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#### NOTE

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From:	the Services of the Commission
To:	Working Party on Civil Law Matters (General Questions)
Subject:	The ratification of/accession to The Hague Convention of 13 January 2000 on the International Protection of Adults by EU Member States and its first application experiences
	- Non-paper by the Services of the Commission <sup>1</sup>

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The purpose of this non-paper is to resume discussions in the Working Group on Civil Law Matters (General Questions) on the process of ratification or accession by EU Member States of The Hague Convention of 13 January 2000 on the International Protection of Adults and gather information on the first application experiences from the Member States which are already Party to it. Already the Stockholm Programme called for a swift ratification of the Convention by the Member States. The Stockholm Action Plan foresaw an evaluation by the Commission by 2014 on the application of the 2000 Hague Convention on the International Protection of Adults, assessing also the need for additional proposals as regards vulnerable adults.

The EU and 25 Member States are parties to the UN Convention on the Rights of Persons with Disabilities (UNCRPD), and the remaining three Member States are finalising the ratification process<sup>2</sup>.

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<sup>1</sup> This document corresponds to the working document by the Services of the Commission which was distributed during the meeting of the Working Party on Civil Law Matters (General Questions) on 7 July 2014.

<sup>2</sup> The EU became a party to the CRPD on 22 January 2011 by virtue of Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities

## **Introduction**

Free movement of persons results in greater mobility of citizens, including those who might be considered as vulnerable, whether as a result of disability, or for example, of age.

Private international law issues concerning, for instance, the management or sale of goods belonging to persons with disabilities resulting from impairments in their personal faculties with barriers in the environment are arising with ever greater frequency. Questions arise such as which law applies and who may represent the adult, and with what powers and what safeguards apply. In these circumstances, it is important to have clear rules concerning the authorities which are competent to take any necessary measures to protect the person or property of the adult. Where adults themselves have organised in advance their protection for the time when they will need support or not be in a position to look after their own interests, such as appointing a representative, it is important that such arrangements will be respected abroad.

## **The Hague Convention of 13 January 2000 on the International Protection of Adults**

The Hague Convention of 13 January 2000 on the international protection of adults provides rules on jurisdiction and applicable law, recognition and enforcement of decisions, and establishes administrative cooperation between states.

The Convention should promote the international circulation of principles and values underlying the United Nations *Convention of 13 December 2006 on the Rights of Persons with Disabilities* (UNCRPD), which entered into force on 3 May 2008, in particular those of Article 12 on equal recognition before the law. One of the general principles of the UNCRPD is the respect for individual autonomy including the freedom to make one's *own choices*. *The UNCRPD recognises the right of persons with disabilities to exercise* legal capacity on equal basis with others and requires State Parties to provide the support they need to exercise legal capacity. The implementation of the Hague Convention is to be made in full respect of the Member States' international obligations under the UNCRPD.

The Convention furthers the adult's self-determination and therefore the individual's right to appoint an agent for his or her protection in the event of a future incapacity (so-called "lasting power of attorney" or "*mandat de protection future*").

In 2008, the Commission supported the French Presidency's initiative in order to make the Convention enter into force and invited the Member States to ratify/accede to it.

The European Parliament Resolution of 18 December 2008 with recommendations to the Commission on cross-border implications of the legal protection of adults also encouraged those Member States which had not yet signed or ratified the 2000 Hague Convention to do so and called on the Commission to monitor experience with the application of the Hague Convention and its implementation in the Member States.<sup>1</sup>

The 2000 Hague Convention has entered into force on 1 January 2009. It has been ratified, beside Switzerland, by 7 EU Member States (Germany, France, United Kingdom (only for Scotland); Estonia, Finland, Czech Republic and Austria.

The following EU Member States have only signed it: Cyprus, Greece, Ireland, Italy, Luxembourg, Netherlands, Poland.

In the Stockholm Programme, endorsed by the Council at its meeting of 30 November and 1 December 2009<sup>2</sup>, Member States were "*encouraged to join the Convention as soon as possible*".

The Stockholm Action Plan adopted by the Commission on 20 April 2010<sup>3</sup> foresaw an evaluation by the Commission by 2014 on the application of the 2000 Hague Convention on the International Protection of Adults, assessing also the need for additional proposals as regards vulnerable adults.

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<sup>1</sup> P6\_TA(2008)0638. The European Parliament also carried out in November 2008 a comparative study on the legal systems of the protection of adults lacking legal capacity. A hearing on *EU law on successions and the protection of vulnerable adults* was organized on 11 February 2014 by the Committee on Legal Affairs of the European Parliament.

<sup>2</sup> Council Document 17024/09, page 16: "*The need for additional proposals as regards vulnerable adults should be assessed in the light of the experience acquired from the application of the 2000 Hague Convention on the International Protection of Adults by the Member States which are parties or which will become parties in the future. The Member States are encouraged to join the Convention as soon as possible*".

<sup>3</sup> COM(2010)171 final.

At its meeting on 10 November 2010 the Working Party on Civil Law Matters (General Questions) discussed briefly as an AOB item at the request of the Czech delegation the situation in the Member States with regard to respectively the ratification of or accession to the 2000 Hague Convention on the International Protection of Adults and the application thereof.

A compilation of the written comments and of the comments made during the meeting on 10 November 2010 can be found in the Annex to Council document 18083/10.

A recent initiative organized by the French *Conseil Supérieur du Notariat* has showed the shortcomings arising from the lack of clear rules of Private International Law to address cross borders issues at European Level in this field, due to the scarce number of EU Member States which have to date ratified the Convention<sup>1</sup>.

### **Consultation of the Member States**

Concerning the application of the Convention, it seems that there is still limited relevant case-law on the subject. This could be explained by the fact that the Convention has only recently entered into force, the low number of Contracting Parties or that it works so well that no further Court intervention is required.

It is therefore necessary to consult the Member States in order to have a clearer picture of the functioning of the Convention-for those which are already a Contracting Party- and of the reasons which have prevented the others to proceed with ratification/accession.

With a view to prepare its assessment on the current state of play and the possible need of additional measures to the 2000 Hague Convention, the Commission has prepared a short questionnaire addressed to the Member States.

Member States are kindly asked to answer to the questionnaire annexed to this non-paper by 30 September 2014.

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<sup>1</sup> Colloquium: "*The mobility and protection of vulnerable adults in Europe: knowledge and recognition of the instruments*", Paris, 15 May 2014.

## ANNEX

### **Part I-Questions for non-Contracting Member States**

#### **A. Reasons for not being a Contracting State**

1) Why is your State not a Contracting State to the 2000 Hague Convention?  
*Please select one or more answers*

The authorities of your State do not see any added value in the Convention (*e.g.*, compared to regimes established under other judicial co-operation treaties) – *please specify:*

Limited number of cases in your State relating to the subject matter

There are legal obstacles in the internal legal system of your State that prevent it from joining the Convention – *please specify:*

There are specific issues arising out of the Convention which dissuade your State from joining the Convention – *please explain:*

You are assessing the interrelationship of the Convention with the UNCRC before joining it – *please explain:*

Your State does not have the means or resources to properly implement the Convention

Joining the Convention has so far not been studied in detail (see also question 2)

Other – *please explain*

## **B. Preparation to ratification/accession**

- 2) Is your State currently studying the 2000 Hague Convention with a view to becoming a Contracting State, or does your State envisage studying it with a view to becoming a Contracting State?
- Yes – please specify (status of the study, possible timeline for joining the Convention, etc.):
- No

## **Part II – Questions for Contracting Member States**

### **A. General operation of the Convention**

- 1) Do you think that the 2000 Hague Convention is a helpful and efficient tool in cross-border cases involving vulnerable adults?
- 2) Does your State consider there to be any positive or problematic aspects of the operation of the Convention?
- 3) Does the operation of the Convention raise any questions in relation to the support oriented framework for the exercise of legal capacity by persons with disabilities included in the UNCPRPD?

### **B. Requests received/sent**

- 3) How many requests have been received by the Central Authority(ies) of your State?
- 4) Please indicate from which States the requests have been received.
- 5) How many requests have been sent by the Central Authority(ies) of your State?
- 6) Please indicate to which States the requests have been addressed.

### **C. Relevant case-law**

- 7) Have any decisions on the interpretation or application of the 2000 Hague Convention been rendered by the judicial authorities of your State?

If yes, please indicate which was the matter at stake and the relevant references.