



# Commission's proposals on the cross-border protection of adults

FL-EUR conference – European Pathways for Supporting and Protecting Adults

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# Context of the EU's initiative

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- **Increasing number of people in need of support** in protecting their interests
- Differences in national legal frameworks
- Problems for adults in cross-border situations
- **2000 Hague Convention on the Protection of Adults**
  - 15 Contracting Parties out of which 12 are EU Member States
  - **Private international law rules (conflict-of-laws rules)**
- **UNCRC**



# Extensive consultation and research



# Objectives

In cross-border cases,

- **To increase legal certainty and predictability**
- **To increase the effectiveness and speed of cross-border proceedings** (abolition of exequatur, digitalisation etc.)
- **To ensure effective circulation** of measures, powers of representation and authentic instruments



**To enhance the protection of the rights of adults, incl. their fundamental rights**

# 2 legislative proposals

- **Proposal for a Council decision**

- Obligation for Member States to join the 2000 HCCH Convention on the Protection of Adults
- 2 years to sign + ratify or to accede
- The Convention will apply in relation to other non-EU Contracting parties to the Convention (Monaco, Switzerland, UK/Scotland)

- **Proposal for a Regulation**

- Takes over the private international law rules of the Convention, streamlines them for the EU context and complements them
- Makes the cooperation between the EU MS more effective
- The regulation will apply among EU Member States

# Proposal for an EU Regulation



# PIL rules and rules on cooperation

- **Jurisdiction** (jurisdiction to take measures of protection or support concerning an adult) - *reference to the HCCH 2000 Convention; choice of jurisdiction added*
- **Applicable law** (to be applied to measures or powers of representation) - *reference to the HCCH 2000 Convention*
- **Recognition (and enforcement) of measures** – *rules of the HCCH 2000 Convention adapted to the EU context*
- **Rules on cross-border circulation of authentic instruments** (incl. advance directives drawn up in an authentic form) – *novel in the proposal for an EU Regulation*
- **Cooperation among competent authorities and Central Authorities** (designation of a representative abroad, location of an adult or a person likely to provide support, digitalisation...) – *rules of the HCCH 2000 Convention adapted to the EU context*

# European Certificate of Representation ('ECR')

ANNEX III  
**EUROPEAN CERTIFICATE OF REPRESENTATION**  
(Article 38 of the Regulation (EU) 20XX/X)

**IMPORTANT**

This Certificate is for use by a representative or representatives, who need to invoke their powers to represent an adult who, by reason of an impairment or insufficiency of his or her personal faculties, is not in a position to protect his or her interests.

This Certificate may be used to demonstrate that the person designated in this Certificate as a representative of the adult is authorised to represent the adult.

This Certificate is issued by a competent authority of a Member State where the measure was taken or powers of representation were confirmed ('issuing authority'). The original of this Certificate remains in the possession of that issuing authority and only its certified copies are issued. The Certificate is valid until the date indicated in the appropriate box at the end of this form.

**Effects of this Certificate in the Union:**

- The person indicated in the Certificate as the adult's representative is presumed to have the powers mentioned in the Certificate with no conditions and/or restrictions being attached to those powers other than those stated in the Certificate.
- 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 matters, 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.
- The Certificate has these effects in the European Union, with the exception of Denmark [and Ireland].

**1. Competent authority that issued the Certificate ('Issuing authority')**

1.1 Member State of the issuing authority  
 Belgium  Bulgaria  Czech Republic  Germany  Estonia  Ireland  Greece  
 Spain  France  Croatia  Italy  Cyprus  Latvia  Lithuania  Luxembourg  
 Hungary  Malta  Netherlands  Austria  Poland  Portugal  Romania  Slovenia  
 Slovakia  Finland  Sweden

1.2 Name and designation of the issuing authority:

1.3 Address of the issuing authority  
1.3.1 Street and number/PO box:  
1.3.2 Place and postcode:

- Most supported measure throughout the consultations
- For representatives who need to invoke their powers in another Member State
- Based on protection measures or “confirmed powers of representation”
- Mandatory ECR form (annexed to the Regulation)

# European Certificate of Representation ('ECR')

- **Why the ECR?**

- Facilitates representatives' dealings with non-judicial parties (e.g. banks and financial institutions)
- Can be used separately without the need for producing a measure or confirmed powers of representation
- Available in all EU official languages
- Uniform effects throughout the EU
- Strong presumption for representatives and third parties
  - *ECR is presumed to accurately reflect the powers of the representative*
  - *Any person who deals with the representative indicated in the ECR is considered to have dealt with the person who is entitled to represent the adult*



# Interconnection of registers

## Benefits:

- Access to the information on the existence of protection abroad (e.g. where the adult in question is not in a position to provide that information)
  - ➔ Authorities able to ensure continued protection of the adult and full respect of a measure taken abroad
  - ➔ Powers of representation drawn up by the adult respected abroad
- Reduction of the amount of verifications carried out by the competent authorities and thus diminishing the duration and costs of the proceedings
- General increase of legal certainty

**Measure supported by legal practitioners, notaries and other stakeholders**



# Interconnection of registers

- **Limited set of data**
- Access not public - limited to **public authorities with legitimate interest** and authorised by their Member State
- No central EU register, registers set up and maintained by Member States and **interconnected at the EU level** through a software solution
  - Currently, most MS already have one or more (electronic) registers of protection measures and/or powers of representation

# Other provisions of the Regulation

- **Digital communication** (based on the proposal for the digitalisation of justice)
  - Between competent authorities and Central Authorities
  - Between natural/legal persons and competent authorities
- Data protection
- Implementing & delegated acts
- General and final provisions



# Thank you for your attention

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