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PROPOSAL

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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 1 June 2023 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2023) 280 final |
| Subject: | 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 |

Delegations will find attached document COM(2023) 280 final.

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Brussels, 31.5.2023
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2023/0169 (COD)

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**

{SEC(2023) 208 final} - {SWD(2023) 154 final} - {SWD(2023) 155 final} -
{SWD(2023) 156 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.

The number of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests (hereinafter ‘adults’) in the EU is increasing continuously. This is due to the ageing of the population and the subsequent incidence of age-related illnesses, as well as the growing number of persons 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 supported by a third party they have appointed in advance (through ‘powers of representation’) to manage their interests.

This growing number of adults who require support with decision-making combined with the increasing mobility of people in the EU gives rise to many issues faced by adults 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 adults placed under a protection measure by a judicial or administrative authority in cross-border situations in the EU is estimated to be between 145 000 and 780 000¹.

In those cross-border situations, adults are confronted with the complex and sometimes conflicting private international law rules of Member States. Those rules determine which court or other authority competent to take protection measures (hereinafter ‘authority’) has jurisdiction, which law applies to their case, and how to recognise or give effect to a decision taken or 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 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 not recognised in the end, either by foreign courts or by non-judicial actors like banks, medical staff or real estate agents.

Under the auspices of The Hague Conference on Private International Law (HCCH), the Convention of 13 January 2000 on the International Protection of Adults (HCCH 2000 Protection of Adults Convention) was adopted that addresses some of these difficulties. The Convention provides a comprehensive body of rules on international jurisdiction, applicable law, recognition and enforcement of protective measures, as well as provisions on powers of representation. It also sets out mechanisms for cooperation between the authorities and Central Authorities of the countries that have ratified the Convention (Contracting Parties). This Convention is unanimously considered as an efficient private international law instrument that is fit for purpose at global level.

¹ The basis for these figures includes 2020 Eurostat demographic data on the mobility of the EU population and the estimates and/or data on the number of adults under a protection measure in Member States. For details, see the impact assessment accompanying the proposal

The ratification of the HCCH 2000 Protection of Adults Convention by Member States and beyond is essential for its effective operation. However, only 12 Member States are currently party to that Convention.

Ratification by all Member States of the HCCH 2000 Protection of Adults Convention (or accession to it) is a long-standing objective of the EU. Since 2008, the HCCH 2000 Protection of Adults Convention has been explicitly endorsed by the Council of the European Union, the European Parliament, and the European Commission. The European Parliament has actively supported not only the ratification of the Convention by all Member States but also a possible EU legislative initiative in the field of protection of adults to supplement the Convention.

At EU level, more than 20 EU regulations have been adopted to harmonise the private international law rules, and as a result many barriers in judicial cooperation among Member States have been removed based on the principle of mutual trust. However, there is no instrument governing judicial cooperation in the field of the protection of adults between Member States.

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

The present proposal is a part of a package that also contains a Commission proposal for a Council Decision authorising 14 Member States which are not Contracting Parties to the Convention to become parties, in the interest of the European Union, to the HCCH 2000 Protection of Adults Convention.

This will lay down common private international law rules in the EU applied by the Member States authorities with non-EU countries that are parties to the Convention. This will foster the rights of adults beyond EU's borders.

For relations between Member States, this proposal for a Regulation takes over the rules set out in the HCCH 2000 Protection of Adults Convention on jurisdiction and applicable law by making a direct reference to the corresponding provisions of the Convention. In other areas, the proposal for a Regulation builds on the Convention to further simplify its rules and improve efficiency in cooperation between Member States. More simplification and improved cooperation in the EU are also facilitated by the introduction of digitalised tools and a European Certificate of Representation in the Regulation.

The added value of the proposed Regulation is thus the simplification and modernisation of the rules included in the Convention for the EU's circumstances and the strengthening of cooperation among Member States in the area of the protection of adults. While the rules in the Convention are aimed at a global application by countries with different legal systems in general and on the protection of adults in particular, the Regulation would be able to establish more streamlined rules and closer cooperation based on the principle of mutual trust among Member States and drawing on the experience of harmonising other areas of cross-border civil justice in the EU.

It follows that the proposed Regulation would apply among Member States, while the HCCH 2000 Protection of Adults Convention would be applicable in relation to non-EU countries that are Contracting Parties to the Convention. Adults in the EU may have ties with both Member States and non-EU countries (for instance owning property there or having personal links there). Therefore, a coherent private international law framework applicable to the protection of adults both in the EU and in relation to non-EU countries that are party to the Convention is crucial for ensuring the protection of adults in international situations.

Both proposals for a Regulation and a Council Decision are 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, is the international cornerstone of the rights of persons with disabilities.

The consistency and the positive interplay of the rules laid down in the HCCH 2000 Protection of Adults Convention with the rights enshrined in the UNCRPD has been recognised on several occasions. For instance, a legal study commissioned by the UN Special Rapporteur on the rights of persons with disabilities² and the related joint statement 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 have clarified the issue by concluding that the HCCH 2000 Protection of Adults Convention leaves enough room for interpretation and practical improvements and can evolve to reflect the modernisation of national laws.

In addition, in March 2021, the European Commission adopted the Strategy for the Rights of Persons with Disabilities 2021-2030. With this strategy, the Commission aims to improve the lives of persons with disabilities in Europe and around the world. In particular, the Strategy addresses the issue of ‘Improving access to justice, legal protection, freedom and security’ for persons with disabilities. The implementation of the HCCH 2000 Protection of Adults Convention in line with the UNCRPD is one of the objectives of the strategy. For this purpose, a legal study was conducted in 2021 and concluded that an EU initiative on the cross-border protection of adults would safeguard the rights of person with disabilities who need support in protecting their interests. The legal study concluded that, in addition to the ratification of the HCCH 2000 Protection of Adults Convention, an EU regulation improving and simplifying judicial cooperation in the EU would significantly improve the rights of adults.

This proposal is a significant step forward for the respect of the right to autonomy enshrined in the UNCRPD because it will considerably facilitate the circulation of powers of representation granted in advance by an adult for a time when the adult will not be in a position to protect their interests. In particular, this proposal provides for the acceptance of authentic instruments to swiftly recognise their evidentiary effect in the EU and creates a European Certificate of Representation so that representatives can easily prove the nature and extent of their powers across borders.

Finally, this proposal also builds on the previous Commission initiatives on the digitalisation of judicial cooperation. In its Communication of 2 December 2020, the Commission committed to make digital channels the default option in EU cross-border cooperation. On 1 December 2021, a proposal for the digitalisation of judicial cooperation was presented by the Commission to fully digitalise the existing legislative instruments in civil and criminal matters. To digitalise the area of the protection of adults, the present proposal for a Regulation builds on the digitalisation proposal.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for EU competence in the area of judicial cooperation in civil and commercial matters is Article 81(2) of the Treaty on the Functioning of the European Union (TFEU), which is therefore the legal basis for this proposal for a Regulation.

² Study interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the 2007 UN Convention on the rights of Persons with Disabilities.

In contrast, Article 81(3) TFEU on family law with cross-border implications 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 Member States’ national legislation. So far, the EU legislator 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. Regulation (EU) No 650/2012 on matters of succession³, for example, was not considered to be a family law matter and was adopted based on Article 81(2) TFEU.

It is not uncommon for adults to benefit from protection provided by family members. In some Member States, the legal protection of vulnerable adults is attributed *ex lege* to the spouse or family members. However, the adult’s family, if indeed the adult has a family, is merely one of the aspects to consider to ensure protection. The involvement of family members is not a necessary element or an element governed by private international law. Instead, the crucial concern in adult protection is the support provided and preserving the adult’s rights to dignity, individual autonomy, non-discrimination and social inclusion, regardless of their family ties.

Lastly, it must be noted that neither this proposal nor the HCCH 2000 Protection of Adults Convention contain any reference to family relationships (such as ‘parent’, ‘children’ or ‘spouse’), contrary to the Regulations covering family law matters.

- **Subsidiarity (for non-exclusive competence)**

The policy objective of having an efficient and harmonised set of private international law rules applying to all Member States in cross-border cases of protection of adults can be better achieved through an EU initiative.

The current problems faced by adults in cross-border situations have an inherent EU dimension because they are of a cross-border nature and affect the fundamental rights of adults and their right to free movement. The rules on international jurisdiction, applicable law and recognition apply in a cross-border context and thus require the involvement of at least two countries. Member States conflicting or diverging private international law rules in the area of the protection of adults cause multiple issues in cross-border situations in the EU, such as discontinued protection of adults, non-recognition of foreign measures, additional judicial proceedings, or lack of recognition of the wills and preferences expressed by an adult. Member States acting individually could not satisfactorily tackle those problems.

Similarly, the modernisation and digitalisation of judicial cooperation requires the application of harmonised rules (for instance, uniform forms streamlining cross-border procedures), and the use of interoperable tools (forms, software, registers etc.), which can only be developed at EU level.

- **Proportionality**

The objectives of this proposal are to protect the fundamental rights of the adults, improve the effectiveness and speed of cross-border proceedings concerning the protection of adults, and strengthen legal certainty and predictability in cross-border dealings. To that effect, the proposal harmonises Member States’ rules on international jurisdiction, applicable law,

³ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

recognition and enforcement of protection measures and acceptance of authentic instruments. It also sets out rules giving effect to powers of representation in all Member States. Finally, it provides for developing tools to improve and expedite the cooperation between Member States in this area.

The proposal does not go beyond what is necessary to achieve its objectives.

For instance, it does not interfere with national rules governing the support provided to adults with diminished capacities; it only applies to conflict of jurisdiction, conflict of laws or recognition of foreign measures or documents in cross-border situations.

In addition, the European Certificate of Representation introduced in this proposal is optional and will not replace equivalent national documents providing evidence of representation.

The proposal requires Member States to create a register of measures and powers of representation and to interconnect it with other Member States' registers. This is to ensure that the protection of adults is maintained in cross-border cases, and that their right to individual autonomy, including the freedom to make their own choices as regards their person and/or future arrangements is respected when they move within the EU. However, the set of data to be registered and shared through the interconnection of registers under this proposal is extremely limited and only provides information on the existing protection of an adult. Moreover, Member States will remain responsible for designating the national authorities that can access the interconnected system of registers.

The proposal therefore respects the principle of proportionality.

- **Choice of the instrument**

The adoption of common rules on international jurisdiction, recognition of protection measures, acceptance of authentic instruments, and applicable law on protection measures and powers of representation in cross-border situations can only be achieved through a common set of rules applying in the EU.

Furthermore, full cooperation between authorities and removal of barriers for adults and their representatives can be better achieved on the basis of the principle of mutual trust. The European Certificate of Representation, the digitalisation of cross-border communication and easing language barriers can only be laid down in a regulation. Finally, only a regulation ensures a fully consistent interpretation and application of the rules in the EU. In line with previous EU instruments on private international law, the preferred legal instrument is therefore a regulation.

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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

This proposal, together with the parallel proposal for a Council Decision on the same matter, were preceded by extensive and broad stakeholder consultations.

The **open public consultation and the call for evidence** were carried out in early 2022. Most 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 and called for an EU instrument supplementing the Convention. Some respondents (NGOs for the protection of the rights of persons with

disabilities) expressed concerns for the fundamental rights of adults, if an EU instrument favoured the circulation of decisions that could violate the fundamental rights of adults.

As part of the Commission's consultation strategy, an **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. Member States already party to the Convention strongly encouraged other Member States to ratify. Reasons given by Member States for not ratifying the Convention included a change in government, ongoing internal discussions, and the low number of reported cross-border cases, but there was no criticism of the Convention itself.

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

In conclusion, all Commission consultation activities showed strong support for and overall positive feedback on the HCCH 2000 Protection of Adults Convention. Furthermore, the consultations showed that most stakeholders saw a practical need for and supported additional measures at EU level.

- **Collection and use of expertise**

A **legal study** was carried out in 2021⁴. The authors of the study reached the following conclusions: (i) significant gaps and inconsistencies exist in the cross-border protection of 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 tackle some of those problems between Member States and non-EU countries; and (iii) an EU instrument would further strengthen the protection of adults and facilitate their lives and the work of competent authorities.

An additional **study supporting the preparation of an impact assessment** was completed in 2022 and provided further evidence and analysis of the existing problems and impact of various policy options. In the context of this study, further stakeholder consultations were conducted.

A **fact-finding mission**⁵ of the European Network of Judicial Inspection Services (RESIJ) highlighted the insufficient protection of adults in cross-border cases and made the following recommendations: (i) improve the training of authorities on the instruments available; (ii) harmonise the terminology; (iii) create a European Certification of Representation; (iv) set up interoperable national registers on the protection of adults; and (v) adopt a common set of EU rules.

Additional expertise on the topic of the cross-border protection of adults was also gathered from other sources, such as the **European Parliament's study**⁶ accompanying its Legislative Initiative Report (2016) and the **European Law Institute Report** (2020)⁷.

⁴ Study on the cross-border legal protection of vulnerable adults in the EU. <https://op.europa.eu/en/publication-detail/-/publication/facf667c-99d6-11ec-83e1-01aa75ed71a1/language-en/format-PDF/source-253031377>

⁵ Mission to assess European civil judicial cooperation for the protection of adults. <https://op.europa.eu/en/publication-detail/-/publication/facf667c-99d6-11ec-83e1-01aa75ed71a1/language-en/format-PDF/source-253031377>

⁶ Protection of Vulnerable Adults, European Added Value Assessment Accompanying the European Parliament's Legislative Initiative Report.

- **Impact assessment**

Based on the Commission's Better Regulation Guidelines and the conclusions of the inception impact assessment, the Commission prepared an impact assessment of this proposal. In the impact assessment, the following policy options were considered: (i) the baseline scenario; (ii) a Council decision obliging Member States to become party to the HCCH 2000 Protection of Adults Convention within a certain time frame; (iii) a regulation transposing some rules of the Convention and laying down additional rules to foster party autonomy, simplify rules on recognition and enforcement of foreign decisions, acceptance of authentic instruments, create a European Certificate of Representation, provide legal aid, interconnect registers and set up rapid and efficient communication; and (iv) a combination of points (ii) and (iii), meaning a Council decision governing cases involving non-EU countries and a regulation, building on the rules of the Convention and improving its functioning among Member States.

The impact assessment report examined each of these options' expected impact, effectiveness, efficiency and coherence with the EU's legal and policy framework. Based on this assessment, the 'package' option consisting of a proposal for a Council decision on the ratification of the HCCH 2000 Protection of Adults Convention and for a regulation to improve judicial cooperation between Member States was chosen.

The impact assessment concluded that the chosen option would, through a consistent legal framework, significantly improve the protection of adults by ensuring legal certainty, reducing and avoiding lengthy legal proceedings, and ultimately facilitating the recognition of the protection of adults in cross-border cases, within and outside the EU borders.

The chosen policy option would also be the most effective one in tackling the problems concerning the protection of adults as the legal, social and psychological benefits would be the most significant. The chosen option would have a clear positive impact on the protection of the rights, including the fundamental rights, of adults, such as their right to property, access to justice, individual autonomy, and free movement. It would also have a positive social and psychological impact as it would mean more legal certainty, bring benefits to their welfare and social inclusion, and alleviate emotional distress. It would reduce costs currently borne by adults in cross-border situations and by Member States. Other impacts would not be significant⁸. This policy option would be in line with the 'digital by default' principle as the cross-border procedures for the protection of adults would be digitalised under the Regulation.

Through the adoption of common EU rules, the chosen option would do away with most costs and administrative burden linked to judicial proceedings, translations, and other procedures with non-judicial actors. It has been estimated that the average saving made by the adult or the representative in a cross-border case would range, on average, from EUR 40 to EUR 9 000.

The impact assessment report received a positive opinion from the Regulatory Scrutiny Board on 20 January 2023.

- **Regulatory fitness and simplification**

Not applicable

[https://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU\(2016\)581388_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU(2016)581388_EN.pdf)

⁷ The protection of adults in international situations, Report of the European Law Institute. https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Protection_of_Adults_in_International_Situations.pdf

⁸ Such as impact on Sustainable Development Goals or ecological and climate impacts.

- **Fundamental rights**

This Regulation fosters the right to autonomy and freedom to make one's own choices by facilitating the circulation of powers of representation drawn up by the adults. This is in particular ensured by the creation of a European Certificate of Representation, which will allow representatives appointed by an adult to easily prove the nature and the extent of their powers abroad. This will also be guaranteed by the rules on the acceptance of authentic instruments, which will ensure that evidentiary effects of those documents are recognised in the EU. Furthermore, the interconnection of registers will ensure that those powers of representation registered in one Member State are not ignored by a competent authority in another Member State due to the lack of information on their existence and that the will and preferences of the adult are therefore respected.

In addition, this proposal will ensure that in cross-border cases, common private international law rules on the protection of adults are applied and interpreted in line with the UNCRPD. This Regulation will further facilitate the sharing of good practices among Member States at the time of its implementation, through the EJM-civil, the e-Justice Portal and training activities.

Lastly, the proposal upholds other rights of adults that are currently regularly threatened or violated internationally, such as the rights to equality before the law, property, access to justice and free movement.

4. BUDGETARY IMPLICATIONS

Member States may have one-off costs to adjust to the Regulation, in particular costs arising from setting up Central Authorities, or training judges and other competent authorities on the new rules. There may be minor recurring costs, for instance, for the continuous training of authorities or monitoring the application of the Regulation. None of these costs is expected to be significant and would be offset by the efficiency gains and costs savings brought about by the Regulation.

Member States may also incur costs associated with installing and maintaining the decentralised IT system's access points located in their territory and adapting their national IT systems, so they are interoperable with the access points. Additionally, Member States may also need to deploy reference implementation software developed by the Commission, which could also entail some costs. These costs are necessary to make the electronic communication between competent authorities through a decentralised IT system possible, in addition to the communications between people and competent authorities through the European electronic access point set up on the European e-Justice Portal. However, these costs would not only be required for this proposal as the decentralised IT system would be used for all EU instruments on judicial cooperation in civil and commercial matters. In addition, Member States would be able to apply for grants to finance these costs under the appropriate EU financial programmes.

Member States will have specific one-off costs, related to setting up one or more digitalised registers and linking them to other Member State registers, and recurring maintenance costs after that.

Those costs would be largely outweighed by the overall savings on procedural costs made by adults and their representatives.

The digitalisation of communication between authorities and between natural persons and authorities, and the interconnection of registers would also result in additional costs for the Commission. The Commission will provide Member States' competent authorities with common reference implementation software, develop and maintain a new module of the

European Electronic Access Point introduced in the digitalisation proposal⁹, and develop and maintain interconnection software for the registers. Details of these costs are provided in the financial statement and the impact assessment accompanying this proposal.

5. OTHER ELEMENTS

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

A regulation is directly applicable in all Member States and does not therefore have to be implemented into national law.

Appropriate monitoring, evaluation and reporting obligations are envisaged in the proposal. First, the practical application of the Regulation would be monitored through regular meetings of the EJM-civil, bringing together experts from Member States. In addition, a full evaluation of the application of the Regulation would be carried out by the Commission ten years after the Regulation enters into force. The evaluation would be done on the basis of, among others, input received from Member State authorities, external experts and stakeholders.

• **Detailed explanation of the specific provisions of the proposal**

- **Chapter I** delineates the scope of the Regulation that applies to civil matters regarding the protection of adults (Article 1) by providing for a non-exhaustive list of matters covered under the Regulation and an exhaustive list of the matters excluded from the Regulation. It also presents the subject matter of the Regulation (Article 2) and the definitions of the terms used in the Regulation (Article 3).
- **Chapter II** lays down the general rules on international jurisdiction with a direct reference to the rules provided for in Chapter II of the HCCH 2000 Protection of Adults Convention. Articles 6 and 7 of the Regulation provide for an additional and non-exclusive ground of jurisdiction applicable in the EU when a choice of jurisdiction has been made by an adult. That choice should be followed under three cumulative conditions listed in Article 6, with the obligation to inform the Central Authority of the Member State where the adult has their habitual residence.
- **Chapter III** sets out the rules on applicable law with a direct reference to Chapter III of the HCCH 2000 Protection of Adults Convention.
- **Section 1 of Chapter IV** provides for the automatic recognition of measures taken by Member States' authorities, to give effect to the principle of mutual recognition, which is based on the principle of mutual trust in the EU. The grounds for non-recognition are kept to the necessary minimum, and aim, in particular, to safeguard the fundamental rights of adults even in cross-border situations. For instance, regardless of the national procedures and legislation, a measure taken without giving the adult the opportunity to be heard may not be recognised. Recourse to the public policy exception can be made in exceptional circumstances only, in particular in case of manifest violations of fundamental rights of adults. **Section 2 of that Chapter** abolishes *exequatur* (procedures to declare a measure taken in one Member State enforceable in another Member State) for measures taken by the authorities of a Member State. **Section 3** lays down the procedural rules that apply when invoking, contesting or seeking recognition, or seeking enforcement of a measure before the authorities of a Member State.

⁹ Proposal for a Regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation COM/2021/759 final.

- Chapter V sets out the rules on the acceptance of authentic instruments in one Member State that have been drawn up by competent authorities in another Member State, thereby facilitating their circulation in the EU. Acceptance of authentic instruments ensures that they have the same full and complete evidentiary effect in other Member States as they do in their Member State of origin. This includes both the contents of the recorded instruments and the facts contained within them. Authentic instruments also have the same presumption of authenticity and enforceability as in their Member State of origin.
- **Section 1 of Chapter VI on cooperation** establishes Central Authorities to assist in the operation of the Regulation and improve the protection of adults in cross-border cases falling within the scope of the Regulation. The proposal sets out specific procedures for: (i) the locating of an adult or a person likely to provide support to the adult; (ii) obtaining the Central Authority's consent before an adult is placed in another Member State; and (iii) appointing a public authority or a person acting on behalf of or under the supervision of a public authority as a representative of the adult abroad. **Section 2** sets out rules for the direct cooperation and communication between authorities, if necessary through the Central Authorities, to assist with the implementation of a measure or in cases of serious danger. Article 27 provides for a legal basis for direct communication between judicial and administrative authorities. **Section 3** sets out general rules on cooperation between Central Authorities or competent authorities of different Member States. It also lays down rules on the right to legal aid for applicants who benefit from legal aid in their Member State of origin. This ensures the applicant's access to justice in proceedings on the recognition or non-recognition of a measure, or to the service of a document in another Member State.
- **Chapter VII** establishes a European Certificate of Representation that will enable representatives of adults to easily and efficiently show their powers in another Member State. Member States should appoint an authority to issue the certificate. This authority should have sufficient knowledge of the case to which the certificate relates and access to the relevant information in order to swiftly issue the certificate upon request. This certificate does not replace other certificates used in certain Member States. Attestations accompany any protection measure or authentic instrument for their recognition, enforcement, or their acceptance by competent authorities of other Member States. However, the proposed certificate should be used as a stand-alone document to show the representative's powers, in particular when they need to deal with non-judicial actors on behalf or in support of the adult.
- **Chapter VIII** strives to improve providing of information about the protection of an adult to competent authorities in the EU. This ensures that measures taken in another Member State or powers of representation granted by the adult in another Member State are respected across the EU. It therefore obliges Member States to set up one or more register(s) of measures taken by their authorities. In addition, when national law provides for powers of representation confirmed by a competent authority, Member States must set up a register of those confirmed powers of representation. Member States must also ensure that those registers, as well as any other existing register of powers of representation set up under national law, are connected together through an interconnection system developed by the Commission. A minimum set of data is to be recorded in the register to provide sufficient information to the competent authorities of other Member States about the existence of a measure or powers of representation in relation to a specific adult.

- **Chapter IX** provides for the mandatory use of digital communication between competent authorities or Central Authorities, and the optional use of digital communication between natural persons and competent authorities.
- In its **Annexes**, the proposal contains a series of forms that should reduce the need for translations and ease the communication and the transfer of information in cross-border cases in the EU.
 - Annexes I and II aim to facilitate the recognition and enforcement of measures taken by the authorities of a Member State and the acceptance of authentic instruments drawn up by the authorities of a Member State.
 - Annexes IV to X are standard forms that aim to facilitate the communication between natural persons and competent authorities or between competent authorities or Central Authorities of different Member States.
 - Lastly, the proposal contains a form to be used by the competent authorities for issuing the European Certificate of Representation (Annex III).

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The purpose of this Regulation is to lay down rules, in cross-border cases, for the protection of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests. In particular, this Regulation lays down rules on jurisdiction, applicable law, recognition and enforcement of measures, acceptance of authentic instruments and cooperation between Member States' competent authorities and Central Authorities.
- (2) The Union has set itself the objective of creating, maintaining and developing the Union as an area of freedom, security and justice in full respect of fundamental rights in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt, among others, measures relating to judicial cooperation in civil matters, particularly when necessary for the proper functioning of the internal market.
- (3) In accordance with Article 81(2) of the Treaty on the Functioning of the European Union ('TFEU'), such measures may include those aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and jurisdiction and the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases.
- (4) The Union has adopted a number of legislative acts in the area of judicial cooperation in civil matters having cross-border implications. With the exception of 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 the Council¹⁰, none of those Union legislative acts governs the cross-border aspects of legal capacity of natural persons. Similarly, no legal act of the Union governs the civil aspects of the cross-border protection of adults who, by reason of barriers faced in the interaction between an impairment or insufficiency of their personal faculties and a range of personal factors

¹⁰ 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) (OJ L 177, 4.7.2008, p.6).

and factors linked to their living environment, are not in a position to protect their interests, or who may require that the support and safeguards in the exercise of their legal capacity provided to them in one Member State continues across the Union.

- (5) In the absence of such common rules, various difficulties may arise for the adults who are not in a position to protect their interests in cross-border situations, including where those adults move to another Member State or where they own real property or other assets in another Member State. Difficulties may arise for instance where measures taken in one Member State with a view to protecting the adults, including support measures provided to exercise their legal capacity, need to be invoked in other Member States, 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 autonomy, and the right to property and to free movement, may be negatively affected.
- (6) 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') provides 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 competent authorities or Central Authorities of its contracting Parties.
- (7) The HCCCH 2000 Protection of Adults Convention does not prevent its contracting Parties from furthering their cooperation in the field of the protection of adults beyond the provisions of that Convention itself or even departing from its rules in their mutual relations. In compliance with Article 49(2) and (3) of the HCCCH 2000 Protection of Adults Convention, this Regulation establishes rules in the matters covered by that Convention in respect of adults having habitual residence in a Member State. The rules established by this Regulation should not affect, in the relationship of the Member States with third States that are contracting Parties to the HCCCH 2000 Protection of Adults Convention, the application of that Convention.
- (8) This Regulation should incorporate some rules from the HCCCH 2000 Protection of Adults Convention, in particular on international jurisdiction and applicable law, and makes them directly applicable in relations between Member States. However, it is appropriate that in relations between Member States, the Union further improves the protection of adults in cross-border situations within the Union, building on the principle of mutual trust between Member States and on the experience from other areas of judicial cooperation in civil matters. This Regulation should thus complement the rules of the HCCCH 2000 Protection of Adults Convention by laying down rules aimed to simplify, streamline and modernise the procedures and the cooperation among competent authorities of Member States. In particular, it should be possible to foster the right to autonomy of adults and their right to exercise their legal capacity on an equal basis with others, by facilitating the use, in a cross-border context, of powers of representation, whereby adults have organised in advance their protection for a time when they will not be in a position to look after their own interest, and giving full and immediate effect to choices made by the adults.

- (9) Given the complementarity of this Regulation and the HCCH 2000 Protection of Adults Convention, as well as the need to ensure continued protection of adults in cross-border situations involving Member States and third countries, the interpretation of the rules laid down in this Regulation and those included in the HCCH 2000 Protection of Adults Convention should be aligned, where possible.
- (10) In addition, the interpretation of the rules laid down in this Regulation should be guided by its objectives that are to enhance the protection of fundamental rights and freedoms and other rights of adults in cross-border situations, including their right to autonomy, access to justice, right to property, right to be heard, right to free movement and equality. In this regard, this Regulation builds on the Charter of Fundamental Rights of the European Union (‘Charter’) and on international human rights law in this area. In particular, a significant part of adults to which this Regulation applies are persons with disabilities. Their rights, including the right to equality before the law, integrity, access to justice and respect for their inherent dignity and individual autonomy, are guaranteed by the United Nations Convention on the Rights of Persons with Disabilities¹¹ (‘UNCRPD’), to which both the Union and its Member States are parties. The rights safeguarded in the UNCRPD are to be protected both in national and cross-border cases, and where measures are taken in relation to persons with disabilities, those measures are to be in line with the UNCRPD. This Regulation, laying down private international law rules for cross-border cases, should be applied consistently with the human rights obligations under the UNCRPD, in particular with its Articles 3, 9, 12 and 19. 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. In particular, Member States are to respect the equality of adults before the law and their right to enjoy legal capacity on equal basis with others in all aspects of life, with the support that they may require, as well as the autonomy and integrity of the adults in accordance with Article 12 of the UNCRPD.
- (11) Besides the protection, in cross-border situations, of fundamental rights and freedoms and other rights of adults, including the respect for their will and preferences, this Regulation also aims to improve the effectiveness and speed of judicial and administrative proceedings concerning the protection of adults by simplifying and streamlining the mechanisms for cooperation in cross-border proceedings. It further aims to strengthen legal certainty and predictability in cross-border dealings, both for adults and their representatives and for other parties, whether they are public or private entities. Providing greater legal certainty and simpler, streamlined and digitalised procedures should also encourage individuals to exercise their right to free movement.
- (12) This Regulation should cover civil matters involving the protection of adults, in particular related to measures, authentic instruments and powers of representation, aimed at the protection of an adult. The protection is required due to an insufficiency or an impairment of the personal faculties of the adult, which can be permanent or temporary and, among others, of physical or psychosocial nature, or in connection with an age-related disease, such as Alzheimer’s disease, or resulting from a health condition, such as a coma. The protection is in particular required where barriers in the interaction with a range of environmental and personal factors hinder their participation in society on equal basis with others, in particular where the insufficiency or impairment of the personal faculties of the adult is such as to prevent that adult

¹¹ OJ L 23, 27.1.2010, p. 37

from looking after his or her own interests, such as property interests and personal or health interests. Serious neglect of the personal or property interests of the relatives for whom the adult is responsible may also reveal an impairment or insufficiency of the adult's personal faculties.

- (13) Where measures have been taken for the protection of a child, and are to remain in force or take effect after that child reaches the age of majority, they should fall within the scope of this Regulation as soon as the child has reached 18 years of age.
- (14) The terminology used for protective measures differs in the legal systems of each Member State and these differences in terminology should not affect the recognition of those protective measures in other Member States.
- (15) Irrespective of the legal terminology used in each Member State, measures directed to the protection of adults and taken in compliance with the fundamental rights of the adults concerned should circulate without obstacles in the Union. To this end, this Regulation should be interpreted in accordance with the Charter and the UNCRPD. To protect the right to autonomy, safeguards should be provided in this Regulation and make it possible to refuse recognition of measures which are taken without providing the adult with the opportunity to be heard, except in justified exceptional circumstances related to the urgency of the situation, or which are manifestly contrary to public policy. Where assessing whether a measure taken by the authorities of another Member State is not manifestly contrary to public policy, the authorities of a Member State where the recognition is sought should assess whether that measure ensures the fundamental rights of the adult, in light of Articles 3, 9 12 and 19 of the UNCRPD.
- (16) To ensure a uniform interpretation of this Regulation, this Regulation should define in particular the notions of adults, representatives and authorities, which may have divergent meanings in the Member States legal systems. For the purposes of this Regulation, an adult is a person who has reached the age of 18 years. Depending on the context, this should refer for example to adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests, or adults who granted powers of representation to be exercised when those adults are not in a position to protect their interests.
- (17) References to a 'representative' in this Regulation should be construed as referring to one or more representative(s), as appropriate.
- (18) For the purposes of this Regulation, and in line with the terminology used in the HCCH 2000 Protection of Adults Convention, the concept of 'authority' should be interpreted as referring to the judicial or administrative authorities taking measures directed to the protection of the adult. More broadly, a 'competent authority' should be interpreted as referring to a public authority of a Member State with responsibilities in matters of protection of adults. This includes authorities taking measures, authorities drawing up authentic acts and authorities issuing attestations, forms or the European Certificate of Representation. It further includes other authorities, or entities acting in an official capacity in matters related to the protection of adults, such as those that are responsible for the supervision or implementation of measures.
- (19) The rules on international jurisdiction and on applicable law in respect of the protection of adults should be those set out in the HCCH 2000 Protection of Adults Convention, to avoid discrepancies and ensure, to the extent possible, that the same rules apply to a case involving Member States and third countries that are party to that

Convention. Some Member States may not be contracting Parties to the HCCH 2000 Protection of Adults Convention at the time this Regulation will be applicable. To take account of all scenarios, the HCCH 2000 Protection of Adults Convention should be attached to this Regulation.

- (20) It is appropriate to supplement the system of international jurisdiction established by the HCCH 2000 Protection of Adults Convention to give due weight to the choice of jurisdiction made by adults in the Union. To better protect the right to autonomy of the adults, the choice of jurisdiction made by adults when making arrangements for their future representation should be respected without the need for additional proceedings in particular for the approval by the authorities of the Member States of the habitual residence of the adults. Nevertheless, taking into consideration that the personal or financial circumstances of an adult may evolve between the time when the choice of jurisdiction is made and the time when the adult is in need of protection, the courts chosen should have the possibility to assess whether the choice made by the adult is still in the interests of that adult at the time they are seised. This assessment should be made primarily with regard to the views of that adult, and the significance of the changes in his or her living conditions and assets since the time when the choice of jurisdiction was made.
- (21) The establishment of an additional ground of jurisdiction based on the choice of the adult should not disrupt the mechanism established by the HCCH 2000 Protection of Adults Convention, nor affect the effectiveness of communication between authorities, and should avoid positive and negative conflicts of jurisdiction. The mechanisms established by Articles 7, 9, 10 and 11 of the HCCH 2000 Protection of Adults Convention giving priority to certain grounds of jurisdiction, limiting the effects of certain measures, and setting up an exchange of information between the authorities of the habitual residence and the authorities with subsidiary or concurrent jurisdiction, should therefore also apply in the Union to authorities exercising their jurisdiction according to the choice made by the adult. Thus, those provisions should apply in respect of the authorities chosen by an adult in the same way as they apply in respect to the authorities of the habitual residence.
- (22) The authorities contemplating the exercise of their jurisdiction according to the choice made by the adult should not exercise their jurisdiction where the authorities of the habitual residence of the adult have already exercised their jurisdiction, in particular where those authorities have taken a measure, or have decided that no measure should be taken, or where proceedings are pending before them.
- (23) This Regulation should fully incorporate the rules on applicable law laid down by the HCCH 2000 Protection of Adults Convention. To ensure consistent application of this Regulation, the reference to Chapter III of the HCCH 2000 Protection of Adults on applicable law should be read as referring to the whole chapter, including the rules laid down by Article 16 of the Convention regarding the modification or termination of powers of representation.
- (24) Mutual trust in the administration of justice in the Union justifies the principle that measures directed to the protection of adults given in a Member State should be recognised in all Member States without any special procedure being required. This should not preclude any interested person from applying for a decision that there are or that there are no grounds for refusal of recognition. It should be for the national law of the Member State where such application is made to determine who should be considered as an interested person entitled to make such application. To safeguard the

right of the adults to access to justice and provide them with sufficient remedies, and irrespective of the nature and the extent of the measure, adults should have the right to apply for a decision that there are or that there are no grounds for refusal.

- (25) The recognition and enforcement of measures should be based on the principle of mutual trust. Therefore, the grounds for non-recognition should be kept to the minimum in the light of the underlying aim of this Regulation which is to facilitate recognition and enforcement of measures and the circulation of powers of representation and to effectively safeguard the rights of the adults. In particular, the jurisdiction of the authorities of the Member State of origin should not be reviewed.
- (26) It should only be possible to refuse the recognition of a measure if one or more of the grounds for refusal of recognition are present. To uphold the principle of mutual trust, the list of grounds for refusal of recognition in this Regulation should be exhaustive. Measures directed to the protection of adults may be long-term ones and involve successive adjustments. The rules applicable to refusal of recognition of measures should take account of those changes over time. Therefore, a later measure, taken in a third country which would have had jurisdiction under the rules of this Regulation, should supersede an earlier measure to the extent that they are irreconcilable. To avoid that incompatible measures are taken in the Member States, the closed system of jurisdiction and the mechanism of mutual information between competent authorities and Central Authorities should be established by this Regulation.
- (27) Proceedings directed to the protection of an adult should, as a basic principle, be guided by the views expressed by the adult. Adults should thus be given an effective and genuine opportunity to express their views freely in accordance with Articles 20, 25, 26, and 47 of the Charter and Articles 3, 9, 12, 13 and 19 of the UNCRC. The opportunity for the adult to express his or her views should be given, except in cases of urgency, including cases where the adult is absolutely unable to express his or her views. A measure taken without the adult having had an opportunity to be heard, apart from the exceptional circumstances of urgency and the demonstrated incapacity to express himself or herself, may not be recognised. The fact that the adult has had an opportunity to be heard should be assessed uniformly in the Union, and should not be assessed against the fundamental procedural principles of the Member State where recognition is sought. An example of a case of urgency is a situation where the adult needs to undergo urgent surgery and is not, because of his or her medical condition, in a position to express his or her views.
- (28) The question of the procedure and the method of the hearing of the adult should be left to national law, with due respect for the rights of adults to accessibility. When a hearing is required in a cross-border context, Member States authorities should use the specific instruments of international judicial cooperation, including, where appropriate, those provided for by Regulation (EU) 2020/1783¹².
- (29) In order to take account of the different systems for dealing with the protection of adults in Member States, authentic instruments directed to the protection of adults and their interests should be accepted in all Member States. An authentic instrument directed to the protection of an adult or his or her interests drawn up by an authority of a Member State may in particular record powers of representation

¹² Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (OJ L 405, 2.12.2020, p. 1–39).

granted by an adult for a time when that adult will not be in a position to protect his or her interests, or advance directives recording wishes and preferences of the adult or giving direct instructions in some matters including health, welfare or appointment of a representative by an authority. Those authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the law of the Member State of origin.

- (30) To facilitate the circulation of measures and authentic instruments in the Union, it is necessary to provide for attestations to accompany them where they need to be recognised, enforced, or, as the case may be, accepted abroad. The procedures for rectifying, withdrawing and challenging attestations used for the recognition and enforcement of measures and the acceptance of authentic instruments should be left to national law. In light of the case-law of the Court of Justice, authorities exercise judicial functions when issuing the attestations and issuance of forms part of the continuity of the previous judicial proceedings. Therefore, adequate and effective remedies in the context of this issuance should be made available by Member States.
- (31) Central Authorities should be designated in all Member States. Central Authorities should in particular assist competent authorities in cross-border proceedings, and cooperate both in general matters and in specific cases. In individual cases, the cooperation should not be limited to a specific part of the judicial or administrative procedure, and should be initiated and continued where a cross-border element exists and there is a need for cooperation.
- (32) To avoid unnecessary intermediaries and foster expedite communication, competent authorities should be able to request information or assistance directly from the Central Authority of the requested Member State, but should also have the possibility, where appropriate, to send their request through the Central Authority of their Member State.
- (33) According to Article 19 of the UNCPRD, persons with disabilities are to have the opportunity to choose their place of residence and where and with whom they live, on an equal basis as others, and not to be obliged to live in a particular living arrangement. For the purposes of this Regulation, situations may arise where the authorities of a Member State need to take a measure concerning the place of residence or temporary placement of an adult. Examples of such situations are cases where authorities provide assistance to the adult in making a decision on his or her place of residence or where an adult is not in a position to express his or her views and has not granted powers to make a decision concerning his or her place of residence to a representative, and an admission to a care facility is required. Where such placement is to be implemented in another Member State, a consultation procedure for obtaining consent of the Central Authority of the Member State of implementation should be carried out prior to taking that measure. The request for consent made by the authority of origin should include the reasons for the proposed measure, and the views expressed by the adult concerned where possible, in light of Article 19 of the UNCPRD. The Central Authority of the Member State of implementation should be able to decide promptly whether to grant the consent or to refuse it. The absence of a reply within six weeks should not be understood as consent and without consent the measure should not be implemented. The consultation should not be carried out when

the placement is with an individual and does not require the supervision of any public authority of the Member State of implementation.

- (34) In situations where the adult has substantive connections with a Member State other than the one whose authorities have jurisdiction under this Regulation, for example based on his regular presence, or complex financial assets in that State, the appointment of a representative in that other Member State may be required. In those situations, geographical proximity of the representative and good knowledge of the legislation may be necessary to ensure the continuity of the protection of the adult. In cases where that representative in another Member State should be appointed from a competent authority, it should be possible to request the designation of such a representative to the authorities of that other Member State to which the adult has substantive connections, and it should be possible to recover the expenses incurred.
- (35) Representatives of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests, should be able to invoke their powers to represent those adults and to protect the interests of those adults without obstacles within the Union. Therefore, representatives should be able to demonstrate easily their status and powers in another Member State, for instance in a Member State in which adult's real property or other assets are located. To enable them to do so, a European Certificate of Representation ('the Certificate') should be created. That Certificate should be a uniform certificate to be issued for use in another Member State. In order to respect the principle of subsidiarity, the Certificate should not take the place of internal documents, which may exist for similar purposes in the Member States.
- (36) The Certificate can be requested by the adult's representative on the basis of an existing measure or confirmed powers of representation (the 'source measure' and 'source confirmed powers of representation'). It should thus only be issued in situations where an adult is effectively not in a position to protect his or her interests and the representative is entitled to actively represent that adult in one or more specific matters. The Certificate should include information on the extent of the powers which the representative is entitled to exercise on behalf of an adult and, where relevant, on the matters where the representative is not entitled to act or is entitled to act under certain conditions.
- (37) The use of the Certificate should not be mandatory. This means that a representative of an adult entitled to apply for a Certificate should be under no obligation to do so but should be free to use national documents or other instruments available under this Regulation (a measure or an authentic instrument) when invoking his or her powers in another Member State. Persons acting on their own behalf should not be required to present a Certificate, so the Certificate should be issued only for representatives who need to demonstrate their powers to act in support or on behalf of an adult.
- (38) To expedite the issuance of the Certificate and to ensure that the competent authority issuing the Certificate has sufficient information about the case at hand, the competence to issue the Certificate should be vested with the competent authority, which has either taken the measure or confirmed the powers of representation, or with another competent authority that has access to information on the source measure or the source powers of representation ('issuing authority'). It should be for each Member State to designate its issuing authorities and to determine whether they may involve other competent bodies in the issuing process. The Member States should communicate to the Commission the relevant information concerning the authorities

empowered to issue a Certificate in order for that information to be made publicly available.

- (39) To ensure that the process of the issuance of the Certificate is uniform throughout the Union, this Regulation should provide rules on the issuance of the Certificate. The issuing authority should issue the Certificate upon application and after verifying the elements to be certified. The process for the application for and the issuance of the Certificate should be simplified by the fact that the authority issuing the Certificate has access to the source measure or source confirmed powers of representation and has knowledge concerning their continued validity and the information contained therein. Where feasible, the issuing authority should consult the system of interconnection of protection registers established in this Regulation before the issuance of the Certificate to verify whether a conflicting measure or powers of representation exist in another Member State. Where the applicant indicates in the application for a Certificate that the Certificate should serve to demonstrate their powers for a specific purpose or in a specific context, the issuing authority should, as far as possible, include in the Certificate sufficiently detailed information that reflects that purpose or context. The original of the Certificate should remain with the issuing authority, which should issue one or more certified copies of the Certificate to the applicant. The Certificate should be issued in a mandatory form set out in the annex to this Regulation. To reduce translation costs when the Certificate is presented in another Member State, the form for the Certificate set out in the annex to this Regulation should be available in all Union languages.
- (40) To ensure that the Certificate and its certified copies remain up-to-date and based on a valid source measure of source confirmed powers of representation, the validity of the Certificate and of its certified copies should be limited in time. Upon the expiry of the Certificate, the issuing authority may issue a new Certificate if all the elements for the issuance of the Certificate are verified. The purpose of the limited validity is to ensure that the issuing authority regularly verifies that the legal situation concerning the adult has not changed, for instance on the basis of a later measure concerning the adult or of a revocation of the representative's powers. The validity of the Certificate should be in principle limited to one year. However, the issuing authority may determine the validity period of the Certificate differently on a case-by-case basis, in particular bearing in mind the presumption of validity of the Certificate and the effects linked to the issued Certificate, especially the protection of third parties transacting with the representative. The issuing authority should consider in particular the nature and the expected duration of the protection, the validity of the source measure, any arrangements made by the adult in the source confirmed powers of representation, as well as the objective that the Certificate should reflect accurately the legal situation of the adult throughout the duration of validity of the Certificate. Against this background, the issuing authority may issue the Certificate for a shorter period than a year, for instance where the source measure is to last less than a year, or issue it for a longer period than a year, for instance where the source measure is to last for several years and the probability of a change of circumstances concerning the adult is minimal. The validity period of the certified copies of the Certificate should correspond to the validity period of the Certificate.
- (41) The Certificate should produce the same effects in all Member States. It should not be an enforceable title in its own right but should have an evidentiary effect and should be presumed to demonstrate accurately elements included in the Certificate which have been established under the law applicable to the protection of a particular adult or

under any other law applicable to specific elements. That presumption of accuracy is strengthened by the fact that before issuing the Certificate, the issuing authority should verify, including through the system of interconnection, that the source measure or the source confirmed powers of representation remain valid and have not been replaced by a later measure or confirmed powers of representation. However, the evidentiary effects of the Certificate should not extend to elements which are not governed by this Regulation, such as to the question whether or not a particular asset belonged to the adult.

- (42) Any person who deals with a representative indicated in a valid Certificate as being entitled to represent an adult in a specific matter should be afforded appropriate guarantees if he or she acted in good faith relying on the accuracy of the information certified in the Certificate. The same guarantee should be afforded to any person who, relying on the information certified in a valid Certificate, gives access to the adult's representative to real property or other assets of the adult, makes payments to the representative, or buys or receives property from that representative, where the representative is indicated in a valid Certificate as being entitled to act on behalf of the adult in those matters. The protection should be ensured if certified copies which are still valid are presented.
- (43) To ensure access to justice and to improve the reliability of the Certificate, it is necessary to provide for redress against decisions of the issuing authority to issue or to refuse to issue a Certificate or decision to rectify, modify or withdraw a Certificate. Where the Certificate is rectified, modified or withdrawn, the issuing authority should inform the persons to whom certified copies have been issued so as to avoid wrongful use of such copies.
- (44) To ensure a continuous protection of adults in cross-border situations in the Union, competent authorities and Central Authorities should have access to relevant information on the existence of measures taken by other authorities, including those measures that have been taken in another Member State. In addition, it is crucial for safeguarding of the right to autonomy and freedom to make one's own choices that the will expressed by an adult in powers of representation is respected, even in cases where those powers of representation have been granted by the adult in another Member State or confirmed by competent authorities of another Member State. In order to improve the provision of information to relevant competent authorities and Central Authorities and to prevent parallel proceedings or failure to take account of powers of representation, Member States should be required to set up and maintain one or more registers recording data related to the protection of adults. Protection registers should record mandatory information concerning measures taken by their authorities and, where their national law provides for a confirmation by a competent authority of powers of representation, mandatory information concerning those confirmed powers of representation. To ensure interoperability and availability of information related to the protection of adults in the Union, those Member States that have established, prior to the adoption of this Regulation, registers of protection measures, of confirmed powers of representation, or other types of powers of representation which are registered under their national law, should make the same mandatory information available in those registers.
- (45) To ensure that the information provided through the system of interconnection is relevant, Member States should not be prevented from making available through the system of interconnection additional information besides the mandatory information. In particular, Member States should have the possibility to make available through the

system of interconnection information in relation to the nature of the measure, the name of the representative, or historical data concerning measures and powers of representation recorded prior to the application of this Regulation.

- (46) To facilitate access to the information recorded in protection registers or registers of other powers of representation for competent authorities and Central Authorities with a legitimate interest located in other Member States, those registers of measures, confirmed powers of representation, or other types of powers of representation should be interconnected. This Regulation should provide legal basis for that interconnection.
- (47) The interconnection of Member States' registers is an essential component of the cooperation mechanism to safeguard the rights of adults in cross-border cases and ensure legal certainty in the Union. Member States should hence ensure that the information stored in their registers is up-to-date. The authorities of a Member State, when amending or terminating a measure taken in another Member State, should ensure that appropriate information is provided to the authorities of that other Member State, in particular so that the other Member State can update its protection register(s).
- (48) Modern and time-efficient means of written communication among Member States' competent authorities and Central Authorities should be ensured. For the proceedings under this Regulation, written communication between Member States competent authorities and Central Authorities should, as a rule, be carried out by electronic means, via a secure and reliable decentralised IT system. The decentralised IT system should be comprised of the back-end systems of Member States and interoperable access points, including the European electronic access point, through which they should be interconnected. The access points of the decentralised IT system should be based on the e-CODEX system established by Regulation (EU) 2022/850 of the European Parliament and of the Council¹³.
- (49) Transmission through the decentralised IT system could be impossible due to a disruption of the system or where the nature of what has to be transmitted makes transmission by digital means impracticable, such as the transmission of physical or material evidence. Where the decentralised IT system is not used, communication should be carried out by the most appropriate alternative means. Such alternative means should entail, inter alia, transmission being performed as swiftly as possible and in a secure manner by other secure electronic means or by postal service.
- (50) To ensure the flexibility of certain cross-border procedures for the protection of adults, other means of communication could be more appropriate. Therefore, communication through the decentralised IT system should not be obligatory for direct communication between authorities, in particular where the authorities need direct personal communication. In such cases, less formal communication means, such as email, could be used. Considering that authorities deal with sensitive data, the security and reliability of the information exchange should always be taken into account when selecting the appropriate means of communication.
- (51) It is necessary to provide for a modern means of access to justice making it possible for natural and legal persons and Member States' competent authorities to communicate electronically through the European electronic access point established

¹³ Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726 (OJ L 150, 1.6.2022, p. 1).

on the European e-Justice Portal by Regulation (EU) [...] of the European Parliament and of the Council¹⁴ [the Digitalisation Regulation].

- (52) The European electronic access point should allow the electronic communication of natural and legal persons with Member State's competent authorities in the context of the proceedings for a decision on the recognition or non-recognition of a measure, of the issuance of attestations, and of issuance, rectification, modification, withdrawal, suspension or redress procedures of the European Certificate of Representation. Member State's competent authorities should communicate through the European electronic access point only where the individual or private entity concerned has given prior express consent to the use of this means of communication.
- (53) Any processing of personal data under this Regulation should be undertaken in accordance with Regulations (EU) 2016/679¹⁵ and (EU) 2018/1725¹⁶ and Directive 2002/58/EC¹⁷ of the European Parliament and of the Council. Personal data should be processed under this Regulation only for the specific purposes set out therein, without affecting further processing for archiving purposes in the public interest in accordance with Articles 5(1)(b) and 89 of Regulation (EU) 2016/679.
- (54) In general, personal data to be processed under this Regulation should be in particular data contained in the documents handled by Member States' competent authorities and Central Authorities concerning adults within the scope of this Regulation and their representatives. That personal data should concern in particular the information needed to take a measure concerning adults within the scope of this Regulation and to ensure their continued protection in cross-border situations. In applying this Regulation, that personal data will be handled by Member States' competent authorities and Central Authorities. In addition, the Commission may need to process that data for the purposes of developing and maintaining the digital communication means. This Regulation should not limit the storage period of information and personal data processed by the Member States' competent authorities and Central Authorities, since the protection of adults often needs to be ensured in a long term and the measures and authentic instruments remain relevant for an extended period of time.
- (55) Besides the above-described data processing, personal data should also be processed under this Regulation for the purposes of establishing the system for the interconnection of protection registers and other registers of powers of representation and of ensuring the maintenance and proper functioning of that system. This additional processing is justified by the need that Member States' competent authorities and Central Authorities with a legitimate interest have access to information on whether a particular adult is protected in another Member State, with a view to ensuring continued protection of that adult in cross-border situations and to increasing legal certainty and predictability. Member States should be responsible for

¹⁴ OJ C [number], [X.X.XXXX], p. X.

¹⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

¹⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

¹⁷ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

the technical management, maintenance, and security of their registers and, as far as their national law provides, for the correctness and reliability of the data included therein. Data relating to data subjects should be primarily stored in the registers maintained by Member States. In addition, the Commission may need to process data for the purposes of developing and maintaining the system of interconnection and temporarily store data that are accessed through the system of interconnection.

- (56) Member States' competent authorities and Central Authorities should process personal data in accordance with applicable data protection legislation, in particular Regulation (EU) 2016/679. This Regulation should provide for the legal basis for the processing of personal data by Member States' competent authorities and Central Authorities pursuant to Article 6(1) and (3) of Regulation (EU) 2016/679. This Regulation should also provide for the legal basis for processing of personal data by the Commission pursuant to Article 5(1) and (2) of Regulation (EU) 2018/1725.
- (57) In addition, data concerning adults processed under this Regulation may also include personal data concerning health of those adults. Those health-related personal data may either be explicitly included in the documents processed under this Regulation or they may be indirectly deduced from the fact that an adult is not, by reason of an impairment or insufficiency of his or her personal faculties, in a position to protect his or her interests. Pursuant to Article 9 of Regulation (EU) 2016/679, personal data concerning health should be treated as special category of personal data. This Regulation should provide conditions and safeguards for the processing of those special categories of personal data by Member States' competent authorities and Central Authorities in line with Article 9(2) of Regulation (EU) 2016/679. Data will be processed by Member States' authorities in their judicial capacity in conformity with point (f) of that Article, or the processing will be, in conformity with point (g) of that Article, necessary for reasons of substantial public interest on the basis of this Regulation, which aims to enhance the protection of fundamental rights and freedoms and other rights of adults in cross-border situations, to improve the effectiveness and speed of judicial and administrative proceedings concerning the protection of adults and to strengthen legal certainty and predictability in cross-border dealings. Similarly, this Regulation should provide conditions and safeguards for the processing of those special categories of personal data by the Commission in line with Article 10(2) of Regulation (EU) 2018/1725. That processing of data will be necessary for the establishment, exercise or defence of legal claims in conformity with point (f) of that Article, or the processing will be necessary for reasons of substantial public interest on the basis of this Regulation, in conformity with point (g) of that Article.
- (58) Appropriate safeguards should exist for such processing of special categories of personal data and such data should be processed under this Regulation only where it is necessary for and proportionate to the purposes of processing identified under this Regulation. For instance, several safeguards should be introduced when establishing the system of interconnection. The data processed through the system of interconnection should be limited to what is necessary for accessing information about the measures and powers of representation concerning a particular adult. Data processed through the system of interconnection should thus be limited to the personal data included in the mandatory information defined in this Regulation, unless Member States give access through the system of interconnection to additional data, such as on registered powers of representation, or on the name of a representative and the extent of the representation. The system of interconnection should not store any personal data except for a temporary storage needed to ensure access to them. Access to data

through the system of interconnection should not be public. Only the competent authorities and Central Authorities that are permitted, under their national law, to access the national registers should have access to the system of interconnection, as long as they also have a legitimate interest in accessing given data. Implementing acts should provide further data protection safeguards regarding the digital communication and the interconnection of registers.

- (59) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁸ and delivered an opinion on [date]¹⁹.
- (60) In order to ensure uniform conditions for the implementation of this Regulation as regards the establishment of the decentralised IT system and the decentralised system of interconnection provided for in this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁰.
- (61) The forms and information provided to the public, and the communication between competent authorities and natural persons pursuant to this Regulation should be accessible, in accordance with Directive (EU) 2019/882 of the European Parliament and of the Council²¹. The accessibility requirement should be assessed and implemented taking account of the nature and the legal effects of the information or the communication. In particular, the attestations and the European Certificate of Representation should reflect accurately and in detail the content of the measure taken or the powers of representation granted and should not be simplified.
- (62) In order to ensure that the attestations provided for in Articles [15](#) and [17](#) and the European Certificate of Representation provided for in Chapter [VII](#) of this Regulation are kept up to date, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I to X to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making²². In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (63) In accordance with the principle of mutual trust and to facilitate cross-border procedures, administrative formalities relating to the circulation of public documents should be simplified in matters relating to the protection of adults. Therefore, public

¹⁸ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

¹⁹ OJ C [number], [X.X.XXXX], p. X.

²⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

²¹ Directive (EU) 2019/882 of the European Parliament and of the Council of the European Union of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

²² Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

documents submitted for the purposes of this regulation should be exempted from legalisation or similar formality, such as an apostille. That exemption should cover the public documents which are issued by a Member State's public authority and submitted to public authorities of another Member State. That exemption should in particular apply in the context of judicial proceedings with a cross-border element or in procedures established by this Regulation, and should cover public documents directly relating to the protection of adults and other supporting documents

- (64) In relations between Member States, this Regulation should take precedence over the HCCH 2000 Protection of Adults Convention. However, to ensure that the HCCH 2000 Protection of Adults is applied in relation to third countries that are contracting parties to that Convention and to which this Regulation does not apply, in certain specific circumstances, where the adult has his or her habitual residence in the Union and where the cross-border element of the case at hand involves that third country, this Regulation should not apply. In addition, the cooperation between competent authorities and Central Authorities of a Member State and those of a contracting Party to the HCCH 2000 Protection of Adults Convention should be governed by the relevant provisions of the Convention.
- (65) This Regulation should not apply to children below the age of 18 even in cases where they have acquired capacity before that age. This should avoid an overlap with the scope of the Council Regulation (EU) 2019/1111²³ and of the HCCH Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children²⁴. This should also prevent that certain persons are not covered neither by this Regulation nor by those two instruments.
- (66) 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 Regulation and is not bound by it or subject to its application.
- (67) [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 the European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.] OR
- (68) [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 the 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 Regulation.]
- (69) Since the objectives of this Regulation, namely to enhance the protection of the rights of adults in cross-border situations in the Union, to improve the effectiveness and speed of cross-border proceedings concerning the protection of adults and to increase legal certainty and predictability in those situations, cannot be sufficiently achieved by the Member States, but can rather, by reason of the direct applicability and binding

²³ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ L 178, 2.7.2019, p. 1).

²⁴ OJ L 151, 11.6.2008, p. 39

nature of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Chapter I

SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down the rules which:

- (a) determine the Member State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the adult;
- (b) determine which law is to be applied by such authorities in exercising their jurisdiction;
- (c) determine the law applicable to the representation of the adult;
- (d) provide for the recognition and enforcement of such measures in all Member States;
- (e) provide for the acceptance of authentic instruments in all Member States;
- (f) establish cooperation between the competent authorities and Central Authorities of the Member States to achieve the purposes of this Regulation;
- (g) digitalise the communications between competent authorities and Central Authorities, and provide digital means of communication between natural and legal persons and competent authorities;
- (h) create a European Certificate of Representation;
- (i) establish a system of interconnection of the Member States' protection registers.

Article 2

Scope

1. This Regulation shall apply in civil matters to the protection in cross-border 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. This Regulation shall also apply to measures in respect of an adult who had not reached the age of 18 years at the time the measures were taken.
3. The matters referred to in paragraph (1) may, in particular, include:
 - (a) the determination of the incapacity of an adult 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) decisions concerning 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.
4. This Regulation 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.
5. Paragraph (4) does not affect, in respect of the matters referred to therein, the entitlement of a person to act as the representative of the adult.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'adult' means a person who has reached the age of 18 years;
- (2) 'measure' means any measure taken by an authority of a Member State, whatever it may be called, directed to the protection of an adult;
- (3) 'powers of representation' means powers granted by an adult, either under an agreement or by a unilateral act, to be exercised when that adult is not in a position to protect his or her interests;
- (4) 'Member State of origin' means the Member State in which the measure was taken or the authentic instrument was formally drawn up;
- (5) 'authentic instrument' means a document in a matter of protection of an adult which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:
 - (a) relates to the signature and the content of the authentic instrument; and
 - (b) has been established by a public authority or other authority empowered for that purpose by the Member State of origin;

- (6) ‘authority’ means any judicial or administrative authority of a Member State with competence to take measures directed to the protection of an adult's person or property;
- (7) ‘authority of origin’ means the authority which has taken the measure or formally drawn up the authentic instrument;
- (8) ‘confirmed powers of representation’ means powers of representation in respect of which a competent authority has confirmed that the representative vested with these powers can exercise them;
- (9) ‘competent authority’ means a public authority of a Member State with responsibilities in matters of protection of adults;
- (10) ‘system of interconnection’ means a system for the interconnection of protection registers and registers of other powers of representation;
- (11) ‘decentralised IT system’ means a network of IT systems, interoperable access points operating under the individual responsibility and management of each Member State, and the European electronic access point, which enables secure and reliable cross-border exchange of information;
- (12) ‘protection register’ means a register where measures directed to the protection of an adult or confirmed powers of representation have been registered.
- (13) ‘European electronic access point’ means an interoperable access point as defined in point (5) of Article 2 of Regulation [...] [the Digitalisation Regulation];

Article 4

References to the HCCH 2000 Protection of Adults Convention

Where referred to in this Regulation, the HCCH Convention of 13 January 2000 on the International Protection of Adults ('the HCCH 2000 Protection of Adults Convention'), which is attached to this Regulation, shall apply *mutatis mutandis*.

Chapter II JURISDICTION

Article 5

General jurisdiction

Subject to Article 6 of this Regulation, jurisdiction shall be determined in accordance with Chapter II of the HCCH 2000 Protection of Adults Convention.

Article 6

Choice of jurisdiction

1. Notwithstanding Article 5, the authorities of a Member State other than the Member State in which the adult is habitually resident shall have jurisdiction where all of the following conditions are met:
 - (a) the adult chose the authorities of that Member State, when he or she was still in a position to protect his or her interest;

- (b) the exercise of jurisdiction is in the interest of the adult;
 - (c) the authorities of a Member State having jurisdiction under Articles 5 to 8 of the HCCH 2000 Protection of Adults Convention have not exercised their jurisdiction.
2. When exercising their jurisdiction in accordance with paragraph (1), the authorities of a Member State shall notify, using the form set out in **Annex IV**, the Central Authority of the Member State of the habitual residence of the adult, designated pursuant to Article 18.
 3. The choice of jurisdiction referred to in paragraph (1) shall be expressed in writing and dated and signed by the adult. Any communication by electronic means which provides a durable record of the choice shall be deemed equivalent to writing.
 4. The references to Article 5 of the HCCH 2000 Protection of Adults Convention contained in Article 7(1), (2), and (3), Articles 9, 10, and Article 11(1) and (2) of that Convention shall be read as also including a reference to this Article. The information provided for in Article 10(4) of that Convention shall also be provided, where applicable, to the authority having exercised their jurisdiction in accordance with paragraph (1).

Article 7

Non-exclusive jurisdiction

Jurisdiction conferred to the authorities chosen by the adult pursuant to Article 6 of this Regulation shall not be exclusive and in particular shall not prevent the authorities having jurisdiction under Articles 5 and 6 of the HCCH 2000 Protection of Adults Convention to exercise their jurisdiction, when the authorities chosen by the adult have not exercised their jurisdiction or when they have waived such jurisdiction.

Chapter III APPLICABLE LAW

Article 8

Determination of applicable law

The law applicable to the cross-border protection of adults shall be determined in accordance with Chapter III of the HCCH 2000 Protection of Adults Convention.

Chapter IV RECOGNITION AND ENFORCEMENT OF MEASURES

SECTION 1 RECOGNITION OF MEASURES

Article 9

Recognition of a measure

1. A measure taken by the authorities of a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested person, included the adult concerned by the measure, may request from the authorities of a Member State that they decide on the recognition or non-recognition of a measure taken in another Member State.
3. If the outcome of proceedings before the authority of a Member State depends on the determination of an incidental question concerning a refusal or a non-refusal of recognition, that authority shall have jurisdiction over that question.

Article 10

Grounds for refusal of recognition

The recognition of a measure taken in another Member State may be refused in the following cases:

- (a) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceedings, without the adult having been provided the opportunity to be heard;
- (b) if such recognition is manifestly contrary to public policy of the Member State in which recognition is sought;
- (c) if the measure is incompatible with a later measure taken in a third country which would have had jurisdiction under Article [5](#) or Article [6](#), where this later measure fulfils the requirements for recognition in the requested Member State;
- (d) if the procedure provided in Article [14](#) has not been complied with.

SECTION 2

ENFORCEABILITY AND ENFORCEMENT OF MEASURES

Article 11

Enforceability (abolition of exequatur)

A measure taken by the authorities of a Member State which is enforceable in that Member State shall be enforceable in another Member State without the need for a declaration of enforceability.

Article 12

Enforcement

1. Subject to Section [3](#), the procedure for the enforcement of measures taken in another Member State shall be governed by the law of the Member State of enforcement. A measure taken in a Member State which is enforceable in the requested Member State shall be enforced in that Member State under the same conditions as a measure taken in the requested Member State.
2. Notwithstanding paragraph [\(1\)](#), the grounds for refusal or suspension of enforcement under the law of the requested Member State shall apply in so far as they are not incompatible with the grounds referred to in Article [10](#).

SECTION 3 COMMON PROVISIONS

Article 13

No review as to the substance

Under no circumstances may a measure taken by the authorities of a Member State be reviewed as to its substance.

Article 14

Procedure

1. A person seeking or contesting recognition, seeking enforcement of or invoking a measure taken in a Member State before the authorities of another Member State shall produce:
 - (a) a copy of the measure that satisfies the conditions necessary to establish its authenticity;
 - (b) an attestation issued pursuant to Article [15](#).
2. The authority before which a measure taken in another Member State is invoked or before which recognition or enforcement of a measure taken in another Member State is sought or contested, may, where necessary, require the applicant to provide a translation or a transliteration of the contents of the attestation referred to in paragraph (1), point [\(b\)](#).

Article 15

Attestation

The authority of origin shall, at the request of any interested person, issue an attestation using the form set out in **Annex I** reflecting the content of the measure.

Chapter V AUTHENTIC INSTRUMENTS

Article 16

Acceptance of authentic instruments

1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy in the Member State concerned.
2. The authentic instrument produced shall satisfy the conditions necessary to establish its authenticity in the Member State of origin.

Article 17

Attestation

A person wishing to use an authentic instrument in another Member State may ask the competent authority having formally drawn up or registered the authentic instrument in the Member State of origin to fill in the form set out in **Annex II** describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

Chapter VI COOPERATION

SECTION 1 CENTRAL AUTHORITIES

Article 18

Designation of a Central Authority

1. Each Member State shall designate one or more Central Authorities to assist with the application of this Regulation and shall specify the geographical and functional competence of each.
2. Where a Member State has designated more than one Central Authority, communications shall be sent directly to the relevant Central Authority with competence. Where a communication is sent to a Central Authority without competence, the latter shall forward it to the Central Authority with competence and inform the sender accordingly.
3. Member States shall ensure that Central Authorities have sufficient and appropriate facilities in terms of staff, resources and modern means of communication to adequately fulfil their tasks under this Regulation.

Article 19

Tasks of Central Authorities

1. Central Authorities shall cooperate and promote cooperation among the competent authorities in their Member States in the application of this Regulation.
2. Central Authorities shall communicate information on national laws, procedures and services in matters relating to the protection of adults, take the measures that they consider appropriate for improving the application of this Regulation.
3. Central Authorities shall facilitate communications, by every means, between the competent authorities.

Article 20

Location of an adult or a person likely to provide support

The Central Authority of a Member State, either directly or through competent authorities, shall provide, on the request of an authority of another Member State, assistance in discovering the whereabouts of:

- (a) an adult where it appears that the adult may be present and in need of protection within the territory of the requested Member State;
- (b) a person who is likely to provide support to the adult, in accordance with the information provided by the adult or another competent authority, where it

appears that such person may be present within the territory of the requested Member State.

Article 21

Placement

1. If an authority of a Member State contemplates the placement of the adult in another Member State in an establishment or other institution where protection can be provided, it shall first obtain the consent of a Central Authority of that other Member State. To that effect, it shall transmit to the Central Authority of the requested Member State a report on the adult together with the reasons for the proposed measure, using the form set out in **Annex VI**.
2. Paragraph (1) shall not apply where the placement is contemplated with a private person.
3. Except where exceptional circumstances make this impossible, the decision granting or refusing consent shall be transmitted to the requesting authority no later than six weeks following the receipt of the request.
4. Paragraphs (1), (2) and (3) shall not preclude Central Authorities or competent authorities from entering or maintaining existing agreements or arrangements with Central Authorities or competent authorities of one or more other Member States simplifying the consultation procedure for obtaining consent in their mutual relations.

Article 22

Designation of a representative abroad

1. Where the authority of a Member State contemplates the designation of a competent authority in another Member State as a representative of an adult to provide support for the implementation of a measure, it shall transmit its request to the Central Authority of the requested State using the **form set out in Annex VII**.
2. If the requested Central Authority so requires, the requesting authority shall ensure that the following are reimbursed, without delay:
 - (a) the fees paid to the representative; and
 - (b) the costs occasioned by the implementation of the measure in that other Member State.
3. The requested Central Authority may, before executing the request, ask the requesting authority for an adequate deposit or advance payment towards the requested costs.
4. The duty for the parties to bear the fees and costs pursuant to paragraph (2), or to make the deposit or advance payment pursuant to paragraph (3) shall be governed by the law of the Member State of the requesting authority.

Article 23

Meetings of Central Authorities

1. In order to facilitate the application of this Regulation, Central Authorities shall meet regularly.

2. The meeting of Central Authorities shall be convened, in particular, by the Commission within the framework of the European Judicial Network in civil and commercial matters in compliance with Council Decision 2001/470/EC²⁵.

SECTION 2

COMPETENT AUTHORITIES

Article 24

Implementation of measures

The competent authorities of a Member State may request the competent authorities of another Member State to assist in the implementation of measures.

Article 25

Exchange of information between authorities

1. Where a measure is contemplated, the authorities of a Member State, if the situation of the adult so requires, may request any authority of another Member State which has information relevant to the protection of the adult to communicate such information.
2. The request referred to in paragraph (1) shall be transmitted directly or through the Central Authority of the requested Member State.

Article 26

Serious danger

1. In the event that the adult is exposed to a serious danger, the competent authorities of the Member 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 another Member State, or that the adult is present in another Member State, shall inform the competent authorities of that other Member State about the danger involved and the measures taken or under consideration.
2. The information referred to in paragraph (1) shall be transmitted directly or through the Central Authority of the requested Member State.

Article 27

Direct communication and cooperation between authorities

1. For the purposes of this Regulation, the authorities of Member States may cooperate and communicate directly with, or request information directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.
2. The cooperation referred to in paragraph (1) may be implemented by any means that the authority considers appropriate, and may in particular concern the communications for the purposes of:
 - (a) Article 5;

²⁵ Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p.25).

- (b) this Chapter.
3. For the purposes of the communication pursuant to Article 8 of the HCCH 2000 Protection of Adults Convention, the authorities of Member States may use the form set out in Annex VIII to this Regulation.
 4. For the purposes of the information of the authorities of another Member State pursuant to Article 7, 10 and 11 of the HCCH 2000 Protection of Adults Convention, the authorities of Member States may use the form set out in Annex IX to this Regulation.

SECTION 3 GENERAL PROVISIONS

Article 28

Mediation and alternative dispute resolution

Central Authorities and competent authorities of Member States shall encourage, either directly or through other bodies, the use of mediation or other means of alternative dispute resolution, to achieve agreed solutions for the protection of the person or property of an adult in situations to which this Regulation applies.

Article 29

Non-disclosure of information

Central Authorities and competent authorities of Member States shall not disclose or confirm information gathered or transmitted for the purposes of this Regulation if they determine that to do so could:

- (a) jeopardise the health, safety or liberty of the adult or another person;
- (b) place the property of the adult in danger.

Article 30

Costs of Central Authorities and competent authorities

1. The assistance provided by the Central Authorities and the competent authorities pursuant to this Regulation shall be free of charge.
2. Without prejudice to Article 37(2), each Central Authority and each competent authority shall bear its own costs in applying this Regulation.

Article 31

Languages

1. The requests or applications made under this chapter shall be completed in the official language of the requested Member State or, if there are several official languages in that Member State, in the official language or one of the official languages of the place of the Central Authority or the competent authority concerned, or in any other official language of the Union which that Member State has indicated it can accept, unless the Central Authority or the competent authority of that Member State dispenses with translation.

2. The documents accompanying the request or application form shall not be translated into the language determined in accordance with paragraph [\(1\)](#) unless a translation is necessary in order to provide the assistance requested.

Article 32

Forms

Competent authorities and Central Authorities may use the forms set out in Annexes V and X to this Regulation to send and acknowledge receipt of a request made under this Chapter.

Article 33

Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the requested Member State:

- (a) in any proceedings for recognition or enforcement of a measure;
- (b) in the service of a judicial or extrajudicial document in another Member State;
- (c) in proceedings established pursuant to this Chapter.

Chapter VII EUROPEAN CERTIFICATE OF REPRESENTATION

Article 34

Creation of a European Certificate of Representation

1. This Regulation creates a European Certificate of Representation ('the Certificate') which shall be issued for use in another Member State and shall produce the effects listed in Article [40](#).
2. The use of the Certificate shall not be mandatory.
3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article [40](#) in the Member State whose competent authorities issued it in accordance with this Chapter.

Article 35

Purpose of the Certificate

1. The Certificate shall be issued for use by representatives, who, in another Member State, need to invoke their powers to represent adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.
2. The Certificate may be used to demonstrate that the representative is authorised, on the basis of a measure or confirmed power of representation, to represent the adult in particular in one or more of the following matters:

- (a) the control, management and disposition of the adult's real property or other assets;
- (b) the acquisition of real property or other assets in the adult's name or on the adult's behalf;
- (c) the carrying out of a contract entered into by the adult;
- (d) the carrying on, on the adult's behalf, of any trade or business;
- (e) discharge of the adult's responsibilities and legal obligations;
- (f) the conduct of legal proceedings in the adult's name or on the adult's behalf;
- (g) medical decisions, including giving and refusing consent to the carrying out of a medical treatment;
- (h) decisions concerning the adult's personal welfare and place of residence.

Article 36

Competence to issue the Certificate

1. The Certificate shall be issued in the Member State in which a measure was taken or powers of representation were confirmed concerning an adult.
2. The issuing authority of the Member State referred to in paragraph 1 shall be:
 - (a) the competent authority that has taken a measure or confirmed the powers of representation concerning the adult;
 - (b) another competent authority, as designated by the Member State, that has access to the information concerning the measure taken or the confirmed powers of representation.

Article 37

Application for a Certificate

1. The Certificate shall be issued upon an application by a representative authorised, by means of a measure taken or powers of representation confirmed in a Member State, to represent the adult (hereinafter referred to as: 'the applicant').
2. Member States shall ensure that the fee for obtaining the Certificate, if any, does not exceed the production cost of the Certificate.

Article 38

Issuance of the Certificate

1. Upon receipt of the application for the Certificate, the issuing authority shall verify that:
 - (a) the applicant is entitled to request the Certificate in accordance with the powers entrusted to the applicant in the measure taken or the powers of representation confirmed in the Member State of the issuing authority ('the source measure' or 'the source confirmed powers of representation');
 - (b) the elements to be certified are in conformity with that source measure or those source confirmed powers of representation;

- (c) that source measure or those source confirmed powers of representation remain valid and have not been replaced by a later measure or confirmed powers of representation.
2. The issuing authority shall verify all the elements listed in paragraph (1), in particular by referring to the information and documents available to it. It may also carry out further enquiries necessary to verify those elements. In that regard, it may request, from the applicant or from the competent authorities of another Member State or from both, the information or documents which it deems necessary to verify the elements to be certified.
 3. For the verification of the elements listed in paragraph (1), the issuing authority shall, where feasible, also consult the system of interconnection established in Chapter VIII.
 4. The applicant shall, upon request, provide the issuing authority with the documents or information referred to in paragraph (1). Similarly, competent authorities of other Member States shall, upon request, provide the issuing authority with those documents or information held, where that competent authorities would be authorised, under national law, to provide another national authority with such information.
 5. The issuing authority shall issue the Certificate without delay once all elements listed in paragraph (1) have been successfully verified. It shall issue the Certificate even if the habitual residence of the adult has changed to another Member State or to a third country. It shall not issue the Certificate if the source measure or the source confirmed powers of representation or elements to be certified have been challenged, unless they are provisionally applicable.
 6. The Certificate shall be issued using the form set out in Annex III.
 7. The Certificate shall be completed and issued in the language of the Member State of the issuing authority. The Certificate may also be issued in another official language of the Union requested by the applicant. This shall not create any obligation for the issuing authority issuing the Certificate to provide a translation or transliteration of the translatable content of the free text fields.
 8. The issuing authority shall take all necessary steps to inform the adult and any person with a legitimate interest about the issuance of a Certificate.
 9. The Certificate shall be valid for a period of 1 year. Where justified, the issuing authority may decide that the period of validity is to be longer or shorter, in particular where the source measure has a longer or shorter duration than a year.

Article 39

Contents of the Certificate

1. The Certificate shall indicate which powers the representative of an adult has or, as appropriate, in a negative fashion, which powers the representative does not have. Where applicable, the Certificate shall also indicate any limitations of such powers or conditions attached to such powers.

Article 40

Effects of the Certificate

1. The Certificate shall produce its effects in all Member States, without any special procedure being required.
2. The Certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the source measure or the source confirmed powers of representation or under any other law applicable to their specific elements. The person mentioned in the Certificate as the representative of an adult shall be presumed to have the powers mentioned in the Certificate with no conditions or restrictions being attached to those powers other than those stated in the Certificate. The presumption shall however not extend to elements which are not governed by this Regulation.
3. Any person who, acting on the basis of the information certified in a valid Certificate, deals with someone indicated in the Certificate as the adult's representative with respect to a certain matter, shall be considered to have dealt with someone with authority to represent the adult in that matter, unless the person knows that the contents of the Certificate are not accurate or valid or is unaware of such inaccuracy or invalidity due to gross negligence.

Article 41

Certified copies of the Certificate

1. The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies to the applicant.
2. The issuing authority shall, for the purposes of Article 42(3) and Article 44(2), keep a list of certified copies that have been issued pursuant to paragraph 1 of this Article.
3. The end of validity of a certified copy shall correspond with the end of validity of the Certificate pursuant to Article 38(9), to be indicated in the certified copy by way of an expiry date. Once this period has elapsed, any person in possession of a certified copy shall, in order to be able to use the Certificate for the purposes indicated in Article 35, request the issuance of a new Certificate from the issuing authority.

Article 42

Rectification, modification or withdrawal of the Certificate

1. The issuing authority shall, at the request of any person with a legitimate interest or of its own motion, rectify the Certificate in the event of a clerical error.
2. The issuing authority shall, at the request of any person with a legitimate interest or, where this is possible under national law, of its own motion, modify or withdraw the Certificate where it has been established that the Certificate or individual elements thereof are not accurate or valid.
3. The issuing authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 41(1) of any rectification, modification or withdrawal thereof.

Article 43

Redress procedures

1. Decisions taken by the issuing authority pursuant to Article [38](#) on the issuance of a Certificate or on the refusal to issue a Certificate may be challenged by any person with a legitimate interest.

Decisions taken by the issuing authority pursuant to Article [42](#) and Article 44(1), point [\(a\)](#) may be challenged by any person with a legitimate interest.

The challenge shall be lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that Member State.

2. Member States shall communicate to the Commission the judicial authorities competent to deal with the redress procedures pursuant to paragraph [\(1\)](#).
3. If, as a result of a challenge as referred to in paragraph 1, it is established that the Certificate issued is not accurate or valid, the competent judicial authority shall rectify, modify or withdraw the Certificate or ensure that it is rectified, modified or withdrawn by the issuing authority.

If, as a result of a challenge as referred to in paragraph 1, it is established that the refusal to issue the Certificate was unjustified, the competent judicial authority shall issue the Certificate or ensure that the issuing authority re-assesses the case and makes a new decision.

Article 44

Suspension of the effects of the Certificate

1. The effects of the Certificate may be suspended by one of the following competent authorities:
 - (a) the issuing authority, at the request of any person with a legitimate interest, pending a modification or withdrawal of the Certificate pursuant to Article [42](#);
 - (b) the judicial authority referred to in Article [43](#), at the request of any person entitled to challenge a decision taken by the issuing authority, pending such a challenge.
2. The issuing authority or, as the case may be, the judicial authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 41([1](#)) of any suspension of the effects of the Certificate.

During the suspension of the effects of the Certificate no further certified copies of the Certificate may be issued.

Chapter VIII ESTABLISHMENT AND INTERCONNECTION OF PROTECTION REGISTERS

Article 45

Establishment of protection registers

1. By [two years after the date of the start of application] at the latest, Member States shall establish and maintain in their territory one or several registers in which information is recorded concerning protection measures and, where their national law provides for the confirmation of powers of representation by a

competent authority, concerning those powers of representation ('protection registers').

2. The information recorded in the registers referred to in paragraph (1) shall include the following ('mandatory information'):
 - (a) an indication that a measure has been taken or, where applicable, that powers of representation have been granted or confirmed;
 - (b) the date of the first measure as well as the date of the subsequent measures taken, or, where applicable, the date when the powers of representation were granted by an adult or were confirmed by a competent authority;
 - (c) where a measure or a decision on the powers of representation are provisionally applicable, the date on which the time limit for challenging the measure or the decision on the powers of representation expires;
 - (d) the date of expiration or reviewal of the measures or of the powers of representation, if any;
 - (e) the competent authority which has taken, modified or terminated the measure or registered, confirmed, modified or terminated the powers of representation;
 - (f) the adult's name, place and date of birth and, where applicable, national identification number.
3. The information referred to in paragraph (1) shall be published in the protection registers as soon as possible after the following conditions are met:
 - (a) the authorities of the Member State have:
 - (i) taken, modified or terminated a measure; or
 - (ii) confirmed, modified or terminated powers of representation granted by an adult;
 - (b) the time limit for appealing the measure or the decision on the powers of representation has expired, unless the measure or the powers of representation are provisionally applicable.
4. Paragraph (1) shall not preclude Member States from including additional documents or additional information in their protection registers, such as the name of the representative or the nature and extent of the representation.

Article 46

Interoperability of registers of other powers of representation

By [two years after the date of start of application] at the latest, Member States where national law provides for electronic registers recording information concerning other powers of representation which are registered by a competent authority, and where national law does not provide for the confirmation of such powers of representation, shall ensure that those registers record the mandatory information referred to in Article 45(2).

Article 47

Interconnection of registers

1. By means of implementing acts, the Commission shall establish a decentralised system for the interconnection ('system of interconnection') that is composed of:
 - (a) Member States' protection registers of measures referred to in Article 45 and, where applicable, Member States' protection registers of confirmed powers of representation referred to in Article 45 and Member State's registers of other powers of representation Article 46;
 - (b) a central electronic access point to the information in the system.
2. The system of interconnection shall provide a search service in all the official languages of the Union in order to make available the following:
 - (a) the mandatory information set out in Article 45(2);
 - (b) any other documents or information included in the protection registers or other registers of powers of representation, which the Member States choose to make available through the system of interconnection.

Article 48

Condition of access to information via the system of interconnection

1. Member States shall ensure that the information referred to in Article 47(2) is available free of charge via the system of interconnection.
2. The information available through the system of interconnection shall only be available to those competent authorities or Central Authorities of a Member State which:
 - (a) have access to the mandatory information under their national law;
 - (b) have a legitimate interest in accessing this information.
3. For the purposes of paragraph (2), point (a), Member States shall provide the means to authorise those competent authorities or Central Authorities to access to the system of interconnection.
4. Upon a request made by those competent authorities or Central Authorities, the system of interconnection shall automatically make the information referred to in Article 47(2) accessible to them.

Chapter IX DIGITAL COMMUNICATION

Article 49

Means of communication between competent authorities or Central Authorities

1. Written communication between competent authorities or Central Authorities, including the exchange of forms set out in **Annexes I to X**, shall be carried out through a secure and reliable decentralised IT system.
2. The use of the decentralised IT system may not be appropriate for direct communication between authorities carried out pursuant to Article 27(1), and any other means of communication may be used instead.
3. Where electronic communication in accordance with paragraph (1) is not possible due to the disruption of the decentralised IT system, the nature of the transmitted

material or exceptional circumstances, the transmission shall be carried out by the swiftest, most appropriate alternative means, taking into account the need to ensure a secure and reliable exchange of information.

Article 50

Communication through the European electronic access point

1. The European electronic access point established on the European e-Justice Portal pursuant to Article 4 of Regulation EU [...] [*the Digitalisation Regulation*] may be used for electronic communication between natural and legal persons and Member States' competent authorities and issuing authorities in connection with the following:
 - (a) proceedings for a decision on the recognition or non-recognition of a measure taken in a Member State pursuant to Article [10](#);
 - (b) an application for the issuance of the attestation pursuant to Articles [15](#) and [17](#);
 - (c) an application for the issuance, rectification, modification, withdrawal, suspension or redress procedures of the European Certificate of Representation pursuant to Chapter [VII](#).
2. Article 4(3), Article 5(2) and (3), and Article 6 of Regulation EU [...] [*the Digitalisation Regulation*] shall apply to electronic communications pursuant to paragraph [\(1\)](#).

Article 51

Electronic signatures and electronic seals

1. The general framework for the use of trust services set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council²⁶ shall apply to the electronic communication under this Regulation.
2. Where a document transmitted as part of the electronic communication under Article [49\(1\)](#) requires or features a seal or handwritten signature, qualified electronic seals or qualified electronic signatures as defined in Regulation (EU) No 910/2014 may be used instead.
3. Where a document transmitted as part of the electronic communication under Article [50](#) requires or features a seal or handwritten signature, advanced electronic seals, advanced electronic signatures, qualified electronic seals or qualified electronic signatures as defined in Regulation (EU) No 910/2014 may be used instead.

Article 52

Legal effects of electronic documents

Documents transmitted as part of electronic communication shall not be denied legal effect or be considered inadmissible in the context of cross-border judicial procedures under this Regulation solely on the ground that they are in electronic form.

²⁶ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73–114).

Chapter X

DATA PROTECTION

Article 53

General provision on data protection

1. Personal data required for the application of this Regulation shall be processed by Member States' competent authorities and Central Authorities for the purposes of streamlining cross-border procedures and cooperation among Member States in matters falling within the scope of this Regulation and thus for enhancing protection of adults in international situations. In particular, personal data shall be processed under this Regulation for the purposes of:
 - (a) determining the Member States whose authorities have jurisdiction under Chapter [II](#);
 - (b) determining the law applicable to measures and powers of representation under Chapter [III](#);
 - (c) facilitation of cross-border proceedings for the recognition and enforcement of measures under Chapter [IV](#), including obtaining of a decision on recognition or non-recognition of a measure pursuant to Article [10](#) and the presentation of documents for the purposes of the invocation or enforcement of the measure pursuant to Article [14](#);
 - (d) facilitation of the acceptance of authentic instruments in all Member States under Chapter [V](#);
 - (e) cooperation among competent authorities and Central Authorities of Member States under Chapter [VI](#) and of their digital communication pursuant to Article [49](#);
 - (f) electronic communication with Member States' competent authorities that natural and legal persons may use in connection with specific proceedings and applications under this Regulation;
 - (g) the issuance of the attestations pursuant to Articles [15](#) and [17](#), of the forms simplifying cross-border cooperation set out in Annexes, and of a European Certificate of Representation pursuant to Chapter [VII](#).
2. Personal data to be processed pursuant to this Regulation shall be those contained in the documents handled, for the purposes referred to in paragraph [\(1\)](#), by Member States competent authorities and Central Authorities. Processing of personal data under this Regulation shall be limited to the extent necessary for the purposes set out in paragraph [\(1\)](#), without affecting further processing for archiving purposes in the public interest in accordance with Article 5(1), point (b) and Article 89 of the Regulation (EU) 2016/679.
3. For the purposes of this Regulation, competent authorities and Central Authorities empowered by Member States to apply this Regulation shall be regarded as controllers within the meaning of Article 4(7) of the Regulation (EU) 2016/679. Controllers shall ensure the security, integrity, authenticity and confidentiality of the data processed for the purposes set out in paragraph [\(1\)](#).

4. Notwithstanding paragraph (3), the Commission shall be regarded as a controller within the meaning of Article 3(8) of the Regulation (EU) 2018/1725 with respect to personal data processing by the European electronic access point pursuant to Article 50. This processing shall be for the purposes of providing for electronic communication means with Member States' competent authorities that natural and legal persons may use in connection with specific proceedings and applications under this Regulation. The Commission shall implement the technical measures required to ensure the security of personal data transmitted, in particular confidentiality and integrity of any transmission.

Article 54

Data accessed through the system of interconnection

1. Notwithstanding Article 53, processing of personal data under Chapter VIII on the establishment of protection registers and interconnection of registers shall be governed by the paragraphs 2 to 5 of this Article.
2. Processing of personal data under Chapter VIII shall be limited to the extent necessary for the purposes of facilitating the cross-border provision of information about a measure or powers of representation concerning a particular adult. Without affecting Article 47(2), point (b), the processing shall be limited to the personal data included in the mandatory information set out in Article 45(2).
3. Personal data shall be stored in the Member States' protection registers referred to in Article 45(1) or registers of other powers of representation referred to in Article 46. The retention period of data in the system of interconnection shall be limited to what is necessary to interconnect those registers and to enable the retrieval of and the access to the data from them.
4. Member States shall be responsible, in accordance with Article 4(7) of Regulation (EU) 2016/679, for the collection and storage of data in registers referred to in Article 45 and Article 46 and for decisions taken to make that data available in the system of interconnection referred to in Article 47.
5. With respect to the system of interconnection referred to in Article 47, the Commission shall be regarded as controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725. It shall adopt necessary technical solutions to fulfil its responsibilities within the scope of this function. The Commission shall in particular implement technical measures required to ensure the security of personal data while in transit, especially their confidentiality and integrity.

Chapter XI DELEGATED ACTS

Article 55

Delegation of powers

The Commission is empowered to adopt delegated acts in accordance with Article 56 concerning the amendment of **Annexes I to X** in order to update or make technical changes to those Annexes.

Article 56

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 55 shall be conferred on the Commission for an indeterminate period of time from [*date of entry into force of this Regulation*].
3. The delegation of power referred to in Article 55 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 55 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Chapter XII GENERAL AND FINAL PROVISIONS

Article 57

Legalisation or other similar formality

No legalisation or other similar formality shall be required in the context of this Regulation.

Article 58

Relations with other instruments

1. This Regulation shall not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation.
2. Notwithstanding paragraph 1, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of the Member States in so far as such conventions concern matters governed by this Regulation.

Article 59

Relation with the HCCH 2000 Protection of Adults Convention

1. As concerns the relation with the HCCH 2000 Protection of Adults Convention, this Regulation shall apply:
 - (a) subject to paragraph (2), where the adult concerned has his or her habitual residence in the territory of a Member State;
 - (b) even if the adult concerned has his or her habitual residence in the territory of a State, which is a Party to that Convention, and in which this Regulation does not apply, as concerns the recognition and enforcement of a measure taken, or the acceptance of an authentic instrument drawn up by a competent authority of a Member State in the territory of another Member State.
2. Notwithstanding paragraph 1,
 - (a) with respect to an adult who is a national of a Party to the HCCH 2000 Protection of Adults Convention in which this Regulation does not apply, Article 7 of that Convention shall apply;
 - (b) as concerns the transfer of jurisdiction between an authority of a Member State and an authority of a Party to the HCCH 2000 Protection of Adults Convention in which this Regulation does not apply, Article 8 of that Convention shall apply;
 - (c) as concerns cooperation among competent authorities and Central Authorities, Chapter V of the HCCH 2000 Protection of Adults Convention shall apply between a Member State and a Party to that Convention in which this Regulation does not apply.

Article 60

Adoption of implementing acts by the Commission

1. The Commission shall adopt implementing acts establishing a decentralised system for the interconnection of registers referred to in Article 47 ('system of interconnection') setting out the following:
 - (a) the technical specification defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection;
 - (b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection;
 - (c) minimum criteria for the search service provided by the system of interconnection based on the information set out in Article 45;
 - (d) minimum criteria for the presentation of the results of the searches in the system of interconnection based on the information set out in Article 45;
 - (e) the means and the technical conditions of availability of services provided by the system of interconnection;
 - (f) a technical semantic glossary containing a basic explanation of the Member States' of protection measures or of powers of representation;

- (g) specification of the categories of data that can be accessed, including pursuant to Article 47(2), point (b); and
 - (h) data protection safeguards.
2. The Commission shall adopt implementing acts establishing the decentralised IT system referred to in Chapter IX, setting out the following:
 - (a) the technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system;
 - (b) the technical specifications for communication protocols;
 - (c) the information security objectives and relevant technical measures ensuring minimum information security standards and a high level of cybersecurity for the processing and communication of information within the decentralised IT system; and
 - (d) the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system;
 - (e) data protection safeguards.
 3. The implementing acts referred to in This article shall be adopted in accordance to the procedure referred to in Article 64.
 4. The implementing acts establishing the system of interconnection pursuant to paragraph 1 shall be adopted by [3 years after the entry into force].
 5. The implementing acts establishing the decentralised IT system pursuant to paragraph 2 shall be adopted by [2 years after the entry into force].

Article 61

Reference implementation software

1. With a view to setting up the decentralised IT system referred to in Article 50, the Commission shall be responsible for the creation, maintenance and development of reference implementation software which Member States may choose to apply as their back-end system instead of a national IT system for the purposes of the communication between competent authorities and Central Authorities referred to in Article 49 and between natural and legal persons and competent authorities and issuing authorities referred to in Article 50.
2. The creation, maintenance and development of the reference implementation software shall be financed from the general budget of the Union.
3. The Commission shall provide, maintain and support on a free-of-charge basis the reference implementation software.

Article 62

Costs of establishing protection registers and interconnecting Member States' registers

1. The establishment, maintenance and development of the system of interconnection established under Chapter VIII shall be financed from the general budget of the Union.
2. Each Member State shall bear the costs of establishing and adjusting its registers referred to in Articles 45 and 46 to make them interoperable with the decentralised

system for the interconnection of registers, as well as the costs of administering, operating and maintaining those registers. This shall not affect the possibility to apply for grants to support such activities under the Union's financial programmes.

Article 63

Costs of the decentralised IT system, European electronic access point, and national IT portals

1. As regards the decentralised IT system established pursuant to Chapter [IX](#), each Member State shall bear the costs of the installation, operation and maintenance of the decentralised IT system's access points which are located on their territory.
2. Each Member State shall bear the costs of establishing and adjusting its national IT systems to make them interoperable with the access points, and shall bear the costs of administering, operating and maintaining those systems.
3. Member States shall not be prevented from applying for grants to support the activities referred to in paragraphs 1 and 2, under the relevant Union financial programmes.
4. The Commission shall bear all costs related to the European electronic access point.

Article 64

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011²⁷.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 65

Transitional provisions

1. This Regulation shall apply only to measures taken, to authentic instrument formally drawn up or registered, and to powers of representation confirmed after [**date of application**].
2. Notwithstanding paragraph [\(1\)](#), this Regulation shall apply as from [date of application] to powers of representation previously granted by an adult under conditions corresponding to those set out in Article 15 of the HCCH 2000 Protection of Adults Convention.
3. Chapter [VI](#) on cooperation between Central Authorities shall apply to requests and application received by the Central Authorities as from [**date of application**].
4. Chapter [VII](#) on the European Certificate of Representation shall apply to applications for the Certificate received by the issuing authority as from [**date of application**].

²⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13–18).

5. Member States shall use the decentralised IT system referred to in Article 49(1) to procedures instituted from the first day of the month following the period of two years after the adoption of the implementing act referred to in Article 60(5).
6. Chapter VIII on the establishment and interconnection of protection registers and registers of other powers of representation shall apply to the measures taken and the powers of representation confirmed or registered from the first day of the month following the period of two years after the adoption of the implementing act referred to in Article 60(4).

Article 66

Monitoring and evaluation

1. By [10 years after the entry into force], the Commission shall carry out an evaluation of this Regulation and present to the European Parliament, to the Council [and to the European Economic and Social Committee] a report on the evaluation of this Regulation supported by information supplied by the Member States and collected by the Commission. The report shall be accompanied, where necessary, by a legislative proposal.
2. As of [3 years after the entry into force], the Member States shall provide the Commission, on an annual basis, within the framework of the European Judicial Network in civil and commercial matters, with:
 - (a) the number of incoming communications received by their authorities under Article 7 of the HCCH 2000 Protection of Adults Convention, which were sent by authorities of another Member State;
 - (b) the number of incoming requests received by their authorities under Article 8 of the HCCH 2000 Protection of Adults Convention, which were sent by authorities of another Member State;
 - (c) the number of European Certificates of Representation issued by their competent authorities, as well as the number of requests for rectifications, modifications or withdrawals of European Certificates of Representations previously issued, and, where possible, the division between Certificates issued on the basis of a source measure and those issued on the basis of source confirmed powers of representation;
 - (d) the number of incoming requests received by the Central Authorities coming from Central Authorities of other Member States, and where possible the nature of those requests;
 - (e) the number of incoming requests received by their authorities or Central Authorities coming from authorities and competent authorities of other Member States, and where possible the nature of those requests;
 - (f) the average duration of the cases handled by the Central Authorities under this Regulation, based on the number of cases closed during the relevant year. The duration of a case is calculated from the day it is registered by the Central Authority until the day the file is permanently closed.

Article 67

Information made available to the public

1. The Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, provide factsheets with a short summary of their national legislation, including, where available, information on:
 - (a) an indicative list of measures directed to the protection of adults;
 - (b) an indicative list of powers of representation directed to the protection of adults;
 - (c) the existence of and the procedures for the confirmation of powers of representation;
 - (d) the authorities which have competence in matters of protection of adults, their roles and contact details where possible;
 - (e) the national procedures applying to the establishment, registration, confirmation, modification and termination of measures and/or powers of representation.
2. The Member States shall keep the information permanently updated.

Article 68

Accessibility

Information provided to the public and forms and applications made available to it under this Regulation shall be made accessible to the public in line with the accessibility requirements of Directive (EU) 2019/882.

Article 69

Information to be communicated to the Commission

1. The Member States shall communicate to the Commission the following:
 - (a) the authorities competent to decide on the recognition or non-recognition of a measure taken in another Member State referred to in Article 9(2);
 - (b) the authorities competent to issue the attestation referred to in Article 15;
 - (c) the relevant provisions of their national law on the evidentiary effects of authentic instruments directed to the protection of adults;
 - (d) the conditions for establishing the authenticity of an authentic instrument under their national law, as referred to in Article 16(2);
 - (e) the authorities competent to issue the attestation referred to in Article 17;
 - (f) the names, addresses and means of communication for the Central Authorities designated pursuant to Article 18;
 - (g) where applicable, the names, addresses and contact details of the authorities and other bodies competent to establish mediation or other means of alternative dispute resolution, referred to in Article 28;
 - (h) languages accepted for the translations pursuant to Article 31;
 - (i) the authorities competent to issue the European Certificate of Representation, as referred to in Article 36(2);

- (j) the authorities competent to deal with the redress procedures, as referred to in Article [43](#);
 - (k) fees, if any, that Member States charge for the issuance of the European Certificate of Representation in accordance with Article [37\(2\)](#);
 - (l) the judicial authorities competent to deal with redress procedure pursuant to Article [43](#) and with the requests for a suspension of the effects of the Certificate pursuant to Article [44](#);
 - (m) authorities referred to in Article [48\(2\)](#), point [\(a\)](#) having access to information via the system of interconnection of registers.
2. The Member States shall communicate the information referred to in paragraph 1, points (a) to (l) by the first day of the month following a period of 15 months after the start of application at the latest, and the information referred to in paragraph 1, point (m), by the first day of the month following the period of two years after the date of entry into force of the implementing act referred to in Article [60\(4\)](#).
 3. The Member States shall communicate to the Commission any changes to the information referred to in paragraph 1.
 4. The Commission shall make the information referred to in paragraph 1 publicly available through appropriate means, including through the European e-Justice Portal.

Article 70

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from [the first day of the month following a period of 18 months from the date of entry into force of this Regulation].
3. Article [49](#) and Article [50](#) shall apply from the first day of the month following the period of two years after the date of entry into force of the implementing act referred to in Article [60\(2\)](#).
4. Articles [45](#) and [46](#) shall apply from [two years after the date of entry into application].
5. Article [47](#) shall apply from the first day of the month following the period of two years after the date of entry into force of the implementing act referred to in Article [60\(1\)](#).
6. Article [38\(3\)](#) shall apply from the first day of the month following the period of two years after the adoption of the implementing act referred to in Article [60\(4\)](#).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

[...]

For the Council

The President

[...]