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## TEXTS ADOPTED

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### **P8\_TA(2017)0235**

#### **Protection of vulnerable adults**

##### **European Parliament resolution of 1 June 2017 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 the Charter of Fundamental Rights of the European Union, and more particularly Article 3 thereof which guarantees everyone the right to physical and mental integrity, and Article 21 thereof on non-discrimination,
- having regard to its resolution of 18 December 2008 with recommendations to the Commission on cross-border implications of the legal protection of adults<sup>1</sup>,
- 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 ('the Hague Convention'),
- having regard to the UN Convention of 13 December 2006 on the Rights of Persons with Disabilities ('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 incapable adults ('Recommendation No R (99) 4 of the Committee of Ministers of the Council of Europe'),
- having regard to Recommendation CM/Rec(2009)11 of 9 December 2009 of the Committee of Ministers of the Council of Europe on principles concerning continuing powers of attorney and advance directives for incapacity ('Recommendation CM/Rec(2009)11 of the Committee of Ministers of the Council of Europe'),

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<sup>1</sup> OJ C 45 E, 23.2.2010, p. 71.

- having regard to Rules 46 and 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A8-0152/2017),
- A. whereas it is essential for the Union to move closer to its citizens and to address matters of direct concern to them, guaranteeing respect for fundamental rights, without discrimination or exclusion;
  - B. whereas the protection of vulnerable adults exercising their freedom of movement within the Union is a cross-border issue and therefore affects all Member States; whereas this issue demonstrates the importance 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, particularly in cross-border situations;
  - C. whereas the protection of vulnerable adults is closely linked to respect for human rights; whereas every vulnerable adult, like any European citizen, must be considered to be a holder of rights and capable of making free, independent and informed decisions within the limits of his or her capacity, not simply a passive recipient of care and attention;
  - D. whereas the vulnerability of adults and the differing regulations governing their legal protection must not constitute obstacles 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 who by reason of age-related illnesses are not in a position to protect their interests; whereas there are also other circumstances that are independent of age, such as mental and physical disabilities, and that may also be innate, and 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, as well as to have adequate protection for their property where such property is located in more than one country;
  - 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 point (a) of Article 1(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council<sup>1</sup> 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

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<sup>1</sup> 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 civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

legal rules to address cross-border problems concerning vulnerable adults; whereas, despite the time which has elapsed since the adoption of that 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 Union; whereas it is therefore essential, in the interests of efficiency, to act at Union 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 (personal affairs and/or personal property, whether temporarily or permanently);
- L. whereas consideration should be given to the provisions of the UN Convention on the Rights of Persons with Disabilities; whereas the Union and the Member States are parties to that Convention;
- M. whereas when defining its policies the Union must ensure that the principles of subsidiarity and proportionality are complied with;
- N. whereas Union action in the area of protection of vulnerable adults should seek principally to ensure the circulation, recognition and enforcement by Member States' authorities of protection measures for a vulnerable adult taken by the authorities of another Member State, including the dissemination and recognition of mandates, and to enhance communication and cooperation between Member States in that regard;
- O. whereas 'protection measures' should be taken to mean in particular the measures envisaged in Article 3 of the Hague Convention;
- P. 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 which take effect when that person is no longer in a position to protect his or her interests;
- 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 make informed decisions by themselves;
- R. whereas timely access by the various administrative and legal 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 administrative and legal 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, in accordance with Union law and national legislation concerning the protection of privacy and the protection of personal data;
- T. whereas protection measures taken by the authorities of one Member State should automatically be recognised in other Member States; whereas, notwithstanding the

foregoing, it may be necessary to establish grounds to refuse recognition and enforcement of a protection measure; whereas the duly circumscribed grounds on which the national authorities would be permitted to refuse to recognise and enforce a protection measure taken by the authorities of another Member State should be restricted to the protection of public order in the requested State;

- U. whereas effective mechanisms could be introduced to ensure the recognition, registration and use of mandates in anticipation of incapacity throughout the Union; whereas a single mandate-in-anticipation-of-incapacity form should be created at Union level in order to ensure that such mandates are effective in all Member States;
- V. whereas single Union forms should be introduced to foster the provision of information on decisions concerning the protection of vulnerable adults and on the circulation, recognition and enforcement of those decisions; whereas legal certainty requires that any person who is given responsibility for protecting the person or the property of a vulnerable adult may, upon his request, be issued within a reasonable time with a certificate specifying his or her capacity, status and the powers which have been conferred on him or her;
- W. whereas a decision handed down in a Member State which is enforceable in that Member State should be enforceable in 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 that 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 being more effective;
- AA. whereas the time which has elapsed since the Parliament adopted its resolution of 18 December 2008 is expected to have enabled the Commission to obtain sufficient information concerning the entry into force 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; calls on the Commission to exert political pressure on the Council and the Member States with a view to increasing the number of ratifications by the end

of 2017;

2. Notes that the proposal for a regulation which is the subject of the recommendations set out in the Annex would not replace the Hague Convention; it would support the Convention and encourage Member States to ratify and implement it;
3. Notes that the protection of vulnerable adults, including those with disabilities, requires a comprehensive set of specific and targeted actions;
4. 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 accordingly, thereby ensuring that Union citizens are not stripped of rights that they are still capable of exercising; notes that in most cases of persons with disabilities legal incapacity is due to disability and not to age;
5. Reminds the Commission and the Member States that not all vulnerable adults are necessarily vulnerable by virtue of their advanced age, and calls on the Commission and the Member States to take measures to strengthen the legal protection and rights not only of elderly vulnerable adults, but also of adults who are or have become vulnerable and who by virtue of a serious mental and/or physical disability are not in a position to protect their own interests; considers in this respect that it would be extremely worthwhile to establish procedures for the exchange and comparison of good practices among the Member States, taking forms of protection and safeguard as the starting point;
6. Urges the Member States to promote self-determination for adults by introducing into their national law legislation on mandates in anticipation of incapacity, drawing on the principles set out in Recommendation CM/Rec(2009)11 of the Committee of Ministers of the Council of Europe;
7. Calls on the Member States to pay particular attention to the needs of the most disadvantaged vulnerable adults and to put measures in place aiming to ensure that they do not suffer discrimination as a result of their condition; in that connection, calls on the Member States which recognise incapacity mandates in their legislation, or decide to introduce them 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;
8. Calls on the Commission to initiate, maintain and fund projects designed to make Union citizens aware of the Member States' laws on vulnerable adults and protection measures concerning them; calls on the Member States to take appropriate measures and actions to provide all persons on their territory with easily accessible and sufficient information about their national laws and the services available in the area of the protection of vulnerable adults;
9. 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 that report could have addressed the practical problems encountered by the Commission in obtaining information on the application of the Hague Convention;

10. Calls on the Commission to submit to Parliament and the Council, before 31 March 2018, on the basis of 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, following the recommendations set out in the Annex hereto;
11. Confirms that the recommendations are consistent with fundamental rights and the principle of subsidiarity; stresses in this respect the importance of giving expression, among national best practices, to the outcomes of work done by local communities and by local authorities;
12. Considers that the requested proposal does not have financial implications;
13. Instructs its President to forward this resolution and the accompanying recommendations to the Commission, the Council and the governments and parliaments of the Member States.

## **ANNEX TO THE RESOLUTION:**

### **RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED**

#### **A. PRINCIPLES AND AIMS OF THE PROPOSAL**

1. Foster the provision of information about the 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 concerning or registers of, on the one hand, administrative and judicial decisions setting out protection measures in respect of vulnerable adults and, on the other hand, the relevant mandates in anticipation of incapacity, where such mandates exist, in order to guarantee legal certainty 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 the administrative and judicial decisions in respect of adults 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 the access to files and registers containing details of protection measures and mandates in anticipation of incapacity, is organised in a manner which is entirely consistent with the principle of confidentiality and the rules on 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, which would be valid in all the Member States, specifying his or her status and the powers which have been conferred on him or her.
7. Foster the automatic recognition in the Member States of protection measures taken by the authorities of a Member State, without prejudice to the introduction, as an exception and in keeping with Articles 3 and 21 of the Charter of Fundamental Rights of the European Union, of legal safeguards to protect public order in the Member States requested to recognise such protection measures, which may justify the non-recognition and non-enforcement of such protection measures by those Member States.
8. Foster the enforcement in the Member States of protection measures taken by the authorities of a Member State, without a declaration establishing the enforceability of

such measures being required.

9. Foster consultation and coordination among the Member States in cases in which 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 and in full respect of his or her fundamental rights. 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, the well-informed consent for which should be verified by the relevant authorities, and ensure that such mandates can circulate, and be recognised and enforced.

## **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.