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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: SWD(2023) 156 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults and 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

Delegations will find attached document SWD(2023) 156 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a

Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults

and

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

{COM(2023) 280 final} - {SEC(2023) 208 final} - {SWD(2023) 154 final} -
{SWD(2023) 155 final} - {COM(2023) 281 final}

1. NEED FOR ACTION

1.1 What is the problem and what are its causes and consequences?

Vulnerable adults are people above 18 who are not in a position to protect their financial or personal interests because of an impairment or insufficiency of their personal faculties. The number of vulnerable adults in the EU is increasing continuously due to the growing number of people with disabilities, as well as the ageing of the population. Depending on the national legislation of the Member State where they live, they can be placed under a protection measure by a court or administrative decision, or supported by a third party they had designated in advance (through ‘powers of representation’) to manage their interest.

This growing vulnerability, combined with the increasing mobility of people in the EU, give rise to many issues that vulnerable adults may face in cross-border situations. For instance, 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 the absence of statistics, the number of vulnerable adults in cross-border situations was estimated between 145 000 and 780 000.

In those cross-border situations, vulnerable adults are confronted with the complex and sometimes conflicting rules of Member States on how to decide which court has jurisdiction, which law applies to their case, and how to give effect to a decision taken or powers of representation established abroad. At the same time, in cross-border cases, courts and other public authorities in charge of the protection are confronted with language barriers, cumbersome paper communication, lack of cooperation with other Member State authorities and lack of information on other Member States’ legal systems. This leads to situations where vulnerable adults, their families and their representatives experience significant legal uncertainty as to what rules will apply to their case, the outcome of the procedures and formalities they need to carry out. To ensure that their protection continues 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 to their representative are ultimately not recognised, either by courts or by non-judicial actors like banks, medical staff or real estate agents.

An international instrument, [*the Convention of 13 January 2000 on the International Protection of Adults*](#) (‘HCCH Convention’) provides some solutions to the problems described. It lays down rules concerning jurisdiction and applicable law in matters concerning vulnerable adults and rules for the recognition of measures in this area, and sets up cooperation mechanisms among its contracting parties. However, only 11 Member States are party to the HCCH Convention. There is no EU legislation harmonising the rules on the protection of adults in cross-border cases.

The problems described above for vulnerable adults in cross-border cases may severely curtail their fundamental rights (including the right of autonomy, access to justice, property and freedom of movement), possibly in contradiction with the [*UN Convention on the rights of persons with disability*](#), to which the EU and all Member States are party. In addition, the problems result in discontinuous protection across the EU borders and affect the health and wellbeing of the adults concerned, causing them major psychological distress, while perpetuating inequalities. Under the current situation, these problems also affect public authorities and courts, which experience additional workload and increased legal complexity in such cases.

1.2 What should be achieved?

The **general objective** of the EU action would be to protect rights, including fundamental rights of vulnerable adults. This would be achieved through the following **specific objectives**: (i) to increase legal certainty for the general public and public authorities involved; (ii) to facilitate the cross-border recognition of protection measures and powers of representation; and (iii) to make proceedings faster and less expensive.

2. SOLUTIONS

2.1 What are the options to achieve those objectives?

Based on Article 81(2) of the Treaty on the Functioning of the European Union on the adoption of measures concerning cross-border cases in civil and commercial matters, the EU has competence to act on the above-described problems that adults experience in cross-border cases.

The following policy options have been considered:

- **Option 1:** Baseline scenario
- **Option 2:** Council decision obliging Member States to ratify the Convention within a certain timeframe
- **Option 3:** EU regulation on the protection of adults
- **Option 4:** A combination of options 3 and 4 (a Council decision and an EU regulation).

2.2 What is the preferred option?

The preferred option is option 4, which is the only option fully addressing the problems arising in cross-border cases. This option would allow the adoption of: (i) a common set of rules (based on the provisions of the HCCH Convention) applicable to all Member States and (through the HCCH Convention itself) also to other contracting states of the Convention outside the EU; and (ii) rules allowing closer, modernised and simplified cooperation within the EU, based on the principle of mutual trust. A European certificate of representation would be created, providing a single document that prove one's powers to represent an adult abroad both vis-à-vis public authorities and non-judicial actors and would thus help to ensure that the protection granted in one Member State on the basis of a protection measure or confirmed powers of representation would be respected abroad. Cooperation in this field would be digitalised and language barriers would be alleviated.

3. IMPACTS OF THE PREFERRED OPTION

3.1 Benefits of the preferred option

Adopting common rules and closer cooperation within the EU would ensure continuity of the support for vulnerable adults in cross-border situations for all purposes. It would guarantee their equal access to justice, ensure they can manage their assets or property abroad, and ensure that their medical care is continued. In addition, the recognition of the arrangements made in advance (powers of representation) would safeguard their autonomy and avoid the need to go to court. The preferred option would thus have a positive impact on the **protection of the fundamental rights of vulnerable adults** in cross-border situations and other **positive legal impacts**. Policy option 4 would be the most effective in addressing the problems of legal uncertainty, costly and lengthy proceedings, and the non-recognition of protection measures and powers of representation abroad. This option would therefore best achieve the policy objectives of the initiative.

The preferred option would also have a positive **social impact** as it would benefit vulnerable adults' wellbeing, health, inclusion and equality.

Through the adoption of common EU rules, the preferred option would **simplify and speed up procedures**. This would result in significant savings in terms of costs, time and burden for both adults in cross-border situations and for Member States' public authorities. The total savings under option 4 on the costs related to proceedings was estimated between EUR 2.4 and 2.5 billion.

The macroeconomic and environmental impacts of the preferred option would not be significant.

3.2 Costs of the preferred option

The preferred option would not generate any costs for vulnerable adults in cross-border situations.

The costs that the preferred option would generate for Member States would be moderate and largely outweighed by the efficiency gains (costs savings generated through the simplification of procedures) under the preferred option.

3.3 Subsidiarity and complementarity of the action at EU level

Divergences in Member States' rules applying to cross-border cases and the lack of cooperation between authorities lead to legal uncertainty, long and costly proceedings, and non-recognition of protection measures and powers of representation. These problems require the adoption of common rules, and cannot be solved by Member States acting on their own. The objectives of the initiative would therefore be better achieved at EU level, in accordance with the principle of subsidiarity.

The initiative would also respect the principle of proportionality. By connecting legal systems, the initiative would only resolve difficulties in cross-border situations and would not interfere with the Member States' competence to adopt national substantive legislation on the protection of adults, including the type of measures available, the existence, extent and modification of powers of representation, and the procedural rules applying to the manner of exercise or implementation of the protection. The legislation would not go beyond what is necessary to achieve the objectives of the initiative.