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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 - Redraft of Chapters I to V

Delegations will find in Annex an updated redrafted proposal by the Polish Presidency. It covers Chapters I to V and the related part of Article 69 of the above-mentioned Regulation, as well as the relevant recitals.

Changes in comparison to the Commission's proposal are indicated in **bold** or (…), while changes in comparison with the last version of the redraft (6659/25) are indicated **in bold and underline** or ~~strikethrough~~.

2023/0169 (COD)

PUBLIC

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,

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

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' **courts,** competent authorities and Central Authorities.

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

(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 Council[2], 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 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 continue(...) across the Union.

[2] 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).

(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(...) 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,(...) 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 ('HCCH 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(...) its contracting Parties.

(7) The HCCH 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(...) of the HCCH 2000 Protection of Adults Convention,(...) **t**he rules established by this Regulation should not affect, in the relationship of the Member States with third States that are contracting Parties to the HCCH 2000 Protection of Adults Convention, the application of that Convention.

PUBLIC

(8) This Regulation should incorporate some rules from the HCCH 2000 Protection of Adults Convention, in particular on international jurisdiction and applicable law, and make(...) 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 HCCH 2000 Protection of Adults Convention by laying down rules aimed to simplify, streamline and modernise the procedures and the cooperation among(...) 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(...) their **representation or support**(...) for a time when they **would** ~~**are not or** will~~ not be in a position to look after their own interest**s**, 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 **States**(...), 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**, non-discrimination** and equality **before the law**.**(...)**In this regard, this Regulation builds on the Charter of Fundamental Rights of the European Union ('Charter') **and its Articles 21, 25 and 26** and on international human rights law in this area.

(10a) In particular, a significant part of adults to which this Regulation applies ~~are~~ **fall within the category of** persons with disabilities. Their rights, including the right to equal~~ity~~ **recognition** 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 Disabilities[3] ('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**, 13** 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. ~~**When taking measures concerning an adult, courts of Member States should give due weight to the views, will and preferences of the adult concerned.**~~[4]

(11) Besides the protection, in cross-border situations, of fundamental rights and freedoms and other rights of adults,(...) 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.

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3 OJ L 23, 27.1.2010, p. 37.

4 Moved to recital 14.

(12) This Regulation should cover civil matters **concerning**(...) the protection of adults, in particular related to measures, authentic instruments and powers of representation, aimed at the protection of an adult. **In order to ensure consistency, the matters covered by this Regulation should correspond to those in the scope of the HCCH 2000 Protection of Adults Convention.** The protection **should be understood to include support to adults in decision-making or exercising their legal capacity, co-decision making and representation.**(...) **Adults may require support or other protection** (...) due to an insufficiency or an impairment of the**ir** personal faculties(...), which can be permanent or temporary and, among others, of physical or psychosocial nature, or in connection with a **health condition or a**(...) disease, such as Alzheimer's disease(...) or(...) a coma. The **support or other** 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 **partially or completely** prevent that adult 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) **This Regulation should apply, among others, to 'measures' taken by courts and directed to the protection of the person or the property of an adult. The Regulation should respect the Member States' legal systems and should thus not require them to introduce specific measures into their national laws. However, given the ongoing transition towards supported decision-making in national legal systems, 'measures' under this Regulation should primarily encompass those aimed at supporting adults in exercising their legal capacity but also other measures in accordance with Member States' laws. In that context, it should be ensured that appropriate and effective safeguards for the exercise of the legal capacity of the adults are in place, in particular that measures relating to the exercise of legal capacity respect, where possible, the rights, will and preferences of the adult.** (...)

PUBLIC

(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 **or enforcement** of measures which are **manifestly contrary to public policy, or which are** taken without providing the adult with the opportunity to be heard, except in justified exceptional circumstances(...). Where assessing whether a measure taken by the **courts**(...) of another Member State is not manifestly contrary to public policy, the **courts or enforcement** authorities of a Member State where (...) recognition **is invoked or enforcement** is sought should assess whether that measure ensures the fundamental rights of the adult, in light of **the Charter and** Articles 3, 9 12**, 13** 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 **courts**(...), 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.

PUBLIC

(17) (...)

(...) **T**he concept of '**court**(...)' **in this Regulation** should (...) **mean any** judicial (...) authorit(…)**y and all other authorities**(...) **with competence to take** measures directed to the protection of the **person or the property of an** adult **or with competence to decide on the recognition or non-recognition of a measure taken in another Member State. Accordingly, the term 'court' should be given a broad meaning so as to cover not only courts in the true sense of the word.** (…). **~~(17a)~~ Where other authorities, including notaries, act as 'courts' and take measures under this Regulation, they should be bound by its rules of jurisdiction, and the measures they take should circulate in accordance with the provisions on recognition and enforcement.**

(17a) Conversely, where other authorities, including notaries, ~~are to be considered as competent authorities where, as is usually the case, they~~ do not take measures but are empowered under national law to deal with other aspects related to the protection of adults, they should be considered as competent authorities rather than 'courts' ~~such as drawing up or confirming powers of representation or issuing other authentic instruments. In these cases, they~~ and should not be bound by the rules of jurisdiction, ~~and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.~~ Competent authorities are authorities with various responsibilities in matters of protection of adults, including those responsible for drawing up and confirming powers of representation, for issuing authentic instruments, or for implementing measures[5].

[5] This recital aims at addressing the wish to incorporate a definition on competent authorities.

(18) **Powers of representation enable adults to plan, for a situation(...) of impairment or insufficiency of their personal faculties, by whom and possibly how they envisage to be supported or represented in (...) exercising(...) their legal capacity and autonomy. (...)P(...)owers of representation should be interpreted broadly to include various types of powers provided for by Member States' laws, such as powers granted by an adult to one or more representatives to support or represent the adult(...) in one or more contexts. This Regulation should not oblige Member States to introduce 'powers of representation' or 'confirmed powers of representation' in their national laws. 'Confirmed powers of representation' are to be understood as a type of powers of representation in respect of which a court or a competent authority has confirmed that the representative vested with these powers can exercise them. While this Regulation should not prescribe a particular process for confirming powers of representation, the concept of 'confirmed powers of representation' is to be interpreted in line with its main purpose in this Regulation, that is to serve as a basis for the issuance of the European Certificate of Representation. Since third parties should be able to rely on the legal presumption that a representative is entitled to exercise the powers as described in that Certificate, the confirmation of powers of representation by a court or a competent authority must give every guarantee of reliability in that regard and must at least ensure that the powers of representation are valid, in force and in conformity with the law applicable**.

(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 **States**(…) 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 **and to ensure that the rules of this Regulation can be applied regardless of the status of ratification by Member States of the HCCH 2000 Protection of Adults Convention**, the(...) Convention should be attached to this Regulation.

PUBLIC

(19a) In accordance with the jurisdiction rules in Articles 5 and 6 of the HCCH 2000 Protection of Adults Convention, primary jurisdiction to take measures should lie with the courts of the State of the habitual residence of the adult. For adults who are refugees and those who, due to disturbances occurring in their State, are internationally displaced, the primary jurisdiction should be with the courts of the State on the territory of which the adult is present.

(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(...) **court** made by adults in the Union. To better protect the right to autonomy of the adults, the choice of **court**(...) made by adults **at the time when they were in a position to make such**(...) arrangement(...) for their future **protection**(...) should be respected without the need for additional proceedings in particular for the approval by the **courts**(...) of the Member States of the habitual residence of the adults.(...) **While the formal validity of the choice of court should be governed by the rules of this Regulation, the court examining whether it has jurisdiction on the basis of a valid choice of court should apply its law, including its conflict of law rules, to assess the aspects of validity of the choice not regulated in this Regulation. In particular, the choice of court should have been made when the adult was in a position to make such a choice with respect to his or her capacity and consent in the absence of undue influence**.

(20a) Taking into consideration that the personal or financial circumstances of an adult may evolve between the time when the choice of **court**(...) is made and the time when the adult is in need of protection, the court(...) **seised on the basis of the choice of court**(...) should have the possibility to assess whether the choice made by the adult is **not contrary to**(...) the interests of that adult at the time **it is**(...) 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 **court**(...) was made.

PUBLIC

(21) The establishment of an additional ground of jurisdiction based on the choice of **court by** the adult should not disrupt the mechanism established by the HCCH 2000 Protection of Adults Convention, nor affect the effectiveness of communication between **courts**(...) , and should avoid positive and negative conflicts of jurisdiction.(...) The **court seised based on** (...) the choice made by the adult should not exercise **its**(...) jurisdiction where the **courts**(...) **having primary jurisdiction**(...) **or the court to which jurisdiction was transferred** have already exercised their jurisdiction, in particular where those **courts**(…) have taken a measure, **even if this measure related only to some aspects of protection of the person or property of the adult**, or have decided that no measure should be taken, or where proceedings are pending before them.

(22) Measures concerning adults should be subject to regular review to remain tailored to the adult's current circumstances. If, after the conclusion of initial proceedings, a new measure needs to be taken or an existing measure requires modification, replacement, or termination, jurisdiction should be verified and re-established again in accordance with the applicable jurisdictional rules. In such cases, procedural steps taken in the previous proceedings - such as a prior transfer of jurisdiction - should not prevent courts from exercising their jurisdiction in the new circumstances. Likewise, a court that previously established its jurisdiction based on a choice of court made by an adult, should, in case of new proceedings, reassess whether the conditions for exercising its jurisdiction are still met, for instance that the exercise of jurisdiction is not contrary to the adult's interest. Similarly, the existence of previous measures taken by a court chosen by the adult should not prevent other courts from taking measures in subsequent proceedings following a change of circumstances.

(22a) 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 courts with primary jurisdiction and the courts with subsidiary or concurrent jurisdiction, should also apply in the Union to courts exercising their jurisdiction according to the choice made by the adults. Thus, those provisions should apply in respect of the court exercising its jurisdiction on the basis of the choice of by the adult in the same way as they apply in respect to the courts of the habitual residence.

(22b(...))If the validity of a legal act undertaken or to be undertaken on behalf of an adult in succession proceedings before a court of a Member State requires permission or approval by a court, a court in that Member State should be able to decide whether to permit or approve such a legal act even if it does not have jurisdiction under this Regulation. The term 'legal act' should include, for example, the acceptance or rejection of inheritance or an agreement between the parties on the sharing-out or the distribution of the estate.

(23) **The law applicable in matters of protection of adults should be determined in accordance with the provisions of Chapter III of the HCCH 2000 Protection of Adults Convention. Accordingly, when taking measures, Member States' courts should apply the applicable law rules of the HCCH 2000 Protection of Adults Convention. In this context, the reference in Article 13(1) of the HCCH 2000 Protection of Adults Convention to 'the provisions of Chapter II' of that Convention should be understood as referring to the provisions of this Regulation. In addition, the cross-border legal effects of all types of powers of representation should be governed by the applicable law rules in 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(...) .

(24) Mutual trust in the administration of justice in the Union justifies the principle that measures directed to the protection of adults **taken**(...) in a Member State should be recognised in all Member States without any special procedure being required. This should not preclude any interested **natural or legal** person from **invoking a measure either as an incidental question before a court or by** applying for a decision that there are **no grounds for refusal of recognition or that the recognition is to be refused**(...). 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 **no grounds for refusal of recognition or that the recognition is to be refused**(...). **It should be for the national law to determine whether the grounds for refusal can also be raised *ex officio*.**

(25) The recognition and enforcement of measures **in the Union** should be based on the principle of mutual trust. Therefore, the grounds for **refusal of 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 to effectively safeguard the rights of the adults. In particular, the jurisdiction of the **courts**(...) of the Member State of origin should not be reviewed **and measures taken by those courts should not be reviewed as to their substance in the Member States in which recognition is invoked or enforcement is(...) sought. Nevertheless, this should not prevent courts having jurisdiction under this Regulation from modifying or terminating an earlier measure or replacing it by a subsequent one, in the event of new circumstances.**

(26) It should only be possible to refuse the recognition of a measure **taken in another Member State** if one or more of the grounds for refusal of recognition **in this Regulation** are present. To uphold the principle of mutual trust, the list of grounds for refusal of recognition in this Regulation should be exhaustive.

(26a) 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**nother Member State or a** third **State**(...) 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 **courts,** 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 UNCRPD**, including by means of non-conventional communication methods, such as non-verbal forms.**.(...)**The recognition of a**(...) measure taken without the adult having had an opportunity to be heard**, ~~[~~may~~]~~(...) be refused(...)**, **except where there were serious grounds justifying it.**(...) **This includes, in particular, ~~-~~cases of** urgency **and~~,~~(...) cases where the adult was unable to express his or her views ~~[~~due to a medical condition~~]~~**(...) ~~and due weight has been given to his or her will and preferences~~(...). The fact that the adult has had an opportunity to be heard **in the Member States where a measure was taken should not be assessed in comparison with the procedural principles of the Member State in which recognition is invoked but** should be assessed uniformly in the Union(...). **E**(...)xample**s** of a case of urgency(...) **are(...)** situation**s** where the adult needs to undergo urgent surgery(...)**, or where there is an imminent danger for the adult's property**.

(28) The question of the procedure and the method **for**(...) hearing of the adult should be left to national law**, while ensuring a genuine and effective opportunity for adults to express their views, will and preferences.** ~~with d~~**D**ue respect **should also be given** ~~for~~**to** the rights of adults to accessibility. When a hearing is required in a cross-border context, Member States**' courts**(...) should use the specific instruments of international judicial cooperation, including, where appropriate, those provided for by Regulation (EU) 2020/1783 **of the European Parliament and of the Council**[6]. **Where one of the parties or their representative is present in another Member State at the time of the hearing, they should be able to participate in the hearing through videoconferencing or other distance communication technology provided for in Regulation (EU) 2023/2844 of the European Parliament and of the Council**[7], **taking into account their procedural rights.**

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6 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).

7 Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 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 (OJ L 2023/2844).

(29) (...) **A**(...)uthentic 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 **or registered** by a(...) **public** authority **or other authority** of a Member State**, such as a notary,** may in particular record powers of representation 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 a(...) **court or a competent** 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.

(29a) The 'authenticity' of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the adult indicated appeared before that authority on the date indicated and that this adult made the declarations indicated.

(30) To facilitate the circulation of measures and authentic instruments in the Union, **this Regulation should(...)** 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,(...) **courts** exercise judicial functions when issuing(...) attestations **for measures** and **this** issuance(...) 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.

[…]

PUBLIC

(65) This Regulation should not apply to children below the age of 18 even in cases where they have acquired **legal** capacity before that age **under the law governing their personal status, for example through emancipation by reason of marriage**. This should avoid an overlap with the scope of the Council Regulation (EU) 2019/1111[8] 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 Children[9]. This should also prevent that certain persons are not covered neither by this Regulation nor by those two instruments.

[…]

PUBLIC

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8 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).

9 OJ L 151, 11.6.2008, p. 39.

Chapter I
SCOPE AND DEFINITIONS

PUBLIC

Article 1

Subject matter

This Regulation lays down the rules which:

(a) determine the Member State whose **courts**(...) 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 **courts**(...) in exercising their jurisdiction;

(c) determine the law applicable to the **support and** 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 **courts,** competent authorities and Central Authorities of the Member States to achieve the purposes of this Regulation;

((...) **g) create a European Certificate of Representation;**

[(h) establish a system of interconnection of the Member States'(...) registers **of measures, confirmed powers of representation and of other powers of representation]**[10];

(i) (...) **establish a uniform legal framework for the use of electronic** communication(…) between **courts,** competent authorities and Central Authorities, and(...) **for the use of electronic** communication between natural(...) **or** legal persons and **courts or** competent authorities;

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10 Letter (h) of this Article is not definitive. Its existence and wording are subject to further discussion on Chapter VIII.

Article 2

Scope

1. This Regulation shall apply in civil matters **concerning**(...) 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 **taken in a Member State** 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:

(aa) ~~**measures to provide access by adults to the support they may require in exercising their legal capacity;**~~ **measures to support adults in exercising their legal capacity;**[11]

(ab) powers of representation granted by adults~~**for their support or representation, to be exercised when those adults require support in protecting their interests;**~~[12]

(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) (...) 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;

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11 See recital 12 which specifies that the scope of the Regulation shall correspond to the HCCH 2000 Convention with regards to matters covered in this Article.

12 The chapeau of para 3 refers to matters not measures which is different from Article 3 of the HCCH 2000 Convention.

(g) the authorisation of a specific intervention for the protection of the person or property of the adult.

~~**(h) appropriate and effective safeguards for the exercise of legal capacity, in particular to ensure the respect of the adult's rights, will and preferences.**~~[13]

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.

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[13] Letter (h) has been moved to recital 14.

Article 3

Definitions

1. 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 **a court**(...), whatever **the measure**(...) may be called, directed to the protection **of the person or the property** of an adult**;**

(3) 'powers of representation' means powers granted by an adult **to a representative for his or her support or representation,** either under an agreement or by a unilateral act, to be exercised **by the representative** when that adult ~~**requires support in protecting**~~ is not in a position to protect[14] his or her interests;

(**4**) 'confirmed powers of representation' means powers of representation in respect of which a **court or a** competent authority has confirmed that the representative vested with these powers can exercise them;

(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**) 'Member State of origin' means the Member State in which the measure was taken or the authentic instrument was formally drawn up;

(...)

[14] As a result of the discussion, there was more support to keep the first reference to support and get back to the original wording for the rest.

(7) 'representative' means one or more natural or legal person(s) appointed by a court ~~or competent authority~~ or designated by the adult, or authorised by law, to represent or support the adult in protecting his or her interests;

(…)

(**8**) '**decentralised** IT system' means **a network of IT systems and interoperable access points**(…) **as defined in point (3) of Article 2 of Regulation (EU) 2023/2844;** (…)

(…)

(**9**) 'European electronic access point' means **a portal**(...) as defined in point (**4**) of Article 2 of Regulation **(EU) 2023/2844**(...)**.** ~~;~~

2. For the purposes of this Regulation, the term 'court' shall mean any judicial(...) authority and all other authorities of a Member State with competence to take measures directed to the protection of the person or the property of an adult or with competence to decide on the recognition or non-recognition of a measure taken in another Member State. For the purposes of Chapters II and III of this Regulation, the term 'authority', used in Chapters II and III of the HCCH 2000 Protection of Adults Convention, shall also mean court[15].

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*.

[15] Relevant recital is 17(a).

Chapter II
JURISDICTION

PUBLIC

Article 5

Application of the jurisdiction rules of the HCCH 2000 Protection of Adults Convention(...)

1. Subject to Article**s** 6 **to 7a** of this Regulation, jurisdiction shall be determined in accordance with Chapter II of the HCCH 2000 Protection of Adults Convention.

2. [The request for a transfer of jurisdiction under Article 8 of the HCCH 2000 Protection of Adults Convention may be initiated either by a court of a Member State seeking to transfer jurisdiction or by a court of a Member State to which jurisdiction may be transferred in accordance with that Article[16].]

Article 6

Choice of(...) court

1. Notwithstanding Article 5, the(...) **courts** of a Member State other than the **one**(...) in which the adult is habitually resident shall have jurisdiction **to take measures** where all of the following conditions are met:

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16 This wording aims to incorporate the conclusion made at the 2022 HCCH Special Commission that transfer of jurisdiction can be initiated both by courts of primary jurisdiction and also by courts listed in Art. 8(2) of the HCCH 2000 Convention. The C&R No 14 stated: The SC recalled the clarification in paragraph 66 of the Explanatory Report that Art. 8 of the Convention combines two procedures for the transfer of jurisdiction to Contracting Parties the competent authorities of which might be better placed. On the one hand, competent authorities that have primary jurisdiction under Articles 5 or 6 may request the competent authorities of one of the Contracting Parties listed in Article 8(2) to take measures of protection. On the other hand, the competent authorities of the Contracting Parties listed in Article 8(2) may ask the competent authorities that have primary jurisdiction under Article 5 or 6 to make a request for a transfer of jurisdiction to them.

(a) the adult chose the(...) **courts** of that Member State **at the time when he or she was in a position to make a choice of court;**

(aa) the choice of court was, at the time the choice was made, in favour of a Member State:

i. of the adult's nationality;

ii. of the adult's habitual residence; ~~or~~

iii. <u>of habitual residence of a person close to the adult prepared to undertake his or her protection; or</u>

iv. where the property of the adult is located.

(b) the exercise of jurisdiction is **not contrary to**(...) the interest of the adult;

(c) the(...) **courts** of a Member State having jurisdiction(...) **in accordance with** Articles 5**, 6(...) and 8** (…) of the HCCH 2000 Protection of Adults Convention have not exercised their jurisdiction.

2. The choice of(...) **court** 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.

3. (...)**T**he(...) **court exercising jurisdiction**(...) **under paragraph 1** shall**, ~~if possible,~~** notify **the courts of the Member State of habitual residence of the adult**, using the form set out in **Annex [IV] before taking any measure. This notification may be done directly or through** the Central Authority of(...) **that** Member State**,**(...) designated pursuant to Article 18.

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 (...) 11(...) 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(...) **court** having exercised **its**(...) jurisdiction in accordance with paragraph 1.

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Article 7

Non-exclusive jurisdiction

(…)Jurisdiction conferred to the **courts**(...) pursuant to Article 6 of this Regulation shall not be exclusive**.**(...) **In** particular**, courts having jurisdiction under Articles 5**, 6 **and 8 of the HCCH 2000 Protection of Adults Convention shall not be prevented from exercising it(...)**, when the **court**(...) chosen by the adult **has**(...) not exercised **its**(...) jurisdiction or **where** ~~when it~~ **has**(...)**declined**(...) such jurisdiction.

Article 7a[17]

Incidental questions

(…) 1. If the validity of a legal act undertaken or to be undertaken on behalf of an adult in succession proceedings before a court of a Member State requires permission or approval by a court, a court in that Member State may decide whether to permit or approve such a legal act even if it does not have jurisdiction under this Regulation.

2. The court exercising jurisdiction under paragraph 1 shall notify the courts of the Member State of habitual residence of the adult or any court of a Member State exercising jurisdiction under this Regulation, using the form set out in Annex [VIII][18]. This notification may be done directly or through the Central Authority of that Member State, designated pursuant to Article 18.

[17] See Article 16 of the Regulation 2019/1111 which has a separate provision dedicated to the issue of incidental question.

[18] Reference to annexes will be adapted once the text is finalised.

Chapter III
APPLICABLE LAW

PUBLIC

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.

[Article 8a[19]

States with more than one legal system – territorial conflicts of laws

1. Where the law specified by this Regulation is that of a State which comprises several territorial units with its own rules of law in respect of matters governed by this Regulation, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.

2. In the absence of such internal conflict-of-laws rules:

(a) any reference to habitual residence in that State shall refer to the habitual residence in a territorial unit [at the time the measure is requested];

(b) any reference to the presence of the adult in that State shall refer to presence in a territorial unit;

(c) any reference to the location of property of the adult in that State shall refer to location of property of the adult in a territorial unit;

[19] The existence of articles 8a, 8b and 8c in this chapter would result in deleting Article 59a as presented in the Belgian and Hungarian redraft (16995/24).

(d) any reference to the State of which the adult is a national shall refer to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the adult has the closest connection;

(e) any reference to the State whose courts have been chosen by the adult shall refer to the territorial unit if the adult has chosen the courts of this territorial unit; or to the territorial unit with which the adult has the closest connection if the adult has chosen the courts of the State without specifying a particular territorial unit within the State;

(f) any reference to the law of a State with which the situation has a substantial connection shall refer to the law of a territorial unit with which the situation has a substantial connection;

(g) any reference to the State where a measure is to be implemented shall refer to the territorial unit where the measure is to be implemented;

(h) any reference to courts, competent authorities or other authorities of a State, other than Central Authorities, shall refer to those authorised to act in the relevant territorial unit.

Article 8b

States with more than one legal system – inter-personal conflicts of laws

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect matters governed by this Regulation, any reference to the law of such a State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the adult has the closest connection shall apply.

Article 8c

Non-application of this Regulation to internal conflicts of laws

A Member State which comprises several territorial units with its own rules of law in respect of matters governed by this Regulation shall not be required to apply this Regulation to conflicts of laws arising between such units only.]

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Chapter IV
RECOGNITION AND ENFORCEMENT OF MEASURES

PUBLIC

SECTION 1
RECOGNITION OF MEASURES

Article 9

Recognition of a measure

1. A measure taken ~~by the(...) courts of~~**in** a Member State shall be recognised in the other Member States without any special procedure being required.

2. **Without prejudice to paragraph 1, a**(...)ny interested person, includ**ing**(...) the adult concerned by the measure, may(...) **apply to a**(...) **court** of a Member State **for a decision** that **there are no grounds for refusal of recognition, as referred to in Article 10**(...)**,** of a measure taken in another Member State **or for a decision that the recognition is to be refused on the basis of one of those grounds**.

3. If the outcome of proceedings before **a court**(...) of a Member State depends on the determination of an incidental question concerning **recognition or non-recognition of a measure**(...) , that(...) **court**(...) **may** have jurisdiction over that question.

4. The procedure pursuant to paragraphs 2 or 3 shall be governed by the law of the Member State in which recognition is invoked, without prejudice to Article 10 and Section 3.

Article 10

Grounds for refusal of recognition

[1.**]** The recognition of a measure taken in another Member State **shall**(…) be refused in the following cases:

[(a) if the measure was taken **without the adult having been provided the opportunity to be heard**, except in a case of urgency, **or where the adult was is unable to express his or her views [due to his or her medical condition]**(...), **and due weight has been given to his or her will and preferences**(...)];

(**a**~~b~~) if such recognition is manifestly contrary to public policy of the Member State in which recognition is(...) **invoked**;

(**b**~~c~~) if the measure is incompatible with a later measure taken in **[**a**nother Member State or]** **a** third **State**(...) which would have had jurisdiction under Article**s** 5 or Article 6 **of this Regulation**, where this later measure fulfils the requirements for recognition in the(...) Member State **in which recognition is invoked**; **or**

[(**c**~~d~~) if the procedure provided in Article **21**(...) has not been complied with.**]**[20]

[2. **The recognition of a measure taken in another Member State may be refused if the measure was taken without the adult having been provided the opportunity to be heard, except where there were serious grounds, taking into account, in particular:**

(a) the urgency of the case;

(b) that the adult was unable to express his or her views [due to ~~his or her~~a medical condition.] ~~and due weight has been given to his or her will and preferences.]~~

[20] Letter (c) of this Article is not definitive. Its existence and wording are subject to further discussion on Article 21.

SECTION 2

ENFORCEABILITY AND ENFORCEMENT OF MEASURES

PUBLIC

Article 11

Enforceability (…)

A measure taken (…)**in** 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. (...)A measure taken in a Member State which is enforceable in th**ate**(...) Member State ~~**of enforcement**~~ shall be enforced **in the Member State of enforcement** (…)under the same conditions as a measure taken in the Member State **of enforcement**. **The procedure for the enforcement of measures taken in another Member State shall be governed by the law of the Member State of enforcement, without prejudice to paragraph 2 of this Article and to Section 3**.

2. **The enforcement of a measure shall(…) be refused if one or more of the grounds for refusal of recognition referred to in Article 10 is found to exist.**(...)**T**he grounds for refusal or suspension of enforcement under the law of the(...)Member State **of enforcement** shall **also** apply in so far as they are not incompatible with the grounds referred to in Article 10.

SECTION 3

COMMON PROVISIONS

PUBLIC

Article 13

No review as to the substance

Under no circumstances may a measure taken (…)**in a**n**other** Member State be reviewed as to its substance **in the Member State in which recognition is invoked or enforcement is sought**.

Article 14

Documents to be produced for recognition and enforcement (…)

~~[~~**1.~~]~~** A person(...) invoking **the recognition of** a measure taken in a Member State **or seeking its enforcement** before the **courts or enforcement 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 court (…) **or enforcement authority**, before which a measure taken in another Member State is invoked or before which recognition **is invoked** or enforcement **is sought**, of a measure taken in another Member State is sought or contested, may~~ **W**~~w~~here necessary, ~~require~~ **the person referred to in paragraph 1,** ~~applicant~~ **may be required** to provide, **in accordance with Article 57a,** a translation or a transliteration of the **measure or the** ~~of~~ the content~~s~~ of the attestation. ~~referred to in paragraph (1), point (b).]~~

Article 15

Attestation concerning measures

The(...) **court of the Member State** of origin, shall, at the request of any(...) person **demonstrating a legitimate interest**, issue an attestation using the form set out in **Annex I**(...).

Article 15a

Legal aid

A person applying for legal aid who, in the(…) Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in any proceedings for recognition or enforcement of a measure, **to benefit from ~~[the most favourable]~~ legal aid or ~~[the most extensive]~~ exemption from costs or expenses in accordance with**(…)**the law of the Member State in which proceedings are brought.**

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Chapter V
AUTHENTIC INSTRUMENTS

PUBLIC

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~~ **where it is presented]**.

2. The authentic instrument produced shall satisfy the conditions necessary to establish its authenticity in the Member State of origin.

Article 17

Attestation concerning authentic instruments

1. A person wishing to use an authentic instrument in another Member State may ask the(...)authority having formally drawn up or registered the authentic instrument in the Member State of origin**, to issue an attestation using**(...) the form set out in **Annex II**(...).

2. Where necessary, the person using the authentic instrument may be required to provide, in accordance with Article 57a, a translation or transliteration of the content of the attestation.

[…]

Article 69

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;

(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;

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(**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) the Central Authorities, courts or competent authorities competent to grant or refuse consent in accordance with Article 21;[21]**]**

((...)**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);

(...)

((...)**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(...).

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21 Notification to be added if the Article on placement is maintained and, in addition, if it is also agreed that the consent with placement can be given not only by the Central Authority but that also other competent authorities may be competent to grant/refuse the consent (currently in square brackets). If the consent procedure is centralized with Central Authorities, the notification would not be necessary.

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.

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