

# EUROPEAN PARLIAMENT

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*Committee on Civil Liberties, Justice and Home Affairs*

**2008/2123(INI)**

11.11.2008

## **OPINION**

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Legal Affairs

on cross-border implications of the legal protection of adults  
(2008/2123(INI))

Rapporteur: Urszula Gacek

(Initiative - Rule 39 of the Rules of Procedure)

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## SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas a move from substitute decision-making by legal guardians to supported decision-making by vulnerable adults themselves can, in some cases, help to prevent the dehumanisation of vulnerable adults and prevent conflict, and ensure respect for the dignity of vulnerable adults,
- B. whereas situations have developed in which cases involving legal protection concern two or more Member States and concern Member States and non-EU States, in particular because of traditional migration flows (former colonies, the United States and Canada),
- C. whereas problems have arisen because of the increasing movement between Member States where there is a net outflow of retired people, including vulnerable adults, and those Member States where there is a net inflow of retired individuals,
- D. whereas the need for and the principles governing the legal protection of vulnerable adults were agreed by all EU Member States in the Council of Europe's Recommendation No. R (99) 4 of the Committee of Ministers to Member States on Principles concerning the Legal Protection of Incapable Adults, adopted on 23 February 1999,
- E. whereas the legal protection of vulnerable adults must be a pillar of the right of free movement of persons,
  - 1. Welcomes the commitment of the French Presidency regarding the situation of vulnerable adults and their cross-border legal protection; congratulates those Member States who have signed and ratified the Hague Convention of 13 January 2000 on the International Protection of Adults, and encourages those Member States which have not yet signed or ratified it, to do so;
  - 2. Calls on the Commission to monitor the implementation of the Hague Convention in the Member States and to report to Parliament and the Council on problems and best practices in its practical application;
  - 3. Calls on the Commission to assess the option of the accession of the Community to the Hague Convention; suggests that this could be an area of enhanced cooperation between Member States;
  - 4. Calls on all Member States which have not yet signed or ratified it, to accede to the 2006 UN Convention on the Rights of Persons with Disabilities, which would only enhance the protection of vulnerable adults within the EU;
  - 5. Calls on the Commission to propose legislation on the mutual recognition of Member States' statuses of disability and legal protection measures which limit, or transfer to another, a vulnerable adult's decision-making powers, and supports the introduction of

clear rules on jurisdiction in order to prevent conflicts of interest or other legal issues caused by questions of guardianship of vulnerable adults by family members who live in more than one Member State;

6. Requests that the Commission finances a study to compare Member States' legislation on vulnerable adults and protection measures to confirm where legal issues could occur, and what measures would be needed at the EU or Member States level to solve any such issues; the study should also address the issue of institutionalised adults with intellectual disabilities as regards their guardianship and the possibility for them to exercise their legal rights; calls on the Commission to organise a series of conferences for legal professionals directly involved in such cases and to take into account the results of the study and the opinion of professionals in future legislation;
7. Calls on Member States and the Commission to further investigate national and cross-border legal measures to allow for greater "supported decision-making" by vulnerable adults in the place of legal incapacity or the surrendering of decision-making rights to a guardian; calls for "supported decision-making" to be used for as long as possible and as the first and foremost option in most cases; calls for greater focus to be given to empowering the elderly and other vulnerable adults;
8. Calls on Member States to ensure that protective measures are proportionate to the state of the vulnerable adults so that individual EU citizens are not denied a legal right when they still have the ability to exercise that right;
9. Calls on Member States to take measures to protect vulnerable adults from becoming victims of identity theft or fraud or other telephone or cyber-crimes, including legal measures to enhance the protection of and/or limit access to a vulnerable adult's personal data;
10. Supports the creation of secure mechanisms, subject to robust rules for the protection of personal data and rules on the limitation of access, for the sharing of best practices and other information regarding protective measures currently in force between Member States, including the possibility of sharing information as to the protection status of a vulnerable adult between Member States' judicial systems;
11. Reminds the Commission and Member States that not all vulnerable adults are so because of advanced maturity and asks that steps be taken not only to strengthen the legal protection and rights of elderly vulnerable adults, but also those adults who are vulnerable because of severe physical and/or mental disabilities, and to take into account their needs as well when taking future social measures to ensure these legal rights;
12. Calls on the Council and the Commission to work to clarify other issues related to the free movement of all elderly EU citizens in the Union, including national laws providing for "alimony" payments by adult children to their parents who have financial difficulties, questions of the rights of access to and use of property which has been transferred from an elderly adult to an adult child for reasons of retirement, and other issues which could weaken an elderly person's ability to defend their fundamental rights against the will of their adult child or other relation.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	4.11.2008
<b>Result of final vote</b>	+ : 12 - : 0 0 : 0
<b>Members present for the final vote</b>	Mihael Brejc, Maddalena Calia, Giusto Catania, Jean-Marie Cavada, Agustín Díaz de Mera García Consuegra, Urszula Gacek, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Manfred Weber
<b>Substitute(s) present for the final vote</b>	Adamos Adamou, Luca Romagnoli