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EUSurvey

Initiative on the cross-border protection of vulnerable adults

Fields marked with * are mandatory.

Introduction

Due to the ageing of the European population, more and more adults **are unable to protect their own interests owing to an impairment or insufficiency of their personal faculties. They are thus vulnerable and need legal protection.** At the same time, people are increasingly mobile in the EU – they move and travel between Member States and own assets in an EU country other than the one in which they usually live. In cross-border cases, the rules vary across Member States as regards which court of which State has jurisdiction, which State's law applies, and what the conditions are for recognition of a foreign decision.

Because of the disparity in rules, vulnerable adults may experience serious delays and legal or practical barriers to having a protection measure or powers of representation recognised when they cross borders within the EU. In addition, due to the lack of common rules for cooperation and language barriers, competent authorities and courts may experience problems in cooperating with the authorities of another Member State when a vulnerable adult has moved or when information from another country is sought.

Currently, there is no EU legislation governing the cross-border legal protection of vulnerable adults. To date, the international convention governing the cases of vulnerable adults in cross-border situations, the 2000 Adults Convention (<https://www.hcch.net/en/instruments/conventions/full-text/?cid=71>) has only been ratified by 10 EU countries.

This survey aims at identifying and quantifying the problems that currently arise in cross-border situations involving vulnerable adults in the EU, and to collect views on potential solutions, including the potential adoption of a proposal on the cross-border protection of adults in the EU.

This survey does not prejudice any EU action or affect the EU's remit of its competences.

When answering this survey, please reply to the questions that are applicable to you or of which you or your organisation have experience.

Below you can find definitions that may help you to complete the survey:

- The 2000 Adults Convention

The 2000 Adults Convention (<https://www.hcch.net/en/instruments/conventions/full-text/?cid=71>) was adopted on 13 January 2000 at the Hague Conference on Private International Law. The Convention deals with the cross-border protection of vulnerable adults in international cases. It lays down a comprehensive set of rules that determine which State the authorities have jurisdiction in to take protection measures and establish which law will be applied. It also ensures the recognition and enforcement of protection measures between the countries that have ratified the convention, and establishes and facilitates cooperation between the authorities of those countries.

- Cross-border case

Cases with cross-border implications are situations and/or judicial or administrative proceedings that are connected to two or more countries. A case with cross-border implications may arise when for instance:

- vulnerable adults or their representatives are in another country, or are nationals of a country other than the one of the courts or competent authorities to which the case is referred;
- powers of representation granted in one country need to be recognised in another country;
- vulnerable adults own assets or are involved in contractual arrangements or legal proceedings in a country other than the country in which they habitually live;
- vulnerable adults who benefit from protection measures taken in one country plan to move to another country, or their placement in an establishment or residential facility in another State is being considered.

- Vulnerable adult

According to Article 1(1) of the 2000 Adults Convention, vulnerable adults are **persons older than 18 years who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests**. The vulnerability of the people concerned may result from various factors, including mental or physical impairments affecting the ability to make decisions or to assess the implications (e.g. the financial implications) of those decisions.

- Protective measures

Protective measures are measures aimed at protecting the person or property of the vulnerable adult. Such protective measures could be imposed on the basis of judicial decisions or the decision of a competent authority.

Protective measures can also result from the operation of law. They include:

- the determination of incapacity and the institution of a protective regime;
- the placing of the adult under the protection of a judicial or administrative authority;
- guardianship, curatorship and similar, including the designation and functions of any person or body having charge of the adult's person or property or representing or assisting the adult (see below under powers of representation);
- the placement of the adult in an establishment or other place where protection can be provided;
- the administration, conservation or disposal of the adult's property;
- the authorisation of a specific intervention to protect the person or property of the adult.

- Powers of representation

Arrangements where adults organise protection in advance for a time when they might be unable to look after their own interests, such as appointing a representative. Powers of representation are also known as private mandates, and different names are used in the EU, such as 'lasting (or enduring) powers of attorney', '*mandats de protection future*', '*Vorsorgevollmachten*'.

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Non-governmental organisation (NGO) 

If you are a legal practitioner, please indicate where you work:

- Judicial authority
- Law firm
- Notary's office
- Other

* First name

Nena 

* Surname

GEORGANTZI 

* Email (this won't be published)

na.georgantzi@age-platform.eu 

* Organisation name

255 character(s) maximum

AGE Platform Europe 

19 out of 255 characters used.

* Organisation size

Small (10 to 49 empl) 

Transparency register number 

255 character(s) maximum



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*

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I. Current Situation and Problems relating to the protection of adults

1. Do you think that the differences between Member States as regards the rules applying to the protection of vulnerable adults in cross-border cases pose a problem?

- Yes, it is a serious problem
- Yes, it is a somewhat serious problem
- Yes, but the problem is not serious
- No, there is no such problem
- I don't know
- Other

2. Are you aware of any instance(s) where vulnerable adults faced problems in having their rights protected in another Member State?

- Yes
- No
- I don't know
- Other

Please specify

500 character(s) maximum

AGE does not provide legal services/aid. But we are concerned that the ratification and implementation of the Hague convention would allow the continuation of practices that are prohibited by the UNCPRD, including guardianship and involuntary placement and treatment.

269 out of 500 characters used.

3. In instances where their rights were not adequately protected in another Member State, what were the types of problems encountered?

- Language barriers
- Difficulties in knowing which Member State's court or competent authority has jurisdiction
- Parallel proceedings in two different Member States
- Difficulties in knowing which Member State's law should be applied
- Difficulties in having a protection measure recognised by the authorities of a Member State (courts, notaries, social services, etc.)

- Difficulties in having a protection measure accepted by private persons or companies (including banks, medical staff etc.)
- Difficulties in having powers of representation recognised or accepted in another Member State
- When establishing powers of representation, it is impossible to choose in advance which Member State's court or competent authorities will have jurisdiction
- New legal proceedings are required after the vulnerable adult has moved to another Member State (e.g., need for a second medical assessment, or need for another protective measure)
- Information on the legislation or the competent authorities of another Member State is not available, or not available in my language
- Additional costs arose because of the cross-border proceedings
- Costs arising in the cross-border proceedings are not covered by legal aid
- I don't know
- Other

Please specify

500 character(s) maximum

legal, technological and physical accessibility barriers, lack of legal aid and independent advocacy services

109 out of 500 characters used.

4. Are you aware of breaches of the fundamental rights of vulnerable adults that have occurred in a cross-border case, in particular of the following fundamental rights:

- Autonomy and right to make one's own choice
- Legal capacity on an equal basis
- Access to justice
- Liberty of movement and nationality
- Health
- I don't know
- Other

5. In your opinion, how has the number of protective measures taken for vulnerable adults evolved over the past 5 years in your country?

- The number of protective measures has decreased
- The number of protective measures has increased
- The number of protective measures has remained more or less the same
- I don't know

6. In your opinion, how has the number of powers of representation (private mandates) evolved over the past 5 years in your country?

- The number of powers of representation has decreased
- The number of powers of representation has increased
- The number of powers of representation has remained more or less the same
- I don't know

7. In your opinion, how has the number of cross-border cases involving the protection of vulnerable adults evolved over the past 5 years in your country?

- The number of international cases has decreased
- The number of international cases has increased
- The number of international cases remained more or less the same

- I don't know

8. Are you aware of any instance where competent authorities (courts, notaries, other public bodies in charge of the protection of vulnerable adults) or lawyers have faced specific problems in a cross-border case involving the protection of adults?

- Yes
 No
 I don't know

9. What are the main challenges encountered by the competent authorities (courts, notaries, other public bodies in charge of the protection of vulnerable adults) and lawyers face in your country in cross-border cases:

- Difficulties in accessing or understanding information on the substantial or procedural law of another country
 Uncertainty regarding the validity of legal documents
 Lack of digitalisation leading to, for instance, cumbersome paper requests or postal mail delays, or non-recognition of electronic documents
 Difficulties in identifying the correct point of contact/legal professionals in the other country
 Language barriers
 Legal aid does not cover part or all of the costs of the cross-border procedure
 I don't know / No reply
 Other

II. Possible EU action on the cross-border protection of vulnerable adults between Member States

A. Type of legislative act

10. In your opinion, would vulnerable adults be better protected in cross-border cases if the 2000 Adults Convention, which lays down common rules to resolve conflicts of jurisdiction, conflicts of laws and to organise judicial cooperation, were to be in force in all EU Member States?

- Yes
 No
 I don't know

11. The EU should adopt legislation to oblige Member States to ratify the 2000 Adults Convention in a limited timeframe: what do you think?

- Fully agree
 Somewhat agree
 Neither agree nor disagree
 Somewhat disagree
 Fully disagree
 I don't know

12. In your opinion, should the EU play any other role in facilitating the ratification of the 2000 Adults Convention by all Member States?

- Yes – it should promote the 2000 Adults Convention, for example by organising high-level conferences or seminars
 Yes – it should raise awareness of the problems faced by vulnerable adults in cross-border cases, through recommendations or promotion campaigns
 No, it should not play any other role

Other role

13. The EU should adopt specific European legislation to facilitate cross-border protection of vulnerable adults: what do you think?

- Fully agree
 Somewhat agree
 Neither agree nor disagree
 Somewhat disagree
 Fully disagree
 I don't know

14. In your opinion, should the EU play any other role in facilitating cross-border protection of adults (apart from the general ratification of the 2000 Adults Convention)?

- Yes – it should promote cooperation on the matter between national authorities, for example through campaigns, judicial trainings or thematic meetings under the European Judicial Network in Civil and Commercial matters
 Yes – it should issue guidance
 Yes – it should raise citizens' awareness of the existing problems with cross-border protection of vulnerable adults
 No – it should not play any other role
 Other role

Please specify

500 character(s) maximum

- The EU should develop measures to facilitate the abolishment of substituted decision-making in all EU Member States, as well as to end coercive treatment and placement, and develop supported decision-making regimes
- The EU should issues guidelines for EU Member States on cross-border protection on "vulnerable adults" based on the CRPD
- The EU should consult and involve organisations of persons with disabilities and older persons on issues of "vulnerable adults"

474 out of 500 characters used.

B. Features of possible EU legislation

15. If the EU adopts legislation to more effectively protect vulnerable adults in cross-border cases, which option is most appropriate in your opinion?

- The EU instrument should regulate all issues that might arise in cross-border cases (jurisdiction, applicable law, recognition and enforcement, and cooperation between authorities)
 The EU instrument should only complement the 2000 Adults Convention by strengthening cooperation in specific matters (e.g., the abolition of exequatur; the digitalisation of cooperation)
 I don't know
 Other role

Please specify

500 character(s) maximum

See above

9 out of 500 characters used.

16. What would be the most appropriate procedure to facilitate the recognition and enforcement of a protective measure?

- The grounds for non-recognition of a protective measure should be limited as much as possible
- Exequatur should be abolished (protective measures enforceable in a Member State are enforced in another Member State under the same conditions as a protective measure taken in that Member State)
- Other

Please specify

500 character(s) maximum

Protective measures that allow for substituted decision making, guardianship, involuntary placement or treatment and/or consider adults as inherently vulnerable and in need of protection must be abolished. CRPD standards should be applied to prevent conflict on international law provisions

291 out of 500 characters used.

17. What would the most appropriate measure(s) be to accommodate the needs of vulnerable adults or their representatives in cross-border cases, in particular when they travel or manage assets in another Member State?

- The competent court or authority issues a multilingual certificate or extract accompanying the protective measure and reflecting its content
- Vulnerable adults or their representative can request a multilingual certificate of representation establishing the scope of the legal representation
- Information on the national laws and the competent authorities of all Member States is made available online in all EU languages
- People involved in cross-border protection proceedings can refer the matter to the competent authority (including central authorities) or courts directly by completing a multilingual form online
- The provision of legal aid is facilitated in cross-border cases
- Other opinion

Please explain

1000 character(s) maximum

See above - in accordance with CRPD standards

45 out of 1000 characters used.

18. Should it be made possible for individuals, when establishing powers of representation, to decide in advance which Member State's court will have jurisdiction?

- Yes
- No
- I don't know
- Other

Please specify

500 character(s) maximum

While useful, powers of representation may also risk rights violations. In some cases the person may have changed or change their mind the moment the measure is put in place. It is crucial that the will and preferences of the person is interpreted in the present moment and not only on the basis of what they may have expressed time ago.

338 out of 500 characters used.

19. What would be the most appropriate measure(s) to facilitate cooperation between courts, competent authorities or central authorities in cross-border cases involving the protection of vulnerable adults?

	1 - most appropriate	2	3	4	5	6	7	8	9	10 - least appropriate
Information on the substantive and procedural rules and the competent authorities of all Member States is made available online in all EU languages	<input type="checkbox"/>									
Persons involved in cross-border protection proceedings can refer the matter to the competent authority (including Central Authorities) or courts directly by completing a multilingual form online	<input type="checkbox"/>									
Multilingual standard forms are made available online to facilitate the cooperation between central authorities	<input type="checkbox"/>									
Multilingual standard forms are made available online to facilitate direct communication between competent courts or authorities	<input type="checkbox"/>									
Access to national registries of protection measures is facilitated for the competent authorities	<input type="checkbox"/>									
National registries of protection measures are interconnected	<input type="checkbox"/>									
Competent courts or authorities can submit urgent requests for information (e.g. when urgent medical/financial decisions are required)	<input type="checkbox"/>									
Information on the languages and means of communication accepted in other Member State is made available online	<input type="checkbox"/>									
Communication between competent authorities is fully digitalised	<input type="checkbox"/>									
Other opinion	<input type="checkbox"/>									

C. Impact of possible EU legislation

20. In your opinion, to what extent would an EU initiative facilitating the cross-border protection of vulnerable adults impact the following:

	Very positive impact	Mildly positive impact	No impact	Negative impact	No answer
Vulnerable adults' fundamental rights, such as the right to self-determination, to free movement and access to justice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Vulnerable adults' welfare, including their financial, emotional and psychological wellbeing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

	Very positive impact	Mildly positive impact	No impact	Negative impact	No answer
Legal certainty for vulnerable adults, their relatives and their representative	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Legal certainty for people making arrangements to organise their future protection for the time when they will not be able to protect their interests (powers of representation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Legal certainty for national courts and competent authorities and simplification of their procedures in cross-border cases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Costs, time and burden for vulnerable adults in cross-border legal proceedings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Costs, time and burden for national judicial systems in relation to court proceedings on the protection of vulnerable adults in cross-border cases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Costs, time and burden for competent authorities (notaries, public bodies) when dealing with cross-border cases involving the protection of vulnerable adults	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please add here any other impact you consider relevant:

1000 character(s) maximum

- Measures adopted to deal with conflicts of law and cross-border protection of "vulnerable adults" must be based on the promotion of and compliance with the CRPD. States should prevent the application of legislation by another State in the context of cross-border issues and private international law when it does not comply with international human rights law, including the CRPD.

382 out of 1000 characters used.

Other

21. Please provide here any comment or additional information you would like to share on the cross-border protection of vulnerable adults in the European Union. 

5000 character(s) maximum

Older people may find themselves in a situation of vulnerability in terms of accessing justice, defending their interests, and exercising their human rights. Due to persistent ageism, they are at greater risk of unfair treatment, exploitation, or abuse and exposed to further victimisation, intimidation and retaliation. Cross-border settings can lead to additional obstacles, due to linguistic, technological, legal, administrative, physical accessibility and other barriers. However, we stress that older people are not inherently vulnerable and in need of protection. We need to focus on the barriers such as lack of support (legal aid, independent advocacy services, .etc), and enabling environment (physical or digital barriers, absence of laws, age limits, lack of information and literacy) that create situations of vulnerability.

A key barrier to accessing justice and remedy is the law itself. At EU level, the lack of legal prohibition of age discrimination beyond the field of employment entails that in many countries it is impossible to challenge decisions denying older people insurance or a loan. Additionally, sometimes there are discrepancies in law. For instance, whereas under the UNCRPD institutionalisation is prohibited, international norms merely call for allowing older persons to live at home 'for as long as possible'. Given this caveat, it is more difficult for older persons to access justice in cases of forced placement, coercion or breaches of autonomy.

We call on the EU to:

- Improve information about the law and how to exercise rights, e.g. in case of elder abuse.
- Adopt a rights-based approach in full compliance with the standards of the UNCRPD.
- Help member states accelerate efforts to develop systems that are compliant with the UNCRPD, including for instance through supported decision-making mechanisms. We share concerns that the potential ratification and implementation of the 2000 Hague Convention on the protection of vulnerable adults would allow the continuation of practices that are prohibited by the UNCRPD, including guardianship and involuntary placement and treatment.
- Ensure that all EU legislations and initiatives, including the 2012 EU Directive on Victims' Rights and the EU Victims' Rights Strategy 2020-2025, take into account the specific issues faced by older people and persons with disabilities who are at a higher risk of becoming victims of crime including in cross border settings.

2491 out of 5000 characters used.

Thank you very much for responding to this survey.

For any questions, please send an email to JUST-A1-civil-justice@ec.europa.eu with '**Public consultation on the cross-border protection of vulnerable adults in the European Union**' in the subject line.

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