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PUBLIC

NOTE

From:	Presidency
To:	Delegations
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 - Presidency redraft of Chapter VI

Delegations will find in Annex a redraft of Chapter VI of the above-mentioned Regulation, by the Danish Presidency. It covers Chapters VI and the related part of Article 69, as well as the relevant recitals.

Changes in comparison to the Commission's proposal are indicated in **bold** or (…), while changes in comparison to the last version of the redraft (ST 16995/24) are indicated **in bold and underline** or strikethrough.

ANNEX

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

PUBLIC

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,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

[1] Opinion of 13 December 2023 (OJ C/2024/1581).

Whereas:

[…]

(31) Central Authorities should be designated in all Member States. **Member States should consider designating the same Central Authority for this Regulation as designated for the HCCH 2000 Protection of Adults Convention. Member States should ensure that Central Authorities have adequate financial and human resources to enable them to carry out the tasks assigned to them under this Regulation.**

(31a) Central Authorities should in particular assist **courts and** 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 (...)**prompt** communication, **courts and** competent authorities should be able to request information or assistance directly from the Central Authority**, ~~or~~ courts ~~or~~ or competent authority~~ies~~** 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.

PUBLIC

(32a) Among others, the Central Authorities should be tasked with assisting courts ┤or competent authorities├ of other Member States with locating an adult or a natural or legal person who is likely to provide protection to the adult where those persons appear to be present within the territory of the requested Member State. The person likely to provide protection to the adult may include for instance a family member of the adult present in another Member State who is not aware of the ongoing proceedings. Where a court ┤or competent authority~~ies~~├ presumes that this person is likely to provide protection to the adult, including on the basis of the information provided by the adult himself or herself, but does not posses his or her contact details, it may request another Member State to assist it in determining the whereabouts of that person. Upon such request, the Central Authority of the requested Member State should take appropriate steps to provide that assistance either directly or through any competent authorities or other bodies. The assistance may include, for instance, a search in databases under their responsibilities and should be provided in accordance with the national law and procedure of the requested Member State. National law of the requested Member State should also govern the possibility that a person who, based on the request from the other Member State, is likely to provide protection to the adult, refuses to be identified and to have their whereabouts transmitted to the requesting court ┤or competent authority├.

PUBLIC

(33) According to Article 19 of the UNCRPD, 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 **courts** (...) of a Member State need to take a measure concerning the place of residence or temporary placement of an adult. **The term 'placement' should be understood in a broad sense. It may cover the case where a measure is ordered without the consent of the person concerned, as well as voluntary placement without restrictions on the liberty of the person concerned, including living and related protection arrangements.** Examples of such situations are cases where **courts**(...) 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.

PUBLIC

(33a) Where (...)placement is to be implemented in another Member State, **the measure of placement should not be taken unless the Central Authority, court or competent authority of the Member State in which the placement would be implemented gives consent with the placement.**(...). The request for consent made by the (...)**court of the requesting Member State**(...)should include **a report on the adult together with** the reasons for the proposed measure, **information on the considered funding** and**, where possible,** the views expressed by the adult concerned(...), in light of Article 19 of the UNCRPD. **Best efforts should be made to ensure that decisions in the context of the contemplated placement are adopted in a manner that respects the will and preferences of the adult. The report from the court of the requesting Member State may also include any other information that the court considers pertinent, such as the expected duration of the placement and envisaged supervision of that measure.** The Central Authority**, court or competent authority** of the **requested** Member State(...) should be able to decide promptly whether to grant the consent or to refuse it. The absence of a reply within **two months**(...) should not be understood as consent and without consent the measure should not be implemented. ~~The consultation **for obtaining consent** should not be carried out when the placement is with a **natural person**(...) and does not require the supervision of any **competent**(...) authority of the **requested** Member State(...)[2].~~

[2] This sentence has been redrafted in Article 21(2).

(34) In situations where **an** adult has (...) connections with a Member State other than the one whose **courts**(...) ~~**are**~~**is exercising** jurisdiction under this Regulation, for example **connections** based on **adult's**(...) regular presence, or complex financial assets in that **Member** State, the appointment of a **competent authority as** 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**, for example,** to ensure **a smooth implementation of a measure, and of the** the continuity of the **protection of**~~**support for**~~ (...) the adult **across borders**. **Designation of a competent authority should require the consent of the Member State in question. The consent procedure does not apply in other cases, for example, when designating private persons.** In cases where **the court exercising jurisdiction contemplates designating a competent authority** ~~**[or a professional representative] from another Member State as a representative of the adult**~~**, it should inform the Central Authority, court or competent authority of the requested Member State that it contemplates such designation. It may also include any other information deemed relevant, for instance the proposed arrangements concerning the nature and limits of the tasks of the representative, their future supervision or expected duration of the representation or support to be provided**~~**. In accordance with its national law and procedure, the Central Authority may transmit the request further to court or other authority competent to deal with that request and may also notify the intended representative about the request**~~**. Where the requested Member State requires that the expenses to be incurred by the representative as a result of such designation are recovered, the requesting court should ensure such recovery. The national law of the Member State of the requesting court should govern whether and to which extent these costs should be covered by the parties to the proceeding, including the adult.** (...).

(34a) For the purposes of this Regulation, courts and competent authorities should be able to communicate and exchange information with courts and competent authorities of other Member States, either directly or through their Central Authorities, subject to applicable rules, such as on protection of personal data ~~and confidentiality of information~~. For instance, a court in a Member State contemplating a measure may request a court or a competent authority of another Member State to communicate information relevant to the protection of an adult, if the situation of the adult so requires. In addition, where a court~~s~~ or competent authority~~ies~~ determines that an adult present in another Member State is exposed to a serious danger, it~~they~~ should inform the court~~s~~ or competent authority~~ies~~ of that Member State. Furthermore, to enhance judicial harmony and consistency of decisions across Member States and ensure that national records and registers are up-to-date, a court that modifies, replaces or terminates a measure taken by a court of another Member State should, where appropriate, notify ~~endeavour to inform~~ the court which took the measure about such modification, replacement or termination.

(34b) Nevertheless, Central Authorities, courts or competent authorities should not disclose or confirm any information gathered or transmitted for the purposes of this Regulation if they determine that to do so could jeopardise the health, safety or liberty of the adult or another person or place the property of the adult in danger. **The assessment should be based on serious and detailed information in order to prevent insufficiently justified non-disclosure. As an** ~~For~~ example**, in circumstances where domestic violence has occurred and a court ordered the new address of the adult not to be disclosed, they may decide to refuse providing contact details of the adult. Where appropriate, it should however be possible for a request under this Regulation to be processed by Central Authorities, courts and competent authorities without them transmitting, disclosing or confirming the information that could jeopardise the health, safety or liberty of the adult or another person or place the property of the adult in danger.**

PUBLIC

(34c) In order to achieve agreed solutions for the protection of the person or the property of the adult, Member States should encourage, to the extent that the specific circumstances of the case allow, the use of mediation or other means of alternative dispute resolution. This could, for instance, be between the adult and those responsible for him or her in an endeavour to get the adult to accept a measure which seems beneficial.

[…]

PUBLIC

HAVE ADOPTED THIS REGULATION:

PUBLIC

Chapter VI
COOPERATION AND COMMUNICATION

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 **and communication** among the **courts and**(...) 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 ~~**steps**~~**actions**(...) that they consider appropriate for improving the application of this Regulation.

3. **For the purposes of paragraph 1 and 2, the European Judicial Network in civil and commercial matters may be used.**

(...)

Article 20

Location of an adult or a person likely to provide (...)protection

The Central Authority of a Member State, either directly or through competent authorities **or other bodies**, shall provide, on the request of (...) **a court ~~[~~or a competent 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 (...)**protection** to the adult, **for instance,** in accordance with the information provided by the adult or another **court or** competent authority, where it appears that such person may be present within the territory of the requested Member State.

PUBLIC

~~[~~*Article 21*

~~[~~Cooperation in the event of contemplated placement[3] ~~in another Member State]~~ / ~~[Cooperation on measures concerning living and related protection arrangements in another Member State]~~

1. If (...)**a court** of a Member State contemplates the placement of (...) a**n** adult in another Member State in an establishment or other **place**(...)where protection **or necessary support** can be provided, it shall first obtain the consent of a Central Authority**,** ~~[~~**or court or** ~~other~~ **competent authority]** of that other Member State. To that effect, it shall transmit to th(...)**at** Central Authority **~~[~~,court or** ~~other~~ **competent authority]** of the requested Member State **a request for consent, using the form set out in Annex VI, and include** a report on the adult together with the reasons for the proposed measure,(...)**information on any considered funding, where possible, the views expressed by the adult concerned and other information that the court considers relevant** (...)

2. ~~(...)~~ **This Article** shall not apply where **the adult has consented to** the placement ~~is contemplated with a~~ **natural**~~(...) person~~ **and the placement does not require any supervision or assistance of a court or competent authority of the requested Member State**.

3. The decision on placement in a requested Member State shall not be made in the requesting Member State without a consent given by the Central Authority ~~[~~,court or ~~other~~ **competent authority]~~ of the requested Member State.**

4. Except where exceptional circumstances make this impossible, the decision granting or refusing consent shall be transmitted to the requesting **court**(...) no later than **two months** (...) following the receipt of the request.

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[3] The term "placement" is kept in the title, following the introduction of a definition in recital 33.

~~[~~**5** (...)**This Article** 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 (...)procedure for obtaining consent in their mutual relations.~~]~~

Article 22

Designation of a ~~representative~~ competent authority of another Member State as representative ~~abroad~~

1. Where(...) **a court** of a Member State contemplates the designation of a competent authority**, (...)**in another Member State as a representative of an adult to ~~provide support~~ **represent or support the adult**~~for the implementation of a measure~~, it shall transmit its request to the Central Authority**, court or competent authority** of the requested State using the **form set out in Annex VII**.

~~2. The Central Authority may transmit the request referred to in paragraph 1 to a court or other authority in the requested Member State competent to deal with that request.~~

2. The decision on the designation of a representative in a requested Member State shall not be made in the requesting Member State without a consent given by the Central Authority, court or competent authority of the requested Member State.

3. Except where exceptional circumstances make this impossible, the decision granting or refusing the designation of the representative shall be transmitted to the requesting court no later than two months following the receipt of the request.

(...)**4**. The requested Central Authority**, court or other authority dealing, pursuant to paragraph 2, with the request in the requested Member State** may, before **consenting to** (...)the request, **require that the requesting court ensures that the following will be reimbursed:**

(a) the fee paid to the representative; and

(b) the costs occasioned by the implementation of the measure in its Member State.

It may ~~ask~~ **request** the requesting (...)**court** for an adequate deposit or advance payment towards the ~~requested~~ costs **before consenting**.

~~**5. Where it is required, in accordance with paragraph 4, that the fee or costs are reimbursed or that a deposit or advance payment towards these costs is paid, the requesting court shall ensure that the payments are made.**~~

~~6. The duty for the parties **to the proceedings before the requesting court, including the adult,** to bear the fees and costs **and to make the deposit or advance payment** pursuant to paragraph (4(...)), shall be governed by the law of the Member State of the requesting **court**(...).~~

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/EC[4].

[4] 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).

SECTION 2

COURTS AND COMPETENT AUTHORITIES

PUBLIC

Article 24

Implementation of measures

The **courts and** competent authorities of a Member State may request**, directly or through the Central Authority of the requested Member State,** the **courts and** competent authorities of another Member State to assist in the implementation of measures.

Article 25

Exchange ~~[and use]~~ of information ~~between(...)courts or competent authorities~~

1. Where a measure is contemplated ~~[~~**or to be implemented**~~]~~, the(...) **courts** of a Member State, if the situation of the adult so requires, may request any **court or competent authority** (...) of another Member State which has information relevant to the protection of the adult to communicate such information.

2. **Where ~~feasible~~appropriate, a court that modifies, replaces or terminates a measure taken by a court of another Member State, shall ~~endeavour to~~ notify without delay the court which took that measure.**

3. The **communication(...)** referred to in **this Article**(...) shall be **sent either** (...) directly or through **a** (...)Central Authority(...).

~~**4. [Courts, competent authorities and Central Authorities to whom information has been transmitted in the context of this Regulation may only use it for the purposes of this Regulation.]**~~

Article 26

Serious danger

1. In the event that the adult is exposed to a serious danger, the **courts or** competent authorities of the Member State where measures (...)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 **courts or** competent authorities of that other Member State about the danger involved and**, where relevant, about** 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 (...) courts[5]

(...) For the purposes of this Regulation, the(...) **courts** of Member States may cooperate and communicate directly with(...) each other **by means that they consider appropriate,** provided that such communication respects **confidentiality and** the procedural rights of the parties to the proceedings ~~and the confidentiality of **the** information~~.

(...)

[5] To be considered further when discussing Chapter IX on digital communication.

SECTION 3

GENERAL PROVISIONS

Article 28

Mediation and alternative dispute resolution

Central Authorities**, courts** and (...)competent authorities of Member States shall encourage, **to the extent that the specific circumstances of the case allow,** 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**, courts** and competent authorities of Member States shall not disclose or confirm information gathered or transmitted for the purposes of this Regulation if they determine**, based on serious and detailed information in their possession,** 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.

PUBLIC

Article 30

Costs of Central Authorities and competent authorities

(...)

1. Each Central Authority shall bear its own costs in applying this Regulation.

2. The assistance provided by Central Authorities pursuant to this Regulation shall be free of charge.

3. Without prejudice to Article 22(4) ~~and (5),~~ and Article 37(2) and the possibility of imposing reasonable charges for the provision of services, each competent authority shall bear its own costs in applying this Regulation.

4. ┤This Article shall not preclude Member States from entering or maintaining existing agreements or arrangements with one or more other Member States concerning the allocation of charges.├

(...)

[Article 32

Forms

1. Courts, c(...)ompetent authorities and Central Authorities ~~may~~ **shall** 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.

2. For the purposes of the communication pursuant to Article 8 of the HCCH 2000 Protection of Adults Convention, the courts of Member States shall (...)use the form set out in Annex VIII to this Regulation.

PUBLIC

3. For the purposes of the information of the courts of another Member State pursuant to Article 7, 9, 10 and 11 of the HCCH 2000 Protection of Adults Convention, the courts of Member States (...) shall use the form set out in Annex IX to this Regulation.][6]

(...)

Article 69[7]

Information to be communicated to the Commission

1. The Member States shall communicate to the Commission the following**, if applicable**:

(aa) other authorities referred to in Article 3(2), with competence to take measures;

(a) the **courts**(...) competent to decide**, pursuant to Article 9(2), that there are grounds for refusal of recognition**(...) of a measure taken in another Member State **or that there are no such grounds**(...);

(...)

(b) enforcement authorities referred to in Article 14;

(c) the authorities referred to in point (b) of point (5) of Article 3 competent to formally draw up or register authentic instruments in matters of the protection of adults;

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6 The Working Party should discuss whether it is better to have an Article concerning all forms at once or mention each form in the relevant Article for the said form. In that case, Article 32 would be deleted and paras 2 and 3 would be moved back to Article 27 while para. 1 would be moved to a relevant Article in this Chapter.

7 This Article is taken from the latest Polish redraft (8684/25).

(d) the **courts and** authorities competent to issue the attestation**s** referred to in Article**s** 15 **and 17;**

((...)**e**) the relevant provisions of their national law on the evidentiary effects of authentic instruments directed to the protection of adults;

((...)**f**) the conditions for establishing the authenticity of an authentic instrument under their national law, as referred to in Article 16(2);

((...)**g**) the names, addresses and means of communication for the Central Authorities designated pursuant to Article 18;

(**h**) **the competent authorities ~~or professional representatives~~ which can be designated pursuant to Article 22, ~~as a representative in that Member State;~~**

((...)**i**)(...)the **courts, competent** authorities and other bodies competent to establish mediation or other means of alternative dispute resolution, referred to in Article 28;

~~[~~(j) if applicable, the ~~Central Authorities,~~ courts or competent authorities competent to grant or refuse consent in accordance with Article 21;[8]~~]~~

(jj) agreements or arrangements pursuant to Article 30(4).

((...)**k**) languages accepted for the **requests and communication**(…) pursuant to Article **57a(5)**(...);

((...)**l**) the **issuing** authorities competent to issue the European Certificate of Representation, as referred to in Article 36(2);

(...)

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8 This notification is needed if the consent for placement can be given not only by the Central Authorities but that also other competent authorities.

((...)**m**) fees, if any, that Member States charge for **obtaining**(...) of the European Certificate of Representation in accordance with Article 37((...)**3**);

(n) any additional information and documents required for the issuance of the Certificate in accordance with Article 37(2)(d);

((...)**o**) 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;

((...)**p**) **courts, competent** authorities **and Central Authorities** referred to in Article 48(2) , (...)having access to information via the system of interconnection(...).

2. The Member States shall communicate the information referred to in paragraph 1, points (a) to (**o**) by **[twelve months before the date of applicable of the Regulation]**(...) at the latest, and the information referred to in paragraph 1, point (**p**), by **[nine months before the date referred to in Article 47(3)].** (...).

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.

[…]

PUBLIC