DRAFT REPORT

with recommendations to the Commission on the protection of vulnerable adults
(2015/2085(INL))

Committee on Legal Affairs

Rapporteur: Joëlle Bergeron

(Initiative - Rule 46 of the Rules of Procedure)
CONTENTS

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION .............................................. 3
ANNEX TO THE MOTION FOR A RESOLUTION DETAILED RECOMMENDATIONS CONCERNING THE SUBSTANCE OF THE REQUESTED PROPOSAL ............................. 8
EXPLANATORY STATEMENT ............................................................................................. 10
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on the protection of vulnerable adults (2015/2085(INL))

The European Parliament,

– having regard to Article 225 of the Treaty on the Functioning of the European Union,
– having regard to Articles 67(4) and 81(2) of the Treaty on the Functioning of the European Union,
– having regard to its resolution of 18 December 2008 with recommendations to the Commission on cross-border implications of the legal protection of adults\(^1\),
– having regard to the European Added Value Assessment of September 2016 drawn up by the European Parliamentary Research Service (PE 581.388),
– having regard to the Hague Convention of 13 January 2000 on the International Protection of Adults (hereinafter referred to as the ‘Hague Convention’),
– having regard to the UN Convention of 13 December 2006 on the Rights of Persons with Disabilities (hereinafter referred to as the ‘UN Convention on the Rights of Persons with Disabilities’),
– having regard to Recommendation No R (99) 4 of 23 February 1999 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapacitated adults (hereinafter referred to as ‘Recommendation No R (99) 4 of the Committee of Ministers of the Council of Europe’),
– having regard to Rules 46 and 52 of its Rules of Procedure,
– having regard to the report of the Committee on Legal Affairs (A8-0000/2016),

A. whereas consideration should be given to the difficulties which the Union and its institutions are currently experiencing; whereas it is essential for the Union to move closer to its citizens and to address matters of direct concern to them;

B. whereas the protection of vulnerable adults is a cross-border issue and therefore concerns all Member States; whereas this issue is symbolic of the role which the Union and its Parliament must play in responding to the problems and difficulties which European citizens encounter in the exercise of their rights;

\(^1\) OJ C 45 E, 23.2.2010, p. 71.
C. whereas the legal protection of vulnerable adults is a human rights issue; whereas every
vulnerable adult, like any European citizen, must be considered to be a holder of rights
and capable of making free and informed decisions within the limits of his or her
capacity, not simply a passive recipient of care and attention;

D. whereas the protection of vulnerable adults must not constitute an obstacle to the right
of free movement of persons,

E. whereas demographic change and increased life expectancy have led to an increase in
the number of elderly people in Europe who can no longer protect their interests by
reason of an impairment or inadequacy of their personal faculties; whereas other
circumstances exist, such as mental and physical disabilities, in which an adult’s
capacity to protect his or her interests can be affected;

F. whereas problems have developed as a result of the increasing movement between
Member States of expatriates and retired persons, including vulnerable and potentially
vulnerable persons;

G. whereas differences exist between the Member States’ legal provisions concerning
jurisdiction, applicable law and the recognition and enforcement of protection measures
for adults; whereas the diversity of applicable laws and the multiplicity of competent
jurisdictions may affect the right of vulnerable adults to move freely and to reside in the
Member State of their choice;

H. whereas differences also persist between the Member States’ legal provisions on
protection measures, despite the progress made in this area in line with
Recommendation No R (99) 4 of the Committee of Ministers of the Council of Europe;

I. whereas Article 1(2)(a) of Regulation (EU) No 1215/2012 of the European Parliament
and of the Council\(^1\) excludes the status and legal capacity of natural persons from the
scope of that Regulation;

J. whereas the Hague Convention constitutes a particularly appropriate set of international
legal rules to address cross-border problems concerning vulnerable adults; whereas,
despite the time which has elapsed since the adoption of this Convention, few Member
States have yet ratified it; whereas this delay in ratifying the Convention is
compromising the protection of vulnerable adults in cross-border situations in the EU;
whereas it is therefore essential, in the interests of efficiency, to act at EU level in order
to guarantee the protection of vulnerable adults in cross-border situations;

K. whereas a vulnerable adult is a person who has reached the age of 18 years and who, by
reason of an impairment or insufficiency of his or her personal faculties, is not in a
position to protect his or her interests;

L. whereas ‘protection measures’ should be taken to mean the measures envisaged in

\(^1\) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12
December 2012 on jurisdiction and the recognition and enforcement of judgments in
Article 3 of the Hague Convention;

M. whereas ‘incapacity mandate’ should be taken to mean the powers of representation granted by an adult with legal capacity by means of an agreement or unilateral act intended to enter into force when that person is no longer in a position to protect his or her interests;

N. whereas consideration should be given to the provisions of the UN Convention on the Rights of Persons with Disabilities; whereas the EU and its Member States are parties to that Convention;

O. whereas when defining its policies the Union must comply with the principle of subsidiarity;

P. whereas Union action in the area of protection of vulnerable adults should seek principally to facilitate the circulation, recognition and enforcement by Member States’ authorities of protection measures for a vulnerable adult taken by the authorities of another Member State, and to enhance communication and cooperation between Member States in this regard;

Q. whereas clear and precise information on national legislation concerning incapacity and protection of vulnerable adults should be made more accessible to citizens so that they can obtain that information and make informed decisions;

R. whereas timely access by the various administrations and authorities concerned to information relating to the legal situation of adults subject to a protection measure or an incapacity mandate could improve and strengthen the protection of such persons;

S. whereas the establishment in each Member State of files or registers listing administrative and judicial decisions prescribing protection measures for a vulnerable adult, as well as incapacity mandates, where such mandates are provided for in the national legislation, could be used to facilitate timely access by all administrations and authorities concerned to information on the legal situation of vulnerable adults and to ensure greater legal certainty; whereas the confidentiality of such registers should be duly guaranteed;

T. whereas protection measures taken by the authorities of one Member State should automatically be recognised in the other Member States; whereas, notwithstanding the foregoing, it may be necessary to establish grounds to refuse recognition in order to safeguard the public policy of the requested state;

U. whereas mechanisms could be introduced to facilitate the recognition, registration and use of mandates in anticipation of incapacity throughout the European Union; whereas a single mandate in anticipation of incapacity form should be created at EU level in order to ensure that such mandates are effective in all the Member States;

V. whereas single EU forms could be introduced to foster the provision of information on protection decisions and the circulation, recognition and enforcement of those decisions; whereas any person who is given responsibility for protecting the person or the property of a vulnerable adult should have the right to be issued with a certificate specifying his
or her status and the powers which have been conferred on him or her; whereas this
certificate should be issued at his or her request within a reasonable period;

W. whereas a decision handed down in a Member State which is enforceable in that
Member State should be enforceable in the other Member States without any
declaration of enforceability being required;

X. whereas mechanisms should be introduced which provide for cooperation among the
Member States with a view to promoting and facilitating communication between the
competent authorities and the forwarding and exchange of information concerning
vulnerable adults; whereas designating a central authority for each Member State, like
the one provided for in the Hague Convention, could be a valid way of helping to
achieve this aim;

Y. whereas certain protection measures proposed by the authorities of a Member State
concerning a vulnerable adult, including the placing of the adult in an establishment
situated in another Member State, could have logistical and financial implications for
another Member State; whereas, in such cases, it would be helpful to set up mechanisms
for cooperation between the authorities of the Member States concerned so that they can
agree on the desirability of sharing the costs of the protection measure;

Z. whereas the existence of such central authorities should not prevent the administrative
and judicial authorities of the Member States from communicating directly with each
other when they regard such communication as more effective;

AA. whereas the time which has elapsed since Parliament adopted its resolution of 18
December 2008 should have enabled the Commission to obtain sufficient information
concerning the functioning of the Hague Convention in the Member States which have
ratified it and to draw up the report called for by Parliament in that resolution;

1. Applauds those Member States which have signed and ratified the Hague Convention,
and encourages those Member States which have not yet signed or ratified it to do so as
quickly as possible;

2. Calls on the Member States to make sure that the protection measures for which their
national law makes provision can be tailored to the circumstances of each vulnerable
adult, so that the competent national authorities can take proportionate individual
protection measures, thereby ensuring that Union citizens are not stripped of a legal
right that they are still capable of exercising;

3. Reminds the Commission and the Member States that not all vulnerable adults are
necessarily vulnerable by virtue of their advanced age, and calls for measures to be
taken to strengthen the legal protection and rights not only of elderly vulnerable adults,
but also of adults who are vulnerable by virtue of a serious mental and/or physical
disability;

4. Urges the Member States to promote self-determination for adults by introducing
legislation on mandates in anticipation of incapacity, drawing on the principles set out
in Recommendation CM/Rec(2009)11 of the Ministerial Committee of the Council of
Europe;
5. Calls on the Member States to pay particular attention to the needs of the most disadvantaged vulnerable adults and to ensure that they do not suffer discrimination as a result of their condition; in that connection, calls on the Member States to ensure that their laws do not impose fees or formalities which would, in an unreasonable way, prevent disadvantaged adults from being the subject of a mandate in anticipation of incapacity, irrespective of their financial situation;

6. Calls on the Commission to fund projects designed to make EU citizens aware of the Member States’ laws on vulnerable adults and protection measures; calls on the Member States to take appropriate steps to provide all persons on their territory with information about their national laws and the services available in the area of the protection of vulnerable adults;

7. Deplores the fact that the Commission has failed to act on Parliament’s call that it should submit to Parliament and the Council in due course a report setting out details of the problems encountered and the best practices noted in connection with the application of the Hague Convention, a report which should also have outlined proposals for Union measures to clarify the procedures, or create new procedures, for applying the convention; takes the view that this report could have included a discussion of the practical problems encountered by the Commission in obtaining information on the application of the Hague Convention;

8. Calls on the Commission to submit to Parliament and the Council, before 31 March 2018, pursuant to Article 81(2) of the Treaty on the Functioning of the European Union, a proposal for a regulation designed to improve cooperation among the Member States and the automatic recognition and enforcement of decisions on the protection of vulnerable adults and mandates in anticipation of incapacity, drawing on the recommendations set out in the annex hereto;

9. Confirms that the recommendations are consistent with fundamental rights and the principle of subsidiarity;

10. Considers that the requested proposal will not have any financial implications for the Union;

11. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council and the governments and parliaments of the Member States.
ANNEX TO THE MOTION FOR A RESOLUTION DETAILED
RECOMMENDATIONS CONCERNING THE SUBSTANCE OF THE REQUESTED
PROPOSAL

A. PRINCIPLES AND AIMS OF THE PROPOSAL

1. Foster the provision of information about administrative and judicial decisions concerning vulnerable adults who are the subject of protection measures as defined by the Hague Convention of 13 January 2000 on the international protection of adults, and facilitate the circulation, recognition and enforcement of such decisions.

2. Set up national files or registers of administrative and judicial decisions setting out protection measures in respect of vulnerable adults, and the relevant mandates in anticipation of incapacity, in order to guarantee legal security and facilitate the circulation of, and prompt access by the competent authorities and judges to, information concerning the legal situation of persons who are the subject of a protection measure.

3. Implement specific and appropriate measures to foster cooperation among the Member States, drawing on the instruments available under the Hague Convention, including the designation of central authorities responsible for facilitating communication among the competent Member State authorities and coordinating the forwarding and exchange of information concerning administrative and judicial decisions in respect of persons who are the subject of protection measures.

4. Ensure that the sharing between Member States of information concerning the protection status of vulnerable adults, and access to files and registers containing details of protection measures and mandates in anticipation of incapacity, is organised in a manner entirely consistent with the protection of the personal data of the adults concerned.

5. Introduce single Union forms designed to foster the provision of information about administrative and judicial decisions in respect of vulnerable adults and the circulation, recognition and enforcement of decisions concerning them. The Commission could draw on the model forms recommended by the Special Commission of a Diplomatic Character of the Hague Conference on Private International Law and included in the proceedings of the session of September-October 1999 on the protection of adults.

6. Grant any person who is given responsibility for protecting the person or the property of a vulnerable adult the right to obtain within a reasonable period a certificate specifying his or her status and the powers which have been conferred on him or her.

7. Foster the automatic recognition in the other Member States of protection measures taken by the authorities of a Member State, without prejudice to the introduction of legal safeguards to protect public order in the States requested.

8. Foster the enforcement in the other Member States of protection measures taken by the authorities of a Member State, without a declaration establishing the enforceability of these measures being required.
9. Foster consultation and coordination among the Member States if the enforcement of a decision proposed by the authorities of a Member State could have logistical and financial implications for another member State, so that the Member States concerned can reach agreement on the sharing of the costs associated with the protection measure. The consultation and coordination should always be conducted in a manner consistent with the interests of the vulnerable adult concerned. The authorities concerned could submit proposals for alternative measures to the competent administrative or judicial authority, on the understanding that the final decision would rest with the authority in question.

10. Introduce single mandate in anticipation of incapacity forms in order to facilitate the use of such mandates by the persons concerned, and the circulation, recognition and enforcement of mandates.

B. ACTION TO BE PROPOSED

1. Calls on the Commission to submit to Parliament and the Council, before 31 March 2018, pursuant to Article 81(2) of the Treaty on the Functioning of the European Union, a proposal for a regulation designed to improve cooperation among the Member States and the automatic recognition and enforcement of decisions on the protection of vulnerable adults and mandates in anticipation of incapacity.
EXPLANATORY STATEMENT

I. Introduction

‘Vulnerable adults’ are physical persons over the age of 18 who are temporarily or permanently in the position of being unable to manage their personal affairs or their property. Most vulnerable adults are elderly people, who are more likely to lose their faculties owing to age-related illnesses. Furthermore, demographic change in Europe has led to an exponential rise in the number of vulnerable adults.

All EU Member States have their own legal frameworks, with differing tools for the protection of vulnerable adults. One of the legal foundations of the European Union is the freedom of movement of persons. Persons already or potentially subject to protection measures in an EU Member State may have cause to move to another Member State. These persons’ property may be located in more than one EU Member State.

There is, however, no uniform legal framework within the European Union enabling vulnerable adults to enjoy proper protection in cross-border situations. This may hinder such adults in exercising their freedom of movement and make it harder to protect their property. Filling this legal gap would enable vulnerable adults to benefit fully from the EU’s principles of free movement and residence instead of facing potential difficulties in protecting their personal affairs and property.

The aim here is certainly not to harmonise the protection measures that exist in each Member State, the establishment of which falls within the sole responsibility of each state, but to put in place a set of legal rules seeking to facilitate the recognition and enforcement of decisions taken in a Member State of the Union by the authorities of other Member States, and to enhance cooperation between the Member States in this area. It is also necessary to establish mechanisms to facilitate the movement and recognition in all Member States of incapacity mandates drawn up in accordance with the law of a Member State.

II. The Hague Adult Protection Convention of 13 January 2000

At international level, the main text currently in force containing rules of international private law on the protection of adults is the Hague Convention of 13 January 2000. The rapporteur considers that this convention contains an appropriate set of rules to address the cross-border problems of vulnerable adults. However, she notes with concern that, 16 years after its adoption, only nine states have signed it and only seven have ratified it.

Whatever the reasons for this low ratification rate, its effect is to weaken and compromise the protection of vulnerable adults in cross-border situations within the EU. The rapporteur takes the view that, in this context, it is essential to act in the interests of efficiency at EU level, so as to guarantee the protection of vulnerable adults in cross-border situations.

The EU’s action in this area should at any event remain consistent with the Hague Convention
of 13 January 2000. In line with the subsidiarity principle, it should seek principally to facilitate the transmission, recognition and enforcement by Member States’ authorities of protection measures for a vulnerable adult, and to enhance communication and cooperation between Member States. It should also facilitate the transmission and recognition of incapacity mandates.

The Union’s action should also be founded on the principles and objectives contained in other international instruments such as the UN Convention of 13 December 2006 on the Rights of Persons with Disabilities, to which the EU is a party. It must also be based on the recommendations of the Committee of Ministers of the Member States of the Council of Europe on the protection of incapable adults and on continuing powers of attorney and advance directives for incapacity.

III. Recognition and automatic enforcement of decisions containing protection measures and introduction of mechanisms to facilitate the recognition of incapacity mandates

The main purpose of the regulation should be to facilitate, throughout the Union, the recognition and enforcement of protection measures taken in one of the Member States, and to that end the rapporteur proposes abolishing the requirement for an enforceability declaration (exequatur) for measures taken in the Member States of the Union. Abolishing exequatur would certainly help in reducing the legal and emotional costs for vulnerable adults encountering problems in a cross-border situation, and in creating greater legal certainty.

‘Protection measures’ should be taken to mean, in particular, the measures envisaged in Article 3 of the Hague Convention, which mentions those concerning: 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 analogous institutions; the designation and functions of any person or body having charge of the adult’s person or property, representing or assisting the adult; 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; and the authorisation of a specific intervention for the protection of the person or property of the adult.

In order to facilitate the recognition and automatic enforcement of decisions taken in another Member State of the Union, and to enhance legal certainty, the rapporteur proposes the creation of standardised forms for the EU, and of a certificate which could be obtained on request by any person who has been entrusted with the protection of a vulnerable person or their property. This certificate would indicate the former person’s status and the powers conferred on him by the national authorities, and could be used before the relevant authorities of any Member State. In drawing up these documents, the Commission could base itself on other existing European forms, and on standard forms recommended by the Special Diplomatic Commission on the protection of adults, which met in September-October 1999.

The rapporteur takes the view that the authorities of the requested state would only be permitted on very restricted grounds to refuse to recognise and enforce a protection measure taken by the authorities of another Member State, in particular the protection of public order in the requested state.
The rapporteur also considers it necessary to promote the recognition and enforcement of incapacity mandates and therefore proposes the creation of standardised forms for these too. Such forms would make it easier for incapacity mandates to be understood and accepted by the authorities of other Member States. The rapporteur is fully aware that the introduction of an incapacity mandate in the Member States’ internal legislation falls within the responsibility of the Member States themselves. However, she takes the view that introducing such a mandate would enhance the self-determination of adults and should therefore be encouraged. At any rate, particular care should be taken to ensure that the most disadvantaged vulnerable adults do not suffer discrimination as a result of their condition. The introduction of the incapacity mandate in all Member States would facilitate the movement and recognition of incapacity mandates drawn up under the law of another Member State.

IV. Communication and cooperation among the authorities of EU Member States

The rapporteur takes the view that, in order to provide better protection for vulnerable adults in cross-border situations, it is essential to improve communication and cooperation between the authorities of the Member States. Designating a central authority for each Member State, like the one provided for in the Hague Convention, could be a valid way of helping achieve this aim. Such central authorities would promote and facilitate communication between the authorities of the state concerned and exchanges of information on vulnerable adults, including information on the current legislation in their state. The existence of such central authorities should not prevent the administrative and judicial authorities of the Member States from communicating directly with each other where such communication could prove useful.

Access to information on vulnerable persons is often complicated, even more so in the case of vulnerable persons in cross-border situations. To facilitate access to such information, the rapporteur proposes the creation in each Member State of files or registers of administrative and judicial decisions prescribing protection measures for a vulnerable adult, as well as of incapacity mandates.

However, access to such files or registers should be restricted. The confidentiality of such registers should be duly guaranteed, and to that end mechanisms need to be created to ensure that access to information contained therein is limited to certain categories of subject and should take place only in duly justified cases. The creation of such files and registers in each Member State should facilitate the work of communication and cooperation between the central authorities. These authorities should have access to the files to enable them to perform their duties effectively.

Certain protection measures envisaged by the authorities of a Member State for a vulnerable adult could have logistical and financial implications for another Member State, particularly the placement of the adult in an establishment in another Member State. The rapporteur takes the view that in such cases it would be helpful to set up cooperation mechanisms between the authorities of the state concerned to enable them to agree on the desirability of sharing the costs of the protection measure. The prime objective of the authorities should be the protection of the interests of the vulnerable person, and they could propose alternative measures to the relevant authority which, at any event, would have the last word on the matter.