

THE EMPOWERMENT AND PROTECTION OF VULNERABLE ADULTS

FRANCE

Prof. Christine Bidaud, Prof. Éric Fongaro & Guillaume Millerieux

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.**

The main legal framework regarding the protection and the empowerment of vulnerable adult is the Title XI (Book I) of the civil Code concerning “the majority and adults protected by the law (articles 414-1 until 495-9). Numerous provisions are also located in the Code of social action and families (specially the personalised social support measure: an assistance in the management of social benefits) and the public health Code (general principles relating to health are codified in Article 459 of the civil Code but specific acts are governed by the public health Code, which causes difficulties of articulation between the Codes).

Other instruments can be seen as a protection of vulnerable adults’ goods and property, such as powers of attorney or trust. French contract law (codified in the civil Code) contains likewise provisions protecting people’s consent which can be seen as a temporary protection of vulnerable adults (particularly the possibility to cancel an act for insanity of mind or state of dependency). French matrimonial property regimes contain the possibility for the spouse (only the spouse, not the registered partner, because the protection is linked to the marriage), to represent his or her husband/wife to manage its assets.

Then, French civil law contains measures to protect vulnerable adult’s person (particularly in the field of health), like advance directives regarding end-of-life issues and the possibility to appoint a trusted person, or a person of confidence (designation of a proxy to ensure that the patient’s wishes are made known).

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.

- [Tutelle] (*tutela*) = guardianship (measure of representation)
- [Curatelle] (*curatella*) = curatorship (measure of assistance)
- [Mandat de protection future] = continuing power of attorney (a mandate given by an adult with the purpose that it enters into force *in the future* and shall remain in force in the event of the grantor's incapacity).
- [Habilitation familiale] = created in 2015, the "habilitation familiale", or familial support, is a measure, codified in the civil Code, in which a person's relative can be design by the judge to represent or assist the vulnerable adult for the conclusion of an act or a series of acts relating to the person or/and his or her goods.

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.

In France, we don't have much data about the civil protection and the empowerment of vulnerable adults. Nevertheless, (very) few reports provide information on the population of protected adults and how the law is applied in practice. Here some significant informations:

- Approximatively 800.000 persons (probably between 800.000 and 1 million) are placed under an adult protection measure.
- Before the creation of the familial support ("habilitation familiale"), most of measures pronounced by the judge were guardianships (in 2015, 42 200 full guardianships and 33500 partial guardianship were opened). Since the entry into effect of the familial empowerment, this measure is a success (because it offers more flexibility and liberty) and the number of guardianships is decreasing. In 2021, have been opened 28 909 partial guardianship, 28 495 familial empowerments (but we don't know what kind of familial empowerment have been opened: only for an act? for a series of act? Is it a measure of assistance or representation?) and only 26 318 full guardianships. But, as a familial empowerment can be as serious

as a guardianship, these data doesn't show that measures of representation (and therefore, possibly substitute decision-making measures) are decreasing.

- The number of "mandat de protection future" and personalised social support measures are low.
- Among the population of protected adults, the data should be treated with caution because it only concerns vulnerable adults whose protector is a professional. Among these vulnerable adults, most of them are under 60 years old and live at home. Very few of them are married. Most of them doesn't have a lot of money (on average, around 15 000€ by year) or asset and are unemployed (according to a report, only 14% of vulnerable adults under a measure of protection have a job). As there is no civil definition of disability, we don't know how many adults are persons with disabilities. We don't have in France that kind of data.
- We know for sure that judges don't individualise measures (specially full and partial guardianships) because of a lack of time or/and means. And most of persons who will be placed under guardianship aren't heard by the judge.

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.

France has signed the Convention on the Rights of Persons with Disabilities in 2007 and has ratified it in 2010. France has signed the Hague convention in 2001 and has ratified it in 2008. French civil law must also comply with the right of the European convention of human rights (ratified in 1974). In matter of legal capacity, the European court of human's jurisprudence is based on the recommendation n° R (99) 4 of the Committee of ministers to member States on principles concerning the legal protection of incapable adults.

So far, these international instruments don't have a clear influence on the current legal framework. These texts are in line with the evolution of the law but do not underpin these developments. However, it's true that recent modifications of the legal framework comply with the CRPD (for instance, the abolition of the possibility, for the judge, to withdraw the right to vote of person under guardianship) and that this convention is more and more quote by authors and politicians.

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

The last major reform was in 2007 (Law n° 2007-308 of 5 March 2007 on the reform of the legal protection of adults) but the architecture of the tree principal measures (full guardianship, partial guardianship and the “safeguard of justice”, a temporary measure which can be ordered during the procedure leading to the opening of a protection measure or in case of a temporary alteration of personal faculties) is known since 1968.

Since 2007, the legal framework has been slightly modified by more than twenty texts (creation of the “habilitation familiale”, abolition of the possibility to withdraw the right to vote, liberalisation of access to marriage, substantial amendments to the public health code to make it more compatible with the principles enshrined in the civil code, modification of the name of the “guardianship judge”, modification of the regime of consent of the person to his/her own adoption etc.). Authors regret this accumulation of small reforms instead of a large and consistent general reform. The goals of these reforms are well known (to refocus the judge on his or her essential functions, to encourage the protection of adults by their families and to improve the effectiveness of fundamental rights) but it’s not enough to give these an overall coherence.

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 current legal framework is criticised by doctrine and reports from national and international authorities and politicians. To sum up, here are the main criticisms:

- The legal framework is complicated, sometimes illegible and lacks coherence for three reasons. *Primo*, since the entry into force of the “habilitation familiale”, the articulation of this measure with others is not clear because it can be as wide and serious as a full or partial guardianship, but its regime is particular (specially concerning the role of the judge once the measure is opened). The person in charge of the protection is freer and can have more powers than a representative but there are less judicial controls (because the person in charge of the protection is necessarily a relative). *Segundo*, the legislator makes small and specific modifications of the legal framework, without a clear and global vision, through texts whose main purpose is not the law of vulnerable adults. *Tertio*, and finally, the legal framework is still built around the adult protection measures, rather than the techniques they contain. The legislator merely reforms the measures instead of understanding them, according to the techniques used within each adult protection measures.
- The general principles of civil vulnerable adult protection are not really applied in practice (principles of necessity, subsidiarity, proportionality,

and individualisation): the medical certificates required for the reduction of legal capacity are of uncertain quality; alternative measures to a restriction of legal capacity are rarely used (“mandate de protection future”, personalised social support measures etc.); less than 1% of opened measures of protection are individualised (in most cases, judges apply the standardised legal regime).

- Even though the law has recently been amended, there are still difficulties in the articulation between the civil code and the public health code and the vocabulary used in the public health Code is sometimes not clear (for health professionals and lawyers alike).
- Concerning the discussion around article 12 of the CRPD, debates in France are rare because the CRPD has received a very cold reception. The general comment n° 1 is not taken seriously. Even the “Défenseur des droits” (defender of rights), responsible for monitoring the CRPD in France, recommends not to follow the general comment. Most authors have merely criticised the general comment without seeking to interpret it in a way that could be usefully applied in France. In the end, often, the discussions are sterile. However, some authors and reports try to use Article 12 as an additional argument for far-reaching reform. There is no doubt that when a reform will be considered, Article 12 will have a role to play. But so far, the paradigm promoted by the Convention has not been integrated by the authors. It will take time. To put it simply, Article 12, its paradigm shift and the reforms it would require have elicited three main reactions: criticising the paradigm, cautioning (or reserving) the success of the envisaged reforms and/or defending the state of positive law.

For information, here are the concluding observations of the Committee on the Rights of Persons with Disabilities on the initial report of France:

“The Committee notes with concern: (a) Legal provisions, particularly article 459 of the Civil Code, denying the right of persons with disabilities to equal recognition before the law and establishing deprivation of legal capacity and autonomy through guardianship and wardship, on the basis of medical assessments of the person’s mental capacity. (b) The absence of supported decision-making mechanisms compatible with the Convention, and measures that perpetuate substituted decision-making and fail to recognize the will and preferences of persons with disabilities.

The Committee recommends that the State party, in line with the Committee’s general comment No. 1 (2014) on equal recognition before the law: (a) Review its understanding of legal protection measures and adopt the human rights model of disability ensuring the equal recognition of persons with disabilities before the law and repealing provisions allowing for substituted decisionmaking; (b) Redirect organizational and financial resources from substituted decisionmaking to develop supported decision-making mechanisms that respect the dignity, autonomy, will and preferences of persons with disabilities, regardless the level or mode of support they may require”.

Illustrative bibliography:

I. Reports

- Défenseur des droits, *Protection juridique des majeurs vulnérables*, rapport, 2016.
- Cour des comptes, *La protection juridique des majeurs. Une réforme ambitieuse, une mise en œuvre défailante*, rapport, 2016.
- CNCPH, *Assurer le respect des droits fondamentaux des personnes vulnérables*, rapport relatif à la loi du 5 mars 2007 portant réforme de la protection juridique des majeurs, 2018.
- A. Caron-Dégliise, *L'évolution de la protection juridique des majeurs*, rapport de mission interministérielle, 2018.
- Rapporteuse spéciale sur les droits des personnes handicapées, Rapport sur sa visite en France, A/HRC/40/54/Add.1, 2019.
- C. Abadie et A. Pradié, *Rapport d'information sur les droits fondamentaux des majeurs protégés*, AN n° 2075, 2019.
- Défenseur des droits, *avis n° 19-01 relatif aux droits fondamentaux des majeurs protégés*, 2019.
- Comité des droits des personnes handicapées, *Observation finales sur le rapport initial de la France*, CRPD/C/FRA/CO/1, 2021.

II. Doctrine

For an inventory, see G. Millerioux, *Legal capacity of vulnerable adults*, LGDJ-Lextenso, 2022 (published in December). For some examples:

- É. Pecqueur, A. Caron-Dégliise et T. Verheyde, « Capacité juridique et protection juridique à la lumière de la Convention des Nations Unies relative aux droits des personnes handicapées. La loi n° 2007-308 du 5 mars 2007 est-elle compatible avec l'article 12 de cette Convention ? », *Recueil Dalloz*, 2016, 958.
- D. Noguéro, « Pour la protection à la française des majeurs protégés malgré la Convention des Nations Unies relative aux droits des personnes handicapées », *Revue de droit sanitaire et social*, 2016, 964.
- B. Eyraud, J. Minoc et C. Hanon [dir.], *Choisir et agir pour autrui ? Controverse autour de la Convention de l'ONU relative aux droits des personnes handicapées*, Doin, 2018.
- M. Baudel, « Repenser la protection des majeurs protégés au regard de la Convention relative aux droits des personnes handicapées », *Revue Droit de la famille*, 2018, n° 4, 8.
- G. Raoul-Corneil, M. Rebourg et I. Maria [dir.], *Majeurs protégés : bilan et perspectives*, LexisNexis, 2020.

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

There are no pending or forthcoming reforms (no official information has been provided in this regard).

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?

Legal capacity of an adult can be limited “if he or she is unable to look after his or her own interests because of a medically certified impairment of either his or her mental or physical faculties such as to prevent the expression of his or her wishes” (article 425 of the civil Code).

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 of legal capacity is pronounced by the judge within the limits provided by law.

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

It depends on the measure opened. In most cases, if a full or partial guardianship is opened, it affects all aspects (personal and patrimonial area), although in personal matters, the person benefits from an autonomy of principle which can be overturned by the judge if necessary. But the judge may limit the measure to personal or property matters. On the contrary, if a “habilitation familiale” is opened, the restriction of legal capacity is limited to the purpose of the measure (it can be set up for one act or be as extensive as guardianship or curatorship). If a safeguard of justice is opened, the adult retains her or his legal capacity except for acts for which a special representative is appointed. And for information, a “mandat de protection future” has no effect on legal capacity.

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

Limited legal capacity can be restored by the judge at the request of one of the persons listed in Article 430 of civil Code (the person his/her-self, his or

her spouse, the partner with whom he or she has entered into a civil solidarity pact or his or her concubine, unless they have ceased to live together, or by a relative or an ally, a person who has a close and stable relationship with the adult, or the person exercising a legal protection measure in his or her favour. It may also be presented by the public prosecutor).

The application for restoration of legal capacity can be made at any time. To justify the release of the measure, it will be necessary to demonstrate that the person no longer needs to be protected through a specific medical certificate.

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

Not automatically. See answer 1. C): it depends on the measure opened. But it is true that every time full or partial guardianship or a “habilitation familiale” is opened, it entails a certain limitation of legal capacity.

f. are there any other legal instruments,¹ besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?

No (if special measures relating to the matrimonial property regime are regarded as an adult protection measures).

9. Briefly describe the effects of a limitation of legal capacity on:

a. property and financial matters;

It depends on the measure opened. If a partial guardianship is set up, the intervention of the curator is mandatory for the most serious acts. If a full guardianship is set up, the intervention of the representative is mandatory for all acts, except for acts of daily living. If a “habilitation familiale” is set up, the scope of the reduction of legal capacity depends on the measure opened. Same thing for the safeguard of justice.

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

¹ 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

Family matters (marriage and divorce) are governed by a mandatory text applying to all measures of protection. In the case of marriage, the person in charge of the protection is informed in advance of the planned marriage of the vulnerable adult whom he or she assists or represents (the person in charge of the protection does not have to agree to the marriage; his or her is simply informed).

A vulnerable adult placed under a measure of protection cannot divorce by mutual consent, but the other types of divorce are open to him or her. In divorce proceedings, the adult under full guardianship is represented by his representative and the adult under partial guardianship carries out the action himself/herself, with the assistance of his curator. However, the vulnerable adult may accept the principle of the break-up of the marriage on his or her own, regardless of the facts that gave rise to it.

It is in family matters that we find the “strictly personal acts” of Article 458. These acts involve the strictly personal consent of the vulnerable person and can never give rise to assistance or representation. Strictly personal acts include the declaration of the birth of a child, its recognition, acts of parental authority relating to the person of a child, the declaration of the choice or change of a child's name and the consent given to vulnerable adult's own adoption or that of one's child.

Concerning contraception, no specific text regulates this point. The general health rules apply in this area, which means that vulnerable adults, including those under guardianship, in theory, are free to use contraceptions they wish. Nevertheless, the public health Code authorises therapeutic sterilisation if there is an absolute medical contraindication to contraceptive methods or a proven inability to use them effectively (Article L. 2123-2 of the public health Code).

c. medical matters;

The rule is codified in article 459 of the civil Code.

The vulnerable adult makes personal decisions on his or her own insofar as his or her condition permits.

Where the condition of the vulnerable adult does not allow him or her to make an informed personal decision on his or her own, the judge may provide that he or she will be assisted by the person in charge of his or her protection in all acts relating to his or her person or those the judge lists. If this assistance is not sufficient, the judge may, where appropriate after the granting of a family support (“habilitation familiale”) or the opening of a guardianship measure, allows the person in charge of this habilitation or measure to represent the vulnerable person, including for acts which have the effect of seriously harming his or her physical integrity. Except in emergencies, in the event of disagreement between the protected adult and the person in charge of his or her protection, the judge shall allow either of them to take the decision, at their request or *ex officio*.

However, except in an emergency, the person in charge of the protection may not, without the authorisation of the judge, take a decision that would seriously infringe the privacy of the protected person.

The person in charge of the protection of the adult may take such measures of protection as are strictly necessary to put an end to the danger that his or her own behaviour would cause to the person concerned. The person responsible for the protection of adult shall inform the judge without delay.

In addition to these general rules, certain specific medical acts (organ donation, research on human beings, sterilisation, etc.) are governed by the Public Health Code.

d. donation and wills;

The person under partial guardianship may freely make a will but can only donate with the assistance of the guardian (article 470 of the civil Code). The person under full guardianship may only make a will alone after the opening of the guardianship with the authorisation of the judge, on pain of nullity of the act. The representative may neither assist nor represent her on this occasion (article 476 of the civil Code).

If an “habilitation familiale” is set up, the rules on partial guardianship apply if it is a general assistance measure and the rules on guardianship apply if it’s a general representation measure. All depends on the degree of incapacity established by the “habilitation familiale”: a regime of assistance or representation.

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

In civil proceedings, the person under partial guardianship needs to be assisted by the partial guardian (curator) (article 468 of the civil Code) and the person under full guardianship needs to be represented by the guardian (article 475 of the civil Code).

All vulnerable adults are free to apply for a passport or identity card, except those under full guardianship. For them, they must inform the representative of their request for an identity card (Order of 13 March 2021 implementing Article 4-4 of Decree n° 55-1397 of 22 October 1955 as amended establishing the national identity card) and the representative applies for the passport on their behalf (Decree n° 2005-1726 of 30 December 2005 on passports).

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

Article 464 of the Civil Code provides that acts performed by the vulnerable adult less than two years before the publication of the judgment opening a measure of protection may be reduced on the sole proof that his or her inability to defend his or her interests, because of the alteration of his or her personal faculties, was notorious or known to the contracting party at the

time the acts were performed. These acts may, under the same conditions, be cancelled if it is justified that the vulnerable adult person has suffered harm.

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

Only the judicial judge. No other authority than the judge has jurisdiction.

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

The list of persons who may apply for a reduction or restoration of legal capacity is set out in Article 430 of the civil Code (see answer 8. D).

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;

The vulnerable adult may choose a lawyer or ask the president of the Bar to appoint one *ex officio* (article 1214 of the civil procedure Code; article 432 of the civil Code).

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

With the agreement of the judge, the vulnerable adult may be accompanied by any other person of their choice (article 432 of the civil Code).

If he or she considers it appropriate, the judge may hear one or more of the persons mentioned in Article 430 of the Civil Code (article 1220-4 of the civil procedure Code). This hearing is a matter of right when requested by the vulnerable person applying for protection. Besides, the judge may, either *ex officio* or at the request of the parties or the public prosecutor, order any investigative measure. In particular, the judge may order a social enquiry or findings by any person of his or her choice (article 1221 of the civil procedure Code).

c. requirement of a specific medical expertise / statement;

Article 431 provides that the application must be accompanied, on pain of inadmissibility, by a detailed certificate drawn up by a doctor chosen from a list drawn up by the public prosecutor. This doctor may seek the opinion of the vulnerable adult's referring physician.

d. hearing of the adult by the competent authority;

In principle, the adult is heard by the judge. However, the judge may, by a specially reasoned decision, decide that there is no need to hear the person concerned if this would be detrimental to his or her health or if he or she is unable to express his or her wishes (article 432 of the civil Code; articles 1220-2 and 1220-3 of the civil procedure Code).

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

Persons listed in Article 430 may appeal against the decision to open a measure of protection (article 1239 of the civil procedure Code). However, an appeal against a judgment refusing to grant a measure of protection to an adult is only open to the applicant (article 1239-2 of the civil procedure Code).

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).**

In French law, there is only one general rule concerning mental capacity, sometimes referred to for certain legal acts: to make a valid legal act, one must not be insane of mind (articles 414-1 and 1129 of the civil Code; for donations and will, see article 901 of the civil Code). A person who seeks to have an act cancelled on the grounds of insanity of mind must show that the person was insane at the time of the act. However, as such proof is difficult to provide, case law has established a simple presumption of insanity of mind if it is established that the author of the act was in a "habitual state of insanity" before and after the act was performed. The vulnerable adult can then save the act if he or she shows that he or she concluded the act during a lucid interval.

If the person performs an act for which his or her legal capacity has been reduced, the act can be cancelled without it being necessary to verify whether he or she was able to express consent. Conversely, if a vulnerable adult performs an act alone or with the assistance of the guardian but the expressed will is lacking, so that he or she could not express valid consent to the act, the act may be cancelled for lack of consent. Capacity and consent are two separate conditions for the validity of legal acts: the law of legal capacity is seen as a special law, while the rules on consent are part of the general law, so that if the

act is valid on the ground of legal capacity, it can always be cancelled on the ground of consent.

- 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?**

See the answer to question 6.

SECTION III – STATE-ORDERED MEASURES

Overview

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

N.B.: by “state-ordered measures”, we understand the measures “pronounced by a judge”.

Safeguard of justice [sauvegarde de justice]: The judge may place under safeguard of justice a person who, for one of the reasons provided for in Article 425, needs temporary legal protection or representation for the performance of certain specific acts. This measure may also be ordered by the judge in a partial or full guardianship case for the duration of the proceedings (article 433 of the civil Code).

Partial guardianship (Curatorship) [curatelle]: A person who, without being incapable of acting himself, needs, for one of the reasons provided for in Article 425, to be assisted or controlled continuously in the important acts of civil life may be placed under partial guardianship (curatorship) (article 440, paragraph 1, of the civil Code). The partial guardianship is only pronounced if it is established that safeguard of justice cannot provide sufficient protection (article 440, paragraph 2, of the civil Code).

Full Guardianship [tutelle]: A person who, for one of the reasons provided for in Article 425, must be represented continuously in the acts of civil life, may be placed under full guardianship (article 440, paragraph 3, of the civil Code). Guardianship is only pronounced if it is established that neither safeguard of justice nor partial guardianship can provide sufficient protection (article 440, paragraph 4, of the civil Code).

Family Support [habilitation familiale]: Where a person is unable to provide for his or her interests alone, under the conditions of Article 425, the guardianship judge may empower one or more persons chosen from among his or her ascendants or descendants, brothers and sisters or, unless community of life has ceased between them, the spouse, the partner to whom he or she is linked by a civil solidarity pact or the concubine, to represent him or her, to

assist him or her or to carry out a deed or deeds on his or her behalf in order to safeguard his or her interests (article 494-1 of the civil Code). The family support may concern one or more acts relating to the assets of the person concerned, and/or one or more acts relating to the person (article 494-6 of the civil Code).

All these measures are subject to the principle of necessity and subsidiarity, which means that they can only be set up if they are strictly necessary and if other less restrictive measures are not sufficient to ensure effective protection of the person. Among these less restrictive measures is the judicial support measure.

Judicial support measure [mesure d'accompagnement judiciaire]: this measure can be put in place if personalised social support measures fail. Any adult who receives social benefits and whose health or safety is threatened by difficulties in managing their resources can benefit from a personalised social support measure which includes help in managing their social benefits and individualised social support. Where the personal social support measures have not enabled the person concerned to manage his or her social benefits satisfactorily and his or her health or safety is compromised, the judge may order a judicial support measure designed to restore the person's autonomy in managing his or her resources.

Pay attention to:

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

No, these measures are alternative and prioritised, but not cumulative.

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

See the answer above.

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

The safeguard of justice plays that role.

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.**

These measures, which lead to a restriction of legal capacity, can be set up if the conditions of the article 425 of the civil Code are met. This article states that “any person who is unable to look after his or her own interests by reason of medically certified impairment of either his or her mental or physical faculties such as to prevent the expression of his or her wishes may benefit from a legal protection measure provided for in this Chapter”.

The possibility of limiting legal capacity for prodigality alone was abolished in 2007. Only adults can benefit from a protection measure.

18. Which authority is competent to order the measure?

Protection measures can only be ordered by a judge. This is the judge responsible for protection matters [juge des contentieux de la protection] who sits within the Tribunal judiciaire (Article L213-4-2 of the Code of Judicial Organisation).

19. Who is entitled to apply for the measure?

According to article 430 of the French civil Code, the application to open the measure can be submitted to the judge by :

- the person who needs protection or,
- his or her spouse / partner (with whom he or she has concluded a registered partnership) /cohabitant, unless they have stopped living together, or,
- a family member or,
- a person who has a close and stable relationship with the adult or,
- the person who is exercising a legal protection measure in his or her regard or,
- the public prosecutor either ex officio or at the request of a third party.

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?

Normally, the judge must hear the adult before giving a decision. However, the judge may decide not to proceed to this hearing by means of a specially motivated decision if the opinion of a certified doctor indicates that the adult is unable to express his or her will or if the hearing could have consequences for the adult's health (Art. 432 of the Civil Code). The judge must listen to the adult but is not bound by what the adult says.

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;
- b. availability of legal aid;

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

The application for a protection measure is submitted to the judge who normally has to hear the adult. For this hearing, the adult may be accompanied by a lawyer or, subject to the judge's agreement, by another person of his/her choice. The adult is entitled to legal aid if he or she meets the income requirements laid down by law. The application to open the measure must be accompanied by a medical certificate drawn up by an accredited doctor. This doctor may, if he or she considers it necessary, seek the opinion of the adult's regular doctor. The judge must obtain information on the social and family situation of the adult in order to assess his or her autonomy. Depending on the case, this information may be obtained from family members or from the person who requested the measure. It is possible to appeal against the decision within 15 days (art. 1239 of the Code of Civil Procedure).

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

An abstract of the decision specifying the type of measure is recorded in a special register called the civil register [Répertoire civil]. This register is kept by the court (Article 1233 of the Code of Civil Procedure) and may be consulted by any interested person. In the adult's birth certificate, the mention RC is then written followed by a number allowing to find the extract in the civil register (art. 444 of the Civil Code). If a person sees the mention RC on the birth certificate of a person, he/she can go and consult the civil register to find out, for example, whether he/she can enter into a contract with that person.

Judgments opening, modifying or lifting a protection measure can only be invoked against third parties two months after the mention RC has been written in the margin of the adult's birth certificate. However, they are enforceable against third parties who have personal knowledge of them, even in the absence of such mention.

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

Please consider the following:

- a. what kind of requirements does a representative/support person need to meet (capacity, relationship with the adult, etc.)?**
- b. to what extent are the preferences of the adult and/or the spouse/partner/family members taken into consideration in the decision?**

- 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?**
- d. **what are the safeguards as to conflicts of interests at the time of appointment?**
- e. **can several persons be appointed (simultaneously or as substitutes) as representative/support person within the framework of a single measure?**
- f. **is a person obliged to accept appointment as representative/support person?**

The appointment of the representative or assistant is always made by the judge. It follows a hierarchy. If the adult had anticipated and designated a person in advance in the event of a decrease in his/her faculties, the judge must appoint this person unless he/she refuses or if the judge considers (in a specially reasoned decision) that this would be contrary to the interests of the adult. In the absence of an advance designation, the judge must appoint, depending on the case, the adult's spouse, registered partner or cohabitant, unless common life has stopped between them or if there is a reason not to entrust the mission to him/her (e.g. violence). If this is not possible or the mission is refused, the judge must appoint either a family member (brother, sister-in-law, cousin, etc.) or a person who lives with the adult to be protected or has a close and stable relationship with him or her (for example, a close friend).

If no one is willing or able to take on the task, as a last resort, the judge appoints a judicial agent for the protection of adults (mandataire judiciaire à la protection des majeurs) who is a professional registered on a special list.

Depending on the situation, if it is in the interest of the person to be protected, the judge may appoint two people to carry out the assignment.

In all cases:

- The person appointed must be over 18 and have full civil, civic and family rights.
- The judge must take into account the feelings expressed by the adult.
- The designated person must accept the assignment.

(Art. 446 to 453 of the Civil Code).

During the measure

Legal effects of the measure

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

It depends on the measure ordered by the judge. If it is a full guardianship, the adult will no longer be able to exercise his or her rights, but will be

represented by his or her guardian. If it is a partial guardianship, the adult will be assisted by his or her curator to exercise his or her rights. The judge may mix the regimes and state very precisely in the judgment for which acts the adult must be represented and for which acts he must be assisted. There are also special provisions for marriage, registered partnership, divorce or strictly personal acts of the adult.

If the adult is under a power of attorney, he or she retains legal capacity.

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:**
 - **property and financial matters;**
 - **personal and family matters;**
 - **care and medical matters;**
 - b. what are the criteria for decision-making (e.g. best interests of the adult or the will and preferences of the adult)?**
 - c. 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?**
 - d. are there other duties (e.g. visiting the adult, living together with the adult, providing care)?**
 - e. is there any right to receive remuneration (how and by whom is it provided)?**

It depends on the protection regime ordered by the judge.

If it is a full guardianship, in principle it is a representation regime and the representative acts in the place of the adult in all matters. If it is a partial guardianship, in principle, the curator assists the adult in all matters.

For the guardian, a distinction must be made. He may only perform alone the conservatory and administrative acts that are necessary for the preservation of the adult's assets. If the representative wishes to carry out an act of disposal that involves a change in the adult's assets, he or she must be authorised by the judge.

However, the guardian must give the adult, in a manner appropriate to his or her condition, all the information on his or her personal situation, the acts concerned, their usefulness, their degree of urgency, their effects and the consequences of a refusal by the adult. The protected person takes decisions relating to his or her person alone insofar as his or her condition permits. If his or her state of health does not allow it, the judge will decide on the assistance or representation of the protector as necessary in view of the adult's state of health. The protected adult also chooses the place of residence and is free to maintain personal relations with any third party, relative or not. They have the right to be visited and accommodated by them. However, the person responsible for the protection of the adult may take such protective measures

as are strictly necessary to put an end to the danger to the person concerned caused by his or her own behaviour. He shall inform the judge without delay. Except in an emergency, the person responsible for the protection of the adult may not, without the authorisation of the judge, take a decision that would seriously infringe the privacy of the protected adult.

Some acts are qualified as "strictly personal" and may never give rise to assistance or representation. These include: the declaration of the birth of a child, its recognition, acts of parental authority relating to the person of a child, the declaration of the choice or change of a child's name and consent to one's own adoption or that of one's child.

Regarding remuneration, only the representative is considered an administrator because guardianship is a system of representation and he/she can receive remuneration. This is not the case for curatorship.

For marriage and registered partnership, the protector must be informed of the project and can oppose it by referring to the judge who will decide whether the opposition is founded. If there is no opposition, the protector assists the adult in signing the marriage contract (if there is one) or the registered partnership agreement. But the adult acts alone for the celebration of the marriage or the registration of the partnership agreement.

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?**
- 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)?**

The judge may order a protective measure that combines assistance (partial guardianship) and representation (full guardianship) and give a precise list of acts for which there must be assistance or representation. To assume the functions of guardian, he may appoint one or more persons. To decide, the judge will take into account: the situation of the protected person, the abilities of the persons concerned and the size of the assets to be administered. The judge may divide the protection measure between a representative responsible for the protection of the person and a representative responsible for the management of the assets. He may entrust the management of certain assets to a deputy guardian. Each representative is deemed, with regard to third parties, to have received from the others the power to carry out alone those acts for which a representative would not need any authorisation.

Unless the judge has decided otherwise, the persons appointed as representative are independent and are not responsible to each other. They shall, however, inform each other of the decisions they take.

27. Describe the organisation of supervision of state-ordered measures.

Pay attention to:

- a. what competent authority is responsible for the supervision?**
- b. what are the duties of the supervisory authority in this respect?**
- c. what happens in the case of malfunctioning of the representative/support person? Think of: dismissal, sanctions, extra supervision;**
- d. describe the financial liability of the representative/support person for damages caused to the adult;**
- 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.**

An inventory of the adult's assets must be made at the beginning of the protection measure.

Regarding the possibility of invalidating an act performed by the representative or curator, Article 465, 4e of the Civil Code provides that "If the representative or curator has performed alone an act that should have been performed by the protected person either alone or with his or her assistance or that could only have been performed with the authorisation of the judge, the act is null and void without the need to prove any prejudice". In this case the representative has exceeded the powers entrusted to him or her, which leads to the nullity of the act. If the adult has also suffered damage, he or she may also bring an action for compensation against the guardian.

Regarding the responsibility in property management matter, it is necessary to distinguish the partial guardian from that of the full guardian. Except when the partial guardianship is reinforced by the judge (i.e. if the judge gives the curator the power to collect the adult's income alone, to pay expenses to third parties himself and to deposit only the remaining sums in an account left at the adult's disposal, or if the judge authorises the curator to enter into a residential lease or accommodation agreement for the protected person's accommodation without his/her assistance), the partial guardian is not an administrator. Consequently, he is not subject to an annual audit of the accounts and his/her liability can only be incurred in the event of gross negligence or fraud.

In matters of guardianship, all the guardianship organs are responsible for the proper management of the assets of the guardianship, including the judge and the court clerk. An action for liability against one of them may be brought in the event of a fault, even a minor one, and even if the management was carried out free of charge. If the action is brought on the grounds of fault on the part of the judge or court clerk, it must be brought against the State. An

audit of the accounts must take place every year. In principle, this audit is carried out by filing with the court registry. If the adult's assets are very limited, the judge may waive the annual audit obligation. On the other hand, if the assets are very large, the judge may decide that the control will be carried out by a specialised technician (expert accountant). This action can be taken within five years. In any case, the annual approval of the accounts does not extinguish the action.

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;**
- b. unauthorised acts of the adult and of the representative/support person;**
- c. ill-conceived acts of the adult and of the representative/support person;**
- d. conflicts of interests**

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

The law organises a system of sanctions that depends on the one hand on the date on which the act was performed and on the other hand on the nature of the acts.

A distinction must be made between acts performed before or after the opening of the protection measure.

If the act was performed before the measure was opened:

Under Article 464 of the Civil Code, acts concluded less than two years before the publication of the opening judgment may be reduced on the sole proof that the person concerned is unable to defend his/her interests due to the alteration of his/her personal faculties, which was known to the contracting party at the time the acts were concluded.

These acts may, under the same conditions, be declared null and void if it can be shown that the protected person has suffered prejudice. It will be necessary to prove that the state of vulnerability or alteration of the faculties of the person who has become incapacitated was known to the contracting party or simply that it was notorious. This proof will lead to the reduction of the act if there is no prejudice to the adult and to its nullity if there is prejudice to the adult.

In both cases, action for reduction or nullity, it is prescribed by five years from the date of the judgment opening the measure.

If the act was performed after the opening of the measure:

Article 465 CCiv. specifies the conditions under which the irregularity of acts performed by the protected person is sanctioned. The text distinguishes several situations:

- 1) If the protected person has performed an act alone that he or she could have done without the assistance or representation of the person responsible for his or her protection, the act remains subject to the

rescission or reduction actions provided for in Article 435, i.e. it must be proved that there was a mental disorder at the time the act was performed.

- 2) If the protected person has performed an act alone for which he or she should have been assisted, the act can only be declared null and void if it is established that the protected person has suffered a prejudice. Proof of prejudice is therefore a prerequisite for the nullity action.
- 3) If the protected person has performed an act alone for which he or she should have been represented, the act is automatically null and void without it being necessary to prove prejudice.

These three actions are prescribed by 5 years.

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.

The protection measure can be dissolved in several ways:

- by the death of the adult,
- by the expiry of the term set out in the judgment setting up the measure if it is not renewed,
- by a decision to remove the measure, i.e. if the person's health improves to the point where the measure is no longer justified
- by substituting one measure for another, i.e. curatorship instead of guardianship if the state of health improves and curatorship by guardianship if the state of health of the person deteriorates.

The request to end the measure or the request to modify the measure can be brought before the judge by the same persons as the request to open the measure and also by the guardian. The procedure is the same as for an application to open a protection measure.

Reflection

30. Provide statistical data if available.

The latest data are for the year 2021 and are available on this link:
http://www.justice.gouv.fr/art_pix/RSJ2021%206.2.pdf

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 problem that is regularly mentioned is a lack of time and resources for judges. The law gives them the possibility to adapt the measure very precisely to the needs of the adult, notably by mixing assistance and representation, but due to a lack of time and means, in most cases the measures are standardised. There is also often a lack of time to see the adult regularly.

SECTION IV – VOLUNTARY MEASURES

Overview

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

French law created the power of attorney in 2007 (mandate de protection future). It is a mandate contract that allows a person to organise in advance the protection of his or her person and/or property and to designate the person or persons who will be in charge of it, for the day when his or her state of health no longer allows him or her to do so.

French law also allows an act of anticipated designation of the representative (acte de designation anticipée du tuteur et du curateur). By a notary act, the adult designates in advance the person who will assume the functions of representative if he or she is no longer able to look after his or her own interests. This designation is binding on the judge, unless the designated person is unwilling or unable to take on the duties or the judge considers that this is not in the interests of the adult (in this case, the judge must give special reasons for his or her decision).

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

The power of attorney is governed by Articles 477 et seq. of the Civil Code. It may be drawn up either in the form of a private document or in the form of a notarial deed.

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 power of attorney does not affect the legal capacity of the adult. It allows powers to be entrusted to a proxy, but the adult continues to be able to act alone in law. The law only organises a posteriori protection of the adult and makes it easier to obtain a nullity or reduction of acts when there is a power of attorney. The act of anticipated designation of the representative has a different objective. It is a matter of choosing the representative oneself if one's state of health justifies the judge putting in place a protection regime that affects the legal capacity of the adult (partial or full guardianship). The two acts are not in conflict with each other. It is possible to do both in advance and only the anticipated act that corresponds to the adult's state of health will be activated.

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)?

The power of attorney may concern only the management of the beneficiary's assets or be extended to the protection of his person.

Start of the measure

Legal grounds and procedure

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

Any adult or emancipated minor who is not the subject of a guardianship measure or family support may instruct one or more persons, by means of a single mandate, to represent him or her in the event that, unable to provide for his or her interests alone due to a medically ascertained impairment of either his or her mental faculties or physical faculties such as to prevent the expression of his or her wishes, he or she is no longer able to provide for his or her interests alone.

An adult under partial guardian may conclude a power of attorney for himself, with the assistance of his curator.

Furthermore, parents or the last surviving father and mother, who are not subject to a full or partial guardianship measure or family support, who exercise parental authority over their minor child or assume the material and emotional care of their adult child may in the event that the child is no longer able to look after his or her own interests due to a medically certified impairment of either his or her mental or physical faculties such as to prevent the expression of his or her wishes, designate one or more agents to represent him or her. This designation takes effect from the day on which the principal dies or can no longer take care of the person concerned.

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.

The power of attorney must be given in writing. It is concluded by notarial deed or by private document. However, the power of attorney for others can only be concluded by notarial act.

The power of attorney drawn up under private signature is dated and signed by the attorney. It is either countersigned by a lawyer or drawn up in accordance with a model defined by decree in the Council of State.

The attorney accepts the mandate by signing it.

The power of attorney is published by an entry in a special register.

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

- a. the circumstances under which voluntary measures enter into force;**
- b. which formalities are required for the measure to enter into force (medical declaration of diminished capacity, court decision, administrative decision, etc.)?**
- c. who is entitled to initiate the measure entering into force?**
- d. is it necessary to register, give publicity or to any other kind of notice of the entry into force of the measure?**

The power of attorney enters into force when it is established that the adult can no longer look after his or her own interests due to an alteration of his or her mental or physical faculties such as to prevent the expression of his or her will.

To this end, the attorney shall produce to the clerk of the court the power of attorney and a medical certificate issued by a doctor chosen from the list drawn up by the public prosecutor. The court clerk shall endorse the power of attorney and date it to enter into force, then return it to the attorney.

Appointment of representatives/support persons

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

Please consider:

- a. what kind of requirements does a representative/support person need to meet (capacity, relationship with the grantor, etc.)?**
- b. what are the safeguards as to conflicts of interests?**

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

The attorney may be any natural person chosen by the adult or a legal person registered on the list of legal representatives for the protection of adults provided for in Article L. 471-2 of the Code of Social Action and Families.

Throughout the execution of the power of attorney, the attorney must enjoy civil capacity and meet the conditions laid down for guardianship.

The adult may appoint one or more representatives to represent him or her.

During the measure

Legal effects of the measure

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

Where the power of attorney is drawn up by notarial deed, as long as it has not been executed, the grantor may modify it in the same way or revoke it by notifying the attorney and the notary of his revocation and the attorney may renounce it by notifying the grantor and the notary of his renunciation.

The power of attorney drawn up by private agreement shall be dated and signed by the grantor ; as long as it has not been executed, the grantor may amend or revoke it in the same manner and the attorney may renounce it by notifying the grantor of his renunciation.

The attorney is liable for the exercise of the mandate under the conditions laid down for the mandate under ordinary law.

During the execution, the attorney may be discharged from his duties with the authorisation of the guardianship judge.

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

Normally, the entry into force of the power of attorney does not affect the capacity of the grantor. But acts performed and commitments entered into by a person who is the subject of a power of attorney and who has been executed during the term of the mandate may be rescinded on the grounds of simple injury or reduced in the event of excess, even though they could be annulled under Article 414-1 of the Civil Code. The courts take into consideration, in particular, the usefulness or uselessness of the transaction, the size or consistency of the protected person's assets and the good or bad faith of those with whom he or she has contracted.

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;**
 - **personal and family matters;**
 - **care and medical matters?**
 - b. what are the criteria for decision-making (e.g. best interests of the adult or the will and preferences of the adult)?**
 - c. is there a duty of the representative/support person to inform and consult the adult?**
 - d. is there a right to receive remuneration (how and by whom is it provided)?**

The attorney executes the power of attorney personally. However, he may substitute a third party for acts of management of the assets, but only in a special capacity.

Unless otherwise stipulated, the attorney acts free of charge.

The attorney is liable for the exercise of his mandate under the conditions laid down for the mandate under ordinary law.

The power of attorney may concern only the management of the beneficiary's assets or be extended to the protection of his person.

The attorney responsible for the administration of the protected person's property makes an inventory when the measure is opened. He updates it during the mandate in order to keep the assets up to date.

He draws up an annual account of his management, which is checked in accordance with the terms of the mandate and which the judge may in any event have checked.

The power of attorney concluded by private document is limited, as regards the management of the assets, to acts that a representative may perform without authorisation.

If the performance of an act which is subject to authorisation or which is not provided for in the power of attorney proves to be necessary in the interest of the principal, the attorney shall apply to the guardianship judge for an order to do so.

The attorney may only carry out an act of disposal free of charge with the authorisation of the guardianship judge.

Where the mandate extends to the protection of the person, the rights and obligations of the attorney are the same as those governing the situation of the curator and guardian. Any stipulation to the contrary is deemed unwritten.

The power of attorney may provide that the attorney will carry out the tasks that the Public Health Code and the Social Action and Family Code entrust to the representative of the person under guardianship or to the trusted person.

The mandate sets out the procedures for monitoring its execution.

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?**
- 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)?**

While it is possible to appoint more than one attorney, neither the law nor the case law specifies how the functions are divided between these persons. The interactions between the different attorneys are only governed by the power of attorney. For example, it is possible to appoint an attorney for the protection of property and an attorney for the protection of the person.

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?**
- 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?**

The power of attorney is terminated if the protected person is placed under partial or full guardianship, unless the judge opening the measure decides otherwise. Therefore, in principle, there can be no interaction with other measures.

When the implementation of the power of attorney does not allow, because of its scope, to sufficiently protect the personal or property interests of the person, the judge may open a complementary legal protection measure entrusted, if necessary, to the attorney. He may also authorise the latter or an ad hoc representative to perform one or more specific acts not covered by the power of attorney.

The attorney and the persons appointed by the judge are independent and are not responsible to each other; however, they inform each other of the decisions they take.

45. Describe the safeguards against:

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

- b. ill-conceived acts of the adult and of the representative/support person;**
- c. conflicts of interests**

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

Acts performed and commitments entered into by a person who is the subject of a power of attorney and who has been executed during the term of the mandate may be rescinded on the grounds of simple injury or reduced in the event of excess, even though they could be annulled under Article 414-1 of the Civil Code. The courts take into consideration, in particular, the usefulness or uselessness of the transaction, the size or consistency of the protected person's assets and the good or bad faith of those with whom he or she has contracted.

The action belongs only to the protected person and, after his death, to his heirs. It lapses after a period of five years.

Any interested party may apply to the guardianship judge to contest the implementation of the mandate or to have a ruling given on the conditions and procedures for its execution.

The mandate ends by its revocation pronounced by the guardianship judge at the request of any interested party when the execution of the mandate is likely to harm the interests of the principal.

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

- a. is supervision conducted:**
 - **by competent authorities;**
 - **by person(s) appointed by the voluntary measure.**
- b. in each case, what is the nature of the supervision and how is it carried out?**
- c. the existence of measures that fall outside the scope of official supervision.**

The power of attorney sets out the procedures for monitoring its execution (Civil code, art. 479, al. 3).

During the execution of the mandate for future protection, the attorney may only be discharged from his duties with the authorisation of the guardianship judge (Civil code, art. 480, al. 3).

The attorney responsible for the administration of the protected person's property has an inventory made when the measure is opened. He updates it during the mandate in order to keep the state of the assets up to date (Civil code, article 486, al. 1).

According to Article 486, al 2, of the Civil Code, he draws up an annual account of his management, which is verified according to the procedures

defined in the mandate and which the judge may in any event have verified according to the procedures provided for in Article 512.

If the power of attorney has been established by notarial act, for the application of the second paragraph of Article 486, the attorney shall render an account to the notary who established the mandate by sending him his accounts, to which are annexed all useful supporting documents. The notary shall keep the accounts and the inventory of the property and its updates.

The notary notifies the guardianship judge of any movement of funds and any act that is not justified or does not appear to comply with the stipulations of the mandate (Civil code, art. 491).

If the power of attorney has been established by private deed, for the application of the last paragraph of Article 486, the attorney shall keep the inventory of assets and its updates, the last five management accounts, the supporting documents as well as those necessary for its continuation.

He is required to present them to the guardianship judge or the public prosecutor under the conditions provided for in Article 416 (Civil code, art. 494).

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.

The power of attorney is terminated in various situations.

It automatically lapses in the event of the recovery of the personal faculties of the person concerned established at the request of the grantor or the attorney, or in the event of the death of the protected person or his or her placement under partial or full guardianship, unless the judge who opens the measure decides otherwise.

The death of the grantor, his or her placement under a protective measure or his or her insolvency automatically terminates the power of attorney.

The mandate is also terminated by its revocation pronounced by the guardianship judge at the request of any interested party, when it is found that the conditions provided for by Article 425 of the Civil code are not met, or when the execution of the mandate is likely to harm the interests of the grantor.

The judge may also suspend the effects of the power of attorney for the time of a safeguard of justice measure.

Reflection

48. Provide statistical data if available.

N/A

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?

According to Article 477-1 of the Civil Code, the power of attorney is published by an entry in a special register, the procedures and access to which are regulated by decree of the Council of State. To date, the decree has still not been published. There are therefore no measures to publicise the power of attorney.

SECTION V – EX LEGE REPRESENTATION

Overview

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

French system doesn't have specific provisions for *ex lege* representation of vulnerable adults except specific cases of *ex lege* representation resulting from marital law and/or matrimonial property law.

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

N/A

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

N/A

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

N/A

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.

N/A

- 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.**

N/A

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

N/A

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

N/A

Safeguards and supervision

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

N/A

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

N/A

Reflection

- 60. Provide statistical data if available.**

N/A

- 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)?**

N/A

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?

According to Article 218 of the Civil Code, a spouse may give a mandate to the other spouse to represent him or her in the exercise of the powers granted to him or her by the matrimonial regime. He may, in any case, freely revoke this mandate.

According to Article 219(2) of the Civil Code, in the absence of a legal power, mandate or empowerment by the court, acts performed by one spouse in representation of the other have effect, with regard to the latter, according to the rules of business management.

According to Article 220, paragraph 1, of the Civil Code, each of the spouses has the power to enter into contracts for the maintenance of the household or the education of the children alone : any debt thus contracted by one of them obliges the other jointly.

According to Article 222 of the Civil Code, if one of the spouses appears alone to perform an act of administration, enjoyment or disposal of movable property that he or she holds individually, he or she is deemed, with regard to third parties acting in good faith, to have the power to perform this act alone.

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.

According to Article 1421 of the Civil Code, each of the spouses has the power to administer the joint property alone and to dispose of it, except in the case of faults committed in its management. Acts performed without fraud by one spouse are opposable to the other.

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?

Negotiorum gestio exists in French private law but has no practical significance in cases involving vulnerable adults.

SECTION VI – OTHER PRIVATE LAW PROVISIONS

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

No.

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 Article 477(3) of the Civil Code, parents or the last surviving father and mother, who are not subject to a partial or full guardianship measure or family support, who assume the material and emotional care of their child of full age, may, in the event that the child is no longer able to provide for his or her interests alone for one of the reasons set out in Article 425, appoint one or more representatives to represent him or her. This designation takes effect from the day on which the mandator dies or is no longer able to take care of the person concerned.

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

- 67. 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;**
 - b. subsidiarity: autonomous decision-making of adults with impairments as long as possible, substituted decision-making/representation – as last resort;**
 - c. proportionality: supported decision-making when needed, substituted decision-making/representation – as last resort;**
 - d. effect of the measures on the legal capacity of vulnerable adults;**
 - e. the possibility to provide tailor-made solutions;**
 - f. transition from the best interest principle to the will and preferences principle.**

The law of 5 March 2007 aimed to ensure respect for individual freedoms and the dignity of the person. According to Article 415 of the Civil Code, "protection is established and provided with respect for individual freedoms, fundamental rights and the dignity of the person.

Its purpose is the interest of the protected person. It promotes, as far as possible, the autonomy of the latter".

The protection of adults is based on a number of guiding principles. Some are common to all legal measures, others are specific to judicial measures.

The guiding principles common to all legal measures are set out in Article 415 of the Civil Code. The text states that "Persons of full age shall receive the protection of their person and property that their state or situation makes necessary in accordance with the procedures laid down in this Title.

This protection shall be established and provided with due regard for individual freedoms, fundamental rights and the dignity of the person.

Its purpose shall be the interest of the protected person. It shall promote, as far as possible, the autonomy of the protected person.

It is a duty of families and of the public community".

The guiding principles specific to judicial measures are set out in Article 428 of the Civil Code, which, in essence, lays down three principles. These are the principles of necessity, subsidiarity and proportionality.

According to the principle of necessity, there is no automaticity in French law between the existence of a disability and the implementation of a protection measure. The protection measure should only be initiated when it is necessary.

As regards the principle of subsidiarity, it follows from this principle that a judicial protection regime cannot be ordered when the interests of the person

concerned can be provided for by one of the means indicated by the law: rules of representation, or matrimonial regimes, or by another less restrictive protection measure or by a power of attorney.

In accordance with the principle of proportionality, not only must the measures be adapted to each case, so that an adult who only needs assistance is not placed under guardianship, but also the legal protection measures must be reviewed regularly so that the judge can ensure that they are still appropriate and do not unnecessarily deprive the persons concerned of their freedom to act.

Further on, there are different degrees of protection for adults. When the impairment of mental faculties is only temporary, the protection of the adult will only be intermittent. If the adult cannot govern himself, support measures can be put in place: personalised social support measures, judicial accompaniment measure. There are also accompanying measures of a medical nature consisting of psychiatric care.

Only when these accompanying measures are not sufficient, should supervisory measures be put in place.

All these principles suggest that French law on the protection of vulnerable adults meets the needs of such protection. However, some authors consider that French law is not compatible with the UN Convention on the Rights of Persons with Disabilities.

68. 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;**
- b. protection during a procedure resulting in the application, alteration or termination of adult support measures;**
- c. protection during the operation of adult support measures:**
 - protection of the vulnerable adult against his/her own acts;**
 - protection of the vulnerable adult against conflict of interests, abuse or neglect by the representative/supporting person;**
 - 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;**
 - protection of the privacy of the vulnerable adult.**

The answers to question 67 can be applied to this question.