

THE EMPOWERMENT AND PROTECTION OF VULNERABLE ADULTS

NORWAY

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SECTION 1 – GENERAL

- 1. Briefly describe the current legal framework (all sources of law) regarding the protection and empowerment of vulnerable adults and situate this within your legal system as a whole. Consider state-ordered, voluntary and ex lege measures if applicable. Also address briefly any interaction between these measures.**

1.1 The current legal framework

In the current legal framework, there is regulated two kinds of state-ordered measure, one voluntary measure and one non-voluntary measure, and in addition, one ex lege measure. All the measures are regulated in the Act named “Lov 25. Mars 2010 nr. 9 om vergemål”, hereinafter The Guardianship Act abbreviated TGA. Here is a link to the Act abbreviated TGA: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven>

In addition, there is relevant customary law related to which dispositions are legally binding. And there are customary and non-customary rules on compensation. These measures shall be explained in more detail later.

In Norway the core legislation relates to:

1. State-ordered measures, namely the modern guardianship system based mainly on supported decision-making, regulated in The Guardianship Act (TGA) chapter 4 – 9.
Norway has two different State-ordered measures which will be explained in detail later:

- a. The Voluntary support measures (VM) [frivillig vergemål]; initiated either by the adult or by another person according to the will and preference of the person. This measure is based on supported decision-making and is in use in about 99.5% of the cases.
 - b. Limited guardianship (LG) [vergemål med fratakelse av rettslig handleevne]. This kind of guardianship is initiated by the adult or by another person or institution and allows a certain limitation of the legal capacity of an adult. The decision must be made by a competent court. The limitation of legal capacity shall be as limited as possible in the light of the States' responsibility to secure the person's other rights, including Human Rights, as the right to autonomy, the right to health, the right to housing etc. Also, in a situation where the legal capacity is limited; the will and preferences of the person will be the starting point for any decision in the matter.
2. Voluntary measures: power of attorney (including the right to give further instructions (advanced directives) within the framework of the power, regulated in TGA chapter 10.
 3. Ex lege measures primarily regulated in TGA section 94.

1.2 An ongoing process of amendments

Since 2001 there has been an ongoing process of legislative amendments in this field of law in Norway. Most of the amendments have been driven by an urge to modernize regulation and practice and attempt to search for a balance of autonomy (empowerment), rights and protection in line with existing Human Rights obligations. The aim has been to secure necessary support and protection for elderly persons and other persons with various kinds of (mainly) cognitive disabilities. In Norway the CRPD-paradigm shift should have been in place with the new Act in 2010, mentioned above. However, there has been, and still is, a need for several clarifications and amendments to secure a full shift. In the last (2022) legislative document from the Government, there is listed ongoing work and mentioned possible

amendments of terminology, reconsidering the use of medical diagnosis and other amendments to secure a full implementation of CRPD.¹

The term ‘guardian’ is still used in (non-official) translations of the Norwegian term “verge”. The lingual meaning of the Norwegian word “verge” dates at least thousand years back in time and is traditionally understood as a person “standing by” [stå ved, bistå] the person to assist, protect or support in various situation. Traditionally the term also in Norway has been linked to combined measures of substitute decision making *and* deprivation or limitation of legal capacity, but today its meaning has been broadened to incorporate supported decision making without affecting legal capacity. There is ongoing work in the Ministry of Justice in Norway to examine the possibilities of finding a terminology to replace the existing [verge/vergemål] and which better can communicate the legal realities. (See definitions used in this Questionnaire, p. 2.)

The core state-ordered measures (VM) is regulated as follows in the Act section 20 (my translation):²

“When needed, a support measure [vergemål] can be established for those who have reached the age of 18, and who due to mental illness, including dementia, mental disability, drug addiction, serious gambling addiction or seriously impaired health, is unable to look after his or her interests.

The measure is a voluntary support measure. A person who wishes to be supported by a support person [verge] must consent in writing to the creation of the support measure, the scope of the support measure and who should be the support person [verge]. If the person is unable to form, adhere to or convey his wishes, the best interpretation of the person's will and preferences shall be used as a basis when assessing whether he or she wants the state-ordered measures[vergemål], and when assessing the extent of the measure and who should be his/her support person [verge]. In the interpretation, emphasis must be placed on what the person expresses, the person's personal values, view of life, previous wishes and preferences, the person's understanding and how someone who has had lasting and ongoing contact with the person interprets the person's wishes and preferences. A measure cannot be established if it is assumed that this would be contrary to the wishes of person. The person has the right to reasonable accommodation.

¹ White Paper 2022 (Prop. 141 L (2021-2022) Endringer i vergemålsloven mv. (vergemål som frivillig støttetiltak mv.).)

² The Act section 20 (as amended) is based on the White Paper 2022 (Prop. 141 L (2021-2022) Endringer i vergemålsloven mv. (vergemål som frivillig støttetiltak mv.).)

Such state-ordered measures can also be established for persons under 18 years of age according to the rules in the first and second paragraphs, when it is considered necessary, according to the circumstances, for the support measure to continue uninterrupted when the person reaches the age of majority.

In the White-paper mentioned above, these proposed amendments are described as clarifications [tydeliggjøring], and not as amendments bringing a material change in the implementation of the CRPD-conventions.

1.3 Any interaction between these measures

There is a complex interaction between these three measures presented in 1.1. The starting point is that the voluntary measure: the power of attorney – prevails in all situations. The state may only appoint a guardian where a voluntary measure does not exist or if there is reason to believe that the person is not receiving sufficient support from the attorney. If necessary, the Guardianship Authority may supplement or set aside the power to secure that the adult is receiving necessary support. This could be done in a situation where an attorney is not giving sufficient support or when the power is not including all areas where support is needed. This could be done either by giving the attorney mandate to act also as a guardian to broaden the scope of his support, or it could be done by removing the competence of the attorney and transferring the competence to a guardian which could give support in accordance with the adult's wishes and preferences as it follows from the power and other sources. Normally ex lege measures can only be used when a power of attorney is not covering the matter and where a guardian is not appointed.

2. Provide a short list of the key terms that will be used throughout the country report in the original language (in brackets). If applicable, use the Latin transcription of the original language of your jurisdiction. [Examples: the Netherlands: *curatele*; Russia: *oneka - opeka*]. As explained in the General Instructions above, please briefly explain these terms by making use of the definitions section above wherever possible or by referring to the official national translation in English.

- Adult (voksen/person): an adult is a person who has reached the age of 18 years.
- Adult protection measures (støttetiltak): all measures and instruments, including ex lege representation (*by partner, children,*

grandchildren or parents); state-ordered representation (e.g. voluntary guardianship and any other measures used for the purpose of adult protection, support or legal representation.

- Advance directive (instrukser): instructions given or wishes made by a capable adult concerning issues that may arise in the event of his or her incapacity. In Norway advanced directives can only be given in combination with a power attorney. A certain kind of directives regulating life and death is called “livstestament”. Such directives are as such not binding.
- Attorney (fullmektig): representative/support person appointed by means of a continuing power of attorney by the adult.
- Continuing power of attorney (fremtidsfullmakt): a mandate given by an adult with the purpose that it shall either be effective immediately, *at a set date* or enter into force in the future, and shall remain in force in the event of the granter’s incapacity.
- Ex lege representation (legalfullmakt): an adult protection measure providing *limited* legal authority to other persons to act ex lege (by operation of law) on behalf of the adult, requiring neither a decision by a competent authority nor a voluntary measure by the adult.
- Granter (fullmakts giver): an adult giving the continuing power of attorney.
- Legal capacity (rettsevne/rettslig handleevne): the ability to hold rights and duties (passive legal capacity or legal standing) (rettsevne) and to exercise those rights and duties (active capacity or legal agency) (rettslig handleevne).
- Mental capacity (beslutningsevne): the de facto decision-making and decision-communication skills of a person.
- Representative/guardian (verge): a natural person who assists the adult to legally act or who acts together with the adult. The representative/guardian (but not a support person) is entitled to act against the will of the adult when this is necessary to secure the adult’s rights or needs. The term ‘guardian’ is linked to the combined measure of substitute decision making and limitation of legal capacity
- Support person (verge): a *natural person* who assists the adult to legally act or who acts together with the adult. There are two kinds of support persons:

- a) A natural person appointed as a so-called guardian [verge] based on a voluntary request by the adult but decided by the state body in according to the will and preferences of the person.
 - b) Attorney: representative/support person appointed by means of a continuing power of attorney by the adult.
- State-ordered measures (vergemål): adult protection measures, ordered by a competent state (judicial or administrative) authority, at the request of the adult or others.
 - Voluntary state-orders measures (VM) (vergemål uten fratakelse av rettslig handleevne / alminnelig vergemål); initiated by the adult or initiated by another person according to the will and preference of the person, abbreviated **VM**.
 - Limited guardianship (LG) (vergemål med fratakelse av rettslig handleevne): Guardianship initiated by the adult or by another person or institution which allows limitation of the legal capacity of an adult, abbreviated **LG**. Decision by any competent court.
 - Voluntary measures (fremtidsfullmakt): any measure initiated by the adult without external compulsion ex lege or a decision by any competent state authority.
 - Vulnerable adult: adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.
 - TGA /the Act (vergemålsloven): The Guardianship Act, adopted 26. mars 2010, in force from 1st July 2013. In this rather new and modern Act, the government chose to keep the traditional and old flavored terminology as “guardian” and “guardianship”. Here called **TGA** or just **the Act**.

3. Briefly provide any relevant empirical information on the current legal framework, such as statistical data (please include both annual data and trends over time). Address more general data such as the percentage of the population aged 65 and older, persons with disabilities and data on adult protection measures, elderly abuse, etc.

By the end of year 2023 the Norwegian population consisted of 5 550 203 persons.³ The total number of vulnerable adults who had an appointed

³ The Norwegian population 31th December 2023. [Befolkning – SSB](#)

support person [verge] by the end of 2023 was 42 769.⁴ Nearly all had an appointed support person under a voluntarily state-ordered measure (VM). However, 337 persons had a guardian appointed under the limited guardianship measure (LG).⁵

Approximately 18 percentage of the population were aged 65 and older. Within this group the need for support due to physical or mental impairment, is more common, than by those who are younger. In Norway approximately 990 000 persons are aged 65 and older. In this group 1,5 % or 14 500 persons have an appointed guardian.

The statistical data shown (below) the number of new guardianships in Norway, and the development in the numbers since 2019. The overall picture is that the number of guardianships is declining and being replaced by powers of attorney.

The number of new guardianships in Norway have increased from 2013 when the new supported state-ordered measures for adults came into force and until 2019. Since 2019 the number of new guardianships has been declining, while the number of powers of attorney has increased accordingly. See the columns underneath for more detailed information on the development of state-ordered measures [vergemål] for adults and in powers of attorneys. The first picture shows the number of state-ordered measures established each year in Norway from 2019 to 06.2022.

⁴ Annual Report 2023, Civil Law Administration: [Årsrapport 2023 \(sivilrett.no\)](#), table 3.1 statistics from the years 2019 to end 2023.

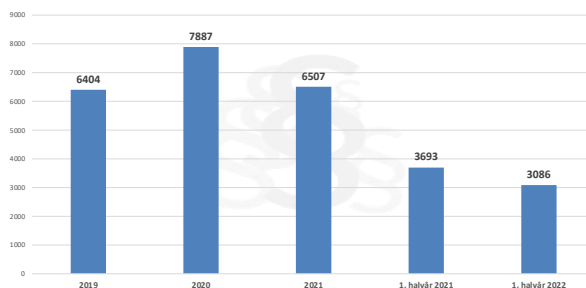
Tabell 31 Antall personer med vergemål

| | 2023 | 2022 | 2021 | 2020 | 2019 |
|---|--------|--------|--------|--------|--------|
| Totalt antall vergemål (EMA ikke medregnet [1]) | 62 520 | 63 781 | 64 732 | 64 292 | 63 299 |
| Sakstype "voksen" | 42 769 | 42 301 | 42 561 | 42 281 | 41 452 |
| Opprettet nye vergemål for voksne | 6 486 | 6 624 | 6 325 | 7 667 | 6 349 |
| Andel begjæringer om vergemål som blir vergemål % | 67 | 71 | 72 | 76 | 76 |
| Enslige mindreårige asylsøkere (EMA) | 1 531 | 1 228 | 467 | 420 | 527 |
| Fratakelse av rettslig handleevne | 337 | 307 | 296 | 280 | 236 |

1) EMA - Enslige mindreårige asylsøkere

⁵ ibid

Antall opprettede vergemål for voksne



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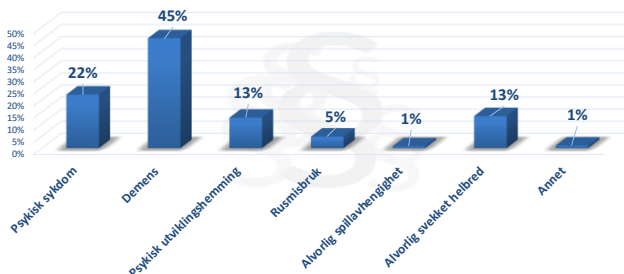
The next picture shows the number of powers of attorneys in force and confirmed [stadfestede fremtidsfullmakter]. The number has increased every year since the instruments come into force 1 st. of July 2013. However, it is particularly in the last years that the increase has been steep. From 2022 till 2023 the number of confirmed powers increased with more than 45 %. In 2023 3616 new powers went into force and became confirmed by the County Governors. Confirmation is not a condition for a valid power which indicate that the number of powers in force exceeds the represented and available statistics. If this trend continues, powers of attorney may take over as the main support measure in Norway within just a few years. ⁷

The data beneath show the diagnosis registered when establishing state-ordered measures. In Norway it has not been necessary to register any particular diagnosis for the person if an overall assessment has been that the person wants and has a need for support. However, the relevant authority has from 2021 instructed the County Governors to register such information.

⁶ Statistics by the Norwegian Civil Law Administration (Statens sivilrettsforvaltning) 2021

⁷ Statistics by the Norwegian Civil Law Administration (Statens sivilrettsforvaltning) 2021

Registrert diagnose – opprettede vergemål 2021



8

The picture above shows that dementia in 2021 was the diagnosis which most frequently was associated with state-ordered measures in Norway. While 45 % of the adults with VM were registered with dementia, 22 % were registered with a mental illness, 13 % with physical illness/impairment, 13 % with a mental impairment, 5 % with drug addiction, 1 % with severe gambling addiction and 1 % Other. One person may have more than one diagnosis.

4. List the relevant international instruments (CRPD, Hague Convention, other) to which your jurisdiction is a party and since when. Briefly indicate whether and to what extent they have influenced the current legal framework.

The international instruments relevant for Norway:

*CRPD: signed 30 March 2007, ratification 3rd June 2013. Norwegian legislation was reviewed in the light of the CRPD-obligations in the period from 2018 to 2019. The final report from the CRPD-committee was published 7th May 2019, [CRPD/C/NOR/CO/1 \(regjeringen.no\)](https://www.regjeringen.no). The ongoing Human Rights dialogue as well as the final report from the Committee has been important factors in the the legal developments in this field.

*Nordic family law Convention 6th February 1931. Ratified 11th December 1931. Chapter III regulates guardianship.

⁸ Statistics by the Norwegian Civil Law Administration (Statens sivilrettsforvaltning) 2021

*The Hague Convention 2000, Norway is not a party, but there exists a governmental green paper advising Norway to ratify the convention. Even if the Convention is not ratified, the Hague 2000 is to a certain extent implemented in Norwegian law, since the TGA sections 98, 99 and 100 are based on and in line with the principles in Hague 2000 article 5, 7, 15 and 16.

(The twin convention, Hague 1996, is ratified by Norway.)

*Recommendation CM/Rec (2009)11 of the Committee of Ministers to member states on principles concerning continuing powers of attorney and advance directives for incapacity

Both the CRPD as interpreted by the committee and the Recommendation CM/Rec (2009)11 of the Committee of Ministers to member states on principles concerning continuing powers of attorney and advance directives for incapacity have had massive influence on the current legal framework in Norway. The first in developing modern state-ordered measures and the second in developing voluntary measures, i.e., a regulation of powers of attorney [fremtidsfullmakter].

5. Briefly address the historical milestones in the coming into existence of the current framework.

The regulation of guardianships has a long history in Norway. Already in Magnus Lagabøtes landslov (Act in force from 1274), there were some provisions in the guardianship field.

In Christian Vs Norske Lov, Act from 1687, there were provisions on incapacity and management of a person's funds. From the beginning, it was only mandatory to have specific guardianship authorities [overformynderier] in the cities, while the magistrates carried out the task elsewhere in the country.

In the Act of 28 September 1857, however, it was decided that specific guardianship authorities [overformynderier] should be established also for each larger settlement (større tettsted). By Act on 25 February 1899, the first Guardianship Authority was given a permanent and paid chairman. This was however, a solution only in the cities. In most parts of the country the task continued to be performed by elected and unpaid citizens in the municipalities. This system with elected and unpaid citizens performing guardianship tasks, was continued in the Guardianship Act adopted in 1927. During more or less thousand years of legislation, the organizational changes have been few.

However, in 2013, there were major changes both in the organization of the field and the legal framework. The implementation efforts consisted of both a new Guardianship Authority, a regional organisation with skilled and paid employees, an attitude reform linked to the CRPD-paradigm shift from substituted to supported decision-making and first and last a legal reform with

a new act. The Act was adopted in 2009, but not in force until 1st July 2013. The years in between were used to implementing the different reforms necessary for the desired paradigm shift. However, this shift was more difficult to obtain in real life than first expected. From 2013 the field has received more attention and since the new act was adopted in 2010, the field has undergone a number of minor changes in 2011, 2013, 2016, 2018, 2019, 2020, 2021 and 2023. By April 2023 the Government set in force important material amendments to secure further clarifications linked to the concept of support and voluntary guardianship. The Act now states in a straightforward manner that the main state-ordered measure (VM) used in 99.5% of the cases “is a voluntary support measure”.⁹ With this last milestone, the paradigm shift might be in reach also in the everyday life of the persons involved. In this amendments of the Act the Parliament has made other important clarifications:

1. To clarify in clear wording that the main state-ordered measure in Norway is a voluntary support measure.¹⁰
2. To receive certain support also from the next of kin. The person receiving the support measures under a VM, will always have the right to claim amendments of the support measure and the support person. In addition, the Government has proposed to give the next of kin the right to assist the person in filing complaints regarding the support/assistance given by the guardian/support person. Not all persons will have the ability to make their complaints themselves, and if the support person himself is part of the problem, it is assumed that the person will be better off with support from next of kin in filing a complaint.¹¹
3. To clarify that the support person [verge] shall assist by giving supported decision-making in line with the will and preferences of the person.¹²
4. To clarify that when the person is unable to form, adhere to or communicate his/her wishes, the best interpretation of the person's will and preference shall be used as a basis for the assessment of what he or she wants.¹³
5. To clarify that when interpreting the will and preference of the person, emphasis must be placed on what the person is expressing, the person's longer-term values, view of life, previous wishes and perceptions, the person's understanding of

⁹ Prop. 141 L (2021 -2022) proposed amendment of the TGA section 20.

¹⁰ Prop. 141 L (2021 -2022) amendment of the TGA section 20.

¹¹ Prop. 141 L (2021 -2022) amendment of the TGA section 29.

¹² Prop. 141 L (2021 -2022) amendment of the TGA section 33.

¹³ Prop. 141 L (2021 -2022) amendment of the TGA section 33.

the matter and how someone who has had lasting and ongoing contact with the person interprets the person's wishes and preferences.¹⁴

6. To clarify that the support person cannot carry out an action if, after an overall assessment, it must be assumed that the action is contrary to the person's wishes.
7. Important, amendments in the sections 25, 46, 53, 54, 60, 65, 77 and 95.¹⁵

However, the Government admits that further amendments should still be assessed and implemented.

6. Give a brief account of the main current legal, political, policy and ideological discussions on the (evaluation of the) current legal framework (please use literature, reports, policy documents, official and shadow reports to/of the CRPD Committee etc). Please elaborate on evaluations, where available.

The CRPD convention is ratified by Norway and the CRPD is transformed into Norwegian law. There has been broad support for this instrument. Parliament has from 2010 and onwards made numerous amendments in the current legislation to secure effective implementation of the obligations into Norwegian law. See point 5 above. An important drive in this willingness to consider possible amendments have been both the received criticism from Civil society, and also the dedicated engagement and involvement from Civil society and the stakeholders in this field.

Civil society (the CSOs) were in 2019 funded to evaluate the Norwegian implementation of CRPD. The core recommendations from the CSOs on CRPD article 12 read as follows:¹⁶

“Recommendations:

A. Ensure that everyone receives the support they need to exercise their legal capacity through the introduction of legislation in line with the CRPD.

¹⁴ Prop. 141 L (2021 -2022) proposed amendment of the TGA section 33.

¹⁵ Prop. 141 L (2021 -2022) proposed amendment of the TGA sections 25, 46, 53, 54, 60, 65 and 95.

¹⁶ Info from Civil Society Organizations (for the session), see the report p. 18.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fNOR%2f33866&Lang=en. There are more than 100 Civil Society Organizations in this field in Norway.

B. The Government must develop (and respect) supported decision-making systems that recognise the person's own will and preferences to guarantee each person's right to self-determination.

C. The Government must provide systematic training on Article 12.”

The legal framework and practice on *powers of attorneys* were evaluated in a separate report to the Central Guardianship Authority in 2019.¹⁷ This evaluation included several important reflections and discussions on self-determination vs. security. One important discussion was also the arguments in favour of considering mandatory registration of the power by the County Governors.

7. Finally, please address pending and future reforms, and how they are received by political bodies, academia, CSOs and in practice.

It is still too early to know how these amendments are received by political bodies, academia, CSOs or in practice. However, the key amendments are the result of a long-term and ongoing dialogue with the relevant CSOs and stakeholders.

SECTION II – LIMITATIONS OF LEGAL CAPACITY

8. Does your system allow limitation of the legal capacity of an adult? N.B. If your legal system provides such possibilities, please answer questions 8 - 15; if not proceed with question 16.

- a. on what grounds?
- b. how is the scope of the limitation of legal capacity set out in (a) statute or (b) case law?
- c. does limitation of the legal capacity automatically affect all or some aspects of legal capacity or is it a tailor-made decision?

¹⁷Torunn E. Kvisberg and Maria Veia Lund (2019) Kartlegging og utredning av ordningen med fremtidsfullmakter. Skriftserien 29 – 2019. Rapport til Statens Sivilrettsforvaltning 16. august 2019 https://brage.inn.no/inn-xmli/bitstream/handle/11250/2630477/29-2019%20-%20Kvisberg_Lund-%20Kartlegging%20og%20utredning%20av%20ordningen%20med%20fremtidsfullmakter%20omslag%20onlineutgave.pdf?sequence=1&isAllowed=y

- d. can the limited legal capacity be restored and on what grounds?
- e. does the application of an adult protection measure (e.g. supported decision making) automatically result in a deprivation or limitation of legal capacity?
- f. are there any other legal instruments,¹⁸ besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?

a. on what grounds?

According to TGA § 22 there are two main grounds which may lead to limitation: *The grounds for limitation of legal capacity of an adult in *financial matters* [økonomiske forhold] are that this is necessary [nødvendig] to prevent him or her from exposing his or her belongings or other financial interests to the risk of being significantly reduced [vesentlig forringet], or he or she is being exploited financially in an improper manner [utilbørlig måte].

* There are grounds for limitation of legal capacity of an adult in *personal matters* [personlige forhold] in certain areas if there is a *significant risk* [betydelig fare] that he or she will act in a way that will be significantly likely to harm his or her interests.

Within these frames the limitation of legal capacity may be - and often will be - limited to certain assets or certain types of dispositions. A supreme court judgement [HR-2017-275-A] underlined this approach. The result of the ruling is instructive as to how the rules are meant to function. In this case a person had his capacity limited; he should not be entitled to make decisions on entering into or ending tenancy agreements, but he kept his capacity to decide where he wanted to live. Said in other words, he was deprived the right to rent an apartment without paying for the costs. As a result, the guardian was given the right to stop the person from ending a tenancy when this was motivated not by the wish to move somewhere else but by a wish to use the rent for gambling instead.

Under Norwegian law limitation of capacity is decided in about 0.5 % of the cases where support is needed.

TGA § 22 in full text: <https://lovdata.no/lov/2010-03-26-9/§22>

¹⁸ Rules that apply regardless of any judicial incapacitation, if that exists, or of the existence of a judicially appointed guardian which might affect the legal capacity of the person or the validity of his/her acts

b. how is the scope of the limitation of legal capacity set out in (a) statute or (b) case law?

The scope of the limitation is set out in a statute: TGA § 22.

c. does limitation of the legal capacity automatically affect all or some aspects of legal capacity or is it a tailor-made decision?

The limitation is tailor-made – and within the grounds described in 8 a above.

d. can the limited legal capacity be restored and on what grounds?

The limitation of legal capacity can be reversed and full capacity restored. No particular grounds are needed to be allowed to take the question to court. The person may go to court proceedings numerous times, but in the case of no new circumstances, the same legal question can only be raised once a year, TGA § 75 third paragraph. The state will cover the costs for such court case, TGA § 76.

In addition, the State Governor may lift the limitation of legal capacity through a court case as well as without a court case, but only if this is assessed as unobtrusive [ubetenkelig], cf. TGA § 63 second paragraph.

<https://lovdata.no/lov/2010-03-26-9/§63>

<https://lovdata.no/lov/2010-03-26-9/§75>

<https://lovdata.no/lov/2010-03-26-9/§76>

It is also important to be aware that the limitation of legal capacity in the first place shall be tailor-made and construed as narrowly as possible, and be limited both in time and in scope, cf. TGA § 21 third paragraph: [“Vergemålet skal ikke gjøres mer omfattende enn nødvendig.”]

<https://lovdata.no/lov/2010-03-26-9/§21>

e. does the application of an adult protection measure (e.g. supported decision making) automatically result in a deprivation or limitation of legal capacity?

No, a person with a voluntary support measure (VM) will have full legal capacity. A limitation of the legal capacity will always need a separate court-

decision. If necessary to avoid significant damage or inconvenience to the person to whom the application applies, and when the conditions pursuant to TGA section 20 are assumed to exist, the State Governor, however, may adopt an interim measure. This must be replaced by a court decision as soon as possible.

<https://lovdata.no/lov/2010-03-26-9/§61>

f. are there any other legal instruments,¹⁹ besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?

Not fully, but certain persons with impairments receiving pensions or other social state benefits, may involuntarily have parts of their state benefit paid out to another person or body (parent, friend etc.) helping him or her to pay the rent and other necessities.

<https://lovdata.no/lov/1997-02-28-19/§22-6>

9. Briefly describe the effects of a limitation of legal capacity on:
a. property and financial matters;

The person loses the ability to act within the tailor-made scope of the decision. However, the guardian [verge] is obliged to discuss the relevant decisions with the person, cf. section 33.

<https://lovdata.no/lov/2010-03-26-9/§33>

b. family matters and personal rights (e.g. marriage, divorce, contraception);

If the right to marriage is included in the tailor-made mandate, marriage will demand consent from the guardian. If the guardian does not consent, the State Governor may still give the permission to marriage.

As far as I know, there exists one case after 2013.

<https://lovdata.no/lov/1991-07-04-47/§2>

¹⁹ Rules that apply regardless of any judicial incapacitation, if that exists, or of the existence of a judicially appointed guardian which might affect the legal capacity of the person or the validity of his/her acts

In case of divorce, the person is entitled to support from the guardian.

<https://lovdata.no/lov/1991-07-04-47/§28>

c. medical matters;

Limitation of legal capacity has no effects on medical matters as such, however the person's medical (mental) condition may under the Health-legislation lead to the person being held as not able to consent, cf. pasient- og brukerrettighetsloven § 4-3. This might lead to a de facto limitation.

<https://lovdata.no/lov/1999-07-02-63/§4-3>

d. donation and wills;

No effects. However, the donation or the will may be held as invalid due to the mental capacity of the granter.

<https://lovdata.no/lov/2019-06-14-21/§41>

e. civil proceedings and administrative matters (e.g. applying for a passport);

In civil proceedings limitation of legal capacity leads to the need to be represented by a guardian in court proceedings. The person loses the right to engage directly in the process process ability, cf. The procedural Act section 2-2 [Tvisteloven § 2-2].

<https://lovdata.no/lov/2005-06-17-90/§2-2>

A person who has limited legal capacity will normally need consent from the guardian to receive a passport, the Passport Act section 4 [Passloven § 4]. Passports may in special cases be issued without consent if there is a danger to the person's life or health, or it is for other reasons obviously unquestionable.

<https://lovdata.no/lov/1997-06-19-82/§4>

10. Can limitation of legal capacity have retroactive effect? If so, explain?

No.

11. Which authority is competent to decide on limitation or restoration of legal capacity?

The courts of Norway. The courts are not specialised, however the judicial competence will often be supplemented by medical and psychological competence for instance by including an expert witness or judge. However, as an *interim* measure, the regional, administrative state-body called County Governor can also decide on limitation of legal capacity, but then the case must be sent to the courts immediately (“straks”), cf. TGA § 61.

The limitation of legal capacity can be reversed and full capacity restored by the County Governor and by the Courts.

No particular grounds are needed to be allowed to take the question to court. The person may go to court proceedings every year, but the same question can only be raised one time each year, TGA § 75 third paragraph, and the state will cover the costs, TGA § 76.

<https://lovdata.no/lov/2010-03-26-9/§75>

<https://lovdata.no/lov/2010-03-26-9/§76>

In addition, the State Governor may lift the limitation without a court case, but only if this is assessed as unobtrusive [ubetenkelig], cf. TGA § 63 second paragraph. (See, number 8 d above.)

<https://lovdata.no/lov/2010-03-26-9/§63>

12. Who is entitled to request limitation or restoration of legal capacity?

The Adult himself/herself, his/her next of kin, his/her guardian or his/her medical doctor, cf. TGA section 69 and section 73 cf. section 56.

<https://lovdata.no/lov/2010-03-26-9/§69>

<https://lovdata.no/lov/2010-03-26-9/§56>

13. Give a brief description of the procedure(s) for limitation or restoration of legal capacity. Please address the procedural safeguards such as:

- a. a requirement of legal representation of the adult;

- b. participation of family members and/or of vulnerable adults' organisations or other CSO's;**
- c. requirement of a specific medical expertise / statement;**
- d. hearing of the adult by the competent authority;**
- e. the possibility for the adult to appeal the decision limiting legal capacity.**

a. a requirement of legal representation of the adult;

Not a requirement, the adult is entitled to meet without representation, cf. section 69. However, the adult is entitled to representation both by a guardian/support person and by an advocate and with the expenses covered by the state, section 76.

<https://lovdata.no/lov/2010-03-26-9/§69>

<https://lovdata.no/lov/2010-03-26-9/§76>

b. participation of family members and/or of vulnerable adults' organisations or other CSO's;

There is no particular regulation for these cases, however CSOs will have a right to take part [partshjelper] and through that support the proceedings under the general rules, cf. the Procedural Act section 15-7.

<https://lovdata.no/lov/2005-06-17-90/§15-7>

c. requirement of a specific medical expertise / statement;

The court is required "to enlighten the case" [sørge for at saken er tilstrekkelig opplyst], cf. TGA section 71. This will normally include the use of medical expertise or a statement from a medical expert [sakkyndig], but it is up to the court to decide what is sufficient in the actual case.

<https://lovdata.no/lov/2010-03-26-9/§71>

d. hearing of the adult by the competent authority;

Yes, there are numerous remedies to secure this including: The adult will as all other persons be summoned to the court-hearing. The hearing may take place at an institution/hospital where the person is staying. If the adult does not attend the hearing, the court shall arrange for an oral conversation

between the adult and the judge outside the court. The court may receive assistance of the police to find the adult etc, cf. TGA section 72.

<https://lovdata.no/lov/2010-03-26-9/§72>

e. the possibility for the adult to appeal the decision limiting legal capacity.

The adult may appeal the decision, cf. TGA section 73.

<https://lovdata.no/lov/2010-03-26-9/§73>

14. Give a brief account of the general legal rules with regard to mental capacity in respect of:

- a. property and financial matters;**
- b. family matters and personal rights (e.g. marriage, divorce, contraception);**
- c. medical matters;**
- d. donations and wills;**
- e. civil proceedings and administrative matters (e.g. applying for a passport).**

a. property and financial matters;

If the person is unable to understand the consequences of the decision or agreement, the agreement may be not binding (invalid) according to customary law, cf. the Supreme court decision: Rt. 1995 s. 1540 at page 1544.²⁰

²⁰ «En rettslig disposisjon avgitt av en person som har en alvorlig sinnslidelse, kan erklæres ugyldig om disposisjonen er påvirket av sykdommen. Sinnslidelsen i seg selv kan, avhengig av sykdommens art, gi en viss formodning om at disposisjonen kan være påvirket av sykdommen. En alvorlig sinnslidelse kan få større betydning ved mer omfattende eller sjeldne transaksjoner enn ved de enkle og dagligdagse. Det er en totalvurdering av sykdommen, forholdet omkring avtaleinngåelsen, disposisjonens innhold og etterfølgende forhold som blir avgjørende. Hvis den alvorlige sinnslidelse etter en slik samlet vurdering tillegges betydning, blir disposisjonen ugyldig uavhengig av om medkontrahenten kjente til eller burde forstått at disposisjonen var påvirket av sinnslidelsen.»

An unofficial translation:

«A legal disposition issued by a person who has a serious mental illness can be declared invalid if the disposition is affected by the disease. The mental illness itself can, depending on the nature of the disease, give a certain presumption that the disposition may be affected by the disease. A serious mental illness can be more important in more extensive or rare transactions than in the simple and everyday ones. It is a total assessment of the illness, the context and the conclusion of

b. family matters and personal rights (e.g. marriage, divorce, contraception);

Entering into marriage: The mental capacity is without interference, but the person may need the consent of an already existing guardian/support person, cf. Marriage Act section 2. <https://lovdata.no/lov/1991-07-04-47/§2>

Divorce: Mental capacity has no direct impact. However, difficult questions may arise in connection with interpreting the will and preferences of the person.

c. medical matters;

The mental competence to consent may lapse in whole or in part if the patient is obviously unable to understand what the consent includes due to physical or mental disorders, senile dementia or other forms of cognitive disabilities, cf. pasient og brukerrettighetsloven § 4-3.

<https://lovdata.no/lov/1999-07-02-63/§4-3>

d. donations and wills;

A testamentary disposition is invalid if the testator due to mental illness, dementia, intoxication or other mental disabilities at the time of testing did not have the ability to understand the meaning of the disposition, cf. the Inheritance Act section 41 second paragraph.

<https://lovdata.no/lov/2019-06-14-21/§41>

e. civil proceedings and administrative matters (e.g. applying for a passport).

In civil proceedings limitation of legal capacity leads to the need for being represented by a guardian in court proceedings. The person loses ability to act independently before the court, cf. The procedural Act section 2-2 [Tvisteloven § 2-2].

<https://lovdata.no/lov/2005-06-17-90/§2-2>

A person who has limited legal capacity will normally need consent from the guardian to receive a passport, the Passport Act section 4 [Passloven

the agreement, the content of the disposition and subsequent circumstances that becomes decisive. If the serious mental illness after such an overall assessment of additional significance, the disposition becomes invalid regardless of whether the co-contractor knew or should have understood that the disposition was affected by the mental illness. »

§ 4]. Passports may in special cases be issued without consent if there is a danger to the person's life or health, or it is for other reasons obviously unquestionable.

<https://lovdata.no/lov/1997-06-19-82/§4>

15. What are the problems which have arisen in practice in respect of your system on legal capacity (e.g. significant court cases, political debate, proposals for improvement)? Has the system been evaluated and, if so, what are the outcomes?

We have very few cases on limitations in Norway. Only 337 persons overall have had their capacity limited. I am not aware of any particular or systematic challenges or problems in the light of the last amendments.

SECTION III – STATE-ORDERED MEASURES

Overview

The state-ordered measures in Norway are called guardianship [vergemål]. There are two kinds of state ordered measures:

1. Measures which result in a particular and described limitation of legal capacity, see II, above.
2. Measures which are voluntary, and which do not affect the legal capacity of the person, which shall be described further under section III of the Questionnaire, called VM.

Norway chose in 2010 to return to²¹ the traditional terminology [vergemål], traditionally translated “guardianship”, but where the content of the measures was broadened and modernized in the light of CRPD article 12 and other Human Right instruments. This use of “ancient” terminology, but with a modernized content has raised understandable critique and challenges.

However, the reasoning in 2010 was to return to a language used for thousand years in Norway – and the fact that the original meaning of the Norwegian word “verge” is to stand by a person [stå ved / støtte]; to stand close and be ready to give support, assist and protect, but still respectful and without use of substituted decision-making. But when the wording is translated into the English word “guardian”; the skilled reader easily will understand this as an old fashioned and substituted measure. There are

²¹ Before 2013 the terminology had been “support guardianship” / “support guardian” [hjelpvergemål / hjelpeverge].

therefore clear policy-reasons in favour of amending the terminology and of turning to a language which more easily gives correct associations – also when translated to English. There is ongoing governmental work to assess the terminology as mentioned above.

16. What state-ordered measures exist in your jurisdiction? Give a brief definition of each measure.

In Norway there are two state-ordered measures:

1. Voluntary guardianship measures (VM); initiated by the adult or initiated by another person according to the will and preference of the person, abbreviated **VM**.
2. Limited guardianship (LG): Guardianship initiated by the adult or by another person or institution which allows limitation of the legal capacity of an adult, abbreviated **LG**. Decision by any competent court.

Pay attention to:

- a. can different types of state-ordered measures be applied simultaneously to the same adult?**

Yes, nearly all Norwegian guardianships are voluntary guardianships (The VM), but this can be supplemented by a court decision giving the guardian the power to make substituted decisions within a certain field (The LG). Systematically the person then may receive support/representation based on both measures. This is done for 337 persons in Norway.

- b. is there a preferential order in the application of the various types of state-ordered measures? Consider the principle of subsidiarity;**

As an overall principle the state-ordered measures shall be based on the principle of “least means” [det minste middels prinsipp]. The state shall not interfere in the life of the person if less invading measures are possible. This means that the state normally will respect any voluntary measure in place [fremtidsfullmakt i kraft]. Thereafter the state as far as possible will choose voluntary state-ordered measures (VM) and where limitation of legal capacity can be used according to a separate court decision as a last resort, and according to the law and according to safeguards and surveillance.

TGA § 21 third paragraph: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

c. does your system provide for interim or ad-hoc state-ordered measures?

Yes, a decision on limitation of legal capacity can in the event of a crisis in the life of the person, be decided as an interim measure, but such decisions must immediately [“straks”] be replaced by a court order.

TGA § 61: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

Start of the measure

Legal grounds and procedure

17. What are the legal grounds to order the measure? Think of: age, mental and physical impairments, prodigality, addiction, etc.

1. Voluntary state-ordered measures (VM); initiated by the adult or initiated by another person according to the will and preference of the person, abbreviated **VM**.

The legal grounds to order this measure follow from TGA section 20. The grounds are:

- 17.a.1. A need for support to handle financial or personal matters
- 17.a.2. A need due to mental and/or physical impairments, gambling addiction and other forms of addiction.
- 17.a.3. The person must be an adult; 18 years or older

2. Limited guardianship (LG): Guardianship initiated by the adult or by another person or institution which allows limitation of the legal capacity of an adult, abbreviated **LG**. Decision by any competent court.

The grounds follow from TGA section 20 and 22. See answers to no. 8 and 17. a, b and c above.

18. Which authority is competent to order the measure?

Voluntary guardianship measures (VM): The County governor (regional state body)

TGA section 55: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

Limited guardianship (LG): The court

TGA section 68: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

19. Who is entitled to apply for the measure?

Voluntary guardianship measures (VM) and Limited guardianship (LG):

In both situations the following are entitled to apply:

- a. The adult
- b. The adult's spouse, cohabitee, parents, closest child/grandchild or sibling
- c. The adult's guardian – if a guardian is appointed already
- d. The adult's medical doctor (typically GP or a medical doctor at the institution where the adult stays or lives)

<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

20. Is the consent of the adult required/considered before a measure can be ordered? What are the consequences of the opposition of the adult?

Voluntary state-ordered measures (VM): The consent of the adult is normally required before a measure can be ordered. Be aware of relevance of two different situations:

1. The adult is able to consent: If the adult is able to consent to the measure, a written consent is always required before a measure can be ordered. The consent must cover the creation of the support measure, the scope of the support measure and who should be the support person [verge]. The consequence of opposition is that the measure cannot be adopted.
2. The adult is not able to consent, understood as: If the person is unable to form, adhere to or convey his wishes, the best interpretation of the person's will and preferences shall be used as a basis when assessing whether he or she wants the state-ordered

measures[vergemål], and when assessing the extent of the measure and who should be his/her support person [verge]. In the interpretation, emphasis must be placed on what the person expresses, the person's personal values, view of life, previous wishes and preferences, the person's understanding and how someone who has had lasting and ongoing contact with the person interprets the person's wishes and preferences. A measure cannot be established if it is assumed that this would be contrary to the wishes of person

TGA section 20 in full text (my translation):

When needed, a support measure [vergemål] can be established for those who have reached the age of 18, and who due to mental illness, including dementia, mental disability, drug addiction, serious gambling addiction or seriously impaired health, is unable to look after his or her interests.

The measure is a voluntary support measure. A person who wishes to be supported by a support person [verge] must consent in writing to the creation of the support measure, the scope of the support measure and who should be the support person [verge]. If the person is unable to form, adhere to or convey his wishes, the best interpretation of the person's will and preferences shall be used as a basis when assessing whether he or she wants the state-ordered measures[vergemål], and when assessing the extent of the measure and who should be his/her support person [verge]. In the interpretation, emphasis must be placed on what the person expresses, the person's personal values, view of life, previous wishes and preferences, the person's understanding and how someone who has had lasting and ongoing contact with the person interprets the person's wishes and preferences. A measure cannot be established if it is assumed that this would be contrary to the wishes of person. The person has the right to reasonable accommodation.”

Such state-ordered measures can also be established for persons under 18 years of age according to the rules in the first and second paragraphs, when it is considered necessary, according to the circumstances, for the support measure to continue uninterrupted when the person reaches the age of majority.

Administrative interpretations from Ministry of Justice and new proposals with suggested clarifications.²²

²² Interpretive statement from Ministry of Justice 21 of March 2018.
<https://www.regjeringen.no/no/dokumenter/-20-og-33---vergemalsloven--20-og-33---samtykkekompetanse/id2594556/>
White paper Prop. 141 L (2021 – 2022) proposed amendment of section 20.

Limited guardianship (LG): A consent of the adult is not required but often considered before a measure is ordered.

TGA section 20: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

21. Provide a general description of the procedure for the measure to be ordered. Pay attention to:

a. a requirement of legal representation of the adult;

Voluntary guardianship measures (VM):

No requirement, cf. TGA section 56:

<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

Limited guardianship (LG):

No requirement, cf. TGA section 56. According to TGA section 69 the adult can also make procedural decisions under a court hearing. This is the case also when the person has had his/her legal capacity limited. However, it is a condition that the adult understands the matter of the question.

If the person has a guardian already, the guardian shall meet at the court hearing as well as the adult.

Section 69: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

b. availability of legal aid;

Voluntary guardianship measures (VM):

When asking for a VM or altering a VM, the adult is normally not entitled to any legal aid in a formal sense. However, this measure (VM) is solely based on administrative procedures, and the civil servants at the County Governor are obliged to support an adult seeking a guardianship order or amendments of such order. The decisions of the Governor shall be based on the will and preferences of the person and tailored to the adult's need for support. This tailoring approach will normally lead to a situation where the Governor develops a measure based on the kind of support the person wants to receive. According to this, the adult should in most cases not be obliged to carry any costs to receive an order. However, a more unexpected situation may appear, and the person might need representation from a lawyer. The person has the right to choose to hire a lawyer to represent him/her, but such costs are not necessarily covered by the state.

Such costs will only be covered in a complaint case, where the complaint was necessary to get the order amended in favor of the adult, cf.

The administrative Act section 36 first paragraph:
https://lovdata.no/dokument/NL/lov/1967-02-10/KAPITTEL_3#shareModal

Limited guardianship (LG):

The adult is entitled to legal aid related to a LG, according to the Legal Aid Act section 16 paragraph no. 5.

<https://lovdata.no/dokument/NL/lov/1980-06-13-35?q=rettshjelpsloven#shareModal>

In addition, the state will cover “all costs” [alle kostnadene ved saken] related to the court case necessary to give or alter the court order, cf. TGA section 76:

<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

c. participation of family members and/or of vulnerable adults’ organisations or other CSO’s;

Voluntary guardianship measures (VM):

Family members have the right to ask for a VM, according to TGA section 56 litra b: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

The Government has in a 2022-White paper proposed that family members in certain circumstances shall have the right to seek amendments of an order and to file a complaint on behalf of the adult if the adult cannot act without support.²³ This is assumed practical where there are complaints related to the guardian/support person and how this person supports the adult.

Limited guardianship (LG):

There are no specific rules related to this group, however, according to the Procedural Act section 15-7 first paragraph litra b, any organisation might intervene in a case in support of a person:

https://lovdata.no/dokument/NL/lov/2005-06-17-90/KAPITTEL_4-5#shareModal

²³ Prop. 141 L (2021-2022) proposed amendments of section 29.

Such intervention might be of importance in these types of cases, and the CSO's will often have good legal knowledge in the Human Rights field and much to offer.

d. requirement of a specific medical expertise / statement;

Voluntary guardianship measures (VM):

The State Governor is obliged to ensure that the case is informed, and has the right to ask for such statement, cf. TGA section 59 first paragraph litra a.

Limited guardianship (LG):

The court is obliged to ensure that the case is sufficiently informed, and medical personnel have the right to give necessary information to the court and the court has the right to receive also information which otherwise would have been confidential, cf. TGA section 71 fifth paragraph:

<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

e. hearing of the adult by the competent authority;

Voluntary guardianship measures (VM):

Yes, according to TGA section 59 first paragraph litra e the adult is entitled to a separate "conversation" with the Authority. The purpose of this dialogue is to secure a relevant knowledge to ensure tailoring of the measure and make a good choice of representative/support person.

See section 59: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

This conversation can be performed by a particular skilled person or a person close to the adult (often next of kin), to ensure better understanding and better tailoring to the will and preferences of the person.²⁴

Limited guardianship (LG):

Yes, a hearing of the adult shall take place related to the court hearings. Either as part of the court meeting, or as a separate meeting between the adult and the judge. The judge may meet the adult where convenient, for instance at an institution where the adult stays or lives.

²⁴ Prop. 141 L (2021 – 2022), proposed amendments to section 59 litra e.

See TGA section 72 for the details:
<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

f. the possibility for the adult to appeal the order.

Voluntary guardianship measures (VM):

Yes, the adult may appeal/lodge a complaint [klage] to the administrative decision by the County Governor, cf. TGA section 64:

<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

Limited guardianship (LG):

Yes, the adult may appeal the order as far as the adult has the ability to understand the matter of the case [forstå hva saken gjelder]. See TGA section 75 fourth paragraph.

<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemalsloven#shareModal>

22. Is it necessary to register, give publicity or any other kind of notice of the measure?

VM: It is not necessary to register, give publicity or any other kind of notice of the measure. However, the decision will always be archived in the State Governor's ordinary journal system.

LG: A court order or an administrative decision which limit the legal capacity of the adult, shall always be registered, cf. TGA sec. 77 a to e

- a) In the Register of Mortgaged Movable Property, b) the land register and other similar
 - b) real registers if the person owns real property or other registered assets, the Registry is called the Mapping Authority (Kartverket),
 - c) The Register of Legal Entities and the Register of Enterprises, if the person is the proprietor of or a responsible participant in an enterprise that is registered there,
 - d) The Central Euronext Securities (previously “*Verdipapirsentralen*”),
 - d) the National Population Register.
- The court that made the court order shall ensure that the relevant registrations take place. If the court revokes or changes

the decision, the court shall ensure that the registers are updated.

The position of third parties is regulated by the rules of land registration law. Deprivation of legal capacity cannot be enforced against a person who, in good faith, has entered into an agreement with the person in question concerning assets as mentioned in the first paragraph, letter b, before the required notification has been entered in a diary or register.

If the court has rendered a judgment of deprivation of legal capacity, the court shall notify the State Trustee of the judgment.

https://lovdata.no/dokument/NL/lov/2010-03-26-9/KAPITTEL_9#shareModal

23. Who can be appointed as representative/support person (natural person, public institution, CSO's, private organisation, etc.)?

VM and LG: Only a natural person can be appointed as representative/support person.

Please consider the following:

- a. what kind of requirements does a representative/support person need to meet (capacity, relationship with the adult, etc.)?**

VM and LG: There are no particular requirements related to relationship, but the person cannot need support or have limited capacity. The main requirement is that the person is wanted by the adult. See section 28: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

- b. to what extent are the preferences of the adult and/or the spouse/partner/family members taken into consideration in the decision?**

The preference of the adult is the most important consideration, and in a voluntary measure, the Authority cannot appoint a person the adult does not want. However, in a situation where the adult cannot form or communicate his/her will, the State Governor is expected to put weight on the beliefs and assessment of persons who used to know the person; this will often be the spouse/partner/family-members.²⁵

²⁵ See Prop. 141

- c. is there a ranking of preferred representatives in the law? Do the spouse/partner/family members, or non-professional representatives enjoy priority over other persons?**

The overall consideration is to find the person which the adult prefers. However, the Authority is obliged to find a willing and suitable person, and the Authority will normally try to find a support person among the adult's next of kin. Professional representatives are more often chosen as a last resort and only when this is necessary to secure the person adequate support.

- d. what are the safeguards as to conflicts of interests at the time of appointment?**

If the Authority cannot find a person acceptable for the adult, the Authority must abstain from appointing a support person. In the first place, the result will be that the adult is not receiving support. However, if the need for support is apparent, the Authority may choose to ask for a Court order with a specific limitation of capacity related to the right to perform this choice.

- e. can several persons be appointed (simultaneously or as substitutes) as representative/support person within the framework of a single measure?**

Normally, only one person will be appointed. But according to the Act, two persons may be appointed within the framework of a single measure, cf. TGA section 28 fifth paragraph.

- f. is a person obliged to accept appointment as representative/support person?**

No, not since 2013.

During the measure

Legal effects of the measure

24. How does the measure affect the legal capacity of the adult?

A VM does not affect the legal capacity of the adult, which means that the adult keeps full capacity.

A LG results in the limitations decided by the court as described in section II above.

Powers and duties of the representatives/support person

25. Describe the powers and duties of the representative/support person:

a. can the representative/support person act in the place of the adult; act together with the adult or provide assistance in:

The answers are here relating to the Norwegian VM, which is in use in 99.5 % of the cases.

b. property and financial matters;

If included in the mandate, the representative/support person can act together with the adult or provide assistance to the adult. In addition, the adult can act on his/her own without assistance. The representative/support person should ensure a good dialogue with the adult to limit conflicting decisions or actions. The representative/the support person may only act in the place of the adult if the acts are in line with the will and preferences of the adult, cf. TGA sec. 20, 21 and 33.

c. personal and family matters;

If included in the mandate the representative/support person can act together with the adult or provide assistance to the adult. In addition, the adult can act on his/her own without assistance. The representative/support person should seek to secure a good dialogue with the adult to limit conflicting decisions or actions, cf. sec 20, 21 and 33.

d. care and medical matters;

If included in the mandate, the representative/support person can act together with the adult or provide assistance to the adult. In addition, the adult can normally act on his/her own without assistance. The representative/support person should seek to secure a good dialogue with the adult to limit conflicting decisions or actions.

- e. what are the criteria for decision-making (e.g. best interests of the adult or the will and preferences of the adult)?**

The will and preference of the adult.

- f. what are the duties of the representative/support person in terms of informing, consulting, accounting and reporting to the adult, his family and to the supervisory authority?**

The answers are given in relation to the Norwegian VM:

All acts and decisions shall be according to the will and preference of the adult.

The representative/support person is obliged to consult the adult, cf. TGA section 33; and cannot act contrary to their will and preference.

The representative/support person is obliged to take part in a system of automatic digital accounting, cf. TGA section 53.

The representative/support person is not obliged to report to the adult's family.

The representative/support person is obliged to take part in an accounting system made by the supervising Authority, cf. section 53.

The representative/support person is obliged to consult the Authority regarding certain dispositions related to immoveable property, cf. TGA section 39.

- g. are there other duties (e.g. visiting the adult, living together with the adult, providing care)?**

There might be other duties following from the mandate of the representative/support person, but this will never be living together with the adult or providing care. Visiting the adult might be relevant if this is necessary to secure and interpret the will and preferences of the adult.

- h. is there any right to receive remuneration (how and by whom is it provided)?**

For others than those next of kin, there will be a right to receive remuneration. However, this will be paid by the state only when the adult has low income and fortune. In all other circumstances this will be paid by the adult.

26. Provide a general description of how multiple representatives/support persons interact, if applicable. Please consider:

- a. if several measures can be simultaneously applied to the same adult, how do representatives/support persons, appointed in the framework of these measures, coordinate their activities?**

Not regulated in the as such TGA.

Could possibly be regulated in the mandate or the decision by the Authority, in each single case.²⁶

- b. if several representatives/support persons can be appointed in the framework of the same measure, how is authority distributed among them and how does the exercise of their powers and duties take place (please consider cases of concurrent authority or joint authority and the position of third parties)?**

Not regulated in the TGA. Could possibly be regulated in the mandate or the decision by the Authority, in each single case.²⁷

27. Describe the organisation of supervision of state-ordered measures. Pay attention to:

- a. what competent authority is responsible for the supervision?**

The Norwegian Civil law Administration [Statens sivilrettsforvaltning] is the competent authority of supervision of the regional state body called the State Governor.

The State Governor appoints representatives/support persons and describes and decides the mandates of such persons..

- b. what are the duties of the supervisory authority in this respect?**

The State Governor makes the administrative decision in the first instance in accordance with the law. As a supervisory authority the State Governor must also supervise the representatives / support person in his geographical area and provide the representatives/support persons in their district with the necessary training, guidance, and assistance, cf. TGA section 6.

The Norwegian Civil law Administration must process complaints about the State Governor's decision and must supervise the State Governor's tasks

²⁶ Fredwall (2022) *Vergemålsloven . Fremtidsfullmakter mv. Lovkommentar*, See pages 75 – 77. such situations are discussed related to powers of attorney under Norwegian law.

²⁷ Fredwall (2022) *Vergemålsloven . Fremtidsfullmakter mv. Lovkommentar*, See pages 75 – 77. such situations are discussed related to powers of attorney under Norwegian law.

according to the Guardianship Act in particular related to decisions, appointment, training and supervision of representatives/support persons, cf. TGA section 7.

- c. what happens in the case of malfunctioning of the representative/support person? Think of: dismissal, sanctions, extra supervision;**

The representative/support person will normally receive supervision to improve his or her conduct. If supervision is not solving the problem of malfunction, the State Governor may alter the mandate of the representative/support person. The State Governor may only remove the representative/support person if this is deemed to be in the best interest of the adult, cf. section 29. There is proposed amendment of this rule to a rule securing that the representative/support person only can be removed when the obligations towards the adult make removal necessary.²⁸

- d. describe the financial liability of the representative/support person for damages caused to the adult;**

For damages caused to the adult, by the representative/support person, the representative/support person's liability is based on negligence (culpa).

- e. describe the financial liability of the representative/support person for damages caused by the adult to contractual parties of the adult and/or third parties to any such contract.**

The representative/support person is not liable for damages caused by the adult to contractual parties of the adult and/or third parties to any such contract.

28. Describe any safeguards related to:

- a. types of decisions of the adult and/or the representative/support person which need approval of the state authority;**

²⁸ Prop. 141 L (2021-2022) proposed amendments of section 29.

Decisions related to immoveable property, particular insurance-products (“livrente, livsforsikring og føderåd”) and loan from the adult to the representative/support person need the approval of the state authority.

Creation of debt, giving of major gifts, renouncing an inheritance or gift, questions about whether the adult may take part in an existing business activity he or she owns or inherits - and whether an existing business activity should be continued or wound up also need the approval of the state authority, cf. TGA sections 38, 39, 40, 41, 42 and 43.

Section 38: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

Section 39: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

Section 40: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

Section 41: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

Section 42: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

Section 43: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

b. unauthorised acts of the adult and of the representative/support person;

There are under a VM-measure, no formal safeguards related to unauthorised acts of the adult, except from the representative/support person’s duty to communicate and support the adult with the intentions of avoiding unlawful or other acts which would harm the interests or needs of the adult.

The representative/support person must act in accordance with the will and preference of the adult, but the state authority has all the same suggested that “nudging” could be a good way forward to secure the adult’s willingness in favour of actions not contrary to the interest of the adult. Under a LG-measure, the appointment of a guardian will be a safeguard in this respect.

There are several safeguards to avoid unauthorised acts of the representative/support person; ie training, supervision, digital control-systems linked to the use and misuse of the adult’s fortune. In addition, the person will be held personally responsible for damages.

c. ill-conceived acts of the adult and of the representative/support person;

There are under a VM-measure, no formal safeguards related to unauthorised acts of the adult, except for the representative/support person's duty to communicate and support the adult with the intentions of avoiding unlawful or other ill-conceived acts.

The representative/support person must act in accordance with the will and preference of the adult, but the state authority has all the same suggested that "nudging" could be a good way forward to secure the adult's willingness in favour of actions not contrary to the interest of the adult. Under a LG-measure, the appointment of the guardian will be a safeguard in this respect.

There are several safeguards to avoid ill-conceived acts of the representative/support person; ie training, supervision, digital control-systems linked to the use and misuse of the adult's fortune. In addition, the person will be held personally responsible for damages. The representative/support person is also expected to seek guidance by the State Governor when in doubt and in all decisions of major impact, cf. TGA section 41.

d. conflicts of interests

There are rules on conflicts of interests restricting the support person from handling cases or making dispositions in situations when this person or anyone close, has a conflicting interest, cf. TGA section 34. A spouse, partner, cohabitant and next of kin, will for instance always be "close" to the support person and dispositions in their interest will therefore be invalid. Also dispositions in the interest of a company owned by the support person will be invalid. If the support person or a person close to him/her has a conflicting interest, any disposition he or she will make, will be invalid.

<https://lovdata.no/dokument/NL/lov/2010-03-26?q=vergemålsloven#shareModal>.

If the support person has a conflict of interest, the State Governor shall appoint a preliminary support person to assist limited to the situations where the other person has conflicting interests. See section 27:

<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

Under the VM the adult maintains full legal capacity and the right to act in all areas of life - also in the area covered by the mandate of the representative/support person. This may cause a risk of conflicting actions. If such actions are not avoided, the conflicts will be solved based on traditional principle in civil law. [Først i tid, best i rett mv.] This may cause a risk for the adult as well as the contractual party and third parties. However, the Government has been willing to accept these disadvantages to secure empowerment for persons with support measures. There is little evidence of any cases where this has been a major problem.

End of the measure

29. Provide a general description of the dissolution of the measure. Think of: who can apply; particular procedural issues; grounds and effects.

End of the measure may follow from:

- a) A decision on state-ordered measures must be revoked or changed by the state body if the conditions for the measures are no longer present or the circumstances so indicate.
- b) If the adult who is receiving support measures or representation, withdraws his or her consent, the guardianship must be revoked, cf. TGA section 63.
- c) If a LG-order has been established by a court decision, a claim to change the decision shall be decided by the court, cf. TGA section 75.
- d) The State Governor may also make the decision instead of the court in the clear cases.

For elder adults, dissolution of the measure normally follows from the death of the person. The support measures are normally applied during the last 3-5 years of the adult's life and in particular for adults with dementia.

Reflection

30. Provide statistical data if available.

See, answers to question no 3 above.

31. What are the problems which have arisen in practice in respect of the state-ordered measures (e.g. significant court cases, political debate,

proposals for improvement)? Have the measures been evaluated, if so what are the outcomes?

The main challenges in this field have been to balance the need for self-determination/empowerment with the need for support and safeguards. The authorities and the representatives/support persons will easily be criticized either for the lack of autonomy or the lack of sufficient protection, support, and safeguards. And in a heterogenic field such as this, both criticisms might be understandable and relevant.

Another major challenge has been to turn formal legal rights to reality to an extent that the adult experiences empowerment and his/her right to autonomy in their everyday life. In Norway the experience has been that several legal amendments and adjustments have been necessary to try to reach the right balance. The Government has signalled the willingness to continue such on-going process.²⁹ The experience so far has been that empowerment is possible to a greater extent than believed, but also that both society and state bodies need to gather experience in how to establish functioning safeguards.

See also answers to questions 5 and 6 above.

SECTION IV – VOLUNTARY MEASURES

Overview

32. What voluntary measures exist in your jurisdiction? Give a brief definition of each measure.³⁰

Powers of attorney [fremtidsfullmakt] is the voluntary measure existing in Norway.

In Norway the mandate given by an adult shall either be effective immediately, at a given time in the future or enter into force when the granter no longer is able to handle his or her affairs. The person is expected to regulate this in the power.

<https://lovdata.no/lov/2010-03-26-9/§83>

²⁹ Prop. 141 L (2021-2022).

³⁰ Please do not forget to provide the terminology for the measures, both in English and in the original language(s) of your jurisdiction. (Examples: the Netherlands: full guardianship – [curatele]; Russia: full guardianship –[opeka]).

This measure can be *supplemented* with advance directives of several kinds:

(1) An adult with sufficient mental capacity can give *legally binding instructions* to how the attorney may act upon the power. For example if it follows from the power that the attorney is entitled to sell the family home, the adult may give written or oral instructions limiting this power; for instance by instructing not to sell the home under a certain sum of money.

(2) If the adult no longer has *sufficient mental capacity*, the attorney is still obliged to discuss the matter with the adult before acting as long as this is possible. The adult's wishes are *not legally binding*, but the attorney shall as far as possible act in accordance with the will and preferences of the adults, see details below.

(3) In Norway an advance decision allows you to express your wishes to refuse medical treatment in future in the case you are dying. This is sometimes referred to as a living will. It is assumed that this decision can be made by the patient in the moment, by the patient's next of kin, in a power of attorney or in a separate and witnessed document.³¹

<https://lovdata.no/lov/2010-03-26-9/§80>

<https://lovdata.no/lov/1999-07-02-63/§4-9>

33. Specify the legal sources and the legal nature (e.g. contract; unilateral act; trust or a trust-like institution) of the measures. Please consider, among others:

a. the existence of specific provisions regulating voluntary measures;

Powers of attorney in Norway are regulated as a specific written power in TGA chapter 10. The adult may make a power within the boundaries of this legislation.

b. the possibility to use general provisions of civil law, such as rules governing ordinary powers of attorney.

The general provisions of civil law, such as rules governing ordinary powers of attorney, can be used, but only within the limitations of TGA chapter

³¹ See TGA Section 80 third paragraph and the Act 2nd July 1999 nr. 63 § 4-9 second paragraph. See also St.meld nr. 24 (2019 – 2020) chapter 6.1.2.

10. This implies that a power made (only) within the general provisions of civil law will lose its effect when the granter no more will have capacity to make the power. This follows from civil law; The Agreement Act [avtaleloven] section 22.³²

34. If applicable, please describe the relation or distinction that is made in your legal system between the appointment of self-chosen representatives/support persons on the one hand and advance directives on the other hand.

The competence of the self-chosen representative [fremtidsfullmektig] may be limited as a result of a supplementary advance directive made by the granter. See point 32 above.

35. Which matters can be covered by each voluntary measure in your legal system (please consider the following aspects: property and financial matters; personal and family matters; care and medical matters; and others)?

These matters can be covered by a power of attorney in Norway:

- property and financial matters
- personal and family matters
- care and medical matters only if this has a legal basis either in TGA chapter 10 or/and in the Healthcare-legislation.

Start of the measure

Legal grounds and procedure

36. Who has the capacity to grant a voluntary measure?

The granter must be 18 years old and able to understand the consequences of the power, ref. TGA section 79 first paragraph.

³² Act 31st May nr. 4 1918 § 22.

37. Please describe the formalities (public deed; notarial deed; official registration or homologation by court or any other competent authority; etc.) for the creation of the voluntary measure.

There is no formal deed or registration necessary or available when the voluntary measure [fremtidsfullmakten] is created. However, a valid power must be in writing, done according to the free will of the adult and witnessed and signed by the granter and 2 adults confirming the granter's ability. The rules are very similar to those applying for a valid will. See TGA sections 81 and 82.

38. Describe when and how voluntary measures enter into force. Please consider:

a. the circumstances under which voluntary measures enter into force;

The power either enters into force (1) at the time set forth in the power, or (2) at the time the granter due to his/her mental or physical health, typically dementia and or very high age, is no longer able to take care of his or her rights and duties - covered by power ["ikke lenger er i stand til å ivareta sine interesser innen de områder som omfattes av fullmakten"]. See TGA section 83 cf. 78.

b. which formalities are required for the measure to enter into force (medical declaration of diminished capacity, court decision, administrative decision, etc.)?

No formalities are required for the measure to enter into force as such. It enters into force by itself when the condition either in the power or the Act is fulfilled. However, the attorney is obliged *to consider* if the power is in force, and if the attorney considers the power as in force, the attorney shall inform the granter, the granter's spouse or cohabitant about that and about the content of the power. This will at the same time imply that the attorney considers himself/herself entitled to act upon the power. See TGA section 83.

c. who is entitled to initiate the measure entering into force?

No one/the attorney, see point 38 b.

d. is it necessary to register, give publicity or to any other kind of notice of the entry into force of the measure?

The attorney shall give notice to the grantor, the grantor's spouse or cohabitant about the content of the power and the entry into force of the measure. If the grantor does not have any partner, other close relatives (next of kin) should be informed. See TGA section 83.

Appointment of representatives/support persons

39. Who can be appointed representative/support person (natural person, public institution, CSO's, private organisation, etc.)?

Only a *natural person* can be appointed as a support person/attorney [fremtidsfullmektig].

Please consider:

a. what kind of requirements does a representative/support person need to meet (capacity, relationship with the grantor, etc.)?

The attorney/support person [fremtidsfullmektig] must at the time of the power entering into force be at least 18 years old and not under guardianship.

b. what are the safeguards as to conflicts of interests?

The appointed attorney cannot be a witness to the creation of the power. The same will apply to the attorney's partner (spouse/cohabitant), children or parents. When the power is in force there are separate rules on conflict of interests, cf. TGA section 86. A disposition made by an attorney with conflicting interest will be invalid. See Supreme Court Ruling: HR-2018-1758-A.

c. can several persons be appointed (simultaneously or as substitutes) as representative/support person within the framework of one single measure?

Yes, the Act does not limit the number and it is up to the granter to decide if the attorneys shall have competence simultaneously or as substitutes. If the attorneys shall have competence simultaneously, the granter should clarify whether the attorneys shall act jointly, concurrently; have separate competence or a combination of these.³³

During the measure

Legal effects of the measure

40. To what extent are the voluntary measure and the wishes expressed within it legally binding?

The power is legally binding for the attorney (the support person). The attorney is in addition and according to the law, obliged to secure the interests of the granter.

41. How does the entry into force of the voluntary measure affect the legal capacity of the granter?

The entry into force of the voluntary measure [fremtidsfullmakt] does not affect the legal capacity of the granter as such. This means that the granter maintains legal capacity even when the measure enters into force, cf. TGA section 2 third paragraph.

Powers and duties of the representative/support person

42. Describe the powers and duties of the representative/support person:

- a. can the representative/support person act in the place of the adult, act together with the adult or provide assistance in:**
 - **property and financial matters;**

Yes, but depending on the wording of the power created by the granter. The granter may have chosen to limit the competence of the attorney.

- **personal and family matters;**

³³ Fredwall (2022) Vergemålsloven. Fremtidsfullmakter mv. Lovkommentar, pages. 75 – 77.

Yes, but depending on the wording of the power created by the granter and by the act, TGA section 80 third paragraph. The granter may have chosen to limit the competence of the attorney, and in addition the act has limited the competence of the attorney in “particular personal matters” such as the right to vote, the right to enter into marriage, the right to accept fatherhood and the right to create a will. Such dispositions cannot be made by the attorney.

- **care and medical matters?**

Yes, to some extent. According to TGA section 80 third paragraph the act has limited the competence of the attorney in “particular personal matters” such as the right to consent to coercion and the consent to donation of organs.

Such dispositions cannot be made by the attorney, unless there is a separate legal basis in an Act for such competence. Medical matters will often be defined as “particular personal matters”. Such disposition will therefore need a double basis both in an Act and in the power made by the granter of the power.

- b. what are the criteria for decision-making (e.g. best interests of the adult or the will and preferences of the adult)?**

The attorney shall secure the interests of the adult within the frames of the power. The duty is interpreted in the light of CRPD article 12 and understood as a duty to secure the will and preference of the adult, or if that cannot be found, the best interpretation of the will and preferences.

- c. is there a duty of the representative/support person to inform and consult the adult?**

Yes, according to TGA section 85 second paragraph. Prior to any decision the attorney is obliged to inform and consult the adult, if this is possible without any major difficulties. The attorney is, however, and according to the Act, not obliged to consult the granter if the granter cannot understand the impact of the decision.

<https://lovdata.no/lov/2010-03-26-9/§85>

d. is there a right to receive remuneration (how and by whom is it provided)?

The granter may order a right to receive remuneration in the power [fremtidsfullmakten]. If so, the attorney has the right to make this payment without any risks of conflict of interests.

If the granter neither has ordered a right to receive nor the right not to receive remuneration, the attorney has a limited right to calculate a “reasonable remuneration” [“når det er rimelig, også beregne seg et passende vederlag”]. The attorney has also the right to cover necessary costs from the granter’s means. These questions are regulated by TGA section 88. <https://lovdata.no/lov/2010-03-26-9/§88>

43. Provide a general description of how multiple representatives/support persons interact, if applicable. Please consider:

a. if several voluntary measures can be simultaneously applied to the same adult, how do representatives/support persons, appointed in the framework of these measures, coordinate their activities?

If there are several voluntary measures, this will follow from the granter’s own decisions. And it will be up to the granter to decide how the different attorneys/support persons [fremtidsfullmektigene] shall interact, please see the answer to 39 litra c.

An example: The granter may first make a power [fremtidsfullmakt] regulating financial matters linked to his company and set up his lawyer as his attorney in these matters. Later he creates a power in more private financial matters and appoints his wife as attorney. The competence of the different attorneys will follow from an interpretation of the different powers.

b. if several representatives/support persons can be appointed in the framework of the same voluntary measure how is the authority distributed among them and how does the exercise of their powers and duties take place (please consider cases of concurrent authority or joint authority and the position of third parties)?

Same answer as above, it does not matter whether the granter has used one or several documents/powers/fremtidsfullmakter.

44. Describe the interaction with other measures. Please consider:

- a. if other measures (state-ordered measures; *ex lege* representation) can be simultaneously applied to the same adult, how do the representatives/support persons, acting in the framework of these measures, coordinate their activities?**

The main rule is that the different measures cannot be applied simultaneously. The hierarchy is as follows:

1. The voluntary measure [fremtidsfullmakten]
2. The state-ordered measure
3. The *ex lege* representation [legalfullmakten]

However, in some situations that might be the case, and these situations are regulated by TGA.

The State Governor is only entitled to revoke the power or parts of the power if the granter is not receiving efficient support. This can for instance follow from a too narrowly construed power or from an attorney not capable of giving adequate support in the light of the will and preference of the person. If a state-ordered measure shall set aside the power, the County Governor shall if possible revoke [kalle tilbake] the power [fremtidsfullmakten], cf. TGA section 91 paragraph 3.

On the other side, if a voluntary support measure [fremtidsfullmakt] exists side by side with *ex lege* representation, the competence arising from the power of attorney [fremtidsfullmakten] will take precedence, cf. TGA section 94 third paragraph. The *ex lege* representation can only take place if the dispositions are not covered by the power.

- b. if other measures can be simultaneously applied to the same adult, how are third parties to be informed about the distribution of their authority?**

Third parties can to some extent be informed by seeing the mandate, the power or a registration – depending on the situation. A digital register on powers is also under development.

45. Describe the safeguards against:

- a. unauthorised acts of the adult and of the representative/support person;**

Safeguards against unauthorized acts of the adult:

- The adult has full legal capacity even when a power of attorney is in force. This may make it more complicated to establish effective safeguards.
- The power will give the attorney the right to represent the adult and often this support will safeguard the granter.
- If this is not enough, the attorney may ask the County Governor to establish a state-ordered measure, either a voluntary measure (VM) or as a last resort, a measure limiting the adult's legal capacity (LG).
- Also, the adult may be responsible for damages.

Safeguards against unauthorized acts of the representative/support person:

- When granting the power: The granter is advised to regulate private safeguards in the document, cf. TGA section 91, for instance:
 - o Make conditions in the power of attorney related to accounting
 - o Make conditions in the power of attorney related to giving a third-party access to information on request.
 - o Make conditions in the power of attorney giving the attorney a duty to report to a third party.
<https://lovdata.no/lov/2010-03-26-9/§91>
- When the power of attorney enters into force:
 - o The attorney must inform certain groups of persons, giving these persons the possibility to protest or complain:
 - The granter
 - The granter's relatives
 - o If the attorney does not adjust, these persons may notify the Count Governor. This is in particular useful if the granter has given the power to a person not able to or not skilled to performing the task etc.
- Public law safeguards:
 - o The attorney is obliged to keep the means of the granter separate from his own, cf. section 85.
 - o The attorney is obliged to keep documentation related to his dispositions under the power, cf. section 85.
<https://lovdata.no/lov/2010-03-26-9/§85>
 - o The State Governor may intervene, cf. TGA sections 90 and 91.

- Request information
 - Give the attorney obligations related to accounting and reporting
 - When needed: replace the attorney with a representative/support person (state-ordered measures)
- <https://lovdata.no/lov/2010-03-26-9/§91>

- The representative/support person will be responsible for any damages following from his or her acts or decisions based on culpa.

b. ill-conceived acts of the adult and of the representative/support person;

See, the text above under a. The same mechanisms will apply.

c. conflicts of interests

In TGA section 85 it is declared that the attorney only acts upon the interest of the adult, and not upon his or her own interests.

Please consider the position of the adult, contractual parties and third parties.

46. Describe the system of supervision, if any, of voluntary measures. Specify the legal sources. Please specify:

- a. is supervision conducted:**
- **by competent authorities;**

The supervision is what we call “sleeping”, which means that the supervision only takes place if the State Governor is notified. All persons may notify the State Governor if they experience a situation which gives rise to worries related to the conduct of the attorney, cf. TGA section 90.

- **by person(s) appointed by the voluntary measure.**

The follows from the Act that the granter “should” establish such measures in the power, cf. TGA section 90. The nature of the supervision will follow from each power of attorney.

b. in each case, what is the nature of the supervision and how is it carried out?

- The supervision from the state body is what we call “sleeping”, which means that the supervision only takes place if the State Governor is notified, cf. TGA sections 56, 57, 90 and 91.
- This follows from the Act that the granter “should” establish such measures in the power, cf. TGA section 90. The nature of the supervision will follow from each power.

c. the existence of measures that fall outside the scope of official supervision.

Yes, as described in a and b above.

End of the measure

47. Provide a general description of the termination of each measure. Please consider who may terminate the measure, the grounds, the procedure, including procedural safeguards if any.

- a. The Granter’s right to terminate the power:
The granter may revoke the power, cf. TGA section 89. The granter may revoke the power also after the power is in force, but the granter must be able to “understand the meaning of” the revocation. If the granter understands that revocation means that he is able to remove an attorney he cannot come to terms with, this will probably be enough.
- b. The State Governor’s right to terminate the power:
The State Governor may replace the power of attorney if this is necessary to ensure that the adult receives the necessary support, cf. TGA section 91.
- c. Other private law measures or facts which lead to the end of the measure:
The power may be limited in time, can be declared null and void by the court, breach of expectations may sometimes lead to an end of the power and the power will always end by death, at least not long after. (The attorney may have an

obligation to secure the granter's means and other interest until the Estate can take over the responsibility.) In some situations, bankruptcy also will lead to an end of the measure.

Reflection

48. Provide statistical data if available.

See answers to question 3.

49. What are the problems which have arisen in practice in respect of the voluntary measures (e.g. significant court cases, political debate, proposals for improvement)? Has the measure been evaluated, if so what are the outcomes?

The measure was evaluated in the 2019.³⁴ Professors Torunn Kvisberg and Maria Veia Lund have assessed decisions made by the County Governor between 2013 and 2018 (5 years), made a survey among lawyers in the field, and received supplementing information from the State Governor, the financial institutions and the Property registry. The authors gave an assessment of the situation in 2019 and proposed several amendments:

- The act should be supplemented with safeguards to restrict the granter from making/hindering the attorney from executing obligations to give away means that the granter needs for his or her own living.
- There should be established a voluntary, public system for registration and safekeeping of the powers of attorney.
- On a voluntary basis, the attorney according to the law may ask the State Governor to confirm that the power of attorney is in force. If the State Governor declines, the Authors suggest that the Attorney should have the right to file a complaint.
- The Authors would also have preferred that the preparatory works had discussed in more detail the relationship between the rules on powers of attorney and the rules on inheritance, including the rules on statutory share of lineal descendants or persons. Such questions are assessed further in the Commentary to the Act.³⁵

³⁴ Kvisberg, Torunn and Maria Veia Lund (2019) «Kartlegging og utredning av ordningen med fremtidsfullmakter», Report to SRF 6 st of August 2019, *Høgskolen i Innlandets skriftserie*, nr. 29,

³⁵ Fredwall, Katrine Kjørheim (2022) *Vergemålsloven. Fremtidsfullmakter mv. Lovkommentar*. Universitetsforlaget, at pages 190 – 194.

In my opinion these suggestions seem well founded and reasonable to follow up.

The same authors have commented on the central issues in a 2020 article based on the findings in the report and on the 2019-ruling of the Supreme court.³⁶

In case HR-2019-1758-A the Supreme court stated that the attorney is entitled to divide the estate on the basis of a power of attorney regulating personal matters, but only if there are no conflicting interests.³⁷

SECTION V – EX LEGE REPRESENTATION

Overview

50. Does your system have specific provisions for *ex lege* representation of vulnerable adults?

Yes, according to TGA § 94: https://lovdata.no/dokument/NL/lov/2010-03-26-9/KAPITTEL_10#shareModal

A relative may represent a family member (the adult) due to his or her lack of physical or mental ability to take care of his/her own economic interests. The Norwegian wording in TGA § 94 runs as follows: «sinnslidelse, herunder demens, eller alvorlig svekket helbred, ikke lenger er i stand til å ivareta sine økonomiske interesser».

51. What are the legal grounds (e.g. age, mental and physical impairments, prodigality, addiction, etc.) which give rise to the *ex lege* representation?

Mental and physical impairments give rise to *ex lege* representation.

52. Is medical expertise/statement required and does this have to be registered or presented in every case of action for the adult?

³⁶ Kvisberg, Torunn and Maria Veia Lund (2020) «Fremtidsfullmakter: HR-2019-1758-A og erfaringer fra ordningens fem første år», in *Lov og Rett*

³⁷ HR-2019-1758-A. The ruling is also discussed in Fredwall, Katrine Kjærheim (2019) «Kommentar til Høyesteretts kjennelse om fremtidsfullmakt og uskifte» in *Juridika*. Universitetsforlaget.

No, not required.

53. Is it necessary to register, give publicity or to give any other kind of notice of the *ex-lege* representation?

No, not required.

Representatives/support persons

54. Who can act as *ex lege* representative and in what order? Think of a partner/spouse or other family member, or other persons.

According to TGA § 94 second paragraph linked above, the following persons in hierarchical order may represent the person:

1. Spouse or partner/cohabitant
2. The children of the person
3. The grandchildren of the person
4. The parents of the person

55. What kind of legal or other acts are covered: (i) property and financial matters; (ii) personal and family matters; (iii) care and medical matters. Please specifically consider: medical decisions, everyday contracts, financial transactions, bank withdrawals, application for social benefits, taxes, mail.

Dispositions and acts related to the daily household, lie in the core of the *ex-lege* representation. In addition, everyday matters following from being an owner of property, including related financial matters are covered by the *ex-lege* representation. This includes the power to make financial dispositions concerning the adult's everyday needs of food, clothing and gas. Also dispositions concerning the adult's residence as ordinary maintenance, insurance, paying for the mortgage etc. are covered. The close relative also has the right to ensure payment of public taxes and fees and of obligations arising from valid loan agreements which the adult already has entered into.

56. What are the legal effects of the representative's acts?

If the representative's acts are within the legal basis in TGA § 94, the dispositions are legally binding.

Can an adult, while still mentally capable, exclude or opt out of such *ex lege* representation (a) in general or (b) as to certain persons and/or acts?

In general: An adult has still his/her legal capacity – both as a holder and actor. The adult can therefore act on his/her own behalf as long as the he or she has the mental ability to understand the content of the actual disposition. This means for instance that the adult may make a competing disposition or revoke the disposition of the representative. In addition, the *ex lege* representative is normally obliged to discuss the dispositions with the adult before making any dispositions, see TGA § 94 fourth paragraph cf. § 85 second paragraph.

More specific options: The adult may require appointment of a guardian according to his or her own will and preferences, cf. TGA § 56. This might be a solution for instance if the adult wish to be represented by another person.

57. Describe how this *ex lege* representation interacts with other measures? Think of subsidiarity

1. Any guardianship will prevail over *ex lege* representation.
2. A power of attorney will prevail as long as the power covers the same dispositions as the *ex lege*.

Safeguards and supervision

58. Are there any safeguards or supervision regarding *ex lege* representation?

Yes, there are some safeguards:

1. The duty to keep the means apart/separate, cf. TGA § 94 cf. § 85 third paragraph.
2. The duty to keep documentation, TGA § 94 cf. § 85.
3. The right to compensation from the person representing the adult. This is a right for the adult, as well as creditors or the Estate after death.
4. So called “sleeping surveillance” in the sense that the Public Authorities have the duty to report to the Guardianship Authority if a person is not receiving necessary support, cf. TGA § 57.

5. The police and private persons have also a duty to prevent crime or neglect, see for instance The Criminal Act § 196.

59. Provide a general description of the end of each instance of *ex-lege* representation.

We do not have other extensive *ex-lege* representation – rules, but to some extent, spouses can represent each other and parents can represent their minors.

Reflection

60. Provide statistical data if available.

Not available.

61. What are the problems which have arisen in practice in respect of *ex lege* representation (e.g. significant court cases, political debate, proposals for improvement)?

We are not aware of many problems; however the *ex lege* representation does not cover all dispositions and might at a stage be replaced by guardianship or a power of attorney.

An advantage with *ex lege* representation, is that family members are allowed to help the adult out a little longer without bringing in any state-ordered measures – also when the adult has not made a power of attorney.

The main challenge has been that several financial institutions did not accept representations from an *ex lege* representative. This may lead to an earlier appointment of a representative / support person or guardian than ideal.

Specific cases of ex lege representation

Ex lege representation resulting from marital law and/or matrimonial property law

62. Does marital law and/or matrimonial property law permit one spouse, regardless of the other spouse's capacity, to enter into transactions, e.g. relating to household expenses, which then (also) legally bind the other spouse?

Yes, to some extent. According to the Marital Act section 41 a spouse may regardless of the other spouse's capacity make dispositions related to the daily household, the tenancy, the children and the necessary personal cost for the spouse, on behalf of both spouses.

Marital Act section 41: <https://lovdata.no/lov/1991-07-04-47/§41>

63. Do the rules governing community of property permit one spouse to act on behalf of the other spouse regarding the administration etc. of that property? Please consider both cases: where a spouse has/has no mental impairment.

Norwegian law does not any specific rules other than those mentioned. However, also between spouses the right to ex lege representation may result from negotiorum gestio and other customary private law rules.

Ex lege representation resulting from negotiorum gestio and other private law provisions

64. Does the private law instrument *negotiorum gestio* or a similar instrument exist in your jurisdiction? If yes, does this instrument have any practical significance in cases involving vulnerable adults?

Yes, this instrument exists, and it is possible that this instrument may have a practical significance involving vulnerable adults in matters not covered by TGA section 94 or the Marital Act section 41. The instrument may be a legal basis for dispositions in order to protect the interests of the vulnerable adult in these rare cases.

SECTION VI – OTHER PRIVATE LAW PROVISIONS

65. Do you have any other private law instruments allowing for representation besides *negotiorum gestio*?

Not really, we also know the concept of “*condictio indebiti*”, which might give useful protection also for a vulnerable adult, but it is less natural to classify this as representation.

66. Are there provisions regarding the advance planning by third parties on behalf of adults with limited capacity (e.g. provisions from parents for a child with a disability)? Can third parties make advance arrangements?

According to TGA section 95 a donor or testator may decide that the gift or inheritance shall not be taken care of by the Guardianship Authority.³⁸

According to the Inheritance Act section 53 a testator may decide certain limitations in the capacity to make decisions over a child's or grandchild's right to compulsory inheritance. This rule applies generally for all children/grandchildren between 18 and 25 years old and are not limited to children with disabilities.

The Inheritance Act section 53: <https://lovdata.no/lov/2019-06-14-21/§53>

According to the Inheritance Act section 54 the testator may in certain (rare) situations decide how an adult's (the testator's child/grandchild) compulsory inheritance shall be divided after the death of the adult. The conditions are that the person is not leaving a child, spouse or cohabitant behind and that the person not have been mentally able to make a will for him-/herself during lifetime.

The Inheritance Act section 54: <https://lovdata.no/lov/2019-06-14-21/§54>

³⁸ In Prop. 141 L (2021-2022) a minor amendment to TGA section 95 is proposed.

SECTION VII – GENERAL ASSESSMENT OF YOUR LEGAL SYSTEM IN TERMS OF PROTECTION AND EMPOWERMENT

68. Provide an assessment of your system in terms of *empowerment* of vulnerable adults (use governmental and non-governmental reports, academic literature, political discussion, etc.). Assess your system in terms of:

a. the transition from substituted to supported decision-making;

In Norway the legal transition from substituted to supported decision-making has developed through several amendments from 2010 and until today. With the proposed amendments in the 2022 white paper (Prop. 141 L (2021-2022)) and explicit regulations of the will and preference of the adult the full transition should be within reach. If the person is unable to form, adhere to or convey his wishes, the best interpretation of the person's will and preferences shall be used as a basis when assessing whether he or she wants the state-ordered measures and when assessing the extent of the support and who should be his/her support person.

b. subsidiarity: autonomous decision-making of adults with impairments as long as possible, substituted decision-making/representation – as last resort;

All decisions under the VM-measure, should be based on supported decision-making, in the sense that the decisions either shall be based on the will and preference of the adult or when that is impossible, the best interpretation of will and preferences. When interpreting the will and preferences of the adult, Prop. 141 L (2021-2022) also proposes to regulate how to interpret the will and preference of the person, and the Government has proposed the following:

“In the interpretation, emphasis must be placed on what the person expresses, the person's personal values, view of life, previous wishes and perceptions, the person's ability to understand the situation and on how someone who has had lasting and ongoing contact with the person interprets the person's wishes and preferences.”

This proposed legislation should be suitable to strengthen and prolong the autonomous decision-making abilities of the adult.

Norway still has rules on substituted decision-making as a last resort. Such measures are in use for 0.5 % of the adults in need of state-ordered measures. There is reason to believe that a narrow construed, but still lawful option of substituted decision-making, probably ensures that persons and institutions are not tempted to use substituted decision-making under cover of being supported. Such “under cover” activities will easily be without necessary safeguards.

c. proportionality: supported decision-making when needed, substituted decision-making/representation – as last resort;

According to Norwegian law proportionality is important, and the principle of “least means” (“minste middels prinsipp”) ensures that the state body always assess the situation and try to choose less intrusive measures.

d. effect of the measures on the legal capacity of vulnerable adults;

In Norway neither the ex lege-measure, the powers of attorney or the VM-state-ordered measures, interfere with the legal capacity of the vulnerable adult.

The only measure limiting the legal capacity is the LG-state-ordered measures, in use in 0,5 % of the cases.

e. the possibility to provide tailor-made solutions;

The ex-lege-measure follows directly from the Act and is not tailor-made.

The Power of Attorney can be tailor-made by the granter.

The state-ordered measures shall be tailor-made. There have been several projects trying to find good ways of securing suitable and tailor-made mandates for the support-person. The Norwegian term is “individtilpasset vergemål”. There has been developed a digital system called FUFINN which ensures digitally that the support-person has the right to represent the adult within the frames of supported-decision-making.

f. transition from the best interest principle to the will and preferences principle.

The former Act was based on the best interest principle until 2013. After 1 st. of July supported decision-making more and more prevail.

69. Provide an assessment of your system in terms of *protection of vulnerable adults* (use governmental and non-governmental reports, academic literature, political discussion, etc.). Assess your system in terms of:

a. protection during a procedure resulting in deprivation of or limitation or restoration of legal capacity;

TGA has strong procedural rights (safeguards) protecting the adult in such situation, cf. TGA chapter 9.

b. protection during a procedure resulting in the application, alteration or termination of adult support measures;

TGA has strong procedural rights protecting the adult in such situation, cf. TGA chapter 8.

c. protection during the operation of adult support measures:

- protection of the vulnerable adult against his/her own acts;**

According to the willingness to secure empowerment, the protection against his/her own act are weaker in the Norwegian system. Protection is in most of the situations replaced with dialogue, nudging and support. However, as a last resort, the legal capacity can be limited. In addition, private law rules on what constitutes valid agreements and who has the ability to enter into valid agreements, will give a certain protection.

- protection of the vulnerable adult against conflict of interests, abuse or neglect by the representative/supporting person;**

There are rules on conflict of interests for the different measures. A decision made in a situation with conflicting interest, will be invalid, cf. Act sections 34 and 86 and the supreme court-ruling HR-2019-1758-A.

Section 86 (powers of attorney):
<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

Abuse or neglect should lead to supervision, advice and training, however, when this is not enough to secure and protect, the support person/attorney should be replaced, cf. the Act section. 29 (support person) or section 91 (attorney).

Section 29: <https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven#shareModal>

<https://lovdata.no/lov/2010-03-26-9/§91>

- **protection of the vulnerable adult against conflict of interests, abuse or neglect in case of institutional representation of persons in residential-care institutions by those institutions;**

The support-person will have a central role in detecting the facts and complaining in a situation where the adult does not receive adequate treatment etc by an institution. The institution will, however, never represent the adult as part of a state-ordered measure in Norway.

- **protection of the privacy of the vulnerable adult.**

The protection of privacy is as for other citizens, except where the support person must have the information necessary to fulfil his or her tasks.

When sections of the Act are mentioned in the text, there will be separate links to central or important sections in the TGA in the text above. However, there might also be good to have the complete text. This is the links to TGA:

<https://lovdata.no/lov/2010-03-26-9>

<https://lovdata.no/dokument/NL/lov/2010-03-26-9?q=vergemålsloven>

An official translation of the Act does not exist.