

Title	Comments of France 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	France (courtesy translation of the PB)
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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

General remark:

France is grateful to the Permanent Bureau for the quality of the document produced on the sensitive issue of advance directives. It considers that the document produced addresses in a relevant manner the issues and questions raised and that they are likely to allow the development of a consensus, subject to the following reservations.

Article 15 refers to "powers of representation conferred by an adult", which implies the designation of a third person, who will be vested with a certain number of powers, general or particular. While France agrees with the proposal that the notion of "representation" can be understood broadly to include mechanisms to assist in decision-making, it believes that the notion of "representation" necessarily implies that there is a third party vested with these powers. The work of the 1997 Special Commission and the 1999 Special Commission of a diplomatic character implies that the participants understood the concept of power of representation in this sense. Similarly, para. 95 of the Lagarde Report, which appears to include advance directives in the notion of power of representation, does not analyse such a possibility in any way other than by conferring powers on a third person. In this respect, §49 of the prel.doc. summarises the different situations encountered in a relevant and clear manner:

- 1: When the advance directive accompanies a power of representation, there appear to be no difficulties in considering that the effects of the interactions between these two acts fall within the scope of Articles 15 and 16.
- 2: Where the advance directive, on its own, designates one or more third persons to represent or assist the adult, these directives appear to fall within the scope of Articles 15 and 16.
- 3: When the advance directive does not designate any person to represent or assist the adult, France considers that it appears difficult to apply Articles 15 and 16 to it.

France thus expresses its reservations about applying Articles 15 and 16 of the Convention to situations where the adult's expression of will does not confer a power of assistance or representation on a third party. These concepts are mentioned in certain paragraphs of the Prel doc (in particular 4, 7, 19, 20, 27, 30, 35, 39, 42, 43 and 49) as well as in Annex IV, §19-20 of which seem too interpretative.

France stresses that, in its view, the reports of the Drafting Committee, the working documents submitted by delegations, the preparatory work or the Proceedings of the Special Commission of a diplomatic character do not directly address this important issue. In order to improve legal certainty and to enable the institutions concerned (courts, medical authorities, citizens, lawyers, etc.) to fully understand the difficulties arising from advance directives without the appointment of a representative, France supports the proposal contained in §25 of the United Nations Special Report on the Rights of Persons with Disabilities. The issue is of such importance that it deserves to be addressed directly, possibly leading to a protocol.