇒ Work. Doc. No 14. 2. General obligation of Central Authorities to cooperate with each other (Art. 29) <i>Prel. Doc. No 9: Response of Czech Republic to Question 10.2 at p. 194. See para. 131 of the ER and Prel. Doc. No 4 at paras 11.1, 11.2 and 11.9.</i> ⇒ Work Doc. No 15. 3. “Confirmation of powers of representation” (Art. 38(1)) <i>Prel. Doc. No 9: Response of France, Germany and Latvia to Question 9.2 at p. 187. See paras 144-147 of the ER, Prel. Doc. No 4 at paras 11.33-11.38, and Prel. Doc. No 11.¹¹</i> 4. Promoting the use of the model certificate (Art. 38) <i>Prel. Doc. No 9: Responses of Czech Republic to Question 3.1 at p. 21, and of France to Question 10.2 at p. 194. See Model Form “Certificate (Article 38)”.</i> ⇒ Work. Doc. No 16. 5. Designation of the authorities competent to draw up the certificate (Art. 38(3)) <i>Prel. Doc. No 9: Response of Germany to Question 9.1 at p. 186. See para. 144 of the ER.</i> ⇒ Work. Doc. No 17. 6. Communications to be accompanied by a translation (Art. 51) <i>Prel. Doc. No 9: Response of Czech Republic to Question 9.8 at p. 192. See para. 169 of the ER and Prel. Doc. No 4 at para. 11.48.</i> ⇒ Work. Doc. No 18.
11.00 a.m.	<i>Break</i>
11.15 a.m.	<p>VII. Tools to assist with the implementation of the 2000 Convention</p> <ol style="list-style-type: none"> 1. Improving accessibility to the existing model forms <i>Prel. Doc. No 9: Responses of Czech Republic to Question 3.1 at p. 21, and of France to Question 10.2 at p. 194. See Model Forms “Certificate (Article 38)”, “Measures of protection concerning the adult” and “Information relating to measures of protection concerning the adult”.</i> ⇒ Work. Doc. No 19. 2. Direct judicial communications and a possible network of judges under the 2000 Protection of Adults Convention (Arts 8, 33 and 42) <i>Prel. Doc. No 9: Responses of Cyprus, Czech Republic, Finland, France, Germany, Latvia, Switzerland and UK (Scotland) to Question 9.5 at pp. 189-190, and Responses of Belgium, Cyprus, Czech Republic, Finland, France,</i>

¹¹ Prel. Doc. No 11 of October 2022 – Confirmation of powers of representation for the purposes of the certificate issued under Article 38.

	<p><i>Germany, Latvia, Switzerland and UK (Scotland) to Question 9.6 at pp. 190-191.</i> See <i>Prel. Doc. No 8.</i></p> <p>3. Finalisation and adoption of the Practical Handbook on the Operation of the 2000 Protection of Adults Convention See <i>Prel. Doc. No 4 and Prel. Doc. No 13.</i>¹²</p> <p>4. Finalisation and adoption of the Implementation Checklist under the 2000 Protection of Adults Convention See <i>Prel. Doc. No 3.</i>¹³</p> <p>5. Finalisation and adoption of the 2000 Protection of Adults Convention Country Profile <i>Prel. Doc. No 9: Responses of Czech Republic, France, Germany, Latvia, Portugal, Switzerland and UK (Scotland) to Question 8.4 at pp. 173-174, and Responses of Czech Republic, France, Germany, Latvia, Portugal, Switzerland and UK (Scotland) to Question 8.9 at pp. 177-180.</i> See <i>Prel. Doc. No 7.</i>¹⁴</p>
1.00 p.m.	Lunch break
2.00 p.m.	<p>VIII. Possible amendments to the 2000 Convention</p> <p>1. Interest in deleting the terms “guardianship” and “curatorship” (Art. 3(c)) <i>Prel. Doc. No 9: No responses to that effect to Question 3.1 at p. 19.</i> See C&R No 8 of the Brussels 5-7 December 2018 Joint EC-HCCH Conference and <i>Prel. Doc. No 4 at para. 3.22.</i> See <i>Prel. Doc. No 12</i>¹⁵ at paras 7-12.</p> <p>2. Interest in adding a new conflict rule for “ex lege representation” <i>Prel. Doc. No 9: No responses to that effect to Question 4.11 at pp. 50-51.</i> See <i>Prel. Doc. No 5 and Prel. Doc. No 12 at paras 13-18.</i></p> <p>3. Interest in adding a provision on “instructions given and wishes made by the adult e.g., advance directives” <i>Prel. Doc. No 9: No responses to that effect to Question 4.11 at pp. 50-51.</i> See <i>Info. Doc. No 2 of September 2022 (comments from France on Prel. Doc. No 6), Prel. Doc. No 6 revised including Annex IV “Relevant extracts from academic discourse on the topic of the inclusion of advance directives within the scope of the 2000 Convention”, and Prel. Doc. No 12 at paras 19-25.</i></p> <p>4. Interest in adding final clauses allowing Regional Economic Integration Organisation to join the 2000 Convention <i>Prel. Doc. No 9: Responses of Czech Republic, France, Germany and Latvia to Question 10.1 at p. 193.</i> See <i>Prel. Doc. No 12 at paras 26-30.</i></p> <p>5. Possible mechanisms to amend the 2000 Convention See <i>Prel. Doc. No 12 at paras 31-49.</i></p>

¹² Prel. Doc. No 13 of October 2022 – Compilation of comments on the Revised Draft Practical Handbook on the Operation of the 2000 Protection of Adults Convention - available in English only with responses in the language in which they were received.

¹³ Prel. Doc. No 3 of September 2020 - Draft Implementation Checklist under the 2000 Protection of Adults Convention.

¹⁴ Prel. Doc. No 7 of October 2022 (revised version) - 2000 Protection of Adults Convention Draft Country Profile.

¹⁵ Prel. Doc. No 12 of October 2022 (revised version) – Possible amendments to the 2000 Protection of Adults Convention.

3.45 p.m.	Break
4.00 p.m.	IX. Other business
5.30 p.m.	End of day 2
Friday 11 November 2022	
Time	Item
9.30 a.m.	IX. Other business (Cont.)
10.30 a.m.	X. Signature ceremony of the 2000 Convention by Malta
11.00 a.m.	Break
11.15 a.m.	XI. Adoption of Conclusions & Recommendations
1.00 p.m.	Lunch break
2.00 p.m.	XI. Adoption of Conclusions & Recommendations (Cont.)
3.45 p.m.	Break
4.00 p.m.	XI. Adoption of Conclusions & Recommendations (Cont.)
5.30 p.m.	End of Special Commission meeting