

**Recommendation CM/Rec(2009)11 of the Committee of Ministers to member states
on principles concerning continuing powers of attorney and
advance directives for incapacity**

REVIEW OF FOLLOW UP BY COUNCIL OF EUROPE MEMBER STATES

**QUESTIONNAIRE
(Full Version)**

Terminology and abbreviations

“the Recommendation” – Council of Europe Ministerial Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity.

“Principle” (with initial capital), unless otherwise indicated – a Principle of the Recommendation.

“law district” – this term refers to individual legal areas of a state where a state is divided into two or more separate individual areas with different legal systems (or different legal systems for the purposes of the subject-matter of this questionnaire).

“CPA” – a continuing power of attorney as defined in the Recommendation - “a mandate given by a capable adult with the purpose that it shall remain in force, or enter into force, in the event of the granter’s incapacity”.

“granter” (as in the Recommendation) - “the person giving the continuing power of attorney”.

“attorney” (as in the Recommendation) - “the person mandated to act on behalf of the granter”.

“advance directives” (as in the Recommendation) – “are instructions given or wishes made by a capable adult concerning issues that may arise in the event of his or her incapacity”.

“autonomous measures” – any measures put in place by a person to be operated in the event of, or in respect of, any impairment of that person’s capacity; including but not limited to continuing powers of attorney and advance directives; including measures put in place (with appropriate support if necessary) by persons with some impairment of capacity who are nevertheless capable of validly putting such measures in place; and including measures for, or including elements of, supported decision-making and/or co-decision-making.

“incapacity” – factual incapability of acting and deciding, in any particular matter, capably and with legal effect; explicitly excluding any form of incapacitation imposed by law which does not match factual incapability; and “capacity” has the narrow meaning of the converse of such factual incapability, and does not extend to the wider meaning of “capacity” to encompass personality, rights and status in law.

“*ex lege* representation” – any automatic or statutory right of representation (such as exists in a number of member states).

Full questionnaire

“UN CRPD” – Convention on the Rights of Persons with Disabilities (New York, 13 December 2006, 2515 UNTS 3).

“Hague 35” – Convention on the International Protection of Adults (the Hague, 13 January 2000, 2600 UNTS 3).

Action

1. Where a member state includes more than one law district (as defined above), a copy of this questionnaire should be completed in respect of each law district.
2. Any queries regarding completion of the questionnaire should be referred to the consultant Adrian D Ward at adw@tcyoung.co.uk.
3. Questions may be referred to by number simply in the form Q1, Q2, etc.
4. All completed questionnaires should be submitted to DGI-CDCJ@coe.int with copy direct to the consultant (see 2 above) by **30 September 2016**.

QUESTIONNAIRE

1. Preliminary

- 1.1. Name of state/law district for which this questionnaire has been completed.
- 1.2. Name and contact details of CDCJ member responsible for this completed questionnaire.
- 1.3. Name and contact details of any other person(s) to whom queries should be addressed.

Principle 1 – promotion of self-determination

2. Promotion of self-determination

- 2.1. Has the Recommendation been translated into any national language(s)? If so, please give details, and (if possible) supply a copy of the translation (or each translation).¹
- 2.2. What steps have been taken to make the Recommendation (including any translations) available within your state/law district?
- 2.3. Is it possible, under the law of your state/law district, for granters to grant a CPA to cover economic and financial matters? YES/NO.
- 2.4. Is it possible, under the law of your state/law district, for granters to grant a CPA to cover health, welfare and other personal matters (or any of the foregoing)? YES/NO.
- 2.5. Does the law of your state/law district permit the issuing of advance directives? YES/NO
- 2.6. If the answer to any of 2.3, 2.4 or 2.5 is NO, are there proposals (or is there pending legislation) to introduce CPAs and advance directives, and by when? YES/NO/WHEN?
- 2.7. If the answer to any of 2.3, 2.4 or 2.5 is YES, are such autonomous measures given priority, in accordance with the principles of self-determination and subsidiarity, over all other measures?
- 2.8. What steps (if any) have been taken within your state/law district to promote self-determination by means of continuing powers of attorney and advance directives, including any (a) by legislation (except as covered above), regulation, official guidance or otherwise, and (b) by publicity, advertising or other promotions? If possible, please supply selected representative copies of relevant material.
- 2.9. Has the effectiveness of steps taken in accordance with Q2.8 been assessed? If so, please provide details of the method and outcome.

¹ As far as possible this questionnaire follows the wording of the Recommendation, so a translation of the Recommendation may assist when answering this questionnaire

Part II – continuing powers of attorney

Principle 3 – content

3. Content of continuing powers of attorney – economic and financial matters

- 3.1. If the answer to 2.3 is YES:
 - 3.1.1. When did the current provisions enter into force?
 - 3.1.2. Are any matters specifically excluded from those which may be dealt with in a continuing power of attorney? Please specify.
 - 3.1.3. Are there proposals (or is there pending legislation) to alter the scope of matters which may be dealt with in a continuing power of attorney?
 - 3.1.4. To what extent, if any, do general powers of attorney automatically have effect as continuing powers of attorney?
- 3.2. If the answer to 2.3 is NO, are there proposals (or is there pending legislation) to introduce continuing powers of attorney to cover economic and financial matters? If so, please give details.

4. Content of continuing powers of attorney – health, welfare and other personal matters

- 4.1. If the answer to 2.4 is YES:
 - 4.1.1. When did the current provisions enter into force?
 - 4.1.2. Are any matters specifically excluded from those which may be dealt with in a continuing power of attorney? Please specify.
 - 4.1.3. Are there proposals (or is there pending legislation) to alter the scope of matters which may be dealt with in a continuing power of attorney?
- 4.2. If the answer to 2.4 is NO, are there proposals (or is there pending legislation) to introduce continuing powers of attorney to cover health, welfare or other personal matters (or any of them)? If so, please give details.
- 4.3. What role (if any) does your state/law district permit attorneys to have in relation to authorisation of deprivations of liberty in terms of Article 5 of ECHR; and subject to what conditions? ²

5. Issues

- 5.1. Have any issues arisen in your state/law district (including but not limited to any issues arising in litigation) regarding the scope and effect of powers contained in continuing powers of attorney?

² The text of Article 5 of ECHR is reproduced in **Appendix I** below.

Principle 4 – appointment of attorney

6. Appointees under continuing powers of attorney

- 6.1. May granters appoint as attorney under a continuing power of attorney any natural person whom the granter considers to be appropriate?
- 6.2. May granters appoint as attorney under a continuing power of attorney any entities other than natural persons whom the granter considers to be appropriate?
- 6.3. Please specify any limitation on the range of persons or entities who may be appointed as attorneys.
- 6.4. Please provide details as to whether more than one attorney may be appointed, and (if so) the extent to which they may be appointed to act jointly, concurrently, separately, or as substitutes.
- 6.5. Please give a general indication of any issues or difficulties which have arisen where there is more than one attorney; the mechanisms available to resolve such issues; and the extent to which such mechanisms have been effective.
- 6.6. Is there a requirement, or alternatively is it permitted, to appoint a supervising attorney (or similar)?
- 6.7. Please provide details of any restrictions which your state/law district has imposed, as being deemed to be necessary for the protection of the granter (in terms of Principle 4.3).
- 6.8. Are there any issues or difficulties which have arisen where there is a sole attorney (and no supervising attorney, where competent) which do not arise, or which arise to a significantly lesser extent, where more than one attorney has been appointed?

Principle 5 – form

7. Form of document

- 7.1. Must all continuing powers of attorney be in writing? YES/NO
- 7.2. May continuing powers of attorney be granted and/or registered electronically? YES/NO. If YES, please provide details.
- 7.3. Is there a general rule that all powers of attorney may enter into force, or shall remain in force, in the event of the granter's incapacity (in other words, is there a general rule that all powers of attorney are continuing powers of attorney as defined in the Recommendation)? YES/NO
- 7.4. If the answer to 7.3 is NO, is it a requirement for all continuing powers of attorney that the document shall explicitly state that it shall enter into force or remain in force in the event of the granter's incapacity?
- 7.5. Does the appointment as attorney require to be accepted in writing by the attorney, and a contract of mandate (or equivalent) thus established, before the attorney is authorised to act?
- 7.6. To what extent are the form and content of continuing powers of attorney specified by law, and to what extent are granters each free to determine their own individual form and content? When answering, please indicate the reasons for the method adopted, and any perceived strengths or weaknesses of the method adopted in that respect.

- 7.7. Can power of attorney documents be presented and executed in forms helpful to people with disabilities, for example in easy-read form?

8. Ensuring validity

- 8.1. What provisions and mechanisms (in addition to those specified in section 7 above) apply to ensure the validity of the continuing power of attorney document?³
- 8.2. Is the validity of the CPA checked at time of granting as to (a) Capacity of the granter? YES/NO, (b) No undue influence? YES/NO, (c) Any other factors? YES/NO, (d) How are these matters assessed? (e) Please provide details and comments.
- 8.3. Do relevant provisions and mechanisms as a whole ensure that your state/law district provides, in relation to the granting of continuing powers of attorney, all of the safeguards required by UN CRPD Article 12.4? Please provide details in support of your answer.⁴

Principle 6 – revocation

9. Revocation – form and safeguards

- 9.1. May a granter who is capable of doing so revoke a continuing power of attorney at any time? YES/NO
- 9.2. Do all of the requirements described in your answers to Q7 and Q8 (except Q7.5 and Q7.6) apply to revocation of a continuing power of attorney? YES/NO. If your answer is NO, please give details.
- 9.3. How are the matters listed in 8.2 assessed in relation to revocations?
- 9.4. Please specify any further or different provisions or mechanisms for revocation.
- 9.5. May a CPA be revoked by a court, or by any other person or entity? YES/NO. If YES, please give details.
- 9.6. Please outline any notable experience of the practical operation of revocations and their requirements.⁵

Principle 7 – entry into force

10. Entry into force

- 10.1. Please state what provisions exist regulating the manner of entry into force of continuing powers of attorney in the event of the granter's incapacity.
- 10.2. What provisions exist as to how incapacity should be determined, and what evidence should be required?
- 10.3. Please state the extent (if any) to which granters are permitted to determine the matters addressed in Q10.1 and Q10.2.

³ Requirements for certification, registration and notification may be dealt with either here or in response to Q11 - Q14.

⁴ Article 12 of UN CRPD is reproduced in **Appendix II** hereto.

⁵ It is understood that in some jurisdictions issues have arisen about protection of attorneys acting in good faith where revocation may take effect before the attorney receives intimation of revocation; protection of third parties transacting in good faith with an attorney following revocation; and so forth.

- 10.4. Must the granter be consulted about/involved in the decision that the CPA should enter into force? YES/NO. If YES, please provide details, including as to how compliance with these requirements is evidenced and recorded.
- 10.5. Is a continuing power of attorney categorised as a species of contract of mandate (or similar), established (and only established) upon acceptance of appointment by the attorney, such acceptance being a prerequisite for entry into force? If so, please confirm the precise categorisation of that contract in the law of your state/law district. If not, please specify the precise categorisation in law of a continuing power of attorney.

Principle 8 – certification, registration, notification and ensuring effectiveness

11. Certification

- 11.1. Please specify any requirements by law for certification of continuing powers of attorney, including the point(s) in the procedural sequence at which it is required, and the matters which must be addressed in the certificate.
- 11.2. Who may certify, and what are the procedural requirements for certification?
- 11.3. Please provide similar information regarding any requirements for certification of revocation.

12. Registration

- 12.1. Please specify the requirements for registration of continuing powers of attorney and related certificates, including the point in the procedural sequence at which registration is required.
- 12.2. Where/with whom is registration effective?
- 12.3. What are the required contents of the register?
- 12.4. To what extent are the contents of the register publicly available, or alternatively available subject to what restrictions?
- 12.5. Please provide similar information in relation to registration of revocations.

13. Notification

- 13.1. What are the requirements for notification, including at what points in the procedural sequence or upon what events, to whom, and by whom?

14. General

- 14.1. Insofar as not covered above, please specify the requirements and systems for certification, registration and/or notification when a continuing power of attorney is granted, revoked, enters into force or terminates.

15. Ensuring effectiveness

- 15.1. How is the acceptance of the CPA by third parties, and the effectiveness of the CPA in dealings by the attorney with third parties, ensured?

Principle 9 – preservation of capacity

16. Effect upon capacity

- 16.1. Does the law of your state/law district explicitly provide that the entry into force of a continuing power of attorney does not as such affect the legal capacity of the granter?
- 16.2. To what extent (if any) may the attorney act in matters for which the granter has capacity?
- 16.3. To what extent (if any) may the granter continue to act, or alternatively may not act, after entry into force of powers in relation to those matters contained in a continuing power of attorney?
- 16.4. How does the law of your state/law district resolve contradictory acts and/or decisions (or purported acts and/or decisions) of the granter and of the attorney?

Principle 10 – role of the attorney

17. Role of the attorney

- 17.1. Is the attorney required to act in accordance with the continuing power of attorney and in the interests of the granter? YES/NO If YES, please state the principles or standards with which the attorney must comply.
- 17.2. What (if any) requirements are there upon the attorney to inform and consult the granter on an ongoing basis?
- 17.3. To what extent (if any) is the attorney required to ascertain and take account of the past and present wishes and feelings of the granter?
- 17.4. To what extent (if any) is the attorney explicitly required to give due respect to the past and present wishes and feelings of the granter; and to respect the rights, will and preferences of the granter (in terms of Article 12 of UN CRPD); and what (if any) rules or principles of law apply in the event that there is conflict between (a) the attorney's view of what is in the interests of the granter and (b) the past and present wishes and feelings of the granter, the will and preferences of the granter, or (in absence of direct evidence of the will and preferences of the granter) the best interpretation of the will and preferences of the granter?
- 17.5. Is an attorney acting in respect of the granter's economic and financial matters required, as far as possible, to keep those matters separate from the attorney's own?
- 17.6. Is the attorney required to keep sufficient records in order to demonstrate the proper exercise of the attorney's mandate?
- 17.7. May the attorney be reimbursed for out-of-pocket costs incurred in the performance of the attorney's duties? YES/NO

- 17.8. May the attorney be paid for acting as attorney? YES/NO. If YES, in what circumstances and subject to what conditions may the attorney be paid?

Principle 11 – conflict of interest

18. Conflict of interest

- 18.1. Please specify what (if any) provisions exist to regulate conflicts between the granter's and the attorney's interests.

Principle 12 – supervision

19. Supervision

- 19.1. Does the law of your state/law district permit the granter to appoint a third party to supervise the attorney?
- 19.2. Is there a system of supervision under which a competent authority is empowered to investigate? If so:
- 19.2.1. Does the competent authority have power to intervene when an attorney is not acting in accordance with the continuing power of attorney, or is not acting in the interests of the granter?
- 19.2.2. Does such intervention include power to terminate the continuing power of attorney in part or in whole?
- 19.2.3. May the competent authority act on request by any person?
- 19.2.4. May the competent authority act on its own motion?
- 19.2.5. What is the competent authority or, if more than one, what are the competent authorities and what are their respective roles?
- 19.2.6. (a) What is the threshold to permit the competent authority to interfere with an act or decision of the attorney? For example, must it be clear that the attorney has acted improperly, or may the competent authority intervene merely because it disagrees? (b) If the competent authority intervenes, must it comply with the same principles or standards as are applicable at Q17.1?

Principle 13 – termination

20. Termination

- 20.1. What are the circumstances under which, by law, a continuing power of attorney ceases to have effect?
- 20.2. Is a competent authority required to consider which measures of protection might be taken, where a continuing power of attorney ceases to have effect in part or in whole?
- 20.3. Is the competent authority, or are the competent authorities, for this purpose the same as per Q19.2.5? YES/NO. If NO, please give details.

Principles 3–13: general

21. Powers of attorney – general

- 21.1. Are adequate legal and other services available to advise and assist granters? Are they available on a legally aided basis where necessary?
- 21.2. Are legal and other services available to advise and assist attorneys? Are they available on a legally aided basis where necessary?
- 21.3. What is the practical experience of the operation of Principles 3–13 inclusive, and in particular what (if any) particular issues have been identified?

Part III – advance directives

Principle 14 – content

22. Content of advance directives

- 22.1. If your answer to question 2.5 was YES, may advance directives apply:
 - 22.1.1. to health, welfare and other personal matters (if only some of these, specify which)?
 - 22.1.2. to economic and financial matters?
 - 22.1.3. to the choice of a guardian or equivalent, should one be appointed?
 - 22.1.4. To any other matter(s)?

Principle 15 – effect

23. Effect of advance directives

- 23.1. To what extent (if any) do advance directives have binding effect ?
- 23.2. Where advance directives do not have binding effect, must they be treated as statements of wishes and be given due respect as such ?
- 23.3. What provisions apply to situations that arise in the event of a substantial change in circumstances following issue of an advance directive ?

Principle 16 – form

24. Form of advance directives

- 24.1. To what extent do advance directives, or certain types of advance directives, require to be made or recorded in writing in order to have binding effect? YES/NO. If YES, but this applies only to certain types, please specify which types.

- 24.2. What other provisions and mechanisms are required to ensure the validity and effectiveness of advance directives intended to have binding effect?
- 24.3. Are there different forms of advance directives (or equivalent) for different purposes, e.g. for mental health purposes and for other purposes?

Principle 17 – revocation

25. Revocation of advance directives

- 25.1. Is an advance directive revocable at any time and without any formalities?

Principles 14-17 – general

26. Advance directives – general

- 26.1. What is the general experience of operation of advance directives, and what (if any) particular issues have arisen?
- 26.2. Except insofar as answered above, what safeguards exist in relation to advance directives to ensure compliance with Article 12.4 of UN CRPD?

The Recommendation – general

The remaining questions below apply to all autonomous measures to which the Recommendation relates, that is to say to continuing powers of attorney and to advance directives, and to equivalents by any name. Where answers are different for different categories of autonomous measures, please specify. Optionally, answers may be included in respect of any other categories of autonomous measure, beyond those to which the Recommendation relates.

27. Statistics

- 27.1. What statistics are available for uptake and use of autonomous measures over the last decade? If statistics are available, please provide them (if possible) on a year-by-year basis, specifying the date(s) of relevant year-end(s) for this purpose.
- 27.2. To permit accurate comparisons, please specify the event(s) to which the statistics relate. For example, if figures are provided for registrations of continuing powers of attorney, do these relate to registration upon grant, or registration upon entry into force, or both?

28. Cross-border issues

- 28.1. Has your state/law district experienced significant cross-border issues:
- 28.1.1. between Contracting States under Hague 35;
- 28.1.2. between a Contracting State on the one hand and a Non-Contracting State on the other;
- 28.1.3. between Non-Contracting States?
- 28.2. Has your state/law district ratified Hague 35? If not, when is it expected that your state/law district will ratify Hague 35?
- 28.3. Would it be helpful to the citizens of your state/law district for Articles 22 and 23 of Hague 35 (or provisions equivalent to those of Article 22 and Article 23 of Hague 35) to apply to continuing powers of attorney, and (if so) to do so on a Europe-wide basis regardless of ratification of Hague 35?⁶
- 28.4. Would it be helpful to the citizens of your state/law district for standard Europe-wide certificates equivalent to those provided for in Article 38 of Hague 35 to have effect explicitly in relation to continuing powers of attorney on a Europe-wide basis? ⁷

29. Inter-relationship with other measures

- 29.1. What is the experience within your state/law district of the inter-relationship between (a) autonomous measures governed by the Recommendation and (b) the range of other measures for the protection of incapable adults?

⁶ Article 22 of Hague 35 provides that measures to which it applies (which hitherto have been understood not to include powers of attorney) should be recognised by operation of law in other states, subject to certain specified grounds on which recognition may be refused. Article 23 provides that any interested party may request a decision from a state's competent authorities on the recognition or non-recognition of a measure taken in another Contracting State. The full texts of Articles 22 and 23 are reproduced in **Appendix III** below.

⁷ The full text of Article 38 is reproduced in **Appendix III** below.

29.2. In particular:

- 29.2.1. Are there measures which to a degree serve an equivalent purpose to continuing powers of attorney, such as appointing a “person of trust” or (in accordance with Principle 14 or otherwise) deciding the choice of guardian (or equivalent) should a guardian ever be necessary?
- 29.2.2. Are there any automatic powers of *ex lege* representation applicable when capacity is impaired, and if so how do such provisions inter-relate with continuing powers of attorney, with advance directives, or with any other autonomous measures?

30. Learning from experience

- 30.1. Are there ways in which your state/law district believes that its own provisions regarding continuing powers of attorney and/or advance directives could be improved? If so, please specify.
- 30.2. Does your state/law district have (a) legal provisions, procedures and guidance, or practical experience, which would be likely to be helpful to other states/law districts; and does it have (b) knowledge or experience of problems or dangers which could helpfully be drawn to the attention of other states/law districts? In either case, please specify.
- 30.3. Was the Recommendation helpful in developing provision of continuing powers of attorney and advance directives, and in encouraging appropriate use of them?
- 30.4. Has the task of completing this questionnaire helped focus any needs within your state/law district for further action (including but not limited to legislative or regulatory action) to encourage citizens to grant continuing powers of attorney and (where appropriate) advance directives?

APPENDIX I

ARTICLE 5 OF ECHR

Article 5 – Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a. the lawful detention of a person after conviction by a competent court;
 - b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

APPENDIX II

ARTICLE 12 OF UN CRPD

Article 12 – Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

APPENDIX III

ARTICLES 22, 23 AND 38 OF HAGUE 35

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 required 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 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.