

Council on General Affairs and Policy of the Conference – March 2019

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 25 of January 2019
Title	Planning for a possible meeting of the Special Commission to review the practical operation of the <i>Convention of 13 January 2000 on the International Protection of Adults</i>	
Author	Permanent Bureau	
Agenda item	Item IV.1.d	
Mandate(s)	Article 6 of the HCCH Statute and Article 52 of the 2000 Protection of Adults Convention	
Objective	To plan for a first meeting of the Special Commission to review the practical operation of the 2000 Protection of Adults Convention	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input checked="" type="checkbox"/> For Information <input type="checkbox"/>	
Annexes	Annex 1: Agenda of the EC-HCCH Joint Conference on the Cross-border Protection of Vulnerable Adults, Brussels, 5-7 December 2018 Annex 2: Conclusions and Recommendations of the EC-HCCH Joint Conference on the Cross-border Protection of Vulnerable Adults, Brussels, 5-7 December 2018	
Related documents	n.a.	

I. Introduction

1. The purpose of this document is to suggest that the Council on General Affairs and Policy (CGAP) mandate the Permanent Bureau (PB) to start assessing the need for a possible first meeting of the Special Commission (SC) to review the practical operation of the HCCH *Convention of 13 January 2000 on the International Protection of Adults* (hereinafter, the “2000 Convention”). The following comments are in support of this proposal.

II. Past events and developments

2. From 5 to 7 December 2018, a conference organised jointly by the European Commission and the HCCH took place in Brussels, Belgium, to discuss the “Cross-border Protection of Vulnerable Adults” (hereinafter the “EC-HCCH Joint Conference”).¹ Approximately 130 experts from more than 35 States representing all continents gathered on the occasion. The Conference offered a unique forum to discuss cross-border protection of vulnerable adults from the perspectives of intergovernmental organisations such as the United Nations, the HCCH, the European Union, and the Council of Europe, as well as a number of non-governmental organisations.²

3. Experts present at the EC-HCCH Joint Conference stressed the practical importance of the topic. Discussions included current needs of vulnerable adults in cross-border situations, States’ responses and experiences in this regard, and possible future work in this area of the law. Contracting Parties to the 2000 Convention shared their experiences with the implementation and operation of the Convention. A number of non-Contracting Parties also shared their ongoing efforts and experiences in relation to the implementation of the Convention.

4. The Conclusions and Recommendations adopted at the EC-HCCH Joint Conference confirmed the need in this area for post-Convention services, such as the establishment of a country profile, the use of direct judicial communications, the development of model forms and certificates as well as electronic registries and the identification and promotion of good practices.³

5. In the light of the above, the EC-HCCH Joint Conference (in Conclusion and Recommendation No 16) gave its support for the PB to seek the approval of CGAP to start planning and organising a first meeting of an SC to review the practical operation of the 2000 Convention. More specifically, the PB suggests to develop a questionnaire to seek the views of both Contracting and non-Contracting Parties as to the issues they would like the SC to deal with, such as, for example:

- general review of the practical operation of the 2000 Convention;
- review of the practical operation of the 2000 Convention focussing on specific issues (*e.g.*, jurisdiction, applicable law, recognition and enforcement, exequatur, enforceability, co-operation, certificates (Art. 38));
- development of a Country Profile providing, for example, information on the nature, substantive and formal requirements of measures available under national law in accordance with the 2000 Convention as well as their conditions for coming into effect;
- collection of information on and / or discussion of legislative reforms carried out in parallel with the implementation of the 2000 Convention (including “supported decision-making” mechanisms);

¹ For the Agenda and Conclusions and Recommendations of the EC-HCCH Joint Conference see Annexes I and II, respectively.

² The following organisations attended the EC-HCCH Joint Conference: AGE Platform Europe, Dementia Alliance & Alzheimer Disease International, the European Law Institute, the International Union of Notaries and STEP.

³ See, Annex II, Conclusions and Recommendations Nos 4-15.

- identification of subject matters for which guides to good practice or practical handbooks could be developed in the future;
- development and use of model forms (or model provisions) and / or model certificates of powers of representation (PoR);
- development of electronic registry systems to verify the authenticity and integrity of PoR and, where possible, their coming into effect;
- direct judicial communications;
- collection of statistical data;
- promotion and awareness raising including, for example, the link with Article 12 of the *United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities* and the work of the Council of Europe progressing the implementation of PoR frameworks; and,
- other issues to be suggested by respondents.

6. In addition, Contracting and non-Contracting Parties would be invited to identify a priority level (*i.e.*, high, medium and low) for each issue retained in their questionnaire responses. The PB would report back to CGAP at its 2020 meeting based on the responses received, and CGAP could then decide whether or not a SC meeting is indeed desirable, also in light of the overall work programme of the HCCH and budgetary implications. Subject to CGAP's approval, such a meeting could be envisaged for the latter part of 2021 (possibly in June or October).

III. Resource implications

7. The work will be carried out by the Diplomat Lawyer with primary responsibility for the 2000 Convention, with in particular the support of a part-time and remote secondment to the PB by a member of the International Hague Network of Judges from Belgium. This secondment has been approved by the relevant national authorities.

IV. Proposal submitted to CGAP

8. Time has come for the 2000 Convention to be monitored and promoted more actively. The Convention was concluded almost 20 years ago. It currently has 12 Contracting Parties and seven signatory States; a number of States are working towards its implementation and future ratification. The PB is of the view that a first meeting of an SC to review the practical operation of the Convention may not only benefit the actual operation of the Convention, but also its promotion at the global level.

9. The PB therefore seeks the approval of CGAP to proceed with the preparation of the aforementioned questionnaire. If approved, the PB would report to the CGAP meeting in 2020 on the outcome of the responses to the questionnaire. CGAP would then decide whether an SC meeting should be convened, and, if so, whether to hold it in June or October 2021. Furthermore, CGAP in 2020, would decide upon proposals made by the PB based on the responses to the questionnaire as to what other preliminary work, if any, should be undertaken by the PB ahead of a 2021 SC.

ANNEXES



EC-HCCH Joint Conference on the Cross-border Protection of Vulnerable Adults

Agenda of the Joint Conference
European Commission ~ Hague Conference on Private International Law
Brussels, 5-7 December 2018

Venue : Albert Borschette Conference Centre (CCAB), Room 0A, Rue Froissart 36, 1040 Brussels, Belgium

Wednesday 5 December 2018 (*afternoon*)

- 1.00–2.30 p.m. *Reception of participants.*
- 2.30–2.45 p.m. Welcoming words by:
 - Tiina Astola, Director General, Directorate-General for Justice and
 Consumers, European Commission.
 - [Christophe Bernasconi](#), Secretary General, Hague Conference on Private
 International Law (HCCH).
- 2.45–3.45 p.m. **Panel I – The need for an international and regional legal
 framework for the Cross-border Protection of Vulnerable
 Adults – Point of view from organisations with a normative
 and / or research function**
- Moderator: [Eric Clive](#), Honorary Professor, School of Law, Edinburgh
 University, Scotland, UK, former member of the Scottish Law Commission,
 President of the HCCH Special Commission with a diplomatic character on
 the Protection of Adults.
- Organisations represented and Panellists:
- United Nations Organisation (UN)** – 2006 Convention on the Rights of
 Persons with Disabilities - Catalina Devandas Aguilar, UN Special
 Rapporteur on the rights of persons with disabilities (by video).
- HCCH** – 2000 Hague Convention on the International Protection of Adults –
[Philippe Lortie](#), First Secretary, HCCH.
- European Parliament (EP)** – [Joelle Bergeron](#), MEP, Rapporteur on the
 Protection of Vulnerable Adults.
- European Commission (EC)** – [Andreas Stein](#), Head of Civil Justice Unit,
 Directorate-General for Justice and Consumers, EC.

	<p>Council of Europe (CoE) – Brigitte Konz, Justice of the Peace Director at the Justice of the Peace of Luxembourg, former Chair of the Council of Europe Steering Committee for Human Rights (CDDH).</p> <p>European Law Institute (ELI) – Pietro Franzina, Associate Professor of International Law, Università di Ferrara, Reporter on the ELI project on the Protection of Adults.</p>
3.45–4.30 p.m.	Discussion
4.30–4.45 p.m.	<i>Tea break</i>
4.45–5.45 p.m.	<p>Panel II – The need for an international and regional legal framework for the Cross-border Protection of Vulnerable Adults – Point of view from organisations providing services and / or protection</p> <p><u>Moderator:</u> Jay Chalke, Ombudsperson of British Columbia, Canada, former Public Guardian and Trustee of British Columbia (2000-2011) and member of the Canadian delegation to the Special Commission with a diplomatic character on the Protection of Adults.</p> <p><u>Organisations represented and Panellists:</u></p> <p>Dementia Alliance & Alzheimer Disease International – Kate Swaffer, Chair, CEO & Co-founder, Dementia Alliance International, and Board member, Alzheimer's Disease International.</p> <p>AGE Platform Europe – Anne-Sophie Parent, Secretary General.</p> <p>Leading figure in global banking – Philippe Legrand, CEO and Founder London and Capital Asia, former Deputy CEO BNP Paribas Wealth Management, North Asia, former Executive Director ABNAMRO Private Banking North Asia, former Executive Director Rabobank Private Banking Asia.</p> <p>STEP – Richard Frimston, Partner Russell-Cooke.</p> <p>UINL – Me José Marqueño de Llano, President of the International Union of Notaries (UINL) & Almudena Castro-Girona Martinez, President of the UINL Human Rights Commission.</p>
5.45–6.30 p.m.	Discussion
6.30 p.m.	<i>Cocktail</i>

Thursday 6 December 2018 (*morning*)

9.00–10.00 a.m.	<p>Panel III – Experience in non-State Parties and recent State Parties on the implementation in domestic law of the 2000 Convention on the International Protection of Adults</p> <p><u>Moderator:</u> Christophe Bernasconi, Secretary General, HCCH.</p>
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States represented and Panellists:

Hungary – Kornél Tóth, Counsellor, Central Authority, Department of Child Protection and Guardianship Affairs, Ministry of Human Capacities of Hungary.

Ireland – [Aine Flynn](#), Director of Decision Support Service, Mental Health Commission of Ireland.

Latvia – [Linda Strazdina](#), Ministry of Justice of Latvia.

Portugal – [Paula Távora Vítor](#), Professor, Faculty of Law - University of Coimbra, Portugal.

10.00–10.45 a.m. Discussion

10.45–11.00 a.m. *Coffee Break*

11.00 a.m.–12.00 p.m. **Panel IV – Experience from States Parties to the 2000 Convention on the International Protection of Adults**

Moderator: [Christelle Hilpert](#), Head of the Private International Law and Judicial Assistance Unit (Central Authority under the HCCH Conventions of 1961, 1965, 1970, 1980, 1996 and 2000), Ministry of Justice, France.

States represented and Panellists:

Czech Republic – [Zuzana Fišerová](#), Director, International Department for Civil Matters, Ministry of Justice.

Germany – [Stefan Schlauss](#), Director, International Civil Law, Federal Office of Justice, Germany.

Monaco – [Carole Delorme-Le Floch](#), Juge des tutelles, Tribunal de première instance, Monaco.

Switzerland – [Anna Claudia Alfieri](#), Head of the Central Authorities under the HCCH Conventions of 1980, 1996 and 2000, Switzerland.

12.00–1.00 p.m. Discussion

1.00–2.30 p.m. Lunch

Thursday 6 December 2018 (afternoon)

2.30–3.30 p.m. **Panel V – Additional Legal Norms and / or Cooperation Mechanisms**

Moderator: [Andreas Stein](#), Head of Civil Justice Unit, Directorate-General for Justice and Consumers, EC.

Subject matters and Panellists:

Abolishing exequatur (pros & cons) – Ian Curry-Sumner, Voorts Juridische Diensten, Netherlands.

More party autonomy (pros & cons) – [Cyril Nourissat](#), Professor at the University of Lyon, European Notary Chair.

Consular Affair Mechanisms – Added Value and Shortcomings – [Jeanette Sautner](#), Consular Policy Expert and member of Canada's Delegation to the 2006 UN Convention on the Rights of Persons with Disabilities, Canada.

Strengthen Co-operation including Direct Judicial Communications – [Francisco Javier Forcada Miranda](#), Spanish Member of the International Hague Network of Judges, International Relations Service, General Council of the Judiciary, Spain.

Progressing the implementation of power of representation frameworks – [Adrian Ward](#), Specialist in law for people with cognitive and volitional impairments, Scotland, UK, as consultant to the Council of Europe, author of "Enabling Citizens to Plan for Incapacity" (2018)

3.30–4.15 p.m. Discussion

4.15–4.30 p.m. *Tea break*

4.30–5.30 p.m. **Panel VI – Possible post-Convention services and Good Practices**

Moderator: [Salla Saastamoinen](#), Director, Civil and Commercial Justice, Directorate-General for Justice and Consumers, European Commission.

Subject matters and Panellists:

"Mandat de protection future" in France and how they come into effect – [Marie-Odile Baur](#), Magistrate (retired), France, former member of the French delegation to the Special Commission with a diplomatic character on the Protection of Adults.

Powers of Representation (PoRs) in Austria and how PoRs come into effect – [Dr. Ilse Koza](#), Judge, Directorate General of Civil Law, Federal Ministry of Justice, Austria

Electronic Registry and coming into effect of PoRs in Quebec, Canada – [Me Laurent Fréchette](#), TEP, M. Not, Quebec, Canada.

Electronic Tools developed by Notaries in Europe – Me Pedro Carrión García de Parada, President of the CNUE Family Law Working Group.

Model Forms including PoRs and how PoRs come into effect in British Columbia, Canada – [Jay Chalke](#), Ombudsperson of British Columbia, Canada, former Public Guardian and Trustee of British Columbia (2000-2011) and former member of the Canadian delegation to the Special Commission with a diplomatic character on the Protection of Adults.

5.30–6.00 p.m. Discussion

7.30 p.m. *Dinner*

Friday 7 December 2018 (*morning*)

9.30–10.30 a.m.	<p>Panel VII – Main points arising from Panels I – VI</p> <p><u>Moderator:</u> - Philippe Lortie, First Secretary, HCCH.</p> <p><u>Panellists:</u> Panel I – Eric Clive, Faculty of Law, University of Edinburgh. Panel II – Jay Chalke, Ombudsperson of British Columbia, Canada, former Public Guardian and Trustee of British Columbia (2000-2011) and member of the Canadian delegation to the Special Commission with a diplomatic character on the Protection of Adults. Panel III – Christophe Bernasconi, Secretary General, HCCH. Panel IV – Christelle Hilpert, Head of the Private International Law and Judicial Assistance Unit (Central Authority under the HCCH Conventions of 1961, 1965, 1970, 1980, 1996 and 2000), Ministry of Justice, France. Panel V – Patrizia De Luca, Team Leader for External Relations & International, Civil Justice Unit, Directorate-General for Justice and Consumers, EC. Panel VI – Salla Saastamoinen, Director, Civil and Commercial Justice, Directorate-General for Justice and Consumers, EC.</p>
10.30–11.00 a.m.	Discussion
11.00–11.15 a.m.	<i>Coffee Break</i>
11.15 a.m.–1.00 p.m.	<p>Panel VIII – Conclusions and Recommendations</p> <p><u>Co-Moderators:</u> - Salla Saastamoinen, Director, Civil and Commercial Justice, Directorate-General for Justice and Consumers, EC. - Christophe Bernasconi, Secretary General, HCCH.</p>
1.00 p.m.	<i>End of work – Closing.</i>



EC-HCCH Joint Conference on the Cross-border Protection of Vulnerable Adults

Brussels, 5-7 December 2018

Conclusions and Recommendations

From 5 to 7 December 2018, at a conference organised jointly by the European Commission and the Hague Conference on Private International Law (HCCH), experts from Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, China (Hong Kong SAR), Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Monaco, Montenegro, the Netherlands, Poland, Portugal, Romania, Saudi Arabia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States of America, Zambia, the AGE Platform Europe, Alzheimer's Disease International, the *Conseil Supérieur du Notariat*, the Council of Bars and Law Societies of Europe (CCBE), the Council of Europe (CoE), the General Secretariat of the Council of the European Union, Dementia Alliance International, the European Commission, the European Disability Forum, the European Law Institute, the European Parliament, Notaries of Europe (CNUE), the *Union Internationale du Notariat* (UINL), STEP as well as the Permanent Bureau of the HCCH, met in Brussels, Belgium, to discuss the cross-border protection of vulnerable adults.

The joint conference reached the following Conclusions and Recommendations:

1. States that are not yet Contracting Parties to the *Convention of 13 January 2000 on the International Protection of Adults* (2000 HCCH Adults Convention) are invited to assess the possibility and benefits of joining the Convention.
2. The 2000 HCCH Adults Convention and the *Convention of 13 December 2006 on the Rights of Persons with Disabilities* (2006 UNCRPD) are complementary. As stated in its preamble, the 2000 HCCH Adults Convention affirms that the interests of the adult and respect for his or her dignity and autonomy are to be primary considerations.

3. United Nations institutions concerned with the 2006 UNCRC, the CoE, the European Union, as well as the HCCH are invited to co-operate, along with interested non-governmental organisations and practitioners, with a view to raising awareness of, and promote, the 2000 HCCH Adults Convention and their respective work to support the implementation and operation of that Convention.
4. It was noted that the implementation of the 2000 HCCH Adults Convention can be undertaken on the basis of reasonable efforts and resources. States having implemented the Convention are invited to share their experience with other interested States.
5. A number of States have shared their valuable experiences in reforming their legislative frameworks in relation to vulnerable adults; these legislative reforms were often carried out in parallel with the implementation of the 2000 HCCH Adults Convention.
6. While stressing the practical usefulness of the 2000 HCCH Adults Convention in general, some Contracting Parties also mentioned that further practical improvements, in particular in relation to the enforceability of measures, would be welcome (*e.g.*, guides to good practice, model forms and direct judicial communications).
7. It was noted that a number of States have put in place guardianship or curatorship institutions based on “supported decision-making” mechanisms.
8. Cross-border measures that the State of enforcement considers not to be in conformity with the 2006 UNCRC could be subject to adaptation under the law of that State (Arts 13 and 14 of the 2000 HCCH Adults Convention) to ensure that international situations are treated in a manner similar to domestic ones.
9. The cross-border transportability of measures under the 2000 HCCH Adults Convention would be improved by the development of a public Country Profile for each Contracting Party providing, for example, information on the nature, substantive and formal requirements of such measures as well as their conditions for coming into effect.
10. The development of a public Country Profile under the 2000 HCCH Adults Convention would also contribute to the building of mutual trust and confidence between actors, including competent authorities from different Contracting Parties.

11. The cross-border transportability of measures and confirmed powers of representation under the 2000 HCCH Adults Convention can be facilitated by using the recommended Certificate under Article 38 indicating the capacity in which the person entrusted by the vulnerable adult is entitled to act and the powers conferred.
12. The cross-border transportability of powers of representation could be enhanced, for example, by the development and use of model forms (or model provisions), model certificates of powers of representation and access to electronic registries to verify their authenticity and integrity as provided by competent authorities. It was noted that a number of model certificates of powers of representation have been developed over the years.
13. It was further noted that electronic registry systems have been developed with a view to assisting third parties, such as financial, insurance and medical institutions, with the verification of the authenticity and integrity of powers of representation as well as, in certain cases, their coming into effect.
14. The potential of direct judicial communications in the context of vulnerable adults has been underlined.
15. The possibility to develop complementary legal norms, for example in relation to party autonomy, was discussed with the understanding that it should bring real added value and should support the operation of the 2000 HCCH Adults Convention.
16. Support was expressed for the Permanent Bureau's (*i.e.*, the Secretariat of the HCCH) plan to seek the approval of its governing body, the Council on General Affairs and Policy, to start planning and organising a first meeting of a Special Commission to review the practical operation of the 2000 HCCH Adults Convention, for example by developing a questionnaire addressed to both Contracting Parties and non-Contracting Parties.
17. A wish was conveyed to hold meetings similar to the current one on a regular basis in the future.