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Proposal for a

COUNCIL DECISION

authorising Member States to become or remain parties, in the interest of the European Union, to the Convention of 13 January 2000 on the International Protection of Adults

{SWD(2023) 155 final} - {SWD(2023) 156 final} - {SEC(2023) 208 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The EU aims to create, maintain and develop an area of freedom, security and justice in which the free movement of persons, access to justice and the full respect of fundamental rights are ensured.

This aim should also include the cross-border protection of adults who, by reason of an impairment or insufficiency of their personal faculties, are not able to protect their interests ('adults'). An adult is a person who has reached the age of 18 years.

The number of adults in such situations in the EU is on the increase due to the ageing population and the associated incidence of age-related illnesses, and the growing number of people with disabilities. Depending on the national legislation of the Member State where they live, they can be under a protection measure taken by a court or an administrative authority, or they can be supported by a third party they had designated in advance (through powers of representation') to manage their interests.

Adults may need to manage their assets or real estate located in another country, undergo emergency or planned medical care abroad, or relocate to another country for various reasons.

In those cross-border situations, adults are confronted with the complex and sometimes conflicting rules of Member States. These include deciding which court or other authority competent to take protection measures has jurisdiction, which law applies to their case, and how to recognise or give effect to a decision taken or to powers of representation established abroad. This leads to situations where adults, their families and their representatives experience significant legal uncertainty as to what rules will apply to their case and as to the outcome of the procedures and formalities they need to undertake. To ensure that their protection continues to be effective across borders or that they have access to their rights abroad, they often have to go through long and expensive proceedings. In some instances, their protection and the powers entrusted in their representative are ultimately not recognised, either by courts or by non-judicial actors such as banks, medical staff or real estate agents.

On 13 January 2000, under the auspices of the Hague Conference on Private International Law (HCCH), the intergovernmental organisation whose purpose is 'to work for the progressive unification of the rules of private international law'¹, the Convention on the International Protection of Adults (HCCH 2000 Protection of Adults Convention) was adopted. This Convention provides a comprehensive body of rules on jurisdiction, applicable law, recognition and enforcement of protective measures, and provisions on the law applicable to powers of representation which give effect to such powers in a cross-border context. It also establishes mechanisms of cooperation between the competent authorities of Contracting States and between Central Authorities of Contracting States.

This Convention is widely considered as an efficient and flexible private international law instrument that is fit for purpose at global level. The recent work carried out under the Special Commission on the practical operation of the HCCH 2000 Protection of Adults Convention² will soon provide practitioners with useful tools for its proper application, such as a Practical Handbook.

¹ Article 1 of the [Statute](#) of the Hague Conference.

² <https://www.hcch.net/en/news-archive/details/?varevent=884>

However, only 12 EU Member States are currently party to that Convention³. Ratification of and accession to the HCCH 2000 Protection of Adults Convention by all Member States is a long-standing EU objective.

Since 2008, the HCCH 2000 Protection of Adults Convention has been explicitly endorsed by the Council of the European Union⁴, the European Parliament⁵, and the European Commission⁶. Broad ratification of the HCCH 2000 Protection of Adults Convention by Member States, and beyond, is essential for its effective operation. Parliament has actively supported the ratification of the Convention by all Member States, as well as a possible EU legislative initiative to complement the HCCH 2000 Protection of Adults Convention.

From 5 to 8 December 2018, the Commission and the HCCH organised an international joint conference to promote the ratification of the HCCH 2000 Protection of Adults Convention and examine possible shortcomings that would require further action⁷.

On 3 May 2021, the Ministers of Justice of Czechia, France and Slovenia wrote to the Commission to request that the Commission speed up its preparatory work on a legislative initiative.

In June 2021, Council conclusions⁸ were adopted which, inter alia, invited Member States to ratify the HCCH 2000 Protection of Adults Convention as swiftly as possible and prompted the Commission to consider the possible need for a legal framework within the EU to

³ Belgium, Czechia, Germany, Estonia, Greece, France, Cyprus, Latvia, Malta, Austria, Portugal and Finland.

⁴ In the Council Conclusions ‘Legal Protection for Vulnerable Adults’ (14667/08 (Press 299), 24.X.2008), the Council invited Member States that had not already done so ‘*to begin as quickly as possible or to actively continue with procedures for [...] signature and / or ratification*’ of the HCCH 2000 Protection of Adults Convention and invited Member States ‘*which are still engaged in domestic consultations [with respect to joining the HCCH 2000 Protection of Adults Convention] to conclude those consultations as soon as possible*’. In addition, in its conclusions on the ‘Stockholm Programme – An open and secure Europe serving and protecting citizens’, adopted in 2009, the European Council expressed the wish that Member States join the HCCH 2000 Protection of Adults Convention ‘*as soon as possible*’.

⁵ See ‘Cross-border implications of the legal protection of adults’ (P6_TA(2008)0638), the European Parliament resolution of 18 December 2008 with recommendations to the Commission on cross-border implications of the legal protection of adults (2008/2123(INI)) (2010/C 45 E/13). In paragraphs 1-4, the resolution called for the ratification of the HCCH 2000 Protection of Adults Convention by Member States and requested that the Commission make a legislative proposal on the strengthening of cooperation between Member States, to summarise operational issues and best practices in relation to the HCCH 2000 Protection of Adults Convention, and to assess the possible accession of the European Community as a whole to the Convention. It is to be noted that Parliament’s 2008 Resolution asked the Commission to present a proposal ‘*as soon as sufficient experience of the operation of the Convention has been acquired*’. A further Resolution was adopted by the European Parliament on 1 June 2017 calling on Member States to sign and ratify the HCCH 2000 Protection of Adults Convention and to promote self-determination for adults by introducing into their national law legislation on mandates in anticipation of incapacity.

⁶ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Delivering an area of freedom, security and justice for Europe’s citizens - Action Plan Implementing the Stockholm Programme, Brussels, 20.4.2010, COM(2010) 171 final. Paragraph 13 of the 2010 action plan for implementing the Stockholm Programme, under the heading of ‘Ensuring the protection of fundamental rights / Vulnerable Groups,’ refers to European Union Member States becoming party to the HCCH 2000 Protection of Adults Convention.

⁷ EC-HCCH Joint Conference on the Cross-border Protection of Vulnerable Adults, Brussels, 5-7 December 2018, <https://www.hcch.net/en/news-archive/details/?varevent=654>.

⁸ [Council Conclusions on the protection of vulnerable adults across the European Union](#) (7 June 2021).

facilitate the circulation of protection measures and present, if necessary, legislative proposals.

In 2021-2022, the Portuguese, French and Czech Presidencies organised various events to raise awareness on this issue.

Notwithstanding these activities, the ratification pace of the Convention is still too slow. In some Member States, the draft law implementing the ratification has been pending for years in parliament, or it has not been submitted by the government notwithstanding the conclusion of the preparatory work. Other Member States are applying the Convention partially in practice (in particular the rules on jurisdiction and applicable law) without taking any initiative to formally ratify the Convention. This would imply the appointment of a Central Authority in order to render effective the cooperation among Contracting States.

Against this backdrop, the Commission has decided to present an initiative aimed at authorising those Member States not yet Party to the Convention to ratify or accede to it. Reference to this initiative is made in the Commission Work Programme 2022: *'We will propose measures [...] to strengthen judicial cooperation on the protection of vulnerable adults in cross-border situations.'*

As the HCCH 2000 Protection of Adults Convention is open for signature and ratification to States which were Members of the Hague Conference on Private International Law on 2 October 1999⁹ (Article 53 of the Convention), the following Member States will have to both sign and ratify the Convention: Bulgaria, Spain, Croatia, Hungary, Romania, Slovenia, Slovakia, and Sweden. Conversely, Ireland, Italy, Luxembourg, Netherlands and Poland will only have to ratify the Convention as they have already signed it. Lithuania will have to accede to it, as it has been a Member of the Hague Conference on Private International Law since 23 October 2001.

- **Consistency with existing policy provisions in the policy area**

There is currently no EU legislation on cross-border protection of adults. However, the present proposal is part of a package with a Commission proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures, authentic instruments and powers of representation and cooperation in civil matters relating to the protection of adults. The proposal provides for the application in Member States of some of the rules of the HCCH 2000 Protection of Adults Convention and lays down complementary rules to facilitate an even closer intra-EU cooperation in this area.

The present proposal concerns ratification and accession for those Member States not yet Party to the HCCH 2000 Protection of Adults Convention, which is the only international instrument dealing with private international law issues concerning the cross-border protection of adults.

⁹ Article 53:

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.
- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Both proposals concern private international law, a well-developed policy area within the EU. Indeed, since 2000, the EU has adopted a number of legislative acts in the area of judicial cooperation in civil matters having cross-border implications. However, none of these legislative acts govern the cross-border aspects of legal capacity of persons¹⁰ or the protection of adults who, ‘by reason of an impairment or insufficiency of their personal faculties’¹¹, are not in a position to protect their interests.

The proposed Regulation would apply in Member States, while the HCCH 2000 Protection of Adults Convention would be applicable vis-à-vis non-EU States that are Contracting States to the Convention. Since adults in the EU may have relations in respect of both Member States and non-EU States (for instance owning property there or having personal links there), a coherent private international law framework applicable to the protection of adults in both the EU and non-EU States that are party to the Convention is crucial for ensuring the protection of adults in international situations.

Both proposals are thus complementary to each other and for this reason are presented together.

- **Consistency with other Union policies**

The EU and its Member States are parties to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which, since its adoption in 2006, represents the international foundation for the rights of people with disabilities.

Article 3(c) of the HCCH 2000 Protection of Adults Convention contains provisions allegedly favouring or condoning substituted decision-making measures (mostly because of the use of the term ‘guardianship, curatorship and analogous institutions’). The question has been raised whether this could favour or allow the recognition of measures establishing substituted decision-making rather than supported decision-making, and whether it would infringe the right to autonomy and equality of adults.

The consistency and complementarity of the HCCH 2000 Protection of Adults Convention with the rights laid down in the UNCRPD has been recognised on several occasions, for instance in the Conclusions and Recommendations (conclusions 2 and 3) adopted at the above-mentioned EC-HCCH Joint Conference in 2018¹².

The HCCH 2000 Protection of Adults Convention is a private international law instrument. It is neutral with regard to material law, which does not prescribe any type of measures, and, in its preamble, it puts the interest of the adult and the respect of their dignity and autonomy as primary considerations. By facilitating cross-border cooperation and removing legal and practical barriers, it furthers some important objectives of the UNCRPD. Among these are those of Article 12 on equal recognition before the law and of Article 32 on international cooperation, for which the HCCH 2000 Protection of Adults Convention establishes a system of Central Authorities.

In addition, not all people with a disability are adults in need of a cross-border protection within the meaning of the HCCH 2000 Protection of Adults Convention, but only those who

¹⁰ The only exception is a rule on the capacity of natural persons in the context of cross-border contractual obligations in civil and commercial matters laid down in Article 13 of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

¹¹ Article 1(1) of the HCCH 2000 Protection of Adults Convention.

¹² [88f10f24-81ad-42ac-842c-315025679d40.pdf \(hcch.net\)](https://www.hcch.net/doc/88f10f24-81ad-42ac-842c-315025679d40.pdf)

are not in a position to protect their personal or financial interests. Conversely, not all adults whose psychosocial faculties are diminished are people with disability.

It is also worth recalling that the UNCRPD Committee, in its 2015 report on the implementation of the UNCRPD in the EU, expressed concerns as to barriers faced by people with disabilities when moving from one Member State to another. The Committee recommended that the EU ‘takes immediate action to ensure that all persons with disabilities and their families can enjoy their right to freedom of movement on an equal basis with others’¹³.

A legal study was commissioned by the Special Rapporteur on the rights of persons with disabilities¹⁴, and a related joint statement¹⁵ was made by the Special Rapporteur on the rights of persons with disabilities and the Independent Expert on the enjoyment of all human rights by older persons. These have clarified the issue by concluding that the HCCH 2000 Protection of Adults Convention leaves enough room for interpretation and practical improvements, and it can evolve to reflect the modernisation of national laws. The Special Rapporteur recalls that the HCCH 2000 Protection of Adults Convention contains provisions to avoid any conflict with the UNCRPD and that both instruments can and should supplement each other. The EU and all its Member States have to use the available room for interpretation in such a way as to ensure compliance with that Convention.

When applying the HCCH 2000 Protection of Adults Convention, the Contracting States that are also Parties to the UNCRPD are bound to respect the UNCRPD and the principles set out in it. It is also settled case law of the Court of Justice of the European Union that international conventions form an integral part of Union law so that their implementation must comply with the principle of proportionality, as a general principle of Union law¹⁶.

In March 2021, the Commission adopted the Strategy for the Rights of Persons with Disabilities 2021-2030¹⁷. This addresses in particular the issue of ‘improving access to justice, legal protection, freedom and security’ for people with disabilities. To achieve this outcome, among the various initiatives, it is explicitly stated that *‘the Commission will work with Member States to implement the 2000 Hague Convention on the international protection of vulnerable adults in line with the UNCRPD, including by way of a study on the protection of vulnerable adults in cross-border situations, notably those with intellectual disabilities, to pave the way for its ratification by all Member States’*¹⁸.

The Commission legal study was carried out in 2021¹⁹ and, inter alia, reached the conclusion that the ratification of the HCCH 2000 Protection of Adults Convention by all Member States would address some of the problems linked to the significant gaps and inconsistencies, which exist in the cross-border protection of adults.

¹³ Concluding observations on the initial report of the European Union: Committee on the Rights of Persons with Disabilities, (2015) draft prepared by the Committee.

¹⁴ Study on [‘Interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the UN Convention on the Rights of Persons with Disabilities \(CRPD\)’](#).

¹⁵ [Joint statement by the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, and the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler – Reflections on the Hague Convention \(2000\) on the International Protection of Adults](#), 8 July 2021.

¹⁶ See, e.g., order of 9 November 2021, Case C-255/20, *Agenzia delle dogane e dei monopoli – Ufficio delle Dogane di Gaeta v Punto Nautica Srl*, para. 33, ECLI:EU:C:2021:926.

¹⁷ [Strategy for the rights of persons with disabilities 2021-2030](#)

¹⁸ See paragraph 5.1 of the Strategy.

¹⁹ [Study on the cross-border legal protection of vulnerable adults in the Union](#), Publications Office of the Union(europa.eu)

Once this Decision is adopted by the Council, the HCCH 2000 Protection of Adults Convention will become part of Union law. It may thus be interpreted by the Court of Justice of the European Union in the light both of the general principles of the EU - safeguarding the free movement of people, access to justice, and full respect of fundamental rights - and of the UNCRPD.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal regards the authorisation of certain Member States to ratify or accede to an international convention in the interest of the EU. Judicial cooperation in civil and commercial matters is governed by Article 81 TFEU, which is thus the legal basis of EU competence in this area. Therefore, the applicable legal basis is Article 218(6) of the Treaty on the Functioning of the European Union (TFEU) in conjunction with the substantive legal basis of Article 81(2) TFEU.

Article 81(3) TFEU is not applicable because the cross-border protection of adults is not a family law matter.

The term ‘family law’ within the meaning of Article 81(3) TFEU must be interpreted autonomously regardless of the definition provided for in the national legislation of Member States.

So far, EU legislation has construed the notion rather strictly and has limited it to the rules governing family relationships, such as matrimonial matters, parental responsibilities or maintenance obligations.

It is not uncommon that vulnerable adults benefit from protection provided by family members. In some Member States, the legal protection of vulnerable adults is attributed, as a matter of law, to the spouse or to family members. However, the adult’s family, if indeed the adult has a family, is merely one of the contexts in which protection can be ensured. The involvement of family members is not a necessary requirement, nor is it governed by rules under private international law. Instead, the crucial concern in adult protection is the support provided, and ensuring the adult’s rights to dignity, self-determination, non-discrimination and social inclusion, regardless of his or her family relations.

It is to be noted that the HCCH 2000 Protection of Adults Convention does not contain any reference to family relationships (such as ‘parent’, ‘children’ or ‘spouse’), contrary to the EU Regulations covering family law matters.

The proposed Regulation will complement the HCCH 2000 Protection of Adults Convention and will incorporate some rules of the Convention, in particular those on international jurisdiction and applicable law, making them directly applicable in Member States.

Therefore, pursuant to established jurisprudence of the CJEU, there is a risk that the HCCH 2000 Protection of Adults Convention may affect or alter the scope of the proposed Regulation.

The scope of Union rules may be affected or altered by international commitments where such commitments are concerned with an area which is already covered to a large extent by such rules or in light of foreseeable developments of Union law, as in the present case.²⁰

Therefore, the HCCH 2000 Protection of Adults Convention falls within the exclusive competence of the Union in accordance with Article 3(2) TFEU.

The EU therefore may authorise Member States to become or remain parties to the HCCH 2000 Protection of Adults Convention.

As only States can become parties to the Convention, which does not contain a clause that would allow the EU to become a party, Member States can ratify or accede to it as well as remain parties acting in the Union's interest, pursuant to the settled jurisprudence of the Court of Justice of the European Union²¹.

A similar initiative was already taken in 2008 to authorise certain Member States to ratify or accede to the HCCH 1996 Convention on the Protection of Children²².

By reason of Protocol No 21, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, legal measures adopted in the area of justice do not bind or apply in Ireland. However, once a proposal has been presented in this area, Ireland can notify its wish to take part in the adoption and application of the measure and, once the measure has been adopted, it can notify its wish to accept that measure.

In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

• **Proportionality**

The present proposal is drafted along the lines of already adopted Council Decisions authorising Member States to join an international convention. It does not go beyond what is necessary to achieve the objective of a coherent EU action in the matter of cross-border protection of adults by ensuring, for Member States not yet Party to the Convention, that they ratify or accede to the HCCH 2000 Protection of Adults Convention within a given time frame.

It is also understood that Member States retain their competence as regards regulation of the adoption of rules under substantive law directed at the protection of adults.

The proposal therefore respects the principle of proportionality.

²⁰ See in particular Opinion 1/13 paragraphs 73 and 74 and cited case law.

²¹ Opinion 1/13 of the Court of Justice of the European Union, paragraph 44, and cited jurisprudence.

²² Council Decision of 5 June 2008 authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law, OJ L151, 11.6.2008, p. 36.

- **Choice of the instrument**

As the proposal concerns an international agreement to be ratified and acceded to in the interest of the Union by certain Member States, the only instrument applicable is a Council Decision, pursuant to Article 218(6).

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal, together with the parallel proposal for a Regulation on the matter, was preceded by intense and broad consultations with stakeholders.

The **open public consultation**²³ and the **call for evidence**²⁴ were carried out in early 2022. A majority of respondents, including Member States and professional organisations representing lawyers and notaries, supported an EU initiative that would oblige Member States to ratify the HCCH 2000 Protection of Adults Convention. They also called for an EU instrument supplementing the Convention. One NGO, an umbrella organisation for the protection of the rights of persons with disabilities, expressed concerns regarding the fundamental rights of adults with disabilities, if an EU instrument would favour the circulation of decisions taken in violation of UNCPRD and the fundamental rights of adults with disabilities. This is a recurring question concerning the relationship between the UNCPRD and the HCCH 2000 Protection of Adults Convention, which has been addressed by the study and joint statement mentioned under footnotes 14 and 15.

As part of the consultation strategy, an **informal online meeting with stakeholders** was organised on 29 September 2022. Moreover, on 27 October 2022, the Commission organised an **online meeting with experts from Member States** to provide information about the initiative on the protection of adults and to exchange initial views.

Finally, during the meeting held on 7 and 8 November 2022, the **European Judicial Network in civil and commercial matters** (EJN-civil) was consulted on its possible role in a future initiative.

To sum up, strong support and overall positive feedback on the HCCH 2000 Protection of Adults Convention could be identified in all consultation activities. Furthermore, the consultations showed a practical need, and support by most stakeholders, for additional measures at EU level.

- **Collection and use of expertise**

A **legal study**²⁵ was carried out in 2021. The authors of the study reached the following conclusions: (i) significant gaps and inconsistencies exist in the cross-border protection of vulnerable adults (rules on jurisdiction, recognition of powers of representation, absence of legal certainty and practical problems for authorities); (ii) the general ratification of the HCCH 2000 Protection of Adults Convention in the EU would directly address some of those

²³ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12965-Civil-judicial-cooperation-EU-wide-protection-for-vulnerable-adults_en

²⁴ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12965-Civil-judicial-cooperation-EU-wide-protection-for-vulnerable-adults/public-consultation_en

²⁵ [Study on the cross-border legal protection of vulnerable adults in the Union, Publications Office of the Union \(europa.eu\)](#)

problems, both between Member States and with non-EU States; and (iii) an EU instrument would further strengthen the protection of vulnerable adults and facilitate their lives and the work of responsible authorities.

Additional expertise on the topic of cross-border protection of adults was also gathered in the study accompanying the European Parliament's Legislative Initiative Report²⁶ (2016) and in the European Law Institute Report²⁷ (2020).

- **Impact assessment**

An impact assessment was carried out in 2022 to explore the various policy options available within the EU to improve the cross-border protection of adults and to assess their impact.

As this proposal only concerns the ratification of and accession to the HCCH 2000 Protection of Adults Convention by certain Member States, a more detailed explanation of the findings of the impact assessment will be given in the accompanying proposal for a Regulation. It is appropriate to limit the current analysis to the indication of the final policy choice.

This includes a Regulation complementing the Convention, and the ratification of and accession to the Convention by those Member States not yet Party to it. It would ensure that appropriate Private International Law rules for the protection of adults in cross-border situations would be applicable not only at EU level, but also between Member States and non-EU States. It is also expected that the ratification by all Member States would encourage more non-EU States to join the Convention.

- **Fundamental rights**

The general objective of the proposed action is to protect the fundamental rights of adults in line with Article 6 TFEU, the Charter of Fundamental Rights of the European Union and the UNCRPD.

In cross-border situations, this would entail in particular preventing dispossession or denial of access to the adult's property abroad, ensuring access to justice, and ensuring self-determination and autonomy of the adults.

By harmonising rules of private international law, the HCCH 2000 Protection of Adults Convention connects different legal systems to facilitate, within the scope of the Convention, non-discriminatory respect for the rights of adults, protection of their interests, and the exercise of their legal capacity.

The preamble of the Convention reflects these values: it affirms that respect for both the dignity and the autonomy of the adult are to be primary considerations. Such priorities are also established in the preamble of the UNCRPD.

Under the rules of the Convention, if a measure of protection is taken in one Contracting State by a competent authority, that measure should continue to have effect in another Contracting State, for instance if the adult happens to move from one Contracting State to another. The Convention also includes safeguards that allow for the measures not to be recognised or enforced if, for example, the measure was taken by an authority whose jurisdiction was not based on, or was not in accordance with, one of the grounds provided for by the Convention,

²⁶ [Protection of Vulnerable Adults – European Added Value Assessment](#)

²⁷ [The Protection of Adults in International Situations, report of the European Law Institute.](#)

or if the recognition of the measure would be contrary to the public policy of the requested State²⁸. In this context, non-compliance with the fundamental rights of the adult concerned by the measure could justify refusal of recognition.

4. BUDGETARY IMPLICATIONS

The proposed decision has no budgetary implications for the European Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

As the proposal concerns the authorisation of certain Member States of the European Union to ratify or accede to the HCCH 2000 Protection of Adults Convention, the monitoring of its implementation is primarily aimed at the respect by those Member States of the time frame to ratify or accede to the Convention, in line with the Council Decision.

However, once all Member States are Party to the Convention, it is planned to carry out several actions to raise awareness of the Convention and to ensure its correct application. In addition, coordinated EU positions will be adopted as part of preparation for future Special Commissions on the operation of the Convention; this will allow the EU to monitor the implementation of this instrument by Member States.

²⁸ See Article 22 of the HCCH 2000 Protection of Adults Convention for a list of the grounds available to a competent authority to refuse, on a discretionary basis, recognition and enforcement of a measure.

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authorising Member States to become or remain parties, in the interest of the European Union, to the Convention of 13 January 2000 on the International Protection of Adults

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) in conjunction with Article 218(6), point (a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹,

Whereas:

- (1) The Union has set itself the objective of creating, maintaining and developing an area of freedom, security and justice in full respect of fundamental rights in which the free movement of persons and access to justice are ensured.
- (2) To fulfil this objective, the Union has adopted a number of legislative acts in the area of judicial cooperation in civil matters having cross-border implications. The Union is also Party, in its own right or through its Member States acting in the interest of the Union, to several international Conventions in the same field.
- (3) However, there is no Union legislation in the matter of the cross-border protection of adults, who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests, or who may require that the support in the exercise of their legal capacity provided to them in one Member State continues across the Union.
- (4) Various difficulties may arise for the adults in cross-border situations, including where those adults move to another Member State or when they own property or assets in another Member State. Difficulties may arise for instance where measures taken in one Member State with a view to protecting the adults need to be invoked in another Member State, or where powers of representation granted by the adults to be exercised by their representatives when the adults are not in a position to protect their interests need to be later invoked abroad. Those difficulties can have serious adverse consequences on legal certainty in cross-border dealings and on the rights and wellbeing of the adults and on respect for their dignity. In particular, fundamental rights of the adults, such as access to justice, the right to self-determination and autonomy, the right to property and to free movement, may be negatively affected.
- (5) Uniform private international law rules governing cross-border situations are thus necessary to enhance the protection of fundamental rights of adults with an impairment or insufficiency of their personal faculties. At international level, the Convention of 13 January 2000 on the International Protection of Adults ('HCCCH 2000 Protection of Adults Convention') includes such rules. The Convention provides

¹ OJ C , , p. .

for rules on jurisdiction, applicable law, recognition and enforcement of measures for the protection of those adults, on applicable law for powers of representation and rules on cooperation among authorities of its Contracting Parties.

- (6) Pursuant to the HCCH 2000 Protection of Adults Convention, only sovereign States may be party to it. For that reason, the Union may not conclude that Convention.
- (7) The ratification of and the accession to the HCCH 2000 Protection of Adults Convention by all Member States is a long-standing objective pursued by the European Union.
- (8) To date Belgium, the Czech Republic, Germany, Estonia, Greece, France, Cyprus, Latvia, Malta, Austria, Portugal, and Finland are Party to the HCCH 2000 Protection of Adults Convention. Ireland, Italy, Luxembourg, Netherlands and Poland have only signed it.
- (9) On [...], the Commission submitted a legislative proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of measures, authentic instruments and powers of representation and cooperation in civil matters relating to the protection adults (the ‘proposed Regulation’). The proposal provides for the application of some of the rules of the HCCH 2000 Protection of Adults Convention between Member States and lays down complementary rules in order to facilitate an even closer intra-EU cooperation in this area. The provisions of the proposed Regulation overlap and are in close connection with the HCCH 2000 Protection of Adults Convention.
- (10) For this reason, there is a risk that the HCCH 2000 Protection of Adults Convention may affect or alter the scope of the proposed Regulation. Therefore, the HCCH 2000 Protection of Adults Convention falls within the exclusive competence of the Union in accordance with Article 3(2) of the Treaty on the Functioning of the European Union.
- (11) The Council should therefore authorise the Member States not yet parties to the HCCH 2000 Protection of Adults Convention to sign, ratify, or accede to, the Convention in the interest of the Union, under the conditions set out in this Decision. The Council should also authorise the Member States that are parties to the HCCH 2000 Protection of Adults Convention to remain parties thereto.
- (12) The Union and its Member States are parties to the United Nations Convention on the Rights of Persons with Disabilities (‘UNCRPD’).
- (13) Under the Treaty on European Union and the Treaty on the Functioning of the European Union, the competence to adopt substantive and procedural rules in the area of the protection of adults lies with the Member States. As contracting Parties to the UNCRPD, Member States are to ensure that their national substantive and procedural laws on the treatment of adults are consistent with the human rights obligations provided by the UNCRPD, including the measures of “guardianship” and “curatorship” as well as incapacitation as referred to in Article 3 of the HCCH 2000 Protection of Adults Convention.
- (14) The rules of the HCCH 2000 Protection of Adults Convention should be applied consistently with the human rights obligations under the UNCRPD.
- (15) The non-respect of this obligation should also affect the recognition and enforcement by Member States of measures taken by third countries.
- (16) [[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed

to the Treaty on European Union and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.] OR

- (17) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified[, by letter of ...,] its wish to take part in the adoption and application of this Decision
- (18) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

1. The Council hereby authorises Member States to become or to remain parties to the Convention of 13 January 2000 on the International Protection of Adults ('the Convention'), in the interest of the Union, subject to the conditions set out in Articles 2.
2. The text of the Convention is attached to this Decision.

Article 2

Bulgaria, [Ireland], Spain, Croatia, Italy, Lithuania, Luxembourg, Hungary, the Netherlands, Poland, Romania, Slovenia, Slovakia, and Sweden shall take the necessary steps to deposit their instruments of ratification or accession with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, acting in its capacity as a depositary of the Convention, no later than [24 months after the date of adoption of this Decision].

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President



EUROPEAN
COMMISSION

Brussels, 31.5.2023
COM(2023) 281 final

ANNEX

ANNEX

to the

proposal for a Council Decision

authorising Member States to become or remain parties, in the interest of the European Union, to the Convention of 13 January 2000 on the International Protection of Adults

ANNEX
**CONVENTION ON THE INTERNATIONAL
PROTECTION OF ADULTS**

(Concluded 13 January 2000)

The States signatory to the present Convention,
Considering the need to provide for the protection 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,
Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of adults,
Recalling the importance of international co-operation for the protection of adults,
Affirming that the interests of the adult and respect for his or her dignity and autonomy are to be primary considerations,
Have agreed on the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

- (1) This Convention applies to the protection 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.
- (2) Its objects are –
 - a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the adult;
 - b) to determine which law is to be applied by such authorities in exercising their jurisdiction;
 - c) to determine the law applicable to representation of the adult;
 - d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;
 - e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

Article 2

- (1) For the purposes of this Convention, an adult is a person who has reached the age of 18 years.
- (2) The Convention applies also to measures in respect of an adult who had not reached the age of 18 years at the time the measures were taken.

Article 3

The measures referred to in Article 1 may deal in particular with –

- a) the determination of incapacity and the institution of a protective regime;
- b) the placing of the adult under the protection of a judicial or administrative authority;
- c) guardianship, curatorship and analogous institutions;
- d) the designation and functions of any person or body having charge of the adult's person or property, representing or assisting the adult;
- e) the placement of the adult in an establishment or other place where protection can be provided;
- f) the administration, conservation or disposal of the adult's property;
- g) the authorisation of a specific intervention for the protection of the person or property of the adult.

Article 4

- (1) The Convention does not apply to –
 - a) maintenance obligations;
 - b) the formation, annulment and dissolution of marriage or any similar relationship, as well as legal separation;
 - c) property regimes in respect of marriage or any similar relationship;
 - d) trusts or succession;
 - e) social security;
 - f) public measures of a general nature in matters of health;
 - g) measures taken in respect of a person as a result of penal offences committed by that person;
 - h) decisions on the right of asylum and on immigration;
 - i) measures directed solely to public safety.
- (2) Paragraph 1 does not affect, in respect of the matters referred to therein, the entitlement of a person to act as the representative of the adult.

CHAPTER II – JURISDICTION

Article 5

- (1) The judicial or administrative authorities of the Contracting State of the habitual residence of the adult have jurisdiction to take measures directed to the protection of the adult's person or property.
- (2) In case of a change of the adult's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Article 6

- (1) For adults who are refugees and those who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these adults are present as a result of their displacement have the jurisdiction provided for in Article 5, paragraph 1.
- (2) The provisions of the preceding paragraph also apply to adults whose habitual residence cannot be established.

Article 7

- (1) Except for adults who are refugees or who, due to disturbances occurring in their State of nationality, are internationally displaced, the authorities of a Contracting State of which the adult is a national have jurisdiction to take measures for the protection of the person or property of the adult if they consider that they are in a better position to assess the interests of the adult, and after advising the authorities having jurisdiction under Article 5 or Article 6, paragraph 2.
- (2) This jurisdiction shall not be exercised if the authorities having jurisdiction under Article 5, Article 6, paragraph 2, or Article 8 have informed the authorities of the State of which the adult is a national that they have taken the measures required by the situation or have decided that no measures should be taken or that proceedings are pending before them.
- (3) The measures taken under paragraph 1 shall lapse as soon as the authorities having jurisdiction under Article 5, Article 6, paragraph 2, or Article 8 have taken measures required by the situation or have decided that no measures are to be taken. These authorities shall inform accordingly the authorities which have taken measures in accordance with paragraph 1.

Article 8

- (1) The authorities of a Contracting State having jurisdiction under Article 5 or Article 6, if they consider that such is in the interests of the adult, may, on their own motion or on an application by the authority of another Contracting State, request the authorities of one of the States mentioned in paragraph 2 to take measures for the protection of the person or property of the adult. The request may relate to all or some aspects of such protection.
- (2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are –
 - a) a State of which the adult is a national;
 - b) the State of the preceding habitual residence of the adult;
 - c) a State in which property of the adult is located;
 - d) the State whose authorities have been chosen in writing by the adult to take measures directed to his or her protection;
 - e) the State of the habitual residence of a person close to the adult prepared to undertake his or her protection;
 - f) the State in whose territory the adult is present, with regard to the protection of the person of the adult.
- (3) In case the authority designated pursuant to the preceding paragraphs does not accept its jurisdiction, the authorities of the Contracting State having jurisdiction under Article 5 or Article 6 retain jurisdiction.

Article 9

The authorities of a Contracting State where property of the adult is situated have jurisdiction to take measures of protection concerning that property, to the extent that such measures are compatible with those taken by the authorities having jurisdiction under Articles 5 to 8.

Article 10

- (1) In all cases of urgency, the authorities of any Contracting State in whose territory the adult or property belonging to the adult is present have jurisdiction to take any necessary measures of protection.
- (2) The measures taken under the preceding paragraph with regard to an adult habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 9 have taken the measures required by the situation.
- (3) The measures taken under paragraph 1 with regard to an adult who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.
- (4) The authorities which have taken measures under paragraph 1 shall, if possible, inform the authorities of the Contracting State of the habitual residence of the adult of the measures taken.

Article 11

- (1) By way of exception, the authorities of a Contracting State in whose territory the adult is present have jurisdiction to take measures of a temporary character for the protection of the person of the adult which have a territorial effect limited to the State in question, in so far as such measures are compatible with those already taken by the authorities which have jurisdiction under Articles 5 to 8, and after advising the authorities having jurisdiction under Article 5.
- (2) The measures taken under the preceding paragraph with regard to an adult habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 8 have taken a decision in respect of the measures of protection which may be required by the situation.

Article 12

Subject to Article 7, paragraph 3, the measures taken in application of Articles 5 to 9 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

CHAPTER III – APPLICABLE LAW

Article 13

- (1) In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.
- (2) However, in so far as the protection of the person or the property of the adult requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

Article 14

Where a measure taken in one Contracting State is implemented in another Contracting State, the conditions of its implementation are governed by the law of that other State.

Article 15

- (1) The existence, extent, modification and extinction of 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 interests, are governed by the law of the State of the adult's habitual residence at the time of the agreement or act, unless one of the laws mentioned in paragraph 2 has been designated expressly in writing.
- (2) The States whose laws may be designated are –
 - a) a State of which the adult is a national;
 - b) the State of a former habitual residence of the adult;
 - c) a State in which property of the adult is located, with respect to that property.
- (3) The manner of exercise of such powers of representation is governed by the law of the State in which they are exercised.

Article 16

Where powers of representation referred to in Article 15 are not exercised in a manner sufficient to guarantee the protection of the person or property of the adult, they may be withdrawn or modified by measures taken by an authority having jurisdiction under the Convention. Where such powers of representation are withdrawn or modified, the law referred to in Article 15 should be taken into consideration to the extent possible.

Article 17

- (1) The validity of a transaction entered into between a third party and another person who would be entitled to act as the adult's representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the adult's representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that such capacity was governed by the latter law.
- (2) The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

Article 18

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

Article 19

In this Chapter the term ‘law’ means the law in force in a State other than its choice of law rules.

Article 20

This Chapter does not prevent the application of those provisions of the law of the State in which the adult is to be protected where the application of such provisions is mandatory whatever law would otherwise be applicable.

Article 21

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy.

CHAPTER IV – RECOGNITION AND ENFORCEMENT

Article 22

- (1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.
- (2) Recognition may however be refused –
 - a)* if the measure was taken by an authority whose jurisdiction was not based on, or was not in accordance with, one of the grounds provided for by the provisions of Chapter II;
 - b)* if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the adult having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;
 - c)* if such recognition is manifestly contrary to public policy of the requested State, or conflicts with a provision of the law of that State which is mandatory whatever law would otherwise be applicable;
 - d)* if the measure is incompatible with a later measure taken in a non-Contracting State which would have had jurisdiction under Articles 5 to 9, where this later measure fulfils the requirements for recognition in the requested State;
 - e)* if the procedure provided in Article 33 has not been complied with.

Article 23

Without prejudice to Article 22, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

Article 24

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 25

- (1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.
- (2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.
- (3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 22, paragraph 2.

Article 26

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 27

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law.

CHAPTER V – CO-OPERATION

Article 28

- (1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 29

- (1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

- (2) They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of adults.

Article 30

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to –

- a) facilitate communications, by every means, between the competent authorities in situations to which the Convention applies;
- b) provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of an adult where it appears that the adult may be present and in need of protection within the territory of the requested State.

Article 31

The competent authorities of a Contracting State may encourage, either directly or through other bodies, the use of mediation, conciliation or similar means to achieve agreed solutions for the protection of the person or property of the adult in situations to which the Convention applies.

Article 32

- (1) Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the adult so requires, may request any authority of another Contracting State which has information relevant to the protection of the adult to communicate such information.
- (2) A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.
- (3) The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention.

Article 33

- (1) If an authority having jurisdiction under Articles 5 to 8 contemplates the placement of the adult in an establishment or other place where protection can be provided, and if such placement is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the adult together with the reasons for the proposed placement.
- (2) The decision on the placement may not be made in the requesting State if the Central Authority or other competent authority of the requested State indicates its opposition within a reasonable time.

Article 34

In any case where the adult is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the adult have been taken or are under consideration, if they are informed that the adult's residence has changed to, or that the adult is present in, another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

Article 35

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the adult's person or property in danger, or constitute a serious threat to the liberty or life of a member of the adult's family.

Article 36

- (1) Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.
- (2) Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

Article 37

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

CHAPTER VI – GENERAL PROVISIONS

Article 38

- (1) The authorities of the Contracting State where a measure of protection has been taken or a power of representation confirmed may deliver to the person entrusted with protection of the adult's person or property, on request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred.
- (2) The capacity and powers indicated in the certificate are presumed to be vested in that person as of the date of the certificate, in the absence of proof to the contrary.
- (3) Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 39

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 40

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 41

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 42

Each Contracting State may designate the authorities to which requests under Article 8 and Article 33 are to be addressed.

Article 43

- (1) The designations referred to in Article 28 and Article 42 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law not later than the date of the deposit of the instrument of ratification, acceptance or approval of the Convention or of accession thereto. Any modifications thereof shall also be communicated to the Permanent Bureau.
- (2) The declaration referred to in Article 32, paragraph 2, shall be made to the depositary of the Convention.

Article 44

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the person or property of the adult shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 45

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units –

- a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
- b) any reference to the presence of the adult in that State shall be construed as referring to presence in a territorial unit;
- c) any reference to the location of property of the adult in that State shall be construed as referring to location of property of the adult in a territorial unit;
- d) any reference to the State of which the adult is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the adult has the closest connection;

- e) any reference to the State whose authorities have been chosen by the adult shall be construed
 - as referring to the territorial unit if the adult has chosen the authorities of this territorial unit;
 - as referring to the territorial unit with which the adult has the closest connection if the adult has chosen the authorities of the State without specifying a particular territorial unit within the State;
- f) any reference to the law of a State with which the situation has a substantial connection shall be construed as referring to the law of a territorial unit with which the situation has a substantial connection;
- g) any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure in force in such territorial unit or authority of the territorial unit in which such measure was taken;
- h) any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure in force in such territorial unit or authority of the territorial unit in which recognition or enforcement is sought;
- i) any reference to the State where a measure of protection is to be implemented shall be construed as referring to the territorial unit where the measure is to be implemented;
- j) any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit.

Article 46

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply –

- a) if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;
- b) in the absence of such rules, the law of the relevant territorial unit as defined in Article 45 applies.

Article 47

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply –

- a) if there are rules in force in such a State identifying which among such laws applies, that law applies;
- b) in the absence of such rules, the law of the system or the set of rules of law with which the adult has the closest connection applies.

Article 48

In relations between the Contracting States this Convention replaces the *Convention concernant l'interdiction et les mesures de protection analogues*, signed at The Hague 17 July 1905.

Article 49

- (1) The Convention does not affect any other international instrument to which Contracting States are Parties and which contains provisions on matters governed by this Convention, unless a contrary declaration is made by the States Parties to such instrument.
- (2) This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of adults habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.
- (3) Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.
- (4) The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 50

- (1) The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.
- (2) The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.
- (3) The Convention shall apply from the time of its entry into force in a Contracting State to powers of representation previously granted under conditions corresponding to those set out in Article 15.

Article 51

- (1) Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.
- (2) However, a Contracting State may, by making a reservation in accordance with Article 56, object to the use of either French or English, but not both.

Article 52

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII – FINAL CLAUSES

Article 53

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law on 2 October 1999.
- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 54

- (1) Any other State may accede to the Convention after it has entered into force in accordance with Article 57, paragraph 1.
- (2) The instrument of accession shall be deposited with the depositary.
- (3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b)* of Article 59. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 55

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- (3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 56

- (1) Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 55, make the reservation provided for in Article 51, paragraph 2. No other reservation shall be permitted.
- (2) Any State may at any time withdraw the reservation it has made. The withdrawal shall be notified to the depositary.
- (3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 57

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 53.
- (2) Thereafter the Convention shall enter into force –

- a) for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
- b) for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 54, paragraph 3;
- c) for a territorial unit to which the Convention has been extended in conformity with Article 55, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 58

- (1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.
- (2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

Article 59

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 54 of the following –

- a) the signatures, ratifications, acceptances and approvals referred to in Article 53;
- b) the accessions and objections raised to accessions referred to in Article 54;
- c) the date on which the Convention enters into force in accordance with Article 57;
- d) the declarations referred to in Article 32, paragraph 2, and Article 55;
- e) the agreements referred to in Article 37;
- f) the reservation referred to in Article 51, paragraph 2, and the withdrawal referred to in Article 56, paragraph 2;
- g) the denunciations referred to in Article 58.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 13th day of January, 2000, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law.