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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	REGULATORY SCRUTINY BOARD OPINION Cross-border protection of vulnerable adults

Delegations will find attached document SEC(2023) 208 final.

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REGULATORY SCRUTINY BOARD OPINION

Cross-border protection of vulnerable adults

{ COM(2023) 280-281 }

{ SWD(2023) 155-156 }



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: Impact assessment / Cross-border protection of vulnerable adults

Overall opinion: POSITIVE

(A) Policy context

The protection of vulnerable adults in the international context is governed by the Hague Convention of 2000 on the international protection of adults. There is currently no EU legislation harmonising the rules for cross-border protection of vulnerable adults, who are dependent on others on issues such as their health, welfare and property.

The varying rules across the EU create difficulties in the protection of vulnerable adults in cross-border situations, which may occur, for instance, when people move or own assets abroad. The report aims to assess the problems arising for vulnerable adults in the current context and propose measures to protect their fundamental rights.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

- (1) The policy options are not alternative measures but different legal delivery instruments for the specific measures envisaged. There is no comparative assessment of these measures against other alternative policy choices.

(C) What to improve

(1) The report should explain why other options were not considered in depth – such as a Directive, a ‘staged’ approach, Commission guidance – but were discarded from the outset. It should explain why the actions and measures proposed in the legislative proposal are presented as a single package without real alternatives. Given the challenges experienced in the implementation of the Hague Convention on International Protection of Vulnerable Adults, in the EU context, the option to make the Convention mandatory should be better justified. There should be a clearer explanation of the key differences between options 3 and 4. The articulation between the proposed legislation and the Hague Convention should be set out clearly.

This opinion concerns a draft impact assessment which may differ from the final version.

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<p>(2) For the criterion of effectiveness, the scoring of the options for legal certainty should be better explained, also in relation to the preceding analysis of legal impacts. For the criterion of coherence, the report should be explicit on the relevant legal and policy areas on which the options are scored, both within the EU and internationally.</p> <p>(3) The report should explain more thoroughly the reasons for the low uptake of the Convention among EU Member States and internationally. It should assess to what extent this low uptake is linked to the limited effectiveness of the Convention and/or the scale of the problem. The report should detail the effects of the Convention in contracting states compared to non-signatories and distinguish the scale of the problems in those states where the Convention is in force. This analysis should be coherent with the need for EU action as well as with the proposed option to make the Convention mandatory.</p> <p>(4) The social and legal impacts should be better distinguished for each option and be consistent with the scoring in the options' comparison. The report should explain how the digitalisation of justice, irrespective of the current initiative, differentiates the options. The significance of the international dimension of the Convention should be better presented, also in relation to the potential influence of the EU to increase the Convention adoption internationally.</p> <p>(5) The report should better explain the optional nature of the certificate of representation in the legislative proposal, considering the shortcomings of the existing optional certificate under the Convention.</p> <p>(6) The cost saving estimates within the One In: One Out approach should be better explained including the methodological approach and the assumptions.</p> <p>(7) The indicators for future monitoring and evaluation should be more specific and linked to SMART objectives. The success criteria should be further elaborated and the timing of the evaluation should be made specific.</p> <p>The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.</p> <p><i>Some more technical comments have been sent directly to the author DG.</i></p>
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<p><u>(D) Conclusion</u></p> <p>The DG may proceed with the initiative.</p> <p>The DG must take these recommendations into account before launching the interservice consultation.</p> <p>If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.</p>	
Full title	Initiative to enhance the legal protection of vulnerable adults in cross-border situations in the European Union in civil matters
Reference number	PLAN/2021/10564
Submitted to RSB on	13 December 2022
Date of RSB meeting	Written procedure

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Direct benefits		
Increased legal certainty	Not quantifiable	Beneficiaries: adults*, their families and their representatives, public authorities of the Member States, private actors (financial institutions and other economic actors).
Increased protection of the fundamental rights of vulnerable adults, including autonomy, access to justice, right to free movement, right to property, and equal treatment	Not quantifiable	
Cost savings on procedural costs* of proceedings (recognition, transfer of jurisdiction)	Total cost reduction for vulnerable adults and their representatives amount to estimated EUR 2.6 billion, as compared to the baseline	Beneficiaries: adults*, their families and their representatives.
Quicker procedures through the harmonised set of PIL rules*	Not quantifiable	Beneficiaries: adults*, their families and their representatives, and public authorities of the Member States.
Facilitated cross-border access to reliable information	Not quantifiable	Beneficiaries: public authorities. They would easily access to the content of the substantial and procedural rules of other Member States through different sources (Central Authorities*, e-Justice Portal*, EJN-civil*). They would also access to the information on the existence of a protection abroad (interconnection of Registers)
Swift and secure cooperation between authorities.	Not quantifiable	Beneficiaries: adults*, their families and their representatives, public authorities of the Member States.
Indirect benefits		
Promotion of equality and non-discrimination in the EU	Not quantifiable	People with disabilities or temporary mental health problems suffer from various forms of discrimination in the EU: the initiative would indirectly reduce inequalities between them and the rest of the population.

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Increased wellbeing of vulnerable adults	Not quantifiable	Beneficiaries: vulnerable adults and their families. The current legal uncertainty and administrative burden may cause emotional distress and have a negative effect on the (psychological) wellbeing of vulnerable adults. The Regulation stands to tackle the existing problems, thereby improving their wellbeing.
Positive impact on the right to free movement	Not quantifiable	Beneficiaries: vulnerable adults and their family/representatives. The initiative would guarantee that all adults, regardless of their incapacity, age or health issues can be supported when they cross borders. This would reassure them and remove legal administrative barriers that may otherwise discourage them from moving or travelling abroad.
Administrative cost savings related to the 'one in, one out' approach*		
Reduced administrative costs for vulnerable adults, their families and legal representatives	Total cost savings for vulnerable adults in a cross-border cases related to the 'one in, one out' approach amount to approximately 1.3 billion over the period of 10 years under the PO4 as compared to the baseline. These cost savings concern all vulnerable adults in a cross-border case and are one-off and aggregate, not annual.	

Overview of costs – Preferred Option

		Vulnerable adults		Administrations	
		One-off	Recurrent	One-off	Recurrent
Action (a)	Direct adjustment costs			Average cost of EUR 304 000 per Member State for setting up a national interoperable register. Minor adjustment costs borne by MS for : - the adjustment to new rules in the legislation and to the issuance of ECR - training of staff as regards the new rules - information campaigns addressed to the public and legal practitioners	Yearly average maintenance cost of EUR 204 000 for maintaining the national registers. Minor adjustment costs borne by MS related to training for staff about the Regulation and related new developments and digitalisation of the procedures
	Direct administrative costs				

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	Direct regulatory fees and charges				
	Direct enforcement costs				Negligible costs (related to monitoring of the operation of the Regulation and judicial cooperation)
Total	Direct adjustment costs				
	Indirect adjustment costs				
	Administrative costs (for offsetting)				