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This document corrects COM(2023)281

Concerns all language versions

The error concerns the replacement of the expression ‘opinion’ of the European Parliament by ‘consent’ of the European Parliament in the third citation of the draft Council Decision.

The text shall read as follows:

Proposal for a

COUNCIL DECISION

authorising Member States to become or remain parties, in the interest of the European Union, to the Convention of 13 January 2000 on the International Protection of Adults

{SWD(2023) 155 final} - {SWD(2023) 156 final} - {SEC(2023) 208 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The EU aims to create, maintain and develop an area of freedom, security and justice in which the free movement of persons, access to justice and the full respect of fundamental rights are ensured.

This aim should also include the cross-border protection of adults who, by reason of an impairment or insufficiency of their personal faculties, are not able to protect their interests ('adults'). An adult is a person who has reached the age of 18 years.

The number of adults in such situations in the EU is on the increase due to the ageing population and the associated incidence of age-related illnesses, and the growing number of people with disabilities. Depending on the national legislation of the Member State where they live, they can be under a protection measure taken by a court or an administrative authority, or they can be supported by a third party they had designated in advance (through powers of representation') to manage their interests.

Adults may need to manage their assets or real estate located in another country, undergo emergency or planned medical care abroad, or relocate to another country for various reasons.

In those cross-border situations, adults are confronted with the complex and sometimes conflicting rules of Member States. These include deciding which court or other authority competent to take protection measures has jurisdiction, which law applies to their case, and how to recognise or give effect to a decision taken or to powers of representation established abroad. This leads to situations where adults, their families and their representatives experience significant legal uncertainty as to what rules will apply to their case and as to the outcome of the procedures and formalities they need to undertake. To ensure that their protection continues to be effective across borders or that they have access to their rights abroad, they often have to go through long and expensive proceedings. In some instances, their protection and the powers entrusted in their representative are ultimately not recognised, either by courts or by non-judicial actors such as banks, medical staff or real estate agents.

On 13 January 2000, under the auspices of the Hague Conference on Private International Law (HCCH), the intergovernmental organisation whose purpose is 'to work for the progressive unification of the rules of private international law'¹, the Convention on the International Protection of Adults (HCCH 2000 Protection of Adults Convention) was adopted. This Convention provides a comprehensive body of rules on jurisdiction, applicable law, recognition and enforcement of protective measures, and provisions on the law applicable to powers of representation which give effect to such powers in a cross-border context. It also establishes mechanisms of cooperation between the competent authorities of Contracting States and between Central Authorities of Contracting States.

This Convention is widely considered as an efficient and flexible private international law instrument that is fit for purpose at global level. The recent work carried out under the Special Commission on the practical operation of the HCCH 2000 Protection of Adults Convention² will soon provide practitioners with useful tools for its proper application, such as a Practical Handbook.

¹ Article 1 of the [Statute](#) of the Hague Conference.

² <https://www.hcch.net/en/news-archive/details/?varevent=884>

However, only 12 EU Member States are currently party to that Convention³. Ratification of and accession to the HCCH 2000 Protection of Adults Convention by all Member States is a long-standing EU objective.

Since 2008, the HCCH 2000 Protection of Adults Convention has been explicitly endorsed by the Council of the European Union⁴, the European Parliament⁵, and the European Commission⁶. Broad ratification of the HCCH 2000 Protection of Adults Convention by Member States, and beyond, is essential for its effective operation. Parliament has actively supported the ratification of the Convention by all Member States, as well as a possible EU legislative initiative to complement the HCCH 2000 Protection of Adults Convention.

From 5 to 8 December 2018, the Commission and the HCCH organised an international joint conference to promote the ratification of the HCCH 2000 Protection of Adults Convention and examine possible shortcomings that would require further action⁷.

On 3 May 2021, the Ministers of Justice of Czechia, France and Slovenia wrote to the Commission to request that the Commission speed up its preparatory work on a legislative initiative.

In June 2021, Council conclusions⁸ were adopted which, inter alia, invited Member States to ratify the HCCH 2000 Protection of Adults Convention as swiftly as possible and prompted the Commission to consider the possible need for a legal framework within the EU to

³ Belgium, Czechia, Germany, Estonia, Greece, France, Cyprus, Latvia, Malta, Austria, Portugal and Finland.

⁴ In the Council Conclusions ‘Legal Protection for Vulnerable Adults’ (14667/08 (Press 299), 24.X.2008), the Council invited Member States that had not already done so ‘*to begin as quickly as possible or to actively continue with procedures for [...] signature and / or ratification*’ of the HCCH 2000 Protection of Adults Convention and invited Member States ‘*which are still engaged in domestic consultations [with respect to joining the HCCH 2000 Protection of Adults Convention] to conclude those consultations as soon as possible*’. In addition, in its conclusions on the ‘Stockholm Programme – An open and secure Europe serving and protecting citizens’, adopted in 2009, the European Council expressed the wish that Member States join the HCCH 2000 Protection of Adults Convention ‘*as soon as possible*’.

⁵ See ‘Cross-border implications of the legal protection of adults’ (P6_TA(2008)0638), the European Parliament resolution of 18 December 2008 with recommendations to the Commission on cross-border implications of the legal protection of adults (2008/2123(INI)) (2010/C 45 E/13). In paragraphs 1-4, the resolution called for the ratification of the HCCH 2000 Protection of Adults Convention by Member States and requested that the Commission make a legislative proposal on the strengthening of cooperation between Member States, to summarise operational issues and best practices in relation to the HCCH 2000 Protection of Adults Convention, and to assess the possible accession of the European Community as a whole to the Convention. It is to be noted that Parliament’s 2008 Resolution asked the Commission to present a proposal ‘*as soon as sufficient experience of the operation of the Convention has been acquired*’. A further Resolution was adopted by the European Parliament on 1 June 2017 calling on Member States to sign and ratify the HCCH 2000 Protection of Adults Convention and to promote self-determination for adults by introducing into their national law legislation on mandates in anticipation of incapacity.

⁶ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Delivering an area of freedom, security and justice for Europe’s citizens - Action Plan Implementing the Stockholm Programme, Brussels, 20.4.2010, COM(2010) 171 final. Paragraph 13 of the 2010 action plan for implementing the Stockholm Programme, under the heading of ‘Ensuring the protection of fundamental rights / Vulnerable Groups,’ refers to European Union Member States becoming party to the HCCH 2000 Protection of Adults Convention.

⁷ EC-HCCH Joint Conference on the Cross-border Protection of Vulnerable Adults, Brussels, 5-7 December 2018, <https://www.hcch.net/en/news-archive/details/?varevent=654>.

⁸ [Council Conclusions on the protection of vulnerable adults across the European Union](#) (7 June 2021).

facilitate the circulation of protection measures and present, if necessary, legislative proposals.

In 2021-2022, the Portuguese, French and Czech Presidencies organised various events to raise awareness on this issue.

Notwithstanding these activities, the ratification pace of the Convention is still too slow. In some Member States, the draft law implementing the ratification has been pending for years in parliament, or it has not been submitted by the government notwithstanding the conclusion of the preparatory work. Other Member States are applying the Convention partially in practice (in particular the rules on jurisdiction and applicable law) without taking any initiative to formally ratify the Convention. This would imply the appointment of a Central Authority in order to render effective the cooperation among Contracting States.

Against this backdrop, the Commission has decided to present an initiative aimed at authorising those Member States not yet Party to the Convention to ratify or accede to it. Reference to this initiative is made in the Commission Work Programme 2022: *'We will propose measures [...] to strengthen judicial cooperation on the protection of vulnerable adults in cross-border situations.'*

As the HCCH 2000 Protection of Adults Convention is open for signature and ratification to States which were Members of the Hague Conference on Private International Law on 2 October 1999⁹ (Article 53 of the Convention), the following Member States will have to both sign and ratify the Convention: Bulgaria, Spain, Croatia, Hungary, Romania, Slovenia, Slovakia, and Sweden. Conversely, Ireland, Italy, Luxembourg, Netherlands and Poland will only have to ratify the Convention as they have already signed it. Lithuania will have to accede to it, as it has been a Member of the Hague Conference on Private International Law since 23 October 2001.

- **Consistency with existing policy provisions in the policy area**

There is currently no EU legislation on cross-border protection of adults. However, the present proposal is part of a package with a Commission proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures, authentic instruments and powers of representation and cooperation in civil matters relating to the protection of adults. The proposal provides for the application in Member States of some of the rules of the HCCH 2000 Protection of Adults Convention and lays down complementary rules to facilitate an even closer intra-EU cooperation in this area.

The present proposal concerns ratification and accession for those Member States not yet Party to the HCCH 2000 Protection of Adults Convention, which is the only international instrument dealing with private international law issues concerning the cross-border protection of adults.

⁹ Article 53:

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.
- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Both proposals concern private international law, a well-developed policy area within the EU. Indeed, since 2000, the EU has adopted a number of legislative acts in the area of judicial cooperation in civil matters having cross-border implications. However, none of these legislative acts govern the cross-border aspects of legal capacity of persons¹⁰ or the protection of adults who, ‘by reason of an impairment or insufficiency of their personal faculties’¹¹, are not in a position to protect their interests.

The proposed Regulation would apply in Member States, while the HCCH 2000 Protection of Adults Convention would be applicable vis-à-vis non-EU States that are Contracting States to the Convention. Since adults in the EU may have relations in respect of both Member States and non-EU States (for instance owning property there or having personal links there), a coherent private international law framework applicable to the protection of adults in both the EU and non-EU States that are party to the Convention is crucial for ensuring the protection of adults in international situations.

Both proposals are thus complementary to each other and for this reason are presented together.

- **Consistency with other Union policies**

The EU and its Member States are parties to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which, since its adoption in 2006, represents the international foundation for the rights of people with disabilities.

Article 3(c) of the HCCH 2000 Protection of Adults Convention contains provisions allegedly favouring or condoning substituted decision-making measures (mostly because of the use of the term ‘guardianship, curatorship and analogous institutions’). The question has been raised whether this could favour or allow the recognition of measures establishing substituted decision-making rather than supported decision-making, and whether it would infringe the right to autonomy and equality of adults.

The consistency and complementarity of the HCCH 2000 Protection of Adults Convention with the rights laid down in the UNCRPD has been recognised on several occasions, for instance in the Conclusions and Recommendations (conclusions 2 and 3) adopted at the above-mentioned EC-HCCH Joint Conference in 2018¹².

The HCCH 2000 Protection of Adults Convention is a private international law instrument. It is neutral with regard to material law, which does not prescribe any type of measures, and, in its preamble, it puts the interest of the adult and the respect of their dignity and autonomy as primary considerations. By facilitating cross-border cooperation and removing legal and practical barriers, it furthers some important objectives of the UNCRPD. Among these are those of Article 12 on equal recognition before the law and of Article 32 on international cooperation, for which the HCCH 2000 Protection of Adults Convention establishes a system of Central Authorities.

In addition, not all people with a disability are adults in need of a cross-border protection within the meaning of the HCCH 2000 Protection of Adults Convention, but only those who

¹⁰ The only exception is a rule on the capacity of natural persons in the context of cross-border contractual obligations in civil and commercial matters laid down in Article 13 of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

¹¹ Article 1(1) of the HCCH 2000 Protection of Adults Convention.

¹² [88f10f24-81ad-42ac-842c-315025679d40.pdf \(hcch.net\)](https://www.hcch.net/doc/88f10f24-81ad-42ac-842c-315025679d40.pdf)

are not in a position to protect their personal or financial interests. Conversely, not all adults whose psychosocial faculties are diminished are people with disability.

It is also worth recalling that the UNCRPD Committee, in its 2015 report on the implementation of the UNCRPD in the EU, expressed concerns as to barriers faced by people with disabilities when moving from one Member State to another. The Committee recommended that the EU ‘takes immediate action to ensure that all persons with disabilities and their families can enjoy their right to freedom of movement on an equal basis with others’¹³.

A legal study was commissioned by the Special Rapporteur on the rights of persons with disabilities¹⁴, and a related joint statement¹⁵ was made by the Special Rapporteur on the rights of persons with disabilities and the Independent Expert on the enjoyment of all human rights by older persons. These have clarified the issue by concluding that the HCCH 2000 Protection of Adults Convention leaves enough room for interpretation and practical improvements, and it can evolve to reflect the modernisation of national laws. The Special Rapporteur recalls that the HCCH 2000 Protection of Adults Convention contains provisions to avoid any conflict with the UNCRPD and that both instruments can and should supplement each other. The EU and all its Member States have to use the available room for interpretation in such a way as to ensure compliance with that Convention.

When applying the HCCH 2000 Protection of Adults Convention, the Contracting States that are also Parties to the UNCRPD are bound to respect the UNCRPD and the principles set out in it. It is also settled case law of the Court of Justice of the European Union that international conventions form an integral part of Union law so that their implementation must comply with the principle of proportionality, as a general principle of Union law¹⁶.

In March 2021, the Commission adopted the Strategy for the Rights of Persons with Disabilities 2021-2030¹⁷. This addresses in particular the issue of ‘improving access to justice, legal protection, freedom and security’ for people with disabilities. To achieve this outcome, among the various initiatives, it is explicitly stated that *‘the Commission will work with Member States to implement the 2000 Hague Convention on the international protection of vulnerable adults in line with the UNCRPD, including by way of a study on the protection of vulnerable adults in cross-border situations, notably those with intellectual disabilities, to pave the way for its ratification by all Member States’*¹⁸.

The Commission legal study was carried out in 2021¹⁹ and, inter alia, reached the conclusion that the ratification of the HCCH 2000 Protection of Adults Convention by all Member States would address some of the problems linked to the significant gaps and inconsistencies, which exist in the cross-border protection of adults.

¹³ Concluding observations on the initial report of the European Union: Committee on the Rights of Persons with Disabilities, (2015) draft prepared by the Committee.

¹⁴ Study on [‘Interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the UN Convention on the Rights of Persons with Disabilities \(CRPD\)’](#).

¹⁵ [Joint statement by the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, and the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler – Reflections on the Hague Convention \(2000\) on the International Protection of Adults](#), 8 July 2021.

¹⁶ See, e.g., order of 9 November 2021, Case C-255/20, *Agenzia delle dogane e dei monopoli – Ufficio delle Dogane di Gaeta v Punto Nautica Srl*, para. 33, ECLI:EU:C:2021:926.

¹⁷ [Strategy for the rights of persons with disabilities 2021-2030](#)

¹⁸ See paragraph 5.1 of the Strategy.

¹⁹ [Study on the cross-border legal protection of vulnerable adults in the Union](#), Publications Office of the Union(europa.eu)

Once this Decision is adopted by the Council, the HCCH 2000 Protection of Adults Convention will become part of Union law. It may thus be interpreted by the Court of Justice of the European Union in the light both of the general principles of the EU - safeguarding the free movement of people, access to justice, and full respect of fundamental rights - and of the UNCRPD.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal regards the authorisation of certain Member States to ratify or accede to an international convention in the interest of the EU. Judicial cooperation in civil and commercial matters is governed by Article 81 TFEU, which is thus the legal basis of EU competence in this area. Therefore, the applicable legal basis is Article 218(6) of the Treaty on the Functioning of the European Union (TFEU) in conjunction with the substantive legal basis of Article 81(2) TFEU.

Article 81(3) TFEU is not applicable because the cross-border protection of adults is not a family law matter.

The term ‘family law’ within the meaning of Article 81(3) TFEU must be interpreted autonomously regardless of the definition provided for in the national legislation of Member States.

So far, EU legislation has construed the notion rather strictly and has limited it to the rules governing family relationships, such as matrimonial matters, parental responsibilities or maintenance obligations.

It is not uncommon that vulnerable adults benefit from protection provided by family members. In some Member States, the legal protection of vulnerable adults is attributed, as a matter of law, to the spouse or to family members. However, the adult’s family, if indeed the adult has a family, is merely one of the contexts in which protection can be ensured. The involvement of family members is not a necessary requirement, nor is it governed by rules under private international law. Instead, the crucial concern in adult protection is the support provided, and ensuring the adult’s rights to dignity, self-determination, non-discrimination and social inclusion, regardless of his or her family relations.

It is to be noted that the HCCH 2000 Protection of Adults Convention does not contain any reference to family relationships (such as ‘parent’, ‘children’ or ‘spouse’), contrary to the EU Regulations covering family law matters.

The proposed Regulation will complement the HCCH 2000 Protection of Adults Convention and will incorporate some rules of the Convention, in particular those on international jurisdiction and applicable law, making them directly applicable in Member States.

Therefore, pursuant to established jurisprudence of the CJEU, there is a risk that the HCCH 2000 Protection of Adults Convention may affect or alter the scope of the proposed Regulation.

The scope of Union rules may be affected or altered by international commitments where such commitments are concerned with an area which is already covered to a large extent by such rules or in light of foreseeable developments of Union law, as in the present case.²⁰

Therefore, the HCCH 2000 Protection of Adults Convention falls within the exclusive competence of the Union in accordance with Article 3(2) TFEU.

The EU therefore may authorise Member States to become or remain parties to the HCCH 2000 Protection of Adults Convention.

As only States can become parties to the Convention, which does not contain a clause that would allow the EU to become a party, Member States can ratify or accede to it as well as remain parties acting in the Union's interest, pursuant to the settled jurisprudence of the Court of Justice of the European Union²¹.

A similar initiative was already taken in 2008 to authorise certain Member States to ratify or accede to the HCCH 1996 Convention on the Protection of Children²².

By reason of Protocol No 21, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, legal measures adopted in the area of justice do not bind or apply in Ireland. However, once a proposal has been presented in this area, Ireland can notify its wish to take part in the adoption and application of the measure and, once the measure has been adopted, it can notify its wish to accept that measure.

In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

• **Proportionality**

The present proposal is drafted along the lines of already adopted Council Decisions authorising Member States to join an international convention. It does not go beyond what is necessary to achieve the objective of a coherent EU action in the matter of cross-border protection of adults by ensuring, for Member States not yet Party to the Convention, that they ratify or accede to the HCCH 2000 Protection of Adults Convention within a given time frame.

It is also understood that Member States retain their competence as regards regulation of the adoption of rules under substantive law directed at the protection of adults.

The proposal therefore respects the principle of proportionality.

²⁰ See in particular Opinion 1/13 paragraphs 73 and 74 and cited case law.

²¹ Opinion 1/13 of the Court of Justice of the European Union, paragraph 44, and cited jurisprudence.

²² Council Decision of 5 June 2008 authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law, OJ L151, 11.6.2008, p. 36.

- **Choice of the instrument**

As the proposal concerns an international agreement to be ratified and acceded to in the interest of the Union by certain Member States, the only instrument applicable is a Council Decision, pursuant to Article 218(6).

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal, together with the parallel proposal for a Regulation on the matter, was preceded by intense and broad consultations with stakeholders.

The **open public consultation**²³ and the **call for evidence**²⁴ were carried out in early 2022. A majority of respondents, including Member States and professional organisations representing lawyers and notaries, supported an EU initiative that would oblige Member States to ratify the HCCH 2000 Protection of Adults Convention. They also called for an EU instrument supplementing the Convention. One NGO, an umbrella organisation for the protection of the rights of persons with disabilities, expressed concerns regarding the fundamental rights of adults with disabilities, if an EU instrument would favour the circulation of decisions taken in violation of UNCPRD and the fundamental rights of adults with disabilities. This is a recurring question concerning the relationship between the UNCPRD and the HCCH 2000 Protection of Adults Convention, which has been addressed by the study and joint statement mentioned under footnotes 14 and 15.

As part of the consultation strategy, an **informal online meeting with stakeholders** was organised on 29 September 2022. Moreover, on 27 October 2022, the Commission organised an **online meeting with experts from Member States** to provide information about the initiative on the protection of adults and to exchange initial views.

Finally, during the meeting held on 7 and 8 November 2022, the **European Judicial Network in civil and commercial matters** (EJN-civil) was consulted on its possible role in a future initiative.

To sum up, strong support and overall positive feedback on the HCCH 2000 Protection of Adults Convention could be identified in all consultation activities. Furthermore, the consultations showed a practical need, and support by most stakeholders, for additional measures at EU level.

- **Collection and use of expertise**

A **legal study**²⁵ was carried out in 2021. The authors of the study reached the following conclusions: (i) significant gaps and inconsistencies exist in the cross-border protection of vulnerable adults (rules on jurisdiction, recognition of powers of representation, absence of legal certainty and practical problems for authorities); (ii) the general ratification of the HCCH 2000 Protection of Adults Convention in the EU would directly address some of those

²³ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12965-Civil-judicial-cooperation-EU-wide-protection-for-vulnerable-adults_en

²⁴ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12965-Civil-judicial-cooperation-EU-wide-protection-for-vulnerable-adults/public-consultation_en

²⁵ [Study on the cross-border legal protection of vulnerable adults in the Union, Publications Office of the Union \(europa.eu\)](#)

problems, both between Member States and with non-EU States; and (iii) an EU instrument would further strengthen the protection of vulnerable adults and facilitate their lives and the work of responsible authorities.

Additional expertise on the topic of cross-border protection of adults was also gathered in the study accompanying the European Parliament's Legislative Initiative Report²⁶ (2016) and in the European Law Institute Report²⁷ (2020).

- **Impact assessment**

An impact assessment was carried out in 2022 to explore the various policy options available within the EU to improve the cross-border protection of adults and to assess their impact.

As this proposal only concerns the ratification of and accession to the HCCH 2000 Protection of Adults Convention by certain Member States, a more detailed explanation of the findings of the impact assessment will be given in the accompanying proposal for a Regulation. It is appropriate to limit the current analysis to the indication of the final policy choice.

This includes a Regulation complementing the Convention, and the ratification of and accession to the Convention by those Member States not yet Party to it. It would ensure that appropriate Private International Law rules for the protection of adults in cross-border situations would be applicable not only at EU level, but also between Member States and non-EU States. It is also expected that the ratification by all Member States would encourage more non-EU States to join the Convention.

- **Fundamental rights**

The general objective of the proposed action is to protect the fundamental rights of adults in line with Article 6 TFEU, the Charter of Fundamental Rights of the European Union and the UNCRPD.

In cross-border situations, this would entail in particular preventing dispossession or denial of access to the adult's property abroad, ensuring access to justice, and ensuring self-determination and autonomy of the adults.

By harmonising rules of private international law, the HCCH 2000 Protection of Adults Convention connects different legal systems to facilitate, within the scope of the Convention, non-discriminatory respect for the rights of adults, protection of their interests, and the exercise of their legal capacity.

The preamble of the Convention reflects these values: it affirms that respect for both the dignity and the autonomy of the adult are to be primary considerations. Such priorities are also established in the preamble of the UNCRPD.

Under the rules of the Convention, if a measure of protection is taken in one Contracting State by a competent authority, that measure should continue to have effect in another Contracting State, for instance if the adult happens to move from one Contracting State to another. The Convention also includes safeguards that allow for the measures not to be recognised or enforced if, for example, the measure was taken by an authority whose jurisdiction was not based on, or was not in accordance with, one of the grounds provided for by the Convention,

²⁶ [Protection of Vulnerable Adults – European Added Value Assessment](#)

²⁷ [The Protection of Adults in International Situations, report of the European Law Institute.](#)

or if the recognition of the measure would be contrary to the public policy of the requested State²⁸. In this context, non-compliance with the fundamental rights of the adult concerned by the measure could justify refusal of recognition.

4. BUDGETARY IMPLICATIONS

The proposed decision has no budgetary implications for the European Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

As the proposal concerns the authorisation of certain Member States of the European Union to ratify or accede to the HCCH 2000 Protection of Adults Convention, the monitoring of its implementation is primarily aimed at the respect by those Member States of the time frame to ratify or accede to the Convention, in line with the Council Decision.

However, once all Member States are Party to the Convention, it is planned to carry out several actions to raise awareness of the Convention and to ensure its correct application. In addition, coordinated EU positions will be adopted as part of preparation for future Special Commissions on the operation of the Convention; this will allow the EU to monitor the implementation of this instrument by Member States.

²⁸ See Article 22 of the HCCH 2000 Protection of Adults Convention for a list of the grounds available to a competent authority to refuse, on a discretionary basis, recognition and enforcement of a measure.

Proposal for a

COUNCIL DECISION

authorising Member States to become or remain parties, in the interest of the European Union, to the Convention of 13 January 2000 on the International Protection of Adults

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) in conjunction with Article 218(6), point (a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) The Union has set itself the objective of creating, maintaining and developing an area of freedom, security and justice in full respect of fundamental rights in which the free movement of persons and access to justice are ensured.
- (2) To fulfil this objective, the Union has adopted a number of legislative acts in the area of judicial cooperation in civil matters having cross-border implications. The Union is also Party, in its own right or through its Member States acting in the interest of the Union, to several international Conventions in the same field.
- (3) However, there is no Union legislation in the matter of the cross-border protection of adults, who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests, or who may require that the support in the exercise of their legal capacity provided to them in one Member State continues across the Union.
- (4) Various difficulties may arise for the adults in cross-border situations, including where those adults move to another Member State or when they own property or assets in another Member State. Difficulties may arise for instance where measures taken in one Member State with a view to protecting the adults need to be invoked in another Member State, or where powers of representation granted by the adults to be exercised by their representatives when the adults are not in a position to protect their interests need to be later invoked abroad. Those difficulties can have serious adverse consequences on legal certainty in cross-border dealings and on the rights and wellbeing of the adults and on respect for their dignity. In particular, fundamental rights of the adults, such as access to justice, the right to self-determination and autonomy, the right to property and to free movement, may be negatively affected.
- (5) Uniform private international law rules governing cross-border situations are thus necessary to enhance the protection of fundamental rights of adults with an impairment or insufficiency of their personal faculties. At international level, the Convention of 13 January 2000 on the International Protection of Adults ('HCCCH 2000 Protection of Adults Convention') includes such rules. The Convention provides

¹ OJ C , , p. .

for rules on jurisdiction, applicable law, recognition and enforcement of measures for the protection of those adults, on applicable law for powers of representation and rules on cooperation among authorities of its Contracting Parties.

- (6) Pursuant to the HCCH 2000 Protection of Adults Convention, only sovereign States may be party to it. For that reason, the Union may not conclude that Convention.
- (7) The ratification of and the accession to the HCCH 2000 Protection of Adults Convention by all Member States is a long-standing objective pursued by the European Union.
- (8) To date Belgium, the Czech Republic, Germany, Estonia, Greece, France, Cyprus, Latvia, Malta, Austria, Portugal, and Finland are Party to the HCCH 2000 Protection of Adults Convention. Ireland, Italy, Luxembourg, Netherlands and Poland have only signed it.
- (9) On [...], the Commission submitted a legislative proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of measures, authentic instruments and powers of representation and cooperation in civil matters relating to the protection adults (the ‘proposed Regulation’). The proposal provides for the application of some of the rules of the HCCH 2000 Protection of Adults Convention between Member States and lays down complementary rules in order to facilitate an even closer intra-EU cooperation in this area. The provisions of the proposed Regulation overlap and are in close connection with the HCCH 2000 Protection of Adults Convention.
- (10) For this reason, there is a risk that the HCCH 2000 Protection of Adults Convention may affect or alter the scope of the proposed Regulation. Therefore, the HCCH 2000 Protection of Adults Convention falls within the exclusive competence of the Union in accordance with Article 3(2) of the Treaty on the Functioning of the European Union.
- (11) The Council should therefore authorise the Member States not yet parties to the HCCH 2000 Protection of Adults Convention to sign, ratify, or accede to, the Convention in the interest of the Union, under the conditions set out in this Decision. The Council should also authorise the Member States that are parties to the HCCH 2000 Protection of Adults Convention to remain parties thereto.
- (12) The Union and its Member States are parties to the United Nations Convention on the Rights of Persons with Disabilities (‘UNCRPD’).
- (13) Under the Treaty on European Union and the Treaty on the Functioning of the European Union, the competence to adopt substantive and procedural rules in the area of the protection of adults lies with the Member States. As contracting Parties to the UNCRPD, Member States are to ensure that their national substantive and procedural laws on the treatment of adults are consistent with the human rights obligations provided by the UNCRPD, including the measures of “guardianship” and “curatorship” as well as incapacitation as referred to in Article 3 of the HCCH 2000 Protection of Adults Convention.
- (14) The rules of the HCCH 2000 Protection of Adults Convention should be applied consistently with the human rights obligations under the UNCRPD.
- (15) The non-respect of this obligation should also affect the recognition and enforcement by Member States of measures taken by third countries.
- (16) [[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed

to the Treaty on European Union and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.] OR

- (17) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified[, by letter of ...,] its wish to take part in the adoption and application of this Decision
- (18) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

1. The Council hereby authorises Member States to become or to remain parties to the Convention of 13 January 2000 on the International Protection of Adults ('the Convention'), in the interest of the Union, subject to the conditions set out in Articles 2.
2. The text of the Convention is attached to this Decision.

Article 2

Bulgaria, [Ireland], Spain, Croatia, Italy, Lithuania, Luxembourg, Hungary, the Netherlands, Poland, Romania, Slovenia, Slovakia, and Sweden shall take the necessary steps to deposit their instruments of ratification or accession with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, acting in its capacity as a depositary of the Convention, no later than [24 months after the date of adoption of this Decision].

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President