



CIVIL ASPECTS OF THE CROSS-BORDER PROTECTION OF VULNERABLE ADULTS

Final Report

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Directorate-General for Justice and Consumers
Directorate A Civil and Commercial justice
Unit A1 Civil Justice

Contact: Unit A1

E-mail: JUST-A1@ec.europa.eu

*European Commission
B-1049 Brussels*

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List of authors

Nathy Rass-Masson (Milieu)

Agnieszka Markowska (Milieu)

Daniela Cinova (Milieu)

Flore Gustave (Milieu)

Emmanuel Hassan (Milieu)

Marco Paron Trivellato (Milieu)

Pietro Franzina (Università Cattolica del Sacre Cuore, Milan)

Ian Sumner (Tilburg University)



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List of abbreviations

BAU	Business as usual (baseline)
ECPR	European Register of Certificates of Representative Powers
EJN	European Judicial Network
ELI	European Law Institute
EU	European Union
FTE	Full-Time Employment
JRC	Joint Research Centre
MS	Member State(s)
MSCA	Member States Competent Authorities
NGO	Non-Governmental Organisation
OIOO	One in one out
OPC	Open Public Consultation
PA	Public authorities
PIL	Private International Law
SDG	Sustainable Development Goal
SMEs	Small and Medium-sized Enterprises
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
The Hague Convention	Convention on the International Protection of Adults of 13 January 2000
The Convention	
The 2000 Hague Convention	

Civil aspects of the cross-border protection of vulnerable adults

HC

UN

United Nations

UNCRPD

United Nations Convention on the Right of Persons
with Disabilities

CRPD

VA

Vulnerable adults

Glossary

2000 Hague Convention	<p>The <u>2000 Hague Convention</u>, or Hague Adults Convention (hereinafter 'the Convention'), was adopted on 13 January 2000 in the framework of the Hague Conference on Private International Law. The 2000 Hague Convention deals with the cross-border protection of vulnerable adults in international cases. The Convention creates a comprehensive set of rules that determine the State whose authorities are to have jurisdiction to take measures of protection and the law to be applied. It also ensures the recognition and enforcement of measures of protection between Contracting States and establishes cooperation between the authorities of those States.</p> <p>The 2000 Hague Convention has been ratified by 10 EU Member States.</p>
Cases with cross-border implication	<p>Cases with cross-border implications are situations and/or judicial or administrative proceedings which are connected to two or more states. A case with cross-border implications arises, for instance, in the following situations:</p> <p>Where an issue arises in one state from the effect of a protective measure issued in a second state;</p> <p>Where an issue arises from the effects of powers of representation granted in one state by an adult living in a second state;</p> <p>Where measures are sought in one state aimed at the protection of an adult living in a different state, or possessing the nationality of a different state;</p> <p>Where an adult who benefits from measures of protection taken in one state plans to move to another state, or where placement in an establishment or residential facility in another state is being contemplated.</p> <p>NB: Article 1(1) of the 2000 Hague Convention stipulates that the Convention applies to international situations, without providing a definition of such situations.</p>
Vulnerable adult	<p>According to Article 1(1) of the 2000 Hague Convention, the Convention applies to 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 own interests. The vulnerability of the persons concerned may result from several factors. These include mental or physical impairments affecting the ability to make decisions, or to assess the implications (e.g. the financial implications) of those decisions.</p>
Protection measures	<p>Protection measures are those measures directed at the protection of the person or property of the vulnerable adult. Such protective measures could be imposed on the basis of judicial decisions, but are not necessarily limited to such decisions. They include inter alia:</p> <p>the determination of incapacity and the institution of a protective regime;</p> <p>the placing of the adult under the protection of a judicial or administrative authority;</p> <p>guardianship, curatorship and analogous institutions, including the designation and functions of any person or body having charge of the adult's person or property, representing or assisting the adult (see below under powers of representation);</p>

	<p>the placement of the adult in an establishment or other place where protection can be provided;</p> <p>the administration, conservation or disposal of the adult's property;</p> <p>the authorisation of a specific intervention for the protection of the person or property of the adult.</p>
<p>Powers of representation (private mandate)</p>	<p>The protection of vulnerable adults often involves the conferral of particular powers on a natural person, or an institution, charged with representing and/or assisting the adult concerned as regards certain decisions. Under the law of some states, the above powers may be granted by the adult concerned, at a time when he or she is in a position to protect his or her own interests. In this survey, the term "powers of representation" is used to refer to such powers as may be granted by an adult, under a contract, or a unilateral act (hereinafter, a private mandate), to be exercised when the grantor is not in a position to protect his or her own interests. Private mandates are known by different names in the various legal orders, such as "lasting (or enduring) powers of attorney", "mandats de protection future", "Vorsorgevollmachten".</p> <p>NB: Private mandates need to be distinguished from advanced directives. An advanced directive or "living will", is an instruction given by a person, when they still have their full capacity, providing guidelines in case the person becomes unable to devise or express their preferences. Such directives may relate to healthcare and end-of-life decisions. It may be that an adult grants a private mandate and also issues advanced directives.</p>
<p>PIL rules</p>	<p>Private International Law (PIL) rules are provisions governing disputes between citizens of different countries, including rules on which court should decide the dispute, which law should apply to the dispute and how a foreign decision should be enforced. In the area of cross-border protection of vulnerable adults, these rules would concern, for example, which court has jurisdiction to deal with the determination of vulnerability of an adult in a cross-border situation, which law would be applicable to a private mandate taken abroad, or the grounds for refusing to recognise a foreign protection measure.</p>

Abstract

This study focuses on the cross-border protection of vulnerable adults and aims to identify, assess and measure the existing problems arising from the lack of harmonised rules in the field of cross-border protection of vulnerable adults. This study also seeks to evaluate and compare the impact of four policy options from a legal, statistical and empirical point of view. These policy options include Option 1, which represents a baseline scenario in which no legislative action would be taken; Option 2, which would require EU Member States to ratify the 2000 Hague Convention; Option 3, which would involve the adoption of an EU Regulation on the cross-border protection of vulnerable adults in the EU with some provisions going further than the Convention; and Option 4, which would entail the mandatory ratification of the 2000 Hague Convention by EU Member States and the adoption of an EU Regulation on the matter. This study assesses these options in terms of effectiveness, efficiency, relevance, coherence and impact on fundamental rights. The analysis of these criteria shows that Option 4 appears to be the most satisfactory option.

Executive summary

The objective of this study is to identify, assess and measure the existing problems arising from the lack of harmonised rules in the field of cross-border protection of vulnerable adults. This study also aims to evaluate and compare the impact of four policy options from a legal, statistical and empirical perspective. The evidence collected in this study will be used by the European Commission to carry out an impact assessment for a potential initiative aimed at facilitating the cross-border protection of vulnerable adults.

To this end, this report carries out an assessment of the problems, as well as developing estimates on the number of vulnerable adults, the evolution of this number, and the number of cases of vulnerable adults having encountered problems in cross-border situations. Several problems are identified, along with their causes and effects, and the need for EU action is assessed. The different policy options to address these problems are analysed, in terms of effectiveness, efficiency, relevance, coherence and impact on fundamental rights, to determine which option would be preferable.

Context of the cross-border protection of vulnerable adults

The main instrument in the field of cross-border protection of vulnerable adults is the 2000 Hague Convention. It sets out rules for determining jurisdiction and applicable law in cross-border situations and provides a list of grounds for refusal to recognise a protection measure taken in another State party to the Convention. Despite a number of initiatives by the EU institutions to promote the ratification of this international instrument, only 11 of the 27 Member States have ratified the Hague Convention to date. For Member States that are not party to the Convention, national rules of private international law apply, creating a mosaic of approaches as regards applicable law, jurisdiction, recognition and enforcement.

Estimates of the number of vulnerable adults in cross-border situations

Vulnerable adults are persons over 18 who are unable to protect their own interests, due to an impairment or insufficiency of their personal faculties. Around 73 million people (17.5%) in the EU population have some form of disability, of which approximately 28 million require constant assistance. The number of people in need of protection is to some extent related to age, as older people are more likely to experience deteriorating health and other difficulties. The increase in the average life expectancy suggests that the number of vulnerable adults will also increase in the future.

Cross-border situations may occur when people move or own assets abroad. Growing migration, including among the elderly, is likely to increase the incidence of cross-border cases. Data on migration trends of people over 65 show that in 2020, more than 31 000 seniors migrated within the EU, although this figure must be considered in light of the impact of the COVID-19 pandemic and the lack of automatic registration of all people concerned in the host country.

Obtaining data in this field is not easy as Member States do not have information on the number of vulnerable adults in need of cross-border protection, and only scarce data exist. In Member States party to the Hague Convention, Central Authorities record statistics on the number of cross-border cases in which they were seized. Figures collected through this channel are quite low. It is however important to keep in mind that Central Authorities are meant to deal only with cases of cooperation with other Contracting States of the Hague Convention; cases related to other States rarely involve Central Authorities and are therefore not recorded by them; and citizens and courts often do not refer their cases to the Central Authorities. Additionally, the number of private mandates activated to protect vulnerable adults is not necessarily counted in official statistics. Private mandates enable a person, at a time when they are able to protect their own interests, to designate another person to represent or assist them in certain decisions at a time when they will not be able to protect their own interests anymore. Data on the number of private mandates in those

Member States that provide for them in their national law is limited.

Problems in cross-border protection of vulnerable adults

The lack of legal certainty, lengthy and costly proceedings, and the non-recognition of protection measures and private mandates have been identified as the main issues that vulnerable adults, their families, their representatives or public authorities have to face in cross-border situations. These three problems are of different proportions for States that are party to the Hague Convention and those that are not, as the Convention provides rules to facilitate cross-border cases. These problems stem from several causes, including impossible or limited cooperation between national authorities, conflicting rules on applicable laws, jurisdiction, conflicting and complex rules on recognition of protection measures and private mandates issued abroad, and unnecessary enforcement proceedings. In practice, this can have serious consequences such as physical and psychological abuse, financial spoliation, denial of access to property abroad, impediments to freedom of movement, the right of access to justice, the rights to self-determination and autonomy, as well as additional costs and workload for public authorities compared to purely domestic cases.

Need for EU action

The harmonisation of private international law rules would fall within the scope of the powers vested in the EU by Article 81 of the TFEU. In addition to the competence to enact an EU legislation on the cross-border protection of vulnerable adults, the EU also has external competence to ask Member States to ratify the Hague Convention 'in the interest of the Union'.

In the absence of EU action, measures taken by individual Member States at national level, such as adopting private international law rules in this area or ratifying the Hague Convention on their own initiative, have resulted in significant impediments to the exercise of rights and protection of vulnerable adults. Even if Member States have the possibility to enact measures on their own, these would differ and conflict with each other and would not lead to establishing efficient common rules on the protection of the rights of vulnerable adults across the EU. Thus, an EU intervention appears necessary. Harmonisation of private international law rules would remove gaps and inconsistencies in the protection of vulnerable adults (e.g. conflicts of jurisdiction, conflict of laws, impossibility of enforcing a foreign decision or measure), and avoid obstacles to the free movement of persons and the proper functioning of the internal market that would otherwise result from divergent substantive and procedural rules.

Policy objectives and policy options

The general and central objective of any policy action in the field of protection of vulnerable adults in cross-border situations is to protect their fundamental rights in line with Article 6 TFEU, the EU Charter of Fundamental Rights and the UN Convention on the Rights of Persons with Disabilities. It is essential to ensure that the physical and psychological integrity of the persons in need of protection is not put at risk in situations presenting a cross-border element. They must also be protected against negative financial consequences of such a situation, while ensuring that they can exercise their right to access to justice, freedom of movement, autonomy and self-determination to the same extent as non-vulnerable people. To achieve this, it is necessary to increase legal certainty, facilitate the cross-border recognition of protection measures and private mandates, as well as to have faster and less expensive proceedings, for vulnerable adults, their representatives, families, practitioners and public authorities.

To address the problems and meet the objectives, four policy options have been developed. **Option 1** is the baseline scenario, in which the current situation would be maintained. The EU institutions would continue to simply encourage Member States to ratify the Hague Convention but would take no additional legislative step. **Option 2** would involve a Council Decision that would in practice oblige Member States that have not done so to ratify or accede to the Hague Convention 'in the interest of the Union'. No additional EU legislation

would be adopted under this option. **Option 3** would consist of adopting an EU Regulation which could contain provisions similar to the Hague Convention and provide for additional measures, based on the principle of mutual trust and existing EU acquis. The ratification of the Hague Convention would not be compulsory for Member States. **Option 4** would combine Option 2 and 3 and would involve the adoption of a Council decision requesting Member States to ratify the Hague Convention if they have not yet done so, thus making the limited set of rules of the Convention applicable in relation to third States party to the Convention. In addition to this obligation for Member States to ratify the Convention, an EU Regulation would be adopted, providing for an extensive set of rules applicable in the EU. All options are feasible from a legal point of view and ensure the respect of the principles of subsidiarity and proportionality.

Comparison and assessment of the policy options

The potential for each of the options to have a significant impact on other EU policies is examined. The study finds that the impacts likely to result from the implementation of the different policy options are economic, social (in particular on health and well-being) and digital. The study shows that the impacts on these fields are likely to be greater for Options 3 and 4.

The different policy options are further assessed taking into account four criteria: their effectiveness in achieving the policy objectives, their efficiency in terms of costs and benefits, their relevance in addressing the identified problems and their coherence with existing policy initiatives and legal frameworks, in particular in the area of fundamental rights.

Options 3 and 4 best meet the objectives of facilitating the recognition of protection measures and private mandates and of having faster and less expensive proceedings. Option 4 achieves the objective of increasing the level of legal certainty better than the other options. **Option 3 and 4** provide for the highest level of **effectiveness**.

Based on an estimate of the vulnerable adults affected by the lack of harmonised framework in cross-border situations and estimations of the range of costs of eight typical illustrative cases, the cost-benefit analysis for the EU undertaken indicates that **Options 3 and 4** are the most **efficient**. The benefits of Option 4 would additionally extend beyond the EU population, and the benefits of moving from Option 3 to Option 4 in terms of additional cost savings for vulnerable adults and administrative authorities are likely to outweigh the additional costs falling on public authorities.

Option 4 qualifies as the most **relevant** because, in addition to addressing current and future needs, it avoids or at least significantly mitigates the shortcomings of the other options, such as the difficulties currently encountered with the application of the Hague Convention or the existence of different regimes between Member States that are party to the Convention and Member States which would only be bound by the EU Regulation.

Option 4 would be the most protective of **fundamental rights and the most consistent** with the UN Convention on the Rights of Persons with Disabilities. The shortcomings of Options 2 and 3 would be avoided, as all Member States would be subjected to a similar regime, and the articulation between the EU Regulation and the Hague Convention would not be problematic, as illustrated in other areas of private international law.

1 Introduction

This Final Report is a deliverable under the study '*Civil aspects of the cross-border protection of vulnerable adults*' (JUST/2021/PR/JCOO/CIVI/0094).

Context

The Hague Convention of 13 January 2000 on the International Protection of Adults (the 'Hague Convention')¹ regulates the protection of vulnerable adults (VA) in an international context. However, there is currently no EU legislative measure dealing with the cross-border protection of vulnerable adults.

Whilst the Hague Convention is generally considered a well-balanced and efficient international instrument, only 11 EU Member States (Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece², Latvia, and Portugal) have ratified it to date. This, coupled with the diversity of Member States' legal systems, creates difficulties in the protection of vulnerable adults in the EU, particularly in cross-border situations. It is also worth noting that the EU cannot itself become a party to the Hague Convention, since the latter is only open to sovereign states³. Therefore, the rules governing cross-border cases vary significantly across the EU, and the need to harmonise them has become more pressing with the high numbers of vulnerable adults and the increase in the mobility of individuals (and their assets) within the EU. Such harmonisation would not align domestic substantive rules, but only Private International Law (PIL) rules, which enable conflicts of jurisdiction or applicable law to be settled and foreign decisions to be recognised.

The absence of a clear legal framework throughout the EU to determine the competent court of authority, the applicable law, and to recognise and enforce foreign decisions prevents certain VA from enjoying continuous and consistent protection. This gap also restricts the use of certain measures of protection, such as powers of representation (also referred to as private mandate), since their proof and legal effects in cross-border situations are jeopardised in the absence of harmonised rules on their recognition and specific cooperation systems within the EU.

Study objectives

Against this background, the objective of the study is to provide DG JUST with an analysis of the problems existing due to lack of harmonised rules governing cross-border cases involving vulnerable adults across the EU and assessing the impact of selected policy options in order to address these problems. The study will enable the Commission to prepare an impact assessment for a possible initiative in this area.

Methodology for the assignment

This section provides a high-level overview of the main methodological tools that were used for the analysis:

- Desk research
- Semi-structured interviews
- Case studies
- Focus groups

¹ Hague Convention of 13 January 2000 on the International Protection of Adults. Available at <https://as-sets.hcch.net/docs/c2b94b6b-c54e-4886-ae9f-c5bbef93b8f3.pdf>.

² Greece ratified the Convention on 28 July 2022. It entered into force on 1 November 2022.

³ It is nevertheless worth mentioning that during the workshop on cross-border protection of vulnerable adults organised by the Czech presidency, the First Secretary of the Hague Conference on Private International Law informally suggested that the EU could become a party to the Hague Convention via the adoption of a Protocol. (Czech Presidency, 20 September 2022, Workshop on the Cross-border Protection of Vulnerable adults).

A more comprehensive description of the methodology applied is presented in **Annex I**.

As part of the data collection phase, and in particular to ensure a clear identification of the problems, an extensive **desk research** was carried out. The primary source of information was the legal study commissioned by the European Commission in 2021, which provides an in-depth analysis of the existing legal and practical obstacles occurring in the cross-border protection of VA across the EU⁴. This analysis, provided in this study is itself based on an extensive survey and interviews of key stakeholders, as well as on a broad literature review. In addition to the legal study and additional literature sources, the responses to the Public Consultation and the Call for Evidence launched by the Commission in the context of this initiative were also analysed. The literature reviewed is presented in **Annex IV**.

In addition to the desk research, a number of **semi-structured interviews** (36) were carried out with stakeholders representing practitioners, NGOs and representatives of vulnerable adults, to gather additional information on the problems experienced, and on the perception of the various groups with regard to the potential impact of the different policy options being considered.

The interviews and literature review revealed recurring gaps in the existing data. Firstly, as the options were refined in the course of the project, the assessment made by the stakeholders on some of these options became obsolete, and additional feedback was needed. Secondly, quantitative data on the costs of the existing proceedings was lacking. **Focus groups** with key stakeholders were therefore organised to complete the data collection. One focus group gathered the competent authorities of Member States and EU-level NGOs, primarily to collect information on the first point. Another focus group, gathering practitioners and academic experts, collected data on the second point. For the latter focus group, a series of eight **case studies** was designed to illustrate typical cases encountered by vulnerable adults in cross-border situations. Each case study was discussed with the participants to understand the costs they would entail. The case studies also form the basis of the efficiency analysis of the policy options presented in this report.

The results of all consultation activities, including the Public Consultation and Call for Evidence are described in the synopsis report, which constitutes **Annex V** to the present report.

Limitations of the analysis

The analysis has some limitations. In particular, quantitative data to provide an accurate picture of the current situation, and more specifically to assess the number of vulnerable adults in cross-border situation is very scarce. There are many reasons for this: Firstly, the definition of vulnerable adults differs across Member States and not all the countries collect these statistics in a systematic manner. Secondly, as further developed in Section 4.1.1., the estimation of the number of vulnerable adults potentially affected by cross-border problems of legal uncertainty poses numerous methodological challenges. In this situation, we have estimated a range of the vulnerable adults affected which is, however, not exhaustive regarding the various types of situations which may occur in practice.

⁴ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

2 State of play: context, problem and need for action

The present section provides the findings of the desk research and consultations regarding the baseline situation, which forms the basis of the assessment of the proposed options.

2.1 Context

2.1.1 The existing regulatory and policy framework applying in cross-border situations

The international legal framework

The main instrument currently applying across countries in the field of cross-border protection of vulnerable adults is **the 2000 Hague Convention**. The Convention is only open to sovereign States, which means that the EU is not entitled to become a party to the Convention. Only Member States can ratify, or accede to, the Convention, either on their own initiative, or under an EU Decision⁵.

Only 11 of the 27 Member States have ratified the Convention so far. The reason for this is to be found in the fact that the topic is not always perceived as a priority in comparison to other areas of private international law which also require the adoption of international instruments and affect a greater number of people (e.g. family law)⁶ and that the operation of the Convention has been sometimes perceived as entailing an increase in cost⁷. In those Member States that have ratified the Convention, the rules on jurisdiction, recognition, enforcement and administrative cooperation only apply with respect to cases involving other Contracting States. The rules on applicable law, on the other hand, apply universally, that is to say even if the other countries involved are not party to the Convention.

The **United Nations Convention on the Rights of Persons with Disabilities** (CRPD) of 2006 is the main international instrument defining standards for the protection of persons with disabilities, with the aim 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'⁸.

The UN Convention was signed by the European Union in 2007, and it entered into force for the Union on 22 January 2011. However, in its 2015 report on the implementation of the Convention in the EU, the United Nations Committee on the Rights of persons with disabilities expressed its concern regarding the barriers faced by persons with disabilities when moving from one Member State to another. The Committee recommended that the European Union 'take 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'⁹.

⁵ For a precedent, see 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, 2008, https://eur-lex.europa.eu/resource.html?uri=cellar:c074e3c2-7619-4d29-96ee-cf53b9cf241e.0006.01/DOC_1&format=PDF

⁶ Interview with the Hague Conference on Private International Law within the context of the 2021 Legal Study.

⁷ European Commission, 2017, *Answer given by Ms Jourová on behalf of the Commission to the parliamentary question E-003844/2017*. Retrieved from https://www.europarl.europa.eu/doceo/document/E-8-2017-003844-ASW_EN.html?redirect

⁸ UN Convention on the Right of Persons with Disabilities, 2007, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

⁹ Concluding observations on the initial report of the European Union: Committee on the Rights of Persons with Disabilities: draft/prepared by the Committee, 2015, <https://digitallibrary.un.org/record/811081>

EU initiatives regarding cross-border protection

To enhance and facilitate cross-border protection of vulnerable adults, EU institutions have, since the adoption of the 2000 Hague Convention, largely promoted the ratification of this instrument by the Member States.

The European Commission has been encouraging Member States to ratify the Hague Convention for several years¹⁰, granted financial support to improve knowledge of the rights of vulnerable adult (for instance the project 'The Vulnerable'¹¹), translated the Explanatory Report to the Hague Convention into the 24 official languages of the EU, co-organised the Joint Conference 'Cross-border Protection of Vulnerable Adults' in 2018 and adopted the Strategy for the rights of persons with disabilities 2021-2030¹².

The European Parliament has been supporting a possible EU legislative initiative to complement the Hague Convention in this regard. In its resolution of 1 June 2017, the Parliament called on the Commission to submit 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, on the basis of Article 81(2) of the TFEU¹³. In its answer to the Resolution, the European Commission stressed that it had been actively encouraging Member States to ratify the Hague Convention¹⁴.

The Council has encouraged ratification by the Member States since 2008. Most recently, in its conclusions of the Justice and Home Affairs meeting of June 2021, the Council invited those Member States which are parties to the Hague Convention to raise awareness among courts, practitioners and all stakeholders involved in its implementation, and those who are not, to ratify the Convention. It also invited Member States to ensure that the national measures on the protection of vulnerable adults are in line with the CRPD¹⁵.

National legal frameworks

The legal study conducted in 2021 for DG JUST¹⁶ evaluated the main legal difficulties and practical challenges in Member State cooperation with regard to the protection of vulnerable adults, and assessed the need for and the possible added value of a common legal framework.

It uncovered a number of issues, and in particular, the analysis of the legal systems of the Member States pointed to numerous differences in the way the protection of vulnerable adults¹⁷ is ensured within the Member States, but also in the manner in which cross-border cases are dealt with. It was pointed out that such discrepancies in the rules governing cross-border cases were likely to affect cross-border cases involving Member States with different approaches.

¹⁰ European Commission, 2017, *Answer given by Ms Jourová on behalf of the Commission to the parliamentary question E-003844/2017*. Retrieved from https://www.europarl.europa.eu/doceo/document/E-8-2017-003844-ASW_EN.html?redirect

¹¹ Council of the Notariats of the European Union. *The Vulnerable*. <http://www.the-vulnerable.eu/?lang=en>

¹² European Commission, 2021, *Union of Equality Strategy for the Rights of Persons with Disabilities 2021-2030*. Retrieved from <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8376&furtherPubs=yes>

¹³ European Parliament resolution of 1 June 2017 with recommendations to the Commission on the protection of vulnerable adults. https://www.europarl.europa.eu/doceo/document/TA-8-2017-0235_EN.html

¹⁴ European Commission, 2017, *Answer given by Ms Jourová on behalf of the Commission to the parliamentary question E-003844/2017*. Retrieved from https://www.europarl.europa.eu/doceo/document/E-8-2017-003844-ASW_EN.html?redirect

¹⁵ Council Conclusions on the Protection of Vulnerable Adults across the European Union 2021/C 330 I/01, 2021, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XG0817\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XG0817(01))

¹⁶ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

¹⁷ See Annex VIII of this report for further information on jurisdiction and applicable law in Member States that are not party to the Hague Convention.

In order to better understand the impact of possible EU action, it is useful to analyse what the national legal frameworks of EU Member States already contain, and whether they already have some or all of the measures that a European Regulation on the topic might offer.

National legal frameworks differ depending on whether Member States are party to the Hague Convention or not.

For the contracting parties, the rules on jurisdiction and applicable law are those of the Convention, and the grounds for non-recognition and enforcement of protection measures originating in another contracting State are governed by Article 22(2) of the Convention. In all 11 contracting Member States, the connecting factor is the habitual residence of the adult in accordance with the Hague Convention¹⁸.

In Member States that are not party to the Convention, only national rules of PIL apply. Five Member States not party to the Convention¹⁹ have a connecting factor based on habitual residence, two Member States have a connecting factor based on the nationality of the person concerned²⁰, and for the other Member States not party to the Convention²¹, both of these criteria or either of the two are applied²². Even though each approach has its merits, such differences between Member States affect legal certainty overall. As regards the grounds for refusal to recognise protection measures, national legislation is generally comparable to that proposed by the Convention, although in some States the grounds for refusal are more restricted, and some provide different or additional grounds to the ones set out in the Hague Convention²³. The grounds for non-recognition are important in blocking foreign decisions that do not comply with certain fundamental principles, but the longer the list of grounds for refusal, the more decisions will not be recognised. In the rare cases where a foreign decision would have to be enforced, a declaration of enforceability by a judicial authority of the State where the enforcement decision is taken is required in most States. Exequatur proceedings are required in all but four non-contracting States²⁴.

When seeking recognition and enforcement of a foreign decision, it is difficult for parties to identify which court in the requested Member State has jurisdiction. When seeking assistance in a cross-border case, there is no **national authority** easily identifiable by foreign practitioners to assist them in cross-border cases, such as the Central Authorities of Member States party to the Hague Convention set up under Article 28 of the Convention.

The **protection measures** for vulnerable adults differ from one country to another. All EU Member States offer protection measures by legal or administrative authorities. However, only 16 of the 27²⁵ domestic laws of the Member States provide for the possibility to use private mandates, which enable the adult, at a time when they are able to protect their own interests, to grant powers of representation to be used in the event of incapacity. Only 7 out of 27 Member States provide for the protection provided by a relative or spouse granted by operation of law. The **differences in the types of measures** and the lack of general guidelines on how to deal with these differences make the recognition and enforcement processes more complex in a country that does not have the same protection tools. In a cross-border case, the applicable law may be different from the law under which the powers of representation were established, since the connecting factors are not

¹⁸ Article 5, Hague Convention of 13 January 2000 on the International Protection of Adults. See also Lagarde, P., 2017, *Protection of Adults Convention - Explanatory Report*. The Hague Conference on Private International Law. Permanent Bureau of the Hague Conference on Private International Law.

¹⁹ DK, EL, ES, NL and SK.

²⁰ LU, exclusive competence for Slovenian citizens in SI.

²¹ BG, HR, HU, IE, IT, LT, MT, PL, RO, SE.

²² A table giving an overview of the content of the PIL rules of non-contracting parties to the Hague Convention can be found in Annex VIII of this Report.

²³ BG, HR, HU, PL and ES.

²⁴ BG, ES, HR, IE, IT, LU, LT, MT, NL, PL, RO, SI, and SK.

²⁵ AT, BE, CZ, DE, DK, ES, FI, FR, HR, HU, IE, LT, MT, PT, RO, and SE.

harmonised. This means that there is currently no guarantee that powers of representation concluded in one Member State will be recognised in another.

All Member States provide for **access to legal aid** for the most disadvantaged people who cannot afford legal representation. However, there are significant differences between the national legal aid systems of EU Member States. The criteria for eligibility to legal aid is restricted to people with very low income only in some countries, and the scope of this legal aid can also be very narrow²⁶. The 2003 Directive on legal aid²⁷ applies to cross-border cases and provides common rules for granting legal aid to a person who is habitually resident in the EU. It additionally provides a cooperation mechanism for sending a cross-border request for legal aid. However, the scope of the Directive is limited to situations where a party is habitually resident in a Member State other than the one where the court is sitting or the decision is to be enforced. It therefore does not apply to recognition of protective measures.

In 2021, all but six Member States had set up **registries** for protection measures²⁸. For those Member States that have a registry, they tend to be managed centrally²⁹, with the exception of three countries³⁰ where the registries are handled by local or municipal authorities. While some registries include information on the protection measures³¹, some others only contain information on powers of attorney and private mandates³². Fifteen Member States have a digitalised registry³³. The access to these registries are generally limited to the competent authorities, although some Member States enable the protected adult or their representatives to have access to them³⁴. **Cross-border access to registries** is only possible in five Member States³⁵, one of which only partially³⁶.

In addition to these legislative divergences, the very concept of vulnerable adult also tends to vary from one Member State to another.

Other relevant EU policy initiatives - digitalisation

With the COVID 19 pandemic, the trend towards increased **digitalisation** has been reinforced in the EU³⁷. The importance of digital technologies, means of communication and information have increased exponentially, which has led the EU to refine its objectives for increased digitalisation. This also has an impact on judicial cooperation in cross-border cases.

The importance of digitalisation in the field of cross-border judicial cooperation has increased as it has the potential to improve access to justice, to facilitate the cooperation between the competent authorities of different Member States and to make justice systems

²⁶ European e-Justice Portal. *Legal Aid*. https://e-justice.europa.eu/content_legal_aid-37129-en.do#tocHeader0

²⁷ Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02003L0008-20030131>

²⁸ BG (however Bulgarian law provides for the establishment of a registry), CY, EE, EL, PL and RO.

²⁹ This is the case for AT, BE, CZ, DE, DK, FI, ES, HR, HU, IE, LU, NL and SK.

³⁰ BG (would be managed by local and municipal authorities once set up), IT and SI.

³¹ AT, BE, ES, FR, HU, IT, IE, LV, MT, PT, SE, SI and SK.

³² AT, BE, DE, DK, ES, HR, IE and PT.

³³ IT, MT and SI have only partly digitalised their registries.

³⁴ AT, BE, DK, ES, HR, LU and SI.

³⁵ DK, FI, IT, NL and SI.

³⁶ SI.

³⁷ Economist Intelligence, 2021, *Digitalisation surges in Europe during the pandemic*. <https://www.eiu.com/n/digitalisation-surges-in-europe-during-the-pandemic/>

more efficient and resilient³⁸. To this end, the **e-Justice strategy for 2019-2023**³⁹ and its associated action plan⁴⁰ has been adopted by the Council of the EU. The digitalisation of justice was also an important component of the **EU's digital strategy "A Europe fit for the digital age"**⁴¹. In its 2020 conclusions on "**Access to justice – seizing the opportunities of digitalisation**"⁴², the Council invited the European Commission to take steps to digitalise justice, for instance by analysing the potential for modernisation of key instruments in civil matters or by examining judicial cooperation instruments to which the e-Evidence Digital Exchange System could be extended.

2.1.2 The size of the population of vulnerable adults and its evolution

2.1.2.1 Estimated current size of the population of vulnerable adults in the EU

2.1.2.1.1 Estimated size of the overall population of vulnerable adults in the EU

Methodological approach

Vulnerable adults may be defined as persons over 18 who are not in a position to protect their own interests, due to an impairment or insufficiency of their personal faculties⁴³. They are dependent on others for actions or decisions concerning their health and welfare, and/or their property. The protection of a vulnerable adult involves the adoption of measures the purpose of which is to ensure that they are provided the support they may need to exercise their legal capacity, and are preserved from the risk of undue influence and neglect. Like many other legal concepts in the EU, the concept of vulnerable adult tends to vary depending on the Member State. The definition presented here and used in the Hague Convention is used for the purpose of the present analysis.

There are several situations triggering the need for legal protection: a) cognitive disability, b) physical disability preventing the adult from expressing his/her opinion, c) temporary physical illness preventing the adult from expressing his/her opinion and d) temporary mental illness requiring the adult to be placed under a protection measure (crisis phase in a psychiatric illness such as schizophrenia or paranoia).

Nevertheless, there are no comprehensive statistics that are comparable at EU level to measure the prevalence of these specific situations among the adult population and to identify vulnerable adults that are under legal protection. Given these limitations, three main methods could be pursued to estimate the population of vulnerable adults in the EU (Figure 1):

- Actual population of vulnerable adults under judicial and administrative protection measures issues by public authorities. This method would entail using available statistics on vulnerable adults under judicial protection measures in countries where

³⁸ European Commission, 2021, *Commission staff working document, Impact assessment report, Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the digitalisation of judicial cooperation and access to justice in crossborder civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation.* (SWD(2021) 392 final).

³⁹ 2019-2023 Strategy on e-Justice. [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52019XG0313\(01\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52019XG0313(01))

⁴⁰ 2019-2023 Action Plan European e-Justice. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019XG0313%2802%29>

⁴¹ European Commission. *A Europe fit for the digital age*. https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_en

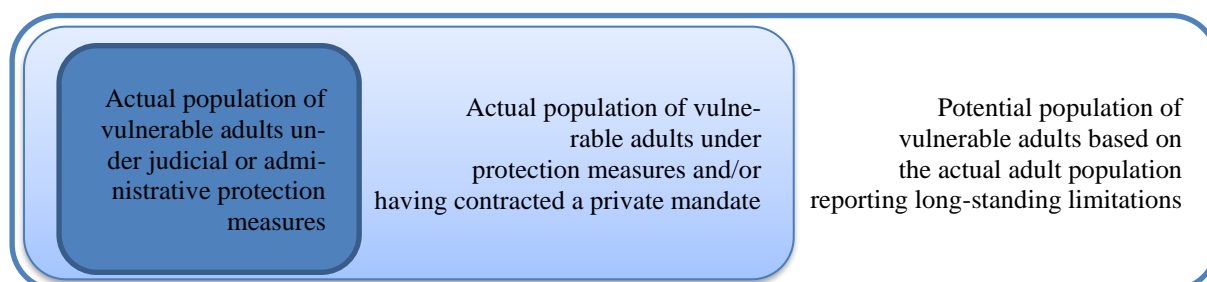
⁴² Council Conclusions "Access to justice – seizing the opportunities of digitalisation". <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2020:342I:TOC>

⁴³ Hague Convention of 13 January 2000 on the International Protection of Adults.

such statistics are compiled by public authorities, and calculating the share of population of vulnerable adults in the total adult population in these countries. This share could ultimately be used to estimate the population of vulnerable adults in other countries based on the total adult population.

- Actual population of vulnerable adults under private protection measures. Not only can vulnerable adults benefit from judicial or administrative protection measures, but they can also be protected through private instrument measures such as private mandates. This type of measure does not however exist in all EU countries. Even in EU countries where private mandates are used, the national legal frameworks greatly differ across them, and statistics are not systematically available. For these reasons, the estimation of the number of actual vulnerable adults under judicial and administrative protection measures in the EU including the extrapolation of the number of private mandates in a few EU countries would not be reliable.
- Potential population of vulnerable adults based on the actual adult population reporting long-standing health limitations. While the former methods aim to estimate the actual number of vulnerable adults under legal protection in the EU, another method could focus on the estimation of the potential population of vulnerable adults that could benefit from legal protection measures. Most of the situations that can trigger the need for legal protection measures are associated with serious physical and mental disabilities and more generally severe health problems. There are no comparable, comprehensive, and objective statistics on the above situations. Nevertheless, there exist European-wide surveys targeting individuals asking questions on self-perceived health, including long standing ones⁴⁴. These statistics can be used to estimate the potential population of vulnerable adults based on the actual adult population reporting long-standing health limitations.

Figure 1: Potential methods to estimate the population of vulnerable adults in the EU



While the first two methods represent lower-end estimates of the population of vulnerable adults, the numbers calculated with the help of health data represent a high and only a potential number of people who may require legal protection.

In this report, we provide estimates for the actual population of vulnerable adults under judicial protection measures and for the potential population of vulnerable adults experiencing long-standing health limitations. The second method, which aims to estimate the actual population of vulnerable adults under public and private protection measures, is not followed in the report. It is not possible to provide a credible estimate based on the number of private mandates. Firstly, there are no systematic statistics gathered by Member States on the number of private mandates, and where such statistics were found, they proved to be inconsistent in meaning and difficult to compare (for example, in some Member States the registration is mandatory while in others not; some Member States register private mandates only when they are activated). Additionally, the number of private mandates currently differs strongly across EU countries using them. In Germany, the register of mandates has been used approximately 5 million times since 2015 to register (or to modify) a

⁴⁴ Eurostat. (2022c). *Self-perceived long-standing limitations in usual activities due to health problem by sex, age and labour status*. https://ec.europa.eu/eurostat/databrowser/view/HLTH_SILC_06__custom_3401600/default/table?lang=en

private mandate. Considering that registering a private mandate is not mandatory in Germany, the actual number of private mandates probably exceeds this figure. In the Czech Republic, however, where only private mandates registered at notary offices are reported, it only amounts to 66⁴⁵. In Belgium, the number of private mandates reported in 2020 is around 211 000⁴⁶. France reports data on private mandates that are activated (5 937 activated mandates between 2009 and 2017). Furthermore, data are also available on private mandates established monthly but there is no indication on the overall number of private mandates in the country as reported by some other Member States⁴⁷. As indicated in the 2021 legal study, national law provides for the possibility to set up private mandates for vulnerable adults only in 16 Member States⁴⁸. For the reasons explained above, in situations where there is a lack of systematic and comparable data that would be needed for extrapolations, we have not made estimates of the number of private mandates per country or an aggregate estimate for the EU.

To provide an estimate of the current number of vulnerable adults based on judicial protection, we calculated the proportion of the adult EU population (population over 18 years old) using Eurostat demographic data for 2020. Subsequently, based on our desk research, we identified statistics on the number of judicial protection measures in a number of European countries publishing these data (France, Belgium, Finland, Germany, Switzerland). We calculated a simple average percentage of vulnerable adults in these countries. We then used this percentage to estimate the number of vulnerable adults in the remaining EU Member States (excluding Denmark)⁴⁹. Finally, we applied these percentages to the adult populations in these countries in order to estimate the total number of vulnerable adults in the EU.

To calculate the high-end estimate, we combined the Eurostat data concerning adults with self-perceived long-standing limitations in usual activities due to health problems⁵⁰ with the Eurostat demographic data. For each country, we multiplied the percentage of adults experiencing difficulties by the number of adults living in that country, and subsequently totalled these estimates to get an EU aggregate.

Results

Our calculations resulted in two sets of estimates in the EU: 5.1 million vulnerable adults (1.4% of the EU population) based on the judicial protection measures; and the high-end estimate of approximately 27.4 million (7.5% of the EU population) based on health complications.

2.1.2.1.2 Estimated size of the population of vulnerable adults in cross-border situations in the EU

Methodological approach

However, in contrast to the above, not every vulnerable adult needs a cross-border arrangement. This report concerns vulnerable adults who need legal protection in cross-

⁴⁵ Data gathered from representatives of German and Czech authorities during the focus group, 14 September 2022.

⁴⁶ Fednot. (2021). *Les mandats de protection extrajudiciaire belges sont désormais aussi reconnus dans d'autres pays européens*. <https://www.fednot.be/communique-de-presse/les-mandats-de-protection-extrajudiciaire-belges-sont-desormais-aussi-reconnus-dans-dautres-pays-europeens/>

⁴⁷ Raoul-Cormeil, G. (2020). *Mandat de protection future ou habilitation familiale : réflexions en vue d'un conseil notarié*. <https://www.actu-juridique.fr/professions/mandat-de-protection-future-ou-habilitation-familiale-reflexions-en-vue-dun-conseil-notarie/>

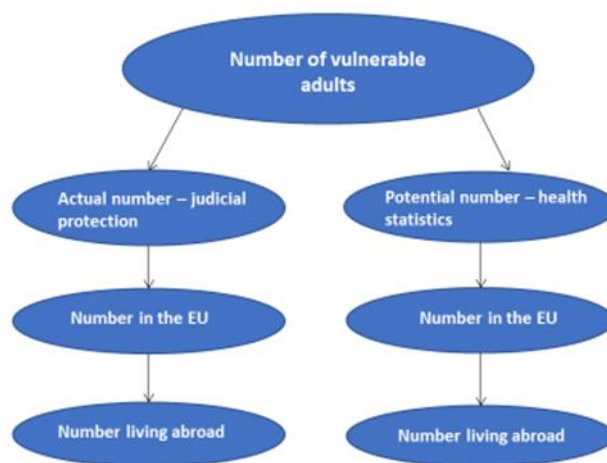
⁴⁸ See more details in European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N. (2021). *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

⁴⁹ The TOR excludes Denmark from this study.

⁵⁰ Eurostat. (2022c). *Self-perceived long-standing limitations in usual activities due to health problem by sex, age and labour status*. https://ec.europa.eu/eurostat/databrowser/view/HLTH_SILC_06__custom_3401600/default/table?lang=en

border situations. Therefore, further calculations to estimate the number of vulnerable adults who may need a cross-border arrangement were required. Different approaches can be considered to that end, as illustrated in Figure 2 below.

Figure 2: Overview of the approaches applied to calculate the number of vulnerable adults



Central authorities established under the Hague Convention record statistics on the number of cross-border cases where they have been seized. However, Central Authorities established under the Convention only deal with, in principle, cases requiring cooperation between Contracting States. Cases connected with other States seldom involve Central Authorities and accordingly remain unrecorded by the latter. This happens mainly because of (a) low awareness of the Hague Convention, (b) even lower awareness of the role of Central Authorities, (c) the fact that most cross-order cases concern states that are not party to the Convention and hence don't have a respective Central Authority in place, and (d) the fact that not all the cases require the intervention of Central Authorities. Additionally, some vulnerable adults encountering difficulties in cross-border cases hire private lawyers and hence such occurrences are not captured by the official statistics. This is correlated by the practical experience reported by practitioners⁵¹.

The number of dossiers recorded by central authorities in states providing some figures remains relatively low – Latvia reported only two cases with a cross-border element since the ratification of The Convention in 2018⁵². Some other countries which ratified the Convention reported a higher number of cases (approximately 15 to 20 cases per year in Austria and Portugal). The highest number has been reported by France, where the Central Authority handled 49 cases in 2021⁵³. However, as explained earlier, this data does not reflect the actual number of VA involved in the cross-border situation.

Therefore, in an absence of better data, we had to base our calculation of the cross-border cases on the Eurostat migration data in the following manner: Firstly, we calculated the percentage of EU adults living in another Member State using Eurostat migration statistics (2.7%)⁵⁴. Subsequently, we applied this percentage to the number of vulnerable adults in

⁵¹ For instance, the French authorities reported that out of the 2 600 cases they are considering, approximately half involve a cross-border element. Ministère de la Justice Français, 2022, *Les enjeux de la protection européenne et internationale des adultes vulnérables*. <https://www.youtube.com/watch?v=Wjg8Wuey7To>

⁵² HCCH. (2022). *Responses to the Questionnaire on the practical operation of the 2000 Protection of Adults Convention*. <https://www.hcch.net/en/publications-and-studies/details4/?pid=6862&dtid=33>

⁵³ Interview with a representative of public authority in France, 2 June 2022.

⁵⁴ This number is slightly lower than statistics reported in mobility reports. This is mainly because mobility reports report the percentages of working-age population, whereas this report considers the overall population

the EU, reaching two sets of estimates of a number of vulnerable adults living in a different Member State than their country of citizenship.

Vulnerable adults requiring cross-border protection may also be people who do not live abroad but own assets in another country, or those who become vulnerable while travelling abroad for a short period of time (for a period shorter than 12 months). We were not able to capture these people in our estimations, because of the limited data availability. With the approach of our choice, the statistics provided represent potential numbers of vulnerable adults in need of a cross-border arrangement.

Results

Finally, applying the methodology described above, **the range of vulnerable adults living abroad and potentially experiencing problems in a cross-border context due to legal uncertainties can be estimated at around 144 649 (judicial protection) – 780 169 (health complications)** in the EU. See more details including estimates per country in Annex III.

Box 1: Estimations for third countries¹

There are three non-EU countries party to the Convention – Switzerland, Scotland and Monaco. Applying the same methodology would lead to the following number of vulnerable adults in these countries: **159 000 (judicial protection) – 848 000 (long-standing health limitations)**. Combining this with migration statistics yields a range of **2 700 (judicial protection)– 14 400 (long-standing health limitations) vulnerable adults in third countries with a potential need of cross-border arrangement**. Additionally, there is an expectation that the number of contracting parties continues to grow. Observing the data on the growth of contracting parties to the Hague Convention, it takes on average 27 years to reach 50 contracting parties. The Convention on the Protection of Vulnerable Adults came into force in 2000. If a pattern similar to other Conventions is followed, we can expect new members in the coming years.

2.1.2.2 Estimated evolution of the population of vulnerable adults

2.1.2.2.1 Estimated evolution of the overall population of vulnerable adults in the EU

There is a reasonable expectation that the number of vulnerable adults will rise, especially because of the ageing population. Life expectancy in the EU is projected to increase by approximately five years by 2050 and should reach 90.82 by 2100. The number of dependent people will double by 2050, affecting mainly Germany and Italy, but also countries of Central and Eastern Europe. Additionally, the proportion of people older than 65 with some form of disability is projected to increase by 77% by 2050⁵⁵.

The older population is, in general, more prone to vulnerability. According to the World Health Organization (2022)⁵⁶, approximately 1 in 6 people above 60 experience some form of elder abuse – for instance financial, psychological or physical. This happens in the community but also in institutional settings and points to the fact that older populations are more vulnerable and less likely to protect their own interests either due to deteriorating physical condition, cognitive impairment, worsening mental health or other factors related to ageing (World Health Organisation, 2022)⁵⁷.

over 18, and the percentage of people over 65 living abroad is lower than this percentage in the working-age population.

⁵⁵ Report on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020. https://www.europarl.europa.eu/doceo/document/A-7-2011-0263_EN.html#top

⁵⁶ World Health Organization. (13 June 2022). Abuse of older people. <https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people>

⁵⁷ Ibid.

While medical advancement can increase average life expectancy, it remains challenging to fight against health problems due to ageing, especially dementia or Alzheimer's. A study conducted by Brookmeyer, Johnson, Ziegler-Graham and Arrighi (2007)⁵⁸ at the John Hopkins University predicted that by 2050, more than 16 million people in Europe will suffer from dementia. This figure is somewhat lower accounting only for the EU countries; nevertheless, **these projections show that the number of vulnerable adults will be on the rise, and a unified framework of protective measures will be necessary to protect their interests.**

Another aspect, which may also increase the number of people impacted upon in the future is growing migration. The Joint Research Centre (JRC) of the European Commission identified migration as one of the 12 megatrends of the future. Even though it is challenging to develop a reliable migration forecast, it is reasonable to expect it continues to grow in the future⁵⁹.

Methodological approach

For the purposes of this report, we calculated two sets of projections regarding the number of vulnerable adults in 2030 – the first set of projections based on the number of protection measures, and the second based on the self-perceived long-standing limitations in usual activities. These projections are based on the population projections data from Eurostat⁶⁰.

To calculate the potential future number of vulnerable adults, we proceeded as follows: Firstly, we used the Eurostat data on population projections for 2030 and made two groups - those aged 18-64, and those above 64. This is an important distinction, because the population aged 18-64 is projected to shrink, while the proportion of the older population is expected to rise, increasing the number of vulnerable adults. Subsequently, we took the data regarding the number of protection measures from France, because this is the only country aggregating them by age. We then extrapolated these percentages to the population projection in 2030 across all Member States, still distinguishing between two different age groups. Finally, we totalled the two age groups to reach an overall number of vulnerable adults in the EU population in 2030.

In order to calculate a projection based on self-perceived health difficulties, we again used the Eurostat population projections for the year 2030 divided into two age groups. Subsequently, we took the Eurostat data concerning adults with self-perceived long-standing limitations in usual activities due to health problems for the year 2021, divided into age groups of 18-64 and over 64⁶¹. We applied the percentages for 2021 to the estimated 2030 population, still distinguishing the two age groups (assuming the proportion of adults with health complications within different age groups remains the same between 2021 and 2030). Then we totalled the two age groups to reach an overall number of vulnerable adults in the EU population in 2030.

Results

The methodological approach yielded two sets of estimates for 2030. Firstly, an estimation based on the number of judicial measures equal to slightly more than 5 million vulnerable adults across the EU; and the second estimate based on the long-standing health limitations corresponding to almost 30 million adults at risk of vulnerability in 2030. Detailed calculations are provided in Annex III.

⁵⁸ Brookmeyer, R., Johnson, E., Ziegler-Graham, K., & Arrighi, H. M., 2007, Forecasting the global burden of Alzheimer's disease. *Alzheimers Dement*, 3(3), 186-191. <https://doi.org/10.1016/j.jalz.2007.04.381>

⁵⁹ European Commission. *Increasing significance of migration*. https://knowledge4policy.ec.europa.eu/increasing-significance-migration_en

⁶⁰ Eurostat, 2021b, *Population on 1st January by age, sex and type of projection*. https://ec.europa.eu/eurostat/databrowser/view/proj_19np/default/table?lang=en

⁶¹ 2020 used where the data not available for 2021.

This estimate based on judicial protection is slightly lower than the one reported under the current situation. This is because we only applied the French estimates regarding the number of protection measures (age division was necessary), and these are in general lower than in other Member States that were considered for current estimates (Finland, Germany, Belgium and Switzerland). With France being the only country aggregating the data regarding the protection measures by age, and with the projected demographic changes (population ageing and shrinking), it is very challenging to provide a reliable future estimate for the number of vulnerable adults based on the number of protection measures. Nevertheless, the estimates based on long-standing limitations in usual activities due to health problems showed an increasing trend (27.4 million in 2020 compared to almost 30 million in 2030).

2.1.2.2.2 *Estimated Evolution of the population of vulnerable adults in cross-border situations in the EU*

Methodological approach

To calculate the potential number of vulnerable adults in cross-border situations in 2030, we decided to apply pre-pandemic intra-EU migration statistics. This choice is based on the literature suggesting that migration will rise in the future and return to pre-pandemic levels⁶². Therefore, we calculated an average percentage of EU citizens residing in a different Member State than their country of citizenship throughout 2017-2019 (3.8%). Subsequently, we applied this percentage to the projected number of vulnerable adults in 2030.

Results

The combination of pre-pandemic migration statistics and the projected number of vulnerable adults yielded two sets of estimates for the number of vulnerable adults in need of a cross-border arrangement in 2030 – 190 000 (protection measures) and slightly more than 1.1 million (based on long-standing health limitations). Both estimates are higher than those calculated for 2020, suggesting that the situation will become more severe and the number of vulnerable adults requiring cross-border protection will rise in the coming years.

Table 1 summarises the results of the different estimates of the overall population of vulnerable adults, including the overall population and the population in cross-border situations.

Table 1: Overview of the estimated numbers of vulnerable adults in the EU and non-EU countries party to the Convention

	Estimate based on protection measures	Estimate based on health statistics	Estimate based on protection measures – potential cross-border arrangement	Estimate based on health statistics – potential cross-border arrangement
Vulnerable adults in the EU – 2020	5.1 million	27.4 million	144 649	780 169
Vulnerable adults in the EU – 2030	5.02 million	29.6 million	190 761	1.1 million
Vulnerable adults – third countries – 2020	159 375		Vulnerable adults – third countries – 2020	159 375

2.2 Problem assessment

In the light of these trends, the problems triggered by cross-border situations involving VA, and which would justify the intervention of the EU need to be understood.

⁶² International Centre for Migration Policy Development, & Spindelgger, M., (2021). *Preparing for rising migration pressure after the pandemic*. <https://www.icmpd.org/news/preparing-for-rising-migration-pressure-after-the-pandemic>

According to the majority (80%) of the respondents (42 contributions received) to the **public consultation** carried out within the context of this initiative, the differences between Member States regarding the PIL rules applying to the protection of vulnerable adults pose a serious or a somewhat serious problem. 68% of the respondents reported being aware of instances 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. Among the types of problems encountered, the respondents most often selected **language barriers** (69% of valid responses), followed by difficulties in having a **protection measure accepted** by private persons or companies, and difficulties in knowing which Member State's court or competent authority has jurisdiction (both options selected by 62% of respondents). Difficulties in having **powers of representation recognised** or accepted in another Member State and difficulties in having a **protection measure recognised** or accepted in another Member State were reported by 59% and 56% of respondents to the public consultation, respectively⁶³.

An overview of problems is presented further in this section with a problem tree (Section 2.2.1.). The problems, and their causes and effects are further described in Section 2.2.2.

2.2.1 Problem tree

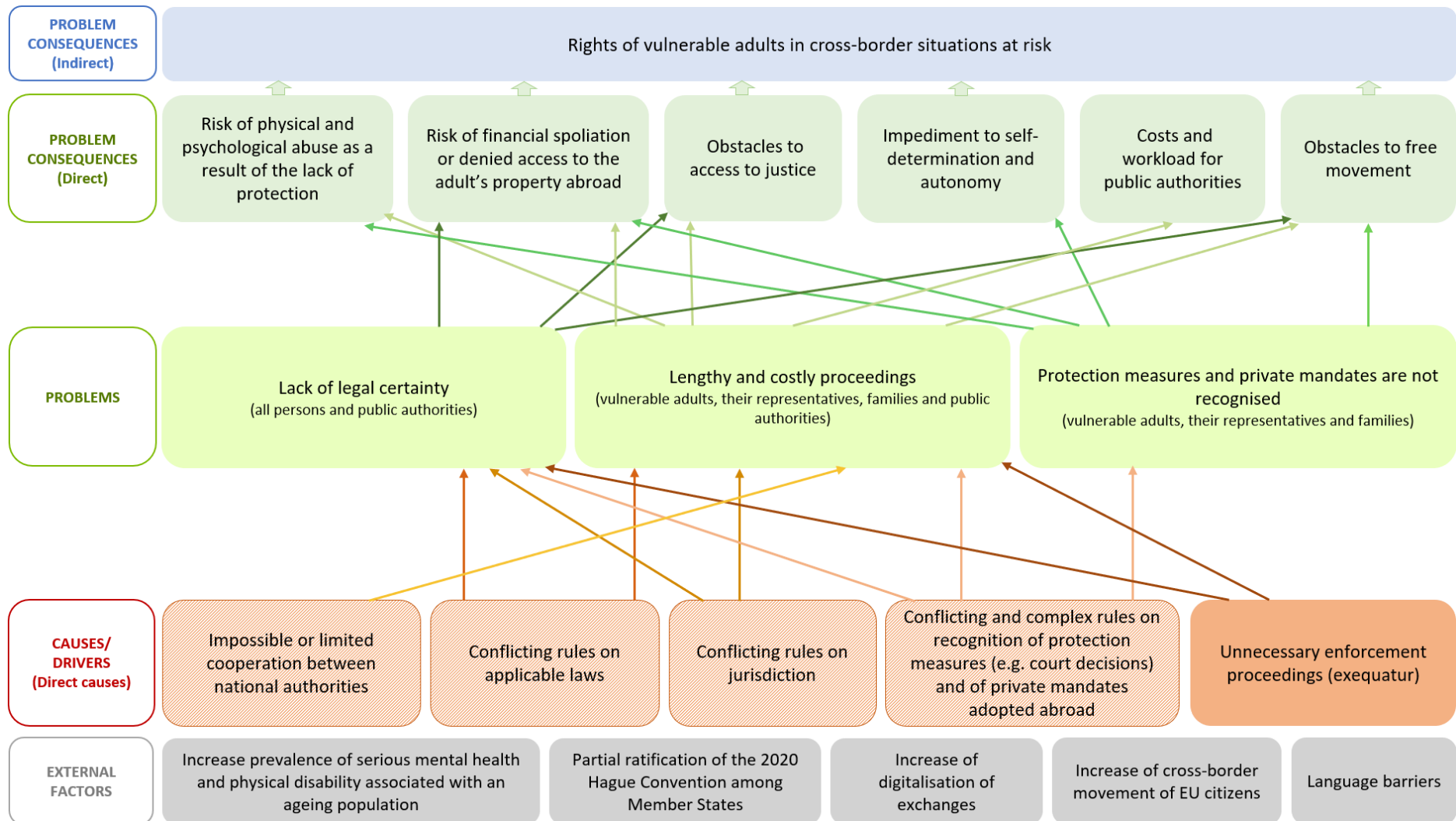
The problem tree presented in Figure 3 below gives an overview of the main categories of problems encountered in the field of protection of vulnerable adults in cross-border situations, the indirect and direct causes of these problems, and the direct and indirect effects that these problems may have.

Some elements may present a different level of relevance depending on whether a Member State is a party to the Convention or not. Overall, Member States party to the Convention face the same problems as the other Member States. Only some of the causes and drivers do not apply to the same extent to Member State parties, where, even though implementation may cause some issues, the rules are in place. This distinction is illustrated by the lighter colour used for several boxes under 'causes and drivers'.

The following sections will present a more in-depth description of the problems, causes and effects outlined in Figure 3, as well as providing insights into their interconnection.

⁶³ See Annex VII for detailed results.

Figure 3: Problem tree



2.2.2 Description of the problems, their causes and effects

Three main problems were identified through desk research and were subsequently confirmed via stakeholder consultations. The lack of legal certainty, lengthy and costly proceedings and the fact that protection measures, authentic instruments and private mandates are not recognised in cross-border situations are the main issues at the centre of the unsatisfactory situation that vulnerable adults, their families, representatives and public authorities face in cross-border situations. These problems have some degree of interconnection, as some of them contribute to each other. This section focuses on the description and analysis of these problems, as well as their causes and effects.

2.2.2.1 Lack of legal certainty

Problem

The **concept of legal certainty** refers to the predictability of a given legal system, as well as its transparency and the guarantee that there is no room for arbitrariness. Legal certainty is ensured when the subjects of a legal system know exactly what to expect and how to adapt their conduct. This principle is therefore a fundamental tool for defining individual freedom⁶⁴.

In the context of the protection of vulnerable adults in cross-border situations, this entails that vulnerable adults themselves, but also their relatives and representatives, are ensured that their rights and protections having been decided in one EU Member State will be recognised and guaranteed in another Member State, and that they know under which law it will be dealt with and by which authority. Legal certainty also entails that public authorities of Member States know which foreign body to communicate with to ensure that its nationals are protected abroad, or that they know which law is applicable.

Legal certainty is considered a significant problem by stakeholders consulted for this study. Out of the 33 stakeholders interviewed who answered the question about the importance of the lack of legal certainty as an obstacle to the protection of vulnerable adults in cross-border situations, 22 (66.6%) considered this issue as very important, and 7 (21.2%) as rather important. Of all the problems identified, the lack of legal certainty received most responses supporting its importance. Many other sources concur with this, in spite of the lack of statistics on the phenomenon. Concerns have been expressed by stakeholders representing a large number of practitioners⁶⁵. Serious problems (e.g. abductions, dispossessions) resulting from the lack of legal certainty have been mentioned on numerous occasions by stakeholders in the context of consultations, including the focus groups organised for this study, as well as various conferences involving stakeholders over the past couple of years⁶⁶. This issue was also mentioned by stakeholders in replies to the call for evidence issued by the Commission for this initiative. In particular, a number of practitioners referred to difficulties occurring in cross-border areas⁶⁷.

The lack of legal certainty arises from the **complex rules** applying in some Member States (e.g. multiple grounds for non-recognition of foreign measures, or inefficient renvoi

⁶⁴ Fenwick, M., & Wrška, S., 2016, The Shifting Meaning of Legal Certainty. In Fenwick M., & Wrška S., (Eds.), *Legal Certainty in a Contemporary Context: Private and Criminal Law Perspectives* (pp. 1-6). Springer Singapore. https://doi.org/10.1007/978-981-10-0114-7_1

⁶⁵ This issue was for instance raised during the interviews by a representative of the Council of the Notariats of the EU, which represents 24 notariats and 45,000 notaries.

⁶⁶ See for instance Présidence Française du Conseil de l'Union Européenne. (21 April 2022). Les professionnels face aux enjeux de la protection européenne et internationale des adultes vulnérables.

⁶⁷ See for instance Commission de droit des tutelles du barreau de Luxembourg, 2022, *Call for evidence for an impact assessment - Feedback on Civil judicial cooperation – EU-wide protection for vulnerable adults*. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12965-Civil-judicial-cooperation-EU-wide-protection-for-vulnerable-adults/F2953149_en, indicating that it was 'frequent' for persons protected under a measure in Luxembourg to have assets abroad, and that managing such assets was in such cases 'very problematic' and required representation by a lawyer. The small Court of Valenciennes (France) indicated having dealt with approximately 1,300 cross-border cases.

mechanism), due to the fact that most of the PIL rules are based on case law in a **foreign language** and not accessible from abroad, and from the **multiplicity of different legal regimes**, particularly between States that have ratified the Hague Convention and those which have not.

On the latter point, many of the stakeholders interviewed did indeed consider that the lack of legal certainty is largely the result of the **non-ratification of the Hague Convention**. Several respondents representing public authorities and national courts of countries that have not ratified the Hague Convention argued that the lack of legal certainty was at least partly linked to the absence of a common legal framework on the subject of vulnerable adults. The same point was made at a workshop on cross-border protection of vulnerable adults organised by the Czech presidency⁶⁸. Along the same lines, the study by the European Parliamentary Research Service points out that one of the weaknesses of the 2000 Hague Convention lies in the limited geographical scope of it, due to the limited number of States that have ratified it⁶⁹.

Even **among those Member States which have ratified the Convention**, problems have been observed, and add to the legal uncertainty. In particular, some difficulties have arisen with regard to the definition of certain terms, such as the notion of 'habitual residence'⁷⁰, or the rules applicable to private mandates and *ex lege* situations. While the Convention provides for open notions allowing more flexibility and facilitating adaptation to all situations⁷¹, in practice, this can lead to a lack of clarity and legal certainty for the public and professionals, as pointed out by literature⁷² and stakeholders⁷³.

Furthermore, practitioners lack experience in the area of cross-border protection of vulnerable adults and are thus rarely able to meaningfully inform them regarding what to expect in cross-border procedures. This is particularly problematic when it comes to the application of **private mandates, powers of representation granted by operation of law** (*ex lege*) or when **managing assets** abroad or planning to move abroad. The difficulty of simply **accessing** foreign law in this field also reinforces the lack of legal certainty.

Causes

More specifically, four direct causes contribute to the lack of legal certainty for vulnerable

⁶⁸ Presentation by Elisabetta Lamarque, University of Milan, Czech Presidency. (20 September 2022). Workshop on the Cross-border Protection of Vulnerable adults.

⁶⁹ European Parliamentary Research Service, & Salm, C., (2016). *Protection of Vulnerable Adults European Added Value Assessment Accompanying the European Parliament's Legislative Initiative Report*. See also: Sumner, I., (2016). *Vulnerable adults in Europe: European added value of an EU legal instrument on the protection of vulnerable adults*. European Parliament. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU\(2016\)581388_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU(2016)581388_EN.pdf) See also: Franzina, P., & Long, J., (2016). *The Protection of Vulnerable Adults in EU Member States: The added value of EU action in the light of The Hague Adults Convention*. European Parliament. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU\(2016\)581388_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU(2016)581388_EN.pdf) .

⁷⁰ Kruger, T., (2017). Habitual Residence: The Factors that Courts Consider. In Beaumont P., Danov M., Trimmings, K., Yüksel, B., (Ed.), *Cross-Border Litigation in the Europe* (pp. 741-755). Hart Publishing.

⁷¹ European Parliamentary Research Service, & Salm, C., (2016). *Protection of Vulnerable Adults European Added Value Assessment Accompanying the European Parliament's Legislative Initiative Report*. In this respect, addressing the concerns raised about the gaps in the Hague Convention on certain aspects such as the *ex lege* powers of representation, or the recognition of private mandates, the first secretary of the Hague Conference on Private International Law defended the view that the Convention should be interpreted in the light of these new rules, and that its text is flexible enough to accommodate these concepts, even if they are not directly stated. He also stressed that there are no legal problems linked to the application of the Convention, only implementation issues. Czech Presidency. (20 September 2022). Workshop on the Cross-border Protection of Vulnerable adults.

⁷² Drventić, M., (2019). THE PROTECTION OF ADULTS IN THE EUROPEAN UNION. *EU and comparative law issues and challenges series (ECLIC)*, 3, 803-829. <https://doi.org/10.25234/ecllc/9032>

⁷³ E.g. in a workshop, the representative of the Austrian Chamber of Civil Law Notaries mentioned that the dominating view in Austria was that *ex lege* representation and authentic instruments are not covered by the Convention and that the way to deal with these issues does not seem to be clear. Czech Presidency. (20 September 2022). Workshop on the Cross-border Protection of Vulnerable adults. This was echoed by several of the practitioners interviewed in the framework of this study.

adults, and for all citizens who may find themselves in a situation where they need protection: conflicting rules on 1) applicable laws, 2) jurisdiction and 3) recognition of foreign decisions, authentic instruments and private mandates, as well as 4) unnecessary enforcement proceedings (exequatur proceedings), all lead to an increase in the lack of clarity and the legal uncertainty.

Conflicting rules on applicable laws

Conflicting rules on applicable laws are a direct cause of the lack of legal certainty. They lead to hesitations as to the applicable regime and can result in significant practical issues.

Thirteen out of 29 respondents (44.8%) to the interviews carried out in the context of this study considered conflicting rules between Member States on applicable law to be a very important factor explaining the lack of legal certainty, and 9 respondents (31%) considered it to be rather important.

Literature sources indicate that, for instance, the determination of the law applicable to *ex lege* powers of representation regularly raises problems, because the determination of the applicable law is left to the different national rules on the choice of law, which differ considerably **where the Hague Convention does not apply**^{74 75}.

Even **where the Convention applies**, conflicting rules on applicable law can arise. An illustration, provided by a representative of the Council of Notaries, refers to the issues met by practitioners when identifying which law applies to the authorisation of a donation abroad when a private mandate has been established.

A separate, but relevant, issue is the **lack of accessible information** on the rules applicable in another Member State, which might complicate the picture. A pan-European organisation representing vulnerable adults mentioned, among the practical issues encountered, that information on the applicable law and competent authorities of another Member State was indeed not available or was not available in their languages. The website *The Vulnerable* offers information, but it remains limited in terms of information available, content, languages available and does not cover all Member States⁷⁶.

Conflicting rules on jurisdiction

Conflicting rules on jurisdiction impact on legal certainty, as it may be difficult for vulnerable adults to know which judge will have jurisdiction to hear their case. **Where the Hague Convention does not apply**, Member State laws have different grounds for jurisdiction, such as the nationality of the person to be protected, or on their habitual residence or domicile, and in some cases on both or either of these two elements⁷⁷. Two courts can therefore be competent for the same case on the grounds of nationality of State A and on the grounds of habitual residence in State B for instance.

Twelve out of 28 interview respondents (42.8%) believed that **conflicting rules between Member States on jurisdiction** is a very important factor in explaining the lack of legal certainty (seven answered that it is rather important and six remained neutral). An organisation representing the interests of vulnerable adults indeed emphasised the difficulty for them to determine which court has jurisdiction. This lack of clarity also results in the risk of parallel proceedings in two Member States. It was for instance raised as an issue by a national authority, who illustrated this by presenting a case where two courts in two

⁷⁴ European Association of Private International Law, 2022, *Position paper in response to the European Commission's public consultation on an EU-wide protection for vulnerable adults*.

⁷⁵ European Law Institute, Fountoulakis, C., Mäsch, G., Bargelli, E., Franzina, P., & Ward, A. (2022). *Public Consultation on the 'Initiative on the Cross-Border Protection of Vulnerable Adults'*.

⁷⁶ Council of the Notariats of the European Union. *The Vulnerable*. <http://www.the-vulnerable.eu/?lang=en>

⁷⁷ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

Member States had been seized of the same case, which was only discovered when the adult moved away⁷⁸.

Conflicting rules on recognition of foreign decisions, authentic instruments and private mandates

Conflicting (and/or complex) rules on recognition of foreign decisions, authentic instruments and private mandates contribute greatly to legal uncertainty, as vulnerable adults, their representatives, and practitioners are not ensured that the protection measures or private mandate adopted in one country will be recognised in another.

On the importance of conflicting rules between Member States on recognition of foreign decisions, authentic instruments and private mandates in explaining the lack of legal certainty, out of 28 respondents, 11 (39.2%) answered that it was very important, and eight (28.5%) that it was rather important, (six remained neutral).

The lack of homogeneity of national laws makes the recognition of measures, private mandates and authentic instruments more complex. From a recent report on a fact-finding mission in seven Member States, it emerges that lawyers consider that the differences between the rules in the Member States constitute a serious difficulty for their work in transnational cases⁷⁹. The report further points out that, even among States that provide for similar protection measures, differences remain with regard to the rules of jurisdiction, powers of representation, safeguards, the scope, duration and review of protection measures, and the applicable remedies⁸⁰. Such differences may result in hurdles in the recognition of measures adopted in one Member State in another Member State with different rules. According to one national authority, the recognition by a foreign private or public entity of a protection measure is one of the most recurring issues observed⁸¹. As a result of these conflicting rules, enforcement of protection measures and authentic instruments and the implementation of private mandates may also be an issue. While it is usually not needed in such non-contentious matters, there may be rare cases where enforcement is needed⁸². In addition, although it should not be the case, private actors such as banks, insurance companies, medical staff or real estate agents will ask the declaration of enforceability of foreign decisions issued by the courts of their Member States to ensure that they will not be liable for any damage caused by the guardian.

Effects

The lack of legal certainty can become a barrier to **access to justice** for vulnerable adults. One pan-European organisation highlighted different obstacles that vulnerable adults have to face when it comes to exercising their right to access to justice, for instance the barriers in reaching legal assistance and representation, lack of training of justice professionals, or lack of accessible information⁸³. This echoes the findings of the report 'Access to Justice of Persons with Disabilities' from the Centre for Disability Law and Policy and the Institute for Lifecourse and Society⁸⁴, which highlighted that access to information for people with

⁷⁸ Feedback from the French authorities provided in the context of the Czech Presidency (20 September 2022) Workshop on the Cross-border Protection of Vulnerable adults; and in French authorities, 2022. *Responses of the French authorities to the public consultation on the initiative on the cross-border protection of vulnerable adults - Note by the French authorities.*

⁷⁹ European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults.*

⁸⁰ Ibid.

⁸¹ French authorities, 2022, *Responses of the French authorities to the public consultation on the initiative on the cross-border protection of vulnerable adults - Note by the French authorities.*

⁸² Hague Conference on Private International Law, 2022, *Draft Practical Handbook on the Operation of the 2000 Protection of Adults Convention.*

⁸³ Inclusion Europe, 2022, *Consultation on Civil aspects of the Cross-border protection of vulnerable adults.*

⁸⁴ Flynn, E., Moloney, C., Fiala-Butora, J., & Echevarria, I. V., 2019, *Access to Justice of Persons with Disabilities.*
https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/CDLP-Finalreport-Access2JusticePWD.docx

disabilities is particularly hampered in cross-border cases. Vulnerable adults therefore already face some difficulties due to their own impairment and to the inability of the justice system to provide the adequate assistance. These difficulties are even greater in a cross-border context, due to the additional barriers (distance, language, etc.). In close connection with the right to access to justice, equal recognition before the law could also be hindered for vulnerable adults in cross-border cases and contravene Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This point was however addressed by Rolland and Keene, who highlighted in their study tools available to ensure coherence between the Hague Convention and the UN Convention on the Rights of Persons with Disabilities, and to make sure that the two international instruments would be interpreted harmoniously⁸⁵.

A **risk of financial spoliation**, also connected to the lack of legal certainty, is currently emerging due to, inter alia, difficulties in accessing assets abroad. Some private institutions have very strict requirements and demand having some information in advance in order to grant access to a bank account or to allow a financial transaction. As observed by a Report of the European Law Institute (ELI), the lack of legal certainty can also lead to a **reluctance of third parties** to enter into transactions with the vulnerable person⁸⁶. In this regard, one example pointed out by the ELI's Report relates to the legal uncertainty faced by a bank when it comes to determining under what conditions the immovable property owned by a vulnerable adult abroad can be used to refund borrowed money by the latter⁸⁷.

Freedom of movement can be hindered by the lack of legal certainty. For instance, not being able to know if protective instruments will be recognised, or which law is applicable, having difficulties understanding, and the likeness of having to face multiple procedures are among elements contributing to creating barriers for vulnerable adults who want or need to travel abroad. According to the ELI's report, such difficulties in enjoying freedom of movement, result in a situation of indirect discrimination, as mobility across borders for vulnerable adults becomes significantly more difficult to enjoy compared to that of people who have full autonomy⁸⁸.

2.2.2.2 Lengthy and costly proceedings

Problem

The average duration of cases with cross-border aspects is longer than that of comparable national cases, which has the consequence of resulting, inter alia, in financial losses for persons involved⁸⁹. An illustration of the very long duration of these cases can be found in the extreme instance of the recognition of a protection measure between Germany and Greece which lasted 12 years⁹⁰.

When asked about the problems impeding the protection of vulnerable adults in cross-border situations, 12 stakeholders interviewed out of 33 (36.3%) felt that the **length and costs of judicial or administrative proceedings** for vulnerable adults, their families and representatives were very important and 8 (24.2%) qualified it as rather important (nine remained neutral and four considered it rather unimportant⁹¹).

⁸⁵ Rolland, S. E., & Ruck Keene, A., 2021, *Interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the 2007 UN Convention on the Rights of Persons with Disabilities (study commissioned by the Special Rapporteur on the Rights of Persons with Disabilities)*.

⁸⁶ European Law Institute, 2020, *The Protection of Adults in International Situations*.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

⁹⁰ Anthimos, A. (2019). *International Civil Litigation in Greece - The Odyssey of a legal guardian*. <http://icl-in-greece.blogspot.com/>

⁹¹ Two representatives of council and chambers of notaries, one representative of a non-governmental organisation and the representatives of a public authority of a Contracting State to the Hague Convention

An association representing a category of vulnerable adults highlighted during the interview the importance of the length and costs of judicial and administrative proceedings for vulnerable adults, their families and representatives. The report of the European Network of Justice Inspection Services on civil cooperation for the protection of adults underlined that in the absence of well-known and efficient tools, vulnerable adults and their families have to turn to lawyers for help⁹². The report added that judicial representatives have to take complex steps and activate their network in order to solve the problems arising from cross-border situations. Although **legal aid** can be attributed to help vulnerable adults to meet the costs of legal proceedings, it does not cover all costs⁹³, is only attributed to people with very limited income, and does not apply in all cross-border cases⁹⁴. Additionally, some national specific requirements can add to the length and costs of proceedings, as explained by a judicial representative interviewed, who described how sometimes in cross-border situations, the protection measure may depend on a time-consuming medical examination.

Causes

The five direct causes identified as individually contributing to the problem of process time and costs are: the impossible or limited cooperation between national authorities, conflicting rules on applicable laws, conflicting rules on jurisdiction, conflicting and complex rules on recognition of foreign decisions, authentic instruments and private mandates, and unnecessary enforcement proceedings. These all lead to longer and more expensive processes than those without foreign elements.

Overall, when assessing the factors that may explain the lengthy and costly proceedings, the majority of interview respondents (11 out of 19 (57.8%)) considered that the **impossible or limited cooperation** between national authorities was very important. However, when it comes to assessing the importance of **conflicting rules on applicable law and on jurisdiction**, the stakeholders' answers were more divided, as eight out of twenty (40%) found that conflicting rules between Member States on applicable law was very important (seven found it rather important, three remained neutral and two considered it rather unimportant); and 15 respondents out of 20 (75%) believed that conflicting rules between Member States on jurisdiction were very or rather important (three respondents remained neutral and two said that it was rather unimportant).

Impossible or limited cooperation between national authorities

The impossible or limited cooperation between national authorities has consequences for the length of proceedings. This occurs at the level of courts and authorities, as well as at central level in non-Contracting States, as the latter do not have Central Authorities similarly to the Hague Convention mechanism to ensure that requests for assistance are transmitted and handled swiftly. A judicial representative from a Contracting State mentioned during his interview that, of the five to ten cases with a cross-border element out of the 90 measures he deals with (a proportion that remains constant over time), he has never had a case in which guardianship judges or public prosecutors have exchanged with their foreign colleagues on their cases.

The representative of a public authority of a non-contracting State underlined that all the problems in the cross-border protection of vulnerable adults were to some extent related

considered that this problem was rather unimportant in comparison to others the lack of legal certainty and the non-recognition of protection measures and private mandates.

⁹² European Network of Justice Inspection Services, 2022. *Mission to assess European civil judicial cooperation for the protection of adults*.

⁹³ Transportation, translation costs or costs incurred abroad are not covered by this financial support. European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

⁹⁴ Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02003L0008-20030131> only applies if the applicant lives in another country than the one of the competent court.

to the lack of cooperation among Member States, in particular for those countries that have **not ratified the Hague Convention**. Pursuant to Article 28 of the Hague Convention, Contracting States must designate a Central Authority 'to discharge the duties which are imposed by the Convention on such authorities'⁹⁵. Central Authorities are set up to cooperate with each other, provide information in their State regarding the protection of adults or assist in specific cases of cross-border protection of vulnerable adults⁹⁶. Thus, they represent a key instrument for facilitating communication and cooperation in this area. Member States that have not ratified the Hague Convention cannot rely on the assistance of a Central Authority. The difficulty of determining the competent foreign authority and persons in non-contracting States, the need for translations and the lack of time constraints imposed on providing a response mean that **public authorities staff spend more time and therefore more money on cases of vulnerable adults in cross-border situations.**

Two participants in the focus group pointed out that the authorities of the States party to the Convention do not face any difficulties in cooperating, whereas, on the contrary, between the authorities of the states which are not party to the Convention there is no cooperation at all⁹⁷. However, a European Parliament report identified that **Member States party to the Hague Convention** also had problems, including poor cooperation and communication between the authorities of the contracting parties⁹⁸. This difficulty is also increased by the absence of digital tools such as a case management system, secure communication, and standard forms or access to the e-Justice portal for communication with foreign courts and notaries. An association representing a category of vulnerable adults referred to the lack of modernisation (i.e. not digitalised and slow) of the judicial and administrative proceedings, therefore leading to public authorities finding themselves in difficulty and being very slow in taking practical measures in sometimes urgent situations. The non-mandatory nature of the certificate of representation as well as the lack of promotion and awareness of the Hague Convention may also lead to the lack of recognition and lengthy procedures⁹⁹. Human resources may also be an issue. Two respondents (a judge and a judicial representative) mentioned that they incidentally learned about the existence of a specific position in their country created to liaise with foreign judicial authorities on the issue of vulnerable adults and to facilitate cross-border cases. Although it would have been a great help in practice, the position was vacant at the time the interviews were conducted. It thus appears that the tools created to facilitate communication and the development of cross-border cases are not known to the professionals for whom they are intended. This influences the workload of legal professionals who feel unprepared when they have a cross-border case and lose time in finding the applicable mechanism.

Conflicting rules on applicable laws

The lack of clarity on the applicable law also contributes to the length and cost of proceedings, as the conflict between the different national rules has to be resolved, which takes time and requires more people and resources. In addition, a representative of notaries pointed out that if people have difficulties in knowing which law is applicable to them, there is also a lack of knowledge of the content of foreign applicable law, as people are not experts on all these different types of systems, which would therefore require external experts, and thus increase costs.

⁹⁵ Article 28, Hague Convention of 13 January 2000 on the International Protection of Adults.

⁹⁶ Articles 29 and 30, *ibid*.

⁹⁷ Representative from Germany – Focus Group 2. Representative of the French Ministry of Justice – Focus Group 2.

⁹⁸ European Parliamentary Research Service, & Salm, C. (2016). *Protection of Vulnerable Adults European Added Value Assessment Accompanying the European Parliament's Legislative Initiative Report*.

⁹⁹ European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults*.

Conflicting and complex rules on recognition of foreign decisions, authentic instruments and private mandates

The conflicting and complex rules on recognition of foreign decisions, authentic instruments and for the implementation of private mandates indirectly lead to an increase in the length and costs of proceedings, as recognition procedures are complex (thus generating costs) and lengthy. Fifteen out of twenty respondents (75%) mentioned the **conflicting rules** between Member States on recognition of foreign decisions, private mandates and of authentic instruments as being very or rather important.

Under the Hague Convention, Articles 22 to 27 provide the rules regarding recognition and enforcement. As highlighted in a recent report, competent authorities of Contracting States are **not sufficiently trained and aware** of Articles 22 to 27, and when an adult moves to another country, they close their file, and a new procedure starts from the beginning in the other country.¹⁰⁰ The report showed that there is a lack of information and training on the Convention and a general underuse of European instruments of civil cooperation.

In States that are **not party to the Hague Convention** and where the **recognition is not automatic**, recognition requires the start of judicial procedures, which incurs costs such as legal representation, court fees, sworn translation of documents. In addition, when the foreign protection measure is **not recognised** (a judgment refuses the recognition or the applicant does not want to go through a judicial proceeding), it will lead to additional costs and procedures. Here as well, most applicants would simply file a new request in another Member State, which would take time and generate new costs. In addition, if the cross-border situation concerns a State that is not party to the Convention, the vulnerable adult concerned could have a decision in one States based on the nationality, and another one in another State based on the habitual residence criterion, which requires double costs¹⁰¹.

Unnecessary enforcement proceedings

Unnecessary enforcement proceedings (and in particular exequatur) result in particular from the lack of automatic recognition of protection measures, authentic instruments and private mandates adopted abroad. They automatically lengthen procedures and generate significant additional costs for vulnerable adults and their families. Fifteen respondents out of twenty (75%) considered that unnecessary enforcement proceedings were respectively very important and rather important.

For non-contracting States, enforcement is often required even when it is not necessary. Several stakeholders interviewed described situations where a protection measure taken in one country was not recognised in another and an exequatur proceeding had to be carried out. As the foreign legal system must proceed with the application for recognition, foreign lawyers must often be hired to carry out these procedures, correspondence must be conducted, documents sent, and sometimes trips to that country must be organised. In terms of **length**, a representative of practitioners consulted pointed out that it may take months to complete an exequatur procedure, which implies a severe prejudice for vulnerable adults in cases where the person has no other assets than those located abroad¹⁰². In terms of **costs**, a judicial representative gave the example of a case where all the costs associated with an exequatur procedure cost the vulnerable adult more in ancillary costs than closing the foreign account itself, which was the original intended step.

Regarding **enforcement for Contracting States**, Article 25(2) of the Hague Convention foresees that the enforcement of measures taken in another Contracting State shall be done via simple and rapid procedures, but the Article does not impose the means for such procedures, nor does it limit the costs. Moreover, most Contracting States have not put in

¹⁰⁰ Ibid.

¹⁰¹ Lawyer from Belgium – Focus Group 1.

¹⁰² Representative of the Council of Bars and Law Societies of Europe (CCBE) – Focus Group 1.

place the simple and rapid procedure¹⁰³. Furthermore, a respondent to interviews highlighted that the recognition procedure in their country (Contracting State) is neither simple nor fast, as the competent court is a court of appeal, and the legal requirements to guarantee the authenticity of the decision are very formal. For instance, it is necessary to send the original certificate by post.

Effects

The length and costs of proceedings in cross-border situations create a **risk to the physical and mental health of vulnerable adults**. Due to the length of proceedings, delays in obtaining necessary medical treatment may occur in cross-border situations¹⁰⁴. Some stakeholders argue that the physical and moral integrity of vulnerable persons are not adequately protected in the current situation, which leads to the EU and Member States being in contradiction with their obligations under the UN Convention on the Rights of Persons with Disabilities¹⁰⁵.

The particularly lengthy and costly proceedings in cross-border situations involving vulnerable adults lead to a significant **risk of financial spoliation and/or denied access to the adult's property abroad**. Vulnerable adults can be deprived of their ability to manage their financial affairs abroad due to the proceedings they would have to go through in cross-border situations. From the interviews carried out, it appears that private institutions such as some banks are particularly demanding in terms of conditions when it comes to cases involving a vulnerable adult. They may therefore restrict the vulnerable adult's access to their bank accounts, particularly if they require steps that some vulnerable adults cannot take, such as travelling to the foreign country. Additionally, the issue of language barrier tends to exacerbate the pre-existing difficulties that vulnerable adults may face with foreign banks¹⁰⁶.

Access to justice for vulnerable adults can be hindered by the length and costs of proceedings. The sometimes exorbitant costs of particularly complex proceedings, the fact that these costs are not necessarily included in legal aid, and the duration of all these legal steps may prevent vulnerable adults from fully exercising their right to access to justice. Access to free or affordable legal representation and advice is considered necessary to fulfil the right to access to justice¹⁰⁷. Legal aid enables vulnerable adults to access justice in proceedings relating to their right to legal capacity, which appears to be particularly necessary in cross-border cases, as these cases are more complex than others¹⁰⁸.

The length and costs of proceedings can additionally be a strong deterrent for vulnerable adults who would have wanted to travel, and some might not have the necessary resources to go through these proceedings. Thus, the right to **free movement** of vulnerable adults can be hampered.

Finally, the length and costs of proceedings also have an impact on **public authorities** who experience **increased workloads and costs** when dealing with cross-border cases involving vulnerable adults. For courts, handling cross-border cases takes longer to process

¹⁰³ DE, AT, LV based on the 2021 legal study, European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

¹⁰⁴ Ibid.

¹⁰⁵ European Disability Forum, 2022, *Ensuring disability rights in civil judicial cooperation - Recommendations on civil aspects of the cross-border protection of vulnerable adults*.

¹⁰⁶ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

¹⁰⁷ Flynn, E., Moloney, C., Fiala-Butora, J., & Echevarria, I. V., 2019, *Access to Justice of Persons with Disabilities*.
https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/CDLP-Finalreport-Access2JusticePWD.docx

¹⁰⁸ Element raised by a representative of the Council of Bars and Law Societies of Europe during the first focus group conducted on 14 September 2022.

than strictly domestic cases involving vulnerable adults¹⁰⁹. In order to avoid additional costs and workload, they tend to simply ignore the international element¹¹⁰. Difficulties encountered by public authorities in obtaining information and cooperating with institutions of other Member States or third countries also have a direct impact on their workload and associated costs. For Member States which are **not party to the Convention**, the workload and costs can be much higher, especially as competent authorities do not have the assistance of a Central authority. The lack of common European legal framework adds to the workload of courts, as they have to deal with the application of their national law and research on the application of foreign law¹¹¹.

2.2.2.3 Non-recognition of protection measures, authentic instruments and private mandates

Problem

Once a protection measure has been adopted in a Member State, it may happen, **depending on the application or not of the Hague Convention**, or on the type of measure (judicial, authentic or private mandate), that the measure adopted in one Member State is not recognised, and thus cannot be implemented in another Member State. This is problematic in particular when a vulnerable adult under a protection measure moves or travels abroad, in which case the continuity of the protection would need to be ensured. This may also be an issue when a person under protection has assets abroad and wishes to dispose of these assets.

Overall, 16 out of 32 respondents of interviews conducted regarded the **non-recognition of protection measures and authentic instruments** in cross-border situations as a very important obstacle to the protection of vulnerable adults, and eight respondents considered it as rather important. This issue was also substantiated by numerous examples of non-recognition provided by stakeholders during the consultations undertaken for this study.

Causes

The main cause connected to the problem of protection measures, authentic instruments and private mandates not being recognised is the **conflicting and complex rules on recognition** from one Member State to another¹¹². A **foreign decision** may not be recognised by a court, based on the grounds for non-recognition listed in national law and in the Hague Convention. The longer the list of grounds for non-recognition, the higher the risk that a decision will not be recognised. Furthermore, a foreign decision may not be recognised by non-judicial actors (e.g. banks), as they would not be familiar with it. When it comes to **private mandates**, 11 Member States do not provide for such mandates in their national law¹¹³. If the applicable law does not provide for the existence of such mandates, it will be considered non-existent in the receiving Member State. Neither the Hague Convention nor national PIL rules provide for rules on the recognition of private mandates. This could only be adopted at EU level. These conflicting and complex rules automatically increase the risk of having protection measures, authentic instruments and private mandates not recognised in a foreign country.

Thirteen out of 24 persons interviewed found that the absence of harmonised rules on cross-border protection of vulnerable adults across Member States is very important in

¹⁰⁹ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

¹¹⁰ European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults*.

¹¹¹ Interview with the representative of a public authority of a non-contracting party to the Hague Convention.

¹¹² European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

¹¹³ BG, CY, EE, EL, IT, LV, LU, NL, PL, SK and SI.

explaining the non-recognition of protection measures, authentic instruments and private mandates, and nine respondents considered it as rather important.

The **Hague Convention** provides for automatic recognition of a foreign protection measure taken in a Contracting party. The rules contained in Chapter IV of the Convention are based on the principle of reciprocity and therefore only apply to measures taken by the authorities of another Member State party to the Convention, which creates a significant gap¹¹⁴. Also in Contracting States, the automatic recognition mechanism is not always correctly implemented, due to the lack of knowledge and awareness on the subject. A judicial representative gave the example of a bank in a Contracting State of the Convention which asked for an exequatur judgment of the foreign protection measure, despite the fact that a measure is automatically recognised under the Hague Convention. Another issue linked to the implementation of the Hague Convention was raised by the representative of the Central Authority of a country party to the Convention, who pointed out that they face a serious problem of recognition, since most foreign decisions predate the entry into force of the Convention in that country, and the Convention limits the application of the recognition rules to decisions made when the Convention is applicable in both States. One possible solution to this would be the solution adopted in the application of the Hague Maintenance Protocol 2007, where the European Union allows for the analogous application of the applicable law rules. Another possibility would be to allow for decisions issued after the entry into force to still be brought under the working of the new instrument if the jurisdiction of the court would have been possible had the Convention been in force at the time (a similar solution to the working of the Brussels IIa Regulation with respect to decisions of parental responsibility in Article 64, Brussels IIa).

When it comes to **private mandates**, recognition of a mandate adopted in another Member States is a recurring issue pointed out by literature¹¹⁵ and by stakeholders^{116 117}. As an explanation, a national authority, in their response to the public consultation, pointed out that the exercise of the mandate in a State other than that of the designated law implies that the person from whom recognition or acceptance is sought should have knowledge of that law, which is a significant difficulty¹¹⁸. The **lack of communication** is another cause of non-recognition of protection measures, as recognition presupposes knowledge of the measure in the first place, and communication across Member States of the existence of protection measures is a recurring issue. This was illustrated by an authority consulted, who emphasised the difficulties in determining the existence of a proceeding concerning a protection measure that has been taken or is being considered before the courts of two different States, including because there is no centralised archive or register at European level or even, depending on the State, at national level^{119 120}. The representative of a chamber of notaries gave the example of a situation where authorities of the country in which a sale was to be concluded could not access the information that the legal capacity of the buyer was limited and that this person needed support to sign the act to sale the property.

Effects

The non-recognition of protection measures in other Member States can create a **risk to the physical and mental health** of vulnerable adults, due to the spatial discontinuity of the protection (the vulnerable adult is under certain safeguards in one Member State, and

¹¹⁴ European Parliamentary Research Service, & Salm, C., 2016, *Protection of Vulnerable Adults European Added Value Assessment Accompanying the European Parliament's Legislative Initiative Report*.

¹¹⁵ Ibid.

¹¹⁶ Representative of the European Law Institute, Focus Group 1. Notary from the Netherlands, Focus Group 1.

¹¹⁷ Representative of the European Law Institute, Focus Group 1.

¹¹⁸ French authorities, 2022, *Responses of the French authorities to the public consultation on the initiative on the cross-border protection of vulnerable adults - Note by the French authorities*.

¹¹⁹ French authorities, 2022, *Responses of the French authorities to the public consultation on the initiative on the cross-border protection of vulnerable adults - Note by the French authorities*.

¹²⁰ On this point, see Annex IX providing an overview of the existence of registers in the Member States.

under other or no safeguards at all in another Member State). The non-recognition of measures that have already been adopted can create distress for the persons concerned and their families; and discontinuity of the protection can result in abuse. In this regard, situations of neglect or even abductions were reported on several occasions by practitioners¹²¹.

A risk of financial spoliation and/or denied access to the adult's property abroad can arise from non-recognition. The costs linked to the non-automatic recognition of a measure can be really high (hiring a foreign lawyer, travel costs, etc.). Non-recognition can also cause a vulnerable adult or their representatives to not be able to access the adult's assets abroad. The representative of a vulnerable adult interviewed experienced the non-recognition of the protection measure of the person under his care, and the need to go through an exequatur procedure, which lasted about 15 months. The representative was not able to obtain access to the bank accounts and was thus unable to detect a scam. He was unable to stop this scam and prosecute the relevant person earlier. Not being able to access assets can also have consequences on the health of vulnerable adults if they cannot meet medical expenses or pay for a care home. This was repeatedly mentioned by stakeholders consulted for this study¹²².

Not recognising the protection measures and in particular private mandates and authentic instruments may result in impeding the **rights to self-determination and autonomy**. Private mandates provide all citizens with the possibility of making arrangements in advance and deciding themselves who will take care of their personal and financial interests. Private mandates thus foster self-determination, and the fact that they are not recognised everywhere due to the lack of harmonisation rules in the EU is a breach of self-determination. As highlighted by the European Association of Private International Law in their position paper answering the European Commission's public consultation on the topic, striking the right balance between self-determination (enabled by instruments such as private mandates) and the protection of vulnerable adults is not an easy exercise and requires careful consideration¹²³. The long, uncertain and complicated procedures that vulnerable adult experience in cross-border situations may lead to the non-respect of their wishes or preferences. For instance, if a private mandate is not recognised in another country, the wish of a vulnerable adult to attribute powers of representation, or to choose a court may be disregarded^{124 125}, in breach of Article 12(3) of the CRPD.

Not being able to ensure that protective measures, private mandates or authentic instruments will be automatically recognised can be a deterrent for vulnerable adults who would want to move to another Member State and can therefore hinder the right to **free movement**.

The lack of legal certainty, the lengthy and costly proceedings and the absence of recognition of protective measures, authentic instruments and private mandates described above stem from a number of indirect causes further described in Annex II. These causes are linked for some (choice of court in private mandates, authentic instruments and private mandates not recognised abroad, grounds for refusal to recognise a foreign decision, absence of harmonised rules on cross-border protection, existence of national enforcement proceedings) to the current PIL rules set in the Member States which are either based on the rules set in the Hague Convention or are set at national level. Others are due to practical issues (optional use of electronic channels, non-acceptance of electronic documents,

¹²¹ Cases presented in Focus Group 1 and in Présidence Française du Conseil de l'Union Européenne. (21 April 2022). Les professionnels face aux enjeux de la protection européenne et internationale des adultes vulnérables.

¹²² Included by CNUE, which represents 22 national notaries associations across the EU.

¹²³ European Association of Private International Law, 2022, *Position paper in response to the European Commission's public consultation on an EU-wide protection for vulnerable adults*.

¹²⁴ European Law Institute, 2020, *The Protection of Adults in International Situations*.

¹²⁵ European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults*.

lack of cooperation between authorities, the absence of information on foreign laws, the absence of accessibility of national registries from abroad and language barriers). These causes, and the problems they result in, are consistently observed in literature and by stakeholders, and are very likely to persist in the absence of EU action. On the contrary, problems will most likely increase in the absence of action, bearing in mind the growing number of vulnerable adults in cross-border situations, and the uptake of the use of private mandates.

2.3 Need for EU action

Legal basis to act

The previous study carried out for the Commission suggested that the EU could consider designing a specific legislative initiative, which would further deepen European judicial co-operation. Ideally, such an EU initiative would be combined with the ratification of the Hague Convention by the EU Member States who are not parties, facilitating the relations between Member States and third countries.

One of the key elements of the analysis provided in the previous study was to assess the **competence of the EU** to adopt such a measure. In this regard the previous study stressed, for instance, that the adoption of an EU legislative measure would, in principle, be compatible with the international obligations of the Member States under the Hague Convention.

As provided in the treaties, the EU develops the European area of justice in civil matters based on the principles of mutual trust and mutual recognition of judgments. Nevertheless, the EU has no competence to harmonise substantive rules relating to the protection of adults or the procedural rules regarding the adoption and review of measure of protection. However, harmonisation of PIL rules does fall within the scope of the powers vested in the EU by **Article 81 of the TFEU**. Article 81(2) would therefore form the legal basis for an EU instrument.

In addition to internal competence (i.e. competence to enact legislation on the matter), the Union has external competence to ask Member States to ratify the Hague Convention 'in the interest of the Union', since the Convention lays down rules of PIL. The said external competence, according to various experts, exists regardless of the prior adoption of EU legislation on the matter. However, as long as no EU legislation is in place, the Union's external competence is shared in nature, rather than exclusive, leading to a mosaic of PIL rules and to the problems described in the previous sections. In addition, the secretariat of the Hague Convention has proposed the adoption of a Protocol for the EU to become a party to the Hague Convention¹²⁶. It would however take quite some time and should therefore not prevent the European Commission from implementing one of the policy options detailed in this study¹²⁷.

Necessity for EU action

Taking into account the problems observed in cross-border situations, the adoption of common rules at EU level would help solve those problems and better safeguard the rights of adults. This is obviously relevant for those Member States which are currently not party to the Hague Convention; but this would also benefit those which are party to the Hague Convention, as they could rely on some degree of reciprocity in the rules they apply to all Member States that are not currently party to the Convention.

¹²⁶ This was informally suggested by the First Secretary of the Hague Conference on Private International Law at a recent workshop. Czech Presidency. (20 September 2022). Workshop on the Cross-border Protection of Vulnerable adults. This issue is now present in the Hague Conference on Private International Law. (9-11 November 2022). Draft Annotated Agenda - First meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention.

¹²⁷ Czech Presidency. (20 September 2022). Workshop on the Cross-border Protection of Vulnerable adults.

As demonstrated in the problem description in Section 2.2, in the absence of EU action, the actions taken individually by Member States at national level have resulted in significant impediments to the exercise of their rights and the protection of vulnerable adults. Additionally, letting Member States choose to act individually means that they can adopt PIL rules that will never be harmonised, depending on their legal system and legal tradition (different connecting factors and different grounds for non-recognition). It also means that there would never be cooperation, considering that it cannot be established at national level, but only at international level (either through EU law, or through bi- or multilateral instruments). The optional ratification of the Hague Convention could take another 20 or 30 years before all Member States ratify it. Furthermore, none of the EU tools dedicated to the correct implementation of EU law will be available (multilingual standardised forms, information on the e-Justice Portal, the European Judicial Network, training, EU grants etc.) and in a case of diverging interpretation, the courts would not be able to refer a case to the Court of Justice of the EU. This is all the more problematic as it is already available in most areas of law and would leave the protected adults behind. Therefore, even though the Member States have the possibility to enact measures on their own, they will fail to establish common efficient rules on the protection of the rights of vulnerable adults across the EU. Furthermore, these measures would differ or conflict with each other, while not enabling cooperation with other Member States.

In that context, an EU intervention appears necessary. Harmonising PIL rules would allow the removal of gaps and inconsistencies in the protection of vulnerable adults (e.g., in cases of conflicts of jurisdiction, conflicts of law, impossibility of enforcing a foreign decision or measure), and avoid obstacles related to the free movement of persons and the proper functioning of the internal market. It would also improve or even introduce practical cooperation between Member States to enhance cross-border protection.

In the light of the CRPD, it is necessary to protect the fundamental rights of all adults with disability in the EU, including in cross-border cases. Considering trends in the numbers of vulnerable adults and mobility within the EU¹²⁸, this need is likely to increase in the next few decades. It is therefore **necessary for the EU to act** now to prevent a corresponding increase in the magnitude of the problems currently experienced and reported by authorities, practitioners, and vulnerable adults and their representatives across the EU.

Therefore, the objectives of this EU action, by reasons of its scope and effects, would be best achieved at Union level in accordance with the principle of subsidiarity.

Stakeholders' views on EU action

The necessity for the EU to act is supported by the stakeholders consulted. The results of the open public consultation (OPC) are particularly relevant in this context¹²⁹: the analysis of the replies to the OPC show that 78% of respondents agreed that the EU should adopt specific European legislation to facilitate cross-border protection of vulnerable adults. The majority of respondents (63%) expressed the opinion that the EU instrument should regulate all issues that might arise in cross-border cases (jurisdiction, applicable law, recognition and enforcement, and cooperation between authorities), as compared to 12% who thought that 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).

According to the majority of respondents to the OPC, an EU initiative in the area of cross-border protection of vulnerable adults would have a very positive effect on all aspects and in particular on legal certainty for national courts and competent authorities and on legal certainty for vulnerable adults, their relatives and representatives¹³⁰.

¹²⁸ This is to some extent related to the megatrend 'Increasing significance of migration' (see Better Regulation Toolbox, Chapter 3, Tool #20: Strategic Foresight for Impact Assessments and Evaluations, (2021c).

¹²⁹ See Annex IV for the public consultation factual summary.

¹³⁰ See more details on the public consultation in Annex VII.

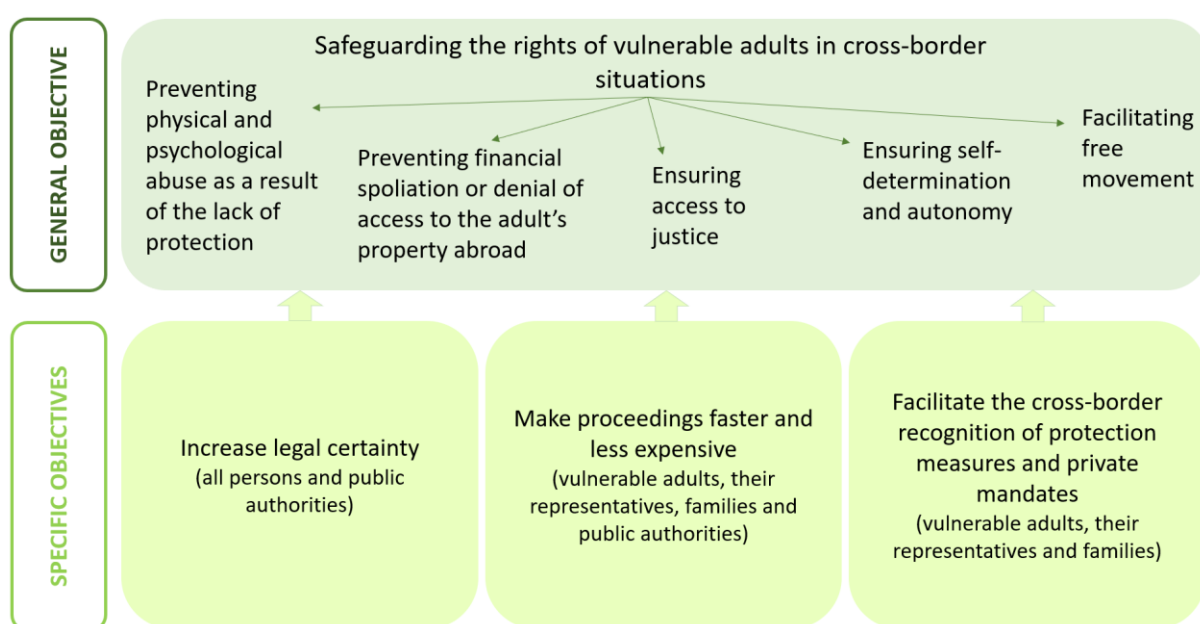
3 Policy objectives and policy options

The present section provides a description of the policy objectives and policy options proposed to address the problems presented in Section 2.2.

3.1 Policy Objectives

Based on the problems identified and further described in Section 2.2, and in order to address them appropriately, general and specific policy objectives have been formulated and mapped out in the figure below. General objectives represent Treaty-based Commission priorities or strategic goals, while the specific objectives describe what the policy action is intended to achieve, allowing for all relevant policy options to be considered. The objectives contained in Figure 4 are further analysed in the following subsections.

Figure 4: Objective Tree



3.1.1 General objective

The general and central objective of any policy action in the field of protection of vulnerable adults in cross-border situations is to **protect their fundamental rights** in line with Article 6 TFEU, the EU Charter of Fundamental Rights and the UNCPRD.

It is essential to ensure that the **physical and psychological integrity** of these persons in need of protection is not put at risk in situations presenting a cross-border element. Typically, the medical treatment of such a person cannot await the recognition of a protection measure that has already been taken in another EU Member State. The risk of psychological abuse must also be considered, as in some cases lengthy and costly processes with an uncertain outcome can create temporary situations where the vulnerable person is not effectively protected anymore (e.g. absence of recognition) or their rights cannot be exercised. It may also result in significant stress, which may have an even greater impact on individuals with mental illnesses or other conditions.

Several proceedings required under the current system have significant **financial consequences** for vulnerable adults, their families and representatives. The costs can be particularly high, and the non-recognition of a protective measure or authentic act made in another country can lead to the financial spoliation of the vulnerable adult, or to them being unable to access property or assets based abroad. This may also have practical

consequences, e.g. if a vulnerable adult needs their representative to access their bank accounts in another country or sell their property to pay for their nursing home in their country of residence.

Ensuring **access to justice** for vulnerable adults on an equal footing with other people is also a key element of the protection of their fundamental rights. Vulnerable adults need to face legal proceedings with reasonable timeframes, affordable for them, and guaranteeing them a fair system and legal certainty, in particular when they find themselves in a cross-border situation.

An EU action should also **promote and safeguard the self-determination** and autonomy of vulnerable adults. The complexity brought by the cross-border character of a case should not lead to a breach of the right to make one's own choice, nor to have to depend on a third person more than in a national case.

The exercise of the **right to free movement** of vulnerable adults is also at risk in the current situation. A greater legal certainty could have a beneficial impact on the freedom of movement of vulnerable adults, their families and representatives as they would know exactly what to expect in the event of a cross-border situation and would not be discouraged or led to give up their projects abroad. Facilitating the recognition of protection measures, authentic instruments and private mandates, as well as making the processes cheaper and faster, would also contribute to safeguarding the freedom of movement of vulnerable adults, as the implications of moving would be much less significant than today.

3.1.2 Specific objectives

For vulnerable adults, their representatives and families, an increased legal certainty for all, the facilitation of cross-border recognition of protection measures, authentic instruments and private mandates as well as faster and less expensive proceedings, are the specific objectives that a political or legislative intervention through the implementation of one of the policy options should achieve.

These specific objectives present strong synergies, and in order to succeed, they are at least to some extent interdependent. Increased legal certainty will result in less lengthy and costly proceedings, as it would reduce unnecessary proceedings (e.g. exequatur proceedings, the need to reopen the case in another Member State) and increase the efficiency of the necessary procedures (e.g. better cooperation between authorities). Moreover, the facilitation of cross-border recognition of the protection measures would directly contribute to legal certainty, as it would mean a reduction of conflicting rules on recognition which affect both legal certainty and the length and costs of procedures.

The Sustainable Development Goals (SDGs) defined by the UN in its 2030 Agenda for Sustainable Development¹³¹ include economic and social goals which correlate with the objective described above. As outlined in the European Commission's Communication on Next steps for a sustainable European future - European action for sustainability, the EU and Member States are committed to ensuring the implementation of the UN 2030 Agenda and its goals¹³². In particular, the fulfilment of the objective would contribute to Goal 1 which addresses poverty, with the goal of ensuring that vulnerable people 'have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.'¹³³ Goal 3 aims to achieve

¹³¹ Resolution adopted by the General Assembly on 25 September 2015, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1.

¹³² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Next steps for a sustainable European future, European action for sustainability, COM/2016/0739 final. <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52016DC0739>

¹³³ Resolution adopted by the General Assembly on 25 September 2015, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1.

'universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all'. Goal 10 addresses inequality and aims to ensure the reduction of inequality and discriminatory laws. Finally, Goal 16 on peace, justice and strong institutions is aimed at ensuring equal access to justice for all. As the objectives also refer to free movement, megatrends such as the increasing significance of migration should be to some extent taken into consideration in the way a future instrument is designed. This is encompassed in all options presented below.

3.2 Intervention logic

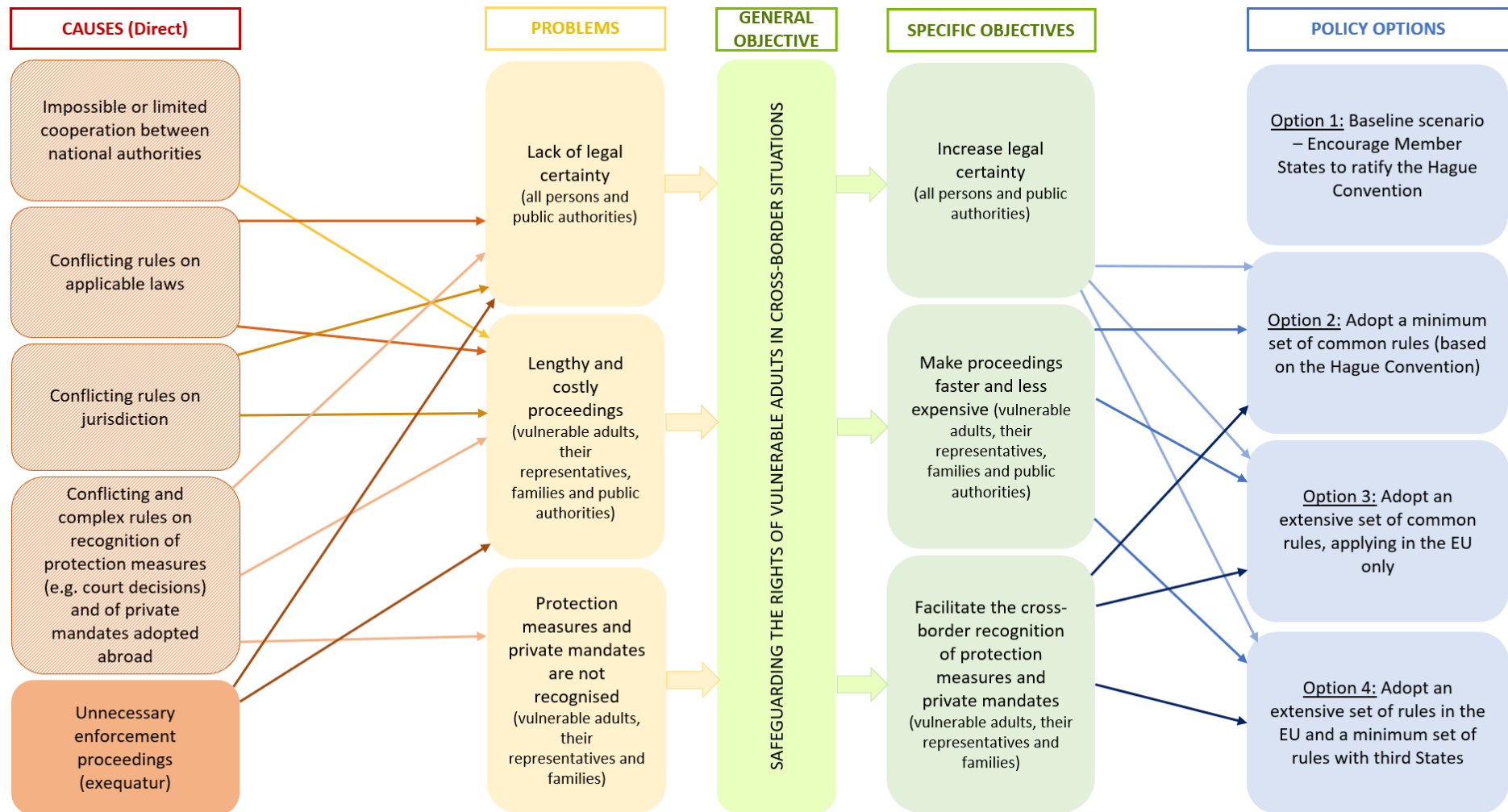
The development of policy options is intrinsically linked to the definition of problems, and their causes. Having identified these, general and specific objectives are formulated in response to the problems. To achieve the objectives, policy options are developed, offering concrete scenarios to be implemented. The intervention logic brings together these various elements (i.e. causes, problems, objectives, options).

In the field of protection of vulnerable adults in cross-border situations, after several adjustments, four policy options have been selected and are described in the following section.

Each of the specific objectives is linked to the policy options in a different way, depending on how a policy option would lead to an objective. Each of the options can lead to the same objective but achieve it in a more or less extensive way.

Considering that the problems stem from the current situation, none of the specified objectives are connected to the first policy option on the figure.

Figure 5: Intervention Logic



3.3 Presentation of the Policy options

In response to the problems identified in the context of cross-border protection of vulnerable adults, the general objective of any initiative in this area is to ensure that the rights of vulnerable adults are safeguarded. This is to be achieved through specific objectives, namely increasing legal certainty, facilitating the cross-border recognition of protection measures, authentic instruments and private mandates, and making proceedings faster and less expensive.

Several policy options have been developed to address these objectives. They range from a status quo scenario to a complete coverage of the protection of vulnerable adults in cross-border situations at EU level also addressing cooperation with third states. The options that have been chosen are defined and explained below.

3.3.1 Policy option 1: Baseline scenario

The first option analysed consists of maintaining the current situation, in which the EU institutions would continue to encourage Member States to ratify the Hague Convention, but would not take any additional legislative step, nor oblige Member States to ratify the Hague Convention.

No legislative tool would be adopted at EU level. Although the EU institutions would support the Permanent Bureau of the Hague Conference in encouraging Member States to ratify the Hague Convention, e.g. through awareness-raising activities, ratification would remain optional, resulting in different legal regimes within the EU, with some countries being party to the Convention and others not. Given the trends such as the overall ageing of the population and related prevalence of several mental illnesses and physical disabilities, alongside increased cross-border mobility of EU citizens and the digitalisation of communications, the problems would remain of the same nature but would be likely to increase in size.

3.3.2 Policy option 2: Adoption of a minimum set of common rules (based on the Hague Convention)

Under the second option, the Commission would prepare a proposal for a Council Decision that would authorise the Member States that have not yet done so to ratify, or accede to, the Hague Convention 'in the interest of the Union'¹³⁴ (since the Union cannot itself become a party to the Convention, as this is only open to sovereign States). The Member States concerned would in fact be requested to proceed with the ratification, or accession, within the timeframe fixed in the decision. At the end of the process, all Member States would be parties to the Convention. The (limited) number of measures provided for by the instrument including rules on jurisdiction, applicable law, recognition and enforcement, the setting up of Central Authorities (enhancing cooperation between them), as well as the possibility of using a certificate of representation, would apply within the EU and in relation to third countries party to the Convention. Considering the incentive created by the ratification of the Hague Convention by all EU Member States, it is likely that many more third countries would join the Convention.

No EU legislation would be adopted on the cross-border protection of vulnerable adults.

Option 2 would enable reaching each of the specific objectives but only to a limited extent. The compulsory ratification of the Hague Convention would increase legal certainty for cross-border situations within the EU and for third countries party to the Convention. Indeed, the rules on jurisdiction, applicable law and on recognition and enforcement would be common to all Member States. Therefore all vulnerable adults, their families and representatives would be aware of the rules applying in cross-border situations that they might

¹³⁴ See footnotes 3 and 145 on this point.

face. Rules requiring Contracting Parties to establish simple and rapid enforcement procedures and the reduction of exequatur proceedings would tend to make proceedings faster and less expensive. In the long term, it can be considered that ratification would lead to a reduction in costs for courts, notaries and other competent authorities due to more efficient case management and easier cooperation between newly established and existing Central Authorities.

3.3.3 Policy option 3: Adoption of an extensive set of common rules applying in the EU only

The third policy option corresponds to the adoption of an EU Regulation which would have a wider scope than what Option 2 would achieve in practice. All the fundamental rules adopted by the Hague Convention (jurisdiction and applicable law) would be included in the new Regulation which would also provide for additional measures, based on the principle of mutual trust and on the existing EU acquis.

In addition to the measures introduced by the previous option, this policy option could add other possible measures, including the choice of court in **private mandates**, which could be provided for in a specific provision; the new Regulation could clarify whether it applies to **ex lege powers of representation**; rules on **recognition** and **enforcement** could be further simplified, they could also cover authentic instruments and private mandates, and could limit grounds for non-recognition of protection measures and authentic acts, as well as abolishing exequatur proceedings.

The **certificate of representation** which was optional in the Hague Convention could become a European mandatory certificate, and form the object of a more detailed and more efficient regulation.

Furthermore, following the model of the Maintenance Regulation, **reinforced powers** could be **attributed to Central Authorities** in order to facilitate the obtention of information; communication would be increasingly **digitalised**, notably through standardised forms and some clarifications could be brought regarding the steps that need to be taken by a court when transferring its jurisdiction to another court; rules regarding **legal aid** could be specified and extended to cover situations that are not currently covered by national law or by the Directive on legal aid, due to the cross-border nature of cases. Some rules on **access to registries** of measures and certificates (with the interconnection of national registries or an EU registry) could be introduced. Several measures of soft law could also be introduced in the EU Regulation, such as information and tools that could be made available on the e-Justice Portal.

Finally, the new Regulation could contain provisions on the **designation of a representative abroad**, by which it would be possible for a court to appoint representatives abroad for a specific act or to follow up on a protection measure.

Under this option, the new rules would be applicable to EU Member States only. There would be no compulsory ratification of the Hague Convention, which would only apply between third Contracting and Member States that are party to the Convention.

Option 3 would satisfy the specific objectives presented in the objective tree to a greater extent than the previous option. Indeed, all the basic rules of the Convention would be included in the Regulation and more provisions would be added to reach a greater level of cooperation. The latter along with the **facilitation of the recognition** of protection measures, authentic instruments and private mandates could be increased due to additional rules concerning the limitation of grounds for non-recognition, the abolition of exequatur and the application of the rules on recognition and enforcement to authentic instruments and private mandates. With these additional elements and more extensive legal aid, proceedings would become much **less expensive**. They could also be **faster** thanks to the Multilingual European certificates of representation which could become mandatory, increased digitalisation, reinforced powers of Central Authorities and rules on access to registries of measures and certificates. These objectives would only be met within the EU,

meaning that the current situation and related problems would remain unchanged when vulnerable adults find themselves in cross-border situations between an EU Member State that has not ratified the Hague Convention and a third State party to the Convention.

3.3.4 Policy option 4: Adoption of an extensive set of rules in the EU and minimum set of rules with third states

The last policy option would consist of reaching a common solid framework of rules for the EU, by adopting an EU Regulation containing a comprehensive set of rules and a Council Decision in regard to third States. The **EU Regulation** would include the same new provisions as those mentioned in Option 3 (choice of court in private mandates, application to *ex lege* power of representation, abolition of exequatur procedures, mandatory European certificate of representation etc.). Additionally, a proposal for a **Council Decision** would be prepared in order to authorise and oblige the Member States that have not yet done so to ratify the Hague Convention, thereby in fact requesting that they proceed in that direction. The aim of this policy option would be to ensure that vulnerable adults moving to another State outside the EU and party to the Hague Convention would have a minimum and consistent standard of protection.

In comparison to Option 3, there would be common rules for jurisdiction and applicable law also covering the cases in which a vulnerable adult would move or have assets in a **third State** party to the Hague Convention. As with Option 2, when considering this option, it is worth bearing in mind that it is very likely that many more non-EU States will ratify the Convention in the future, especially if all EU Member States become party to the Convention, as this would provide a strong incentive for ratification.

In **Option 4**, an EU Regulation comparable to the one proposed in Option 3 would become applicable within the EU, and therefore would **respond to the specific objectives** in the same way. In addition, EU Member States would be obliged to ratify the Hague Convention, which would ensure **greater legal certainty**, the **facilitation of the recognition** of protection measures, as well as **faster and less expensive proceedings** in relation to cross-border cases involving a third State party to the Hague Convention.

While the degree of fulfilment of the specific objectives differs according to the options proposed, this is also true for the general objective of safeguarding the rights of vulnerable adults. Indeed, the more extensively the specific objectives are achieved, the more the fundamental rights of the persons concerned are protected.

On the basis of the description of the policy options provided in Section 3.3, and bearing in mind the objectives presented in Section 3.1 and 3.2 above, **all four policy options can be analysed**. This is provided that Policy Option 1 entails the progressive adhesion of more Member States to the Hague Convention, which contributes to the achievement of the specific and general policy objectives.

3.4 Legal assessment of the policy options

While none of the options should be discarded based on the objectives of the EU intervention, it is important to ensure that they are feasible from a legal point of view and ensure the respect of the principles of subsidiarity and proportionality, as well as providing EU added value. This is the purpose of the present section.

3.4.1 Policy option 1: Baseline scenario

The first option analysed consists of maintaining the current situation, in which the EU institutions would continue to encourage Member States to ratify the Hague Convention, but would not take any additional legislative step, nor oblige Member States to ratify the Hague Convention. This would not modify the balance in terms of **subsidiarity**, where the full responsibility would be on the Member States individually, or in terms of **proportionality**, as no significant intervention of the EU would be needed.

3.4.2 Policy option 2: Adoption of a minimum set of common rules (based on the Hague Convention)

Under the second option, the Commission would prepare a proposal for a Council Decision that would authorise the Member States that have not yet done so to ratify, or accede to, the Hague Convention 'in the interest of the Union' (given that at present¹³⁵ the Union cannot itself become a party to the Convention, as this is only open to sovereign States). The Member States concerned would in fact be requested to proceed with the ratification, or accession, within the timeframe fixed in the decision. At the end of the process, all Member States would be parties to the Convention, but no EU legislation would be adopted on the cross-border protection of vulnerable adults.

This option therefore involves the exercise of external competence by the Union. As explained in Section 2.1 of this report, the Union cannot currently itself become a party to the Hague Convention. Instead, the Union can authorise the Member States that have not yet done so to ratify, or accede to, the Convention 'in the interest of the Union'. A decision to this effect would need to be taken by the Council, **based on Article 81 TFEU in conjunction with Article 218(5) and (6) TFEU**, in light of the practice of the EU institutions, notably following the conclusion of the Hague Convention of 19 October 1996 on measures for the protection of children by the Member States¹³⁶.

The adoption of such a decision presupposes that the conclusion of the Hague Adults Convention comes within the purview of the external competence of the Union. Whether such a competence exists is debated. Various arguments have been put forward to support the view that the conclusion of the Convention would fall within the (non-exclusive) external competence of the Union in accordance with Article 216(1) TFEU, on the grounds that the conclusion of the Convention would be 'necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties'.

The Convention deals with issues within the framework of the policies of the Union, namely those enshrined in Article 81 TFEU (this aspect is further discussed below, under Option 3).

The criterion of 'necessary' is more difficult to assess. In his conclusions regarding case C-600/14, *COTIF I*¹³⁷, AG Szpunar took the view that the criterion should be 'interpreted broadly', arguing that 'the political institutions with competence have a wide margin of discretion'. In its ruling in the case¹³⁸, the Court did not explicitly disagree with the latter opinion. It has been suggested that the assessment of whether the conclusion of the Convention would be 'necessary' for achieving the objectives set out in the Treaties comes in two steps¹³⁹.

The first step involves identifying the objectives, among those referred to in the Treaties, that the Convention would serve if it were in force for all the Member States. The Convention, it is contended, would make it easier for the Union to protect the fundamental rights of those concerned, in line with Article 6 TFEU; it would foster the free movement of citizens, consistent with Article 3(2) TEU; and it would help combat social exclusion and discrimination, as required by Article 3(3) TEU. It has been suggested that the functioning of the internal market would likewise be more effectively secured if the Convention were in

¹³⁵ See footnotes 3 and 145 on this point.

¹³⁶ 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, (2008). https://eur-lex.europa.eu/resource.html?uri=cellar:c074e3c2-7619-4d29-96ee-cf53b9cf241e.0006.01/DOC_1&format=PDF

¹³⁷ Opinion of AG Szpunar in Case C-600/14 Germany v Council (COTIF) EU:C:2017:296, (2017). para 101.

¹³⁸ Case C-600/14, Federal Republic of Germany v Council of the European Union, ECLI:EU:C:2017:935, (2017).

¹³⁹ European Association of Private International Law, 2022, *Position paper in response to the European Commission's public consultation on an EU-wide protection for vulnerable adults*.

force for all Member States¹⁴⁰. The second step involves determining whether the conclusion of the Hague Convention would be needed to attain the said objectives. Various rulings of the Court of Justice provide guidance regarding the way in which the requirement of 'necessity' ought to be understood for the purposes of Article 216 TFEU. The precise implications of those rulings are debatable. One key element is whether a distinction can be made, within the framework of the agreement concerned, between situations that solely affect the EU, on the one hand, and situations that affect a Member State of the Union and a third country, on the other¹⁴¹. If a clear distinction can be made between intra-EU situations and extra-EU situations, then the conclusion of the agreement can hardly be deemed to be 'necessary' to attain the objectives of the Treaties. Conversely, where purely intra-European situations are not practically distinguishable from extra-EU situations, then the conclusion of the agreement appears 'necessary' for achieving the pertinent objectives. The protection of adults is precisely an area of law where a clear distinction between intra-EU and extra-EU situations would hardly make sense¹⁴². Vulnerable adults increasingly move from one country to another, both within the territory of the Union and outside of it. In its replies to the questionnaire on the functioning of the Hague Convention, Switzerland indicated that there is a significant demand for the application of the rules of the Convention, in particular with respect to France, Germany, Italy and Spain. Unfortunately, no statistics have been gathered reflecting the numbers of such cases¹⁴³. The property of a vulnerable adult, for its part, may consist of assets located in several States: these, too, may be Member States of the Union or third countries. Additionally, since an adult may be in a situation of vulnerability for several years, if not decades, situations may arise where the personal or property interests of the person concerned move from within the Union to a third country, and vice-versa, several times during the life of the adult concerned.

All this suggests that the conclusion of the Hague Convention could ensure that the above scenarios are dealt with under one and the same set of basic rules, regardless of whether (or the extent to which) the situation is connected, or becomes connected, to a third country¹⁴⁴. In the end, given the peculiarities of the protection of vulnerable adults, the objectives of the Treaties mentioned above – the protection of the fundamental rights of those concerned, the free movement of citizens, the fight against social exclusion and discrimination, etc. – would not be thoroughly fulfilled if a unitary basic framework were lacking¹⁴⁵.

An EU-wide harmonisation of the PIL rules regarding the protection of adults, through the ratification of the Hague Convention would **comply with the requirements of subsidiarity** as set out in Article 5(3) TEU. The latter rules would deal with the protection of adults in cases with cross-border implications. The goal of enhancing legal certainty in the treatment of those cases and the goal of ensuring a spatially continuous protection to those concerned could not be achieved by the Member States acting individually, due precisely to the international character of the situations considered. The above goals, instead, can be achieved through action at Union level.

The contemplated harmonisation of PIL rules would, additionally, be **consistent with the requirement of proportionality** under Article 5(4) TEU. PIL rules feature a high degree of technicality. The mere approximation of the said rules, as may be achieved through a Directive, would hardly meet the objectives stated above. The adoption of a set of uniform provisions, instead, would meet such objectives.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ CS Protection des adultes de 2000, *Questionnaire sur le fonctionnement pratique de la Convention Protection des adultes de 2000*, Doc. Prel. No 2 de septembre 2020, Swiss replies to questions 2.1 and 2.2, <https://as-sets.hcch.net/docs/01f673e1-934a-43b5-8b12-4dd6d7531460.pdf>

¹⁴⁴ European Association of Private International Law, 2022, *Position paper in response to the European Commission's public consultation on an EU-wide protection for vulnerable adults*.

¹⁴⁵ Ibid.

The **European added value** that Option 2 would create can be assessed in various respects. The uniform rules of the Convention would, as explained, enhance legal certainty as regards the protection of adults in cross-border cases and ensure that protection is spatially continuous. All this would be **consistent with the values of the Union and the objectives set out in the Treaties**. At the same time, the deficiencies noted regarding the Hague Convention would not be solved within the EU context. Furthermore, the issues that fall outside the geographical scope of the Convention would also not be harmonised within the context of the EU Member States, thus ultimately leaving a partially harmonised system in place.

3.4.3 Policy option 3: Adoption of an extensive set of common rules applying in the EU only

The third policy option corresponds to the adoption of an EU Regulation which would have a wider scope than what Option 2 would achieve in practice. The new Regulation would contain provisions similar to the Hague Convention and would also provide for additional measures, based on the principle of mutual trust and on the existing EU acquis.

The **feasibility** of Option 3 is undisputed. **Article 81 TFEU** entrusts the Union with the task of developing judicial cooperation in civil matters having cross-border implications. The protection of adults in international situations obviously fits into this picture. The issue was raised by some commentators of whether the adoption of legislation relating to the protection of vulnerable adults would fall within the scope of Article 81(3) TFEU. This provides that 'measures concerning family law with cross-border implications' must be 'established by the Council, acting in accordance with a special legislative procedure', whereby the Council would 'act unanimously after consulting the European Parliament'. The prevailing view among scholars is that the protection of adults does not come within the purview of family law, as the term should be understood (autonomously) for the purposes of Article 81(3) TFEU¹⁴⁶. It is not uncommon that vulnerable adults benefit from protection provided by family members, but their protection is not, as such, a family law issue. The crucial concern, when it comes to the protection of adults, is the realisation of the concerned adult's right to dignity, self-determination, non-discrimination and social inclusion. These concerns arise, and are required to be addressed, regardless of the family relations of the adult in question. The adult's family, if indeed the adult has a family, is merely one of the contexts in which protection can be ensured.

Existing legislation based on Article 81 TFEU supports the above reading. Regulation (EU) No 650/2012 on matters of succession¹⁴⁷, for example, was adopted based on Article 81(2), rather than 81(3). The rules on succession refer to family relations in various ways, e.g. for the purposes of identifying the heirs of the deceased where the latter has died intestate, or for the purposes of limiting the testator's freedom under forced heirship schemes. However, this was not deemed sufficient to bring the Regulation within the realm of family law. This reading is also correct, as inheritance and succession deal with matters far removed from family law matters. Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters provides an additional illustration¹⁴⁸. The measures contemplated in the latter instrument are often adopted as a safeguard against domestic violence and often have a bearing on family interactions (e.g. between spouses or registered partners, or between parents and children, outside the scope of matrimonial or parental responsibility proceedings). Still, the Regulation was adopted based on Article 81(2), not 81(3). It is, therefore, clear that instruments that have as their aim a non-family law matter do not fall within the ambit or purview of Article 81(3), even if the ancillary matters that they deal

¹⁴⁶ Ibid.

¹⁴⁷ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012.

¹⁴⁸ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, 29.6.2013.

with or the effect of the instrument impact on family law matters. Only those instruments which at their essence deal with family law matters (e.g. divorce, parental responsibility, maintenance of matrimonial property) can truly be regarded as falling within the scope of Article 81(3).

The contemplated Regulation would **comply with the requirements of subsidiarity and proportionality**. The remarks made in this respect under Option 2 apply here.

A Regulation such as the one contemplated would feature a **distinctive European added value**. It would shape the rules governing the international protection of adults in a manner consistent with the values of the Union, notably the realisation of the fundamental rights of those concerned (as required by Article 6 TEU, the Charter of Fundamental Rights of the EU and the UN CRPD) and would facilitate the exercise of freedoms enshrined in the Treaties, notably the freedom of the Union's citizens to move across Member States. Nevertheless, as the rules would apply with regard to EU Member States and not have an impact on relationships with third states, the ultimate end-result would still be one of disjointed legislation across the EU.

3.4.4 Policy option 4: Adoption of an extensive set of rules in the EU and minimum set of rules with third states

Option 4 involves a combination of external action and legislation. The Union would make use of its external competence to ensure that all Member States are eventually a party to the Hague Convention, and it would enact legislation aimed at further improving cooperation between Member States in this area. In this respect, Option 4 can be seen as a combination of Option 2 and Option 3. Its **feasibility rests, accordingly, on the same elements illustrated under Options 2 and 3**. Similarly, the remarks put forward in connection with **Options 2 and 3 regarding compliance with subsidiarity and proportionality, and regarding the European added value, also apply to Option 4, *mutatis mutandis***.

The combination of external action and legislation is not new in EU private international law. Prominent examples of this approach are found in the regulation of international child abduction and the regulation of maintenance obligations. Regulation (EU) 2019/1111 on matrimonial matters and matters of parental responsibility lays down rules on child abduction that build on the Hague Convention of 25 October 1980 on the civil aspects of international child abduction¹⁴⁹. For its part, Regulation (EU) No 4/2009 on maintenance obligations¹⁵⁰ reflects the solutions elaborated at the Hague Conference on Private International Law and transposed in the Hague Convention of 2007 on the recovery of child support¹⁵¹. Additionally, it incorporates, by way of a reference in Article 15, the Hague Protocol of 2007 on the law applicable to maintenance obligations¹⁵².

The combination of universal and regional rules rests on the idea that the Union may want to espouse a set of worldwide standards (the Hague Adults Convention, in the circumstances), but implement them regionally in accordance with its own values and in a manner that reflects the high degree of mutual trust that exists between its Member States.

In line with the foregoing point, the combination contemplated in Option 4 builds on the acceptance, by the Union, of the principles enshrined in the Convention and involves a large degree of deference to the rules and logic of Convention. Against this backdrop, the purpose of legislation would be to enhance the operation of the Convention in the relations

¹⁴⁹ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, ST/8214/2019/INIT, OJ L 178, 2.7.2019, pp. 1–115.

¹⁵⁰ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10.1.2009, pp. 1–79.

¹⁵¹ Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, 23.11.2007.

¹⁵² HCCH. Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

between the Member States, as regards situations that are primarily connected with one or more such States, rather than a State outside the EU. The Convention, as stated in Article 49(2), does not affect the possibility for one or more Contracting States to be bound by international (in particular regional) instruments which contain, in respect of adults habitually resident in those States, provisions on matters governed by the Convention.

All in all, under Option 4, the Convention would provide the basic legal framework to which all Member States would be bound (alongside any interested third country worldwide), but would, at the same time, be complemented, and even derogated from (as regards "European" situations), by such regional rules as the Union would enact based on its internal competence.

All options are **feasible from a legal point of view, and ensure the respect of the principles of subsidiarity and proportionality.**

4 Assessment of impacts

The identification of the potential significant impacts derived from the different policy options in the present study considers different impacts across the various pillars of EU policies, including, but not limited to, economic and social ones, and the stakeholder groups that are potentially affected by these options.

Based on the semi-targeted interviews with key stakeholders, the discussions with the Commission services and the two Senior Advisors, and the desk research undertaken in the context of this project, two broad types of impact are likely to result from the implementation of the different policies: economic and social. Other types of impact, such as impacts on digitalisation, on third countries and on sustainable development goals are also considered. The stakeholder groups affected by the policy options to various degrees are mainly: the vulnerable adults, their families and representatives, non-governmental organisations supporting them, public authorities through their monitoring and enforcement activities, and legal practitioners and other professionals (including health professionals) involved in the administrative procedures and judicial proceedings. Other stakeholder groups such as businesses, including SMEs, are unlikely to be affected by the policy options. The impact on such groups is therefore not included in the analysis. The same applies for environmental impacts, which are marginal in the area covered by the study.

4.1 Economic Impacts

Given the relative limited size of the population of vulnerable adults in the European Union and in cross-border situations, the different policy options are unlikely to have any substantial macro-economic impacts across the Member States (regardless of their adhesion to the Hague Convention). However, these policy options will generate some costs and cost-savings for the most affected stakeholder groups, namely the vulnerable adults (including their families and representatives) and public authorities, since these stakeholder groups are directly involved in administrative procedures and judicial proceedings. These costs and cost-savings related to the implementation of the different options mainly concern two categories of costs: procedural costs and compliance/adjustment costs¹⁵³.

4.1.1 Main cost categories

Costs associated with each of the policy options can be grouped in several broad categories, following the Better Regulation Toolbox¹⁵⁴. The Toolbox in its Chapter 8 provides a distinction between direct and indirect costs of regulation. In our assessment, we focus only on direct costs, which is due to the nature of the problem. While the problem of legal uncertainty potentially affects a high number of individuals, it is not likely that the change in the procedures and rules for cross-border arrangements for vulnerable adults will have a significant impact on the related markets and other stakeholders that are not directly targeted by the initiative/regulation being the subject of this assessment.

The costs are assessed for two main groups of stakeholders affected: 1) vulnerable adults, their families and representatives; 2) public authorities, including judicial authorities (courts). The relevant categories of costs for various stakeholders are described below.

- **Procedural costs for public authorities (PA procedural costs).** These costs are borne by public authorities and relate to handling administrative and judicial procedures involving vulnerable adults in need, in order to arrange cross-border cases and correspond primarily to the working time needed to implement these

¹⁵³ Hassle costs, often referred to as 'regulatory annoyance', are not included in this report. According to the Better Regulation Tool #56, European Commission, 2021a, *Better Regulation Toolbox*, this category of costs is not well-defined. In most cases, hassle costs are not analysed in impact assessments.

¹⁵⁴ Ibid.

procedures. These costs are relevant for all the options including Option 1 (business as usual- BAU) but differ depending on the option: for example, the use of standard forms and new information channels (options 3 and 4) may lower the amount of time needed from representatives of public authorities. These costs have also been estimated per case in the context of the illustrative examples. The Standard Cost Model method as recommended in the Better Regulation Handbook has been used in the estimates.

- **Procedural costs for vulnerable adults (VA procedural costs).** In the context of our study, this category of costs encompasses charges and fees borne by vulnerable adults and their representatives in relation to various judicial procedures and administrative arrangements. These include for instance the costs of arranging recognition of private mandates, various certificates, exequatur, sworn translation of documents, sending registered letters, etc. Vulnerable adults or their families often hire legal representatives who make all or some of these arrangements for them, which implies legal assistance costs. These costs are also relevant for all the policy options including BAU and can be very substantial. In our study, these costs have been assessed per case according to a set of typical illustrative examples. This broad cost category encompasses a sub-category of administrative costs which include translation costs, costs of preparation and sending registered letters, costs related to administering medical assessment and obtaining related certificates (which often implies travel of vulnerable adults and/or their guardians – the costs of travel are also included in this sub-category), and costs of additional expertise that may be required in some cases. Costs of legal representation that are not linked to preparing or obtaining the documents mentioned above and court fees are not included in the sub-category of administrative costs¹⁵⁵.
- **One-off adjustment costs.** These are costs of compliance with the new regulations to be borne by public authorities. Administrative and judicial authorities may incur adjustment costs related to the implementation of new policy instruments and related procedures. These costs would imply working time but possibly also other costs, e.g. costs of software, hardware, training. Establishment of the system for digitalisation and interconnection of electronic registries is an example of adjustment costs for judicial authorities that is relevant for options 3 and 4. Establishment of the central authorities responsible for the implementation of the Hague Convention would also fall into this category, however, in our study these costs are non-existent since all the Member States which are parties to the Convention reported that no new institutions have been created following ratification thereof, and the same situation is expected for the Member States which are likely to join the Convention in the future.
- **Recurrent adjustment costs** are also costs of compliance with the new regulations that are borne by public authorities. They are associated with the implementation of the legislation and new policies, which vary depending on the policy option under consideration. In this category, for the Member States being or becoming (in some of the policy options) parties to the Hague Convention, we report the annual costs of maintenance of the central authority responsible for implementation of the provisions of the Hague Convention in terms of labour costs expressed in Full Time Equivalent (FTE) for staff responsible for handling the relevant procedures. In this category, we also include the cost of maintenance of the interconnected digital registers that is relevant to options 3 and 4.

¹⁵⁵ Please note that the calculations of costs pertaining to various policy options in the following sections do not distinguish the sub-category of administrative costs from the broader category of VA procedural costs – this distinction is made only for the preferred option, leading to the estimate of the one-in one-out (OIOO) gain emerging from this option (see section 6.1.2.).

Table 2: Distribution of costs across the stakeholders according to cost categories

Cost category/stakeholders affected	Vulnerable adults, their families and representatives	Public/judicial administration
PA procedural costs		X
VA procedural costs	X	
One-off adjustment costs		X
Recurrent adjustment costs		X

4.1.2 Main costs per option

In our study, the costs pertaining to Policy Options 2-4 are assessed in comparison with the baseline scenario. Savings on administrative and procedural costs occur to various extents, depending on the policy option. Vulnerable adults and their families benefit from savings on costs of various arrangements including medical assessment, travel, sworn translations of documents, and the necessity of hiring legal assistance. Public authorities also benefit from savings on administrative (labour) costs related to the shorter duration of administrative procedures, better access to cross-border information, better international cooperation and digitalisation. On the other hand, public authorities incur costs related to international cooperation within the framework of the Hague Convention (in Option 2) and costs of setting up interconnected digitalised registers (in Options 3 and 4).

Box 2: Costs and cost-savings related to legal aid

As discussed in Section 2.1. of this report, legal aid for the cross-border protection of vulnerable adults is limited, both in terms of who is eligible for receiving it and in terms of the situations in which legal aid would apply. **Options 1 and 2 would have no impact on this limitation of the scope of legal aid. However, the EU Regulation envisaged in Options 3 and 4 could contain a provision for an extension of legal aid.** Such a measure would benefit vulnerable adults as it would make it easier for them, when they are in cross-border situations, to bear fewer costs and to receive assistance in more cases. However, it would also imply that public authorities of Member States would have to bear these additional costs.

Considering comparable impact assessments such as the one carried out for the Brussels IIb Regulation, we could not find any assessment of the costs that could apply to the cross-border protection of vulnerable adults. Overall, the quantitative data assessing such costs are very limited, and it is challenging to estimate in how many cases it would actually apply. We do not however expect a significant economic burden on the public finances of Member States considering the estimated small number of vulnerable adults in cross-border situations.

In the quantitative analysis, the results of which are described in Section 5, we are using a set of eight illustrative examples which reflect a variety of situations and the resulting costs which are likely to occur for VA and public administration authorities. A detailed description of the illustrative examples used for this assessment together with the assumptions regarding the specific cost items can be found in Annex III; here in Table 3 below we provide a list of the examples with a short description, which may be helpful for better understanding of the following table (Table 4) which explains the differences in the costs pertaining to each of the analysed policy options.

Table 3: Illustrative examples

Examples	Scenario
Illustrative example 1: Establishing a protection measure abroad	Mr X is a national of country A and has moved to country B. A protection measure is requested in country A (e.g. by family).
Illustrative example 2: Implementing a	A protection measure has been adopted by the authorities of country A for Mr X. Mr X. moves to country B. The person charged with assisting Mr

Examples	Scenario
protection measure abroad	X must act in country B (e.g. to rent an apartment or open a bank account).
Illustrative example 3: Exequatur	Mr X lives in country A, but has assets in country B. A protection measure has been adopted by the authorities of country A. The guardian decides to sell the assets in country B. The bank in country B asks for the exequatur of the decision taken in country A.
Illustrative example 4: Activating a private mandate abroad	A private mandate has been concluded by Mr X in accordance with the law of country A (where he was living at the time the mandate was made) providing for his protection in the event of incapacity. Mr X moves to country B and his health deteriorates; the private mandate needs to be activated.
Illustrative example 5: Contesting a guardianship or a guardian's decision abroad	Mr X lives in country B, but is under a protection measure decided in country A. The guardian designated in country A takes a decision that affects Mr X's assets (e.g. contracts life insurance with suspicious beneficiaries or decides to sell all assets in country A). Mr X wants to contest the guardianship or the decision of the guardian.
Illustrative example 6: Conflict of jurisdiction	Mr X is subject to a procedure to establish a protection measure in country A, and he initiates a procedure in country B to obtain a less intrusive protection measure - there is a case of conflict of jurisdiction.
Illustrative example 7: Relocation of a vulnerable adult without change of protection measure	Mr X lives in country A, in an establishment where his protection can be ensured. He enjoys the company of his sister, Ms Y, who also lives in country A. Now Ms Y has found a job in country B, and seeks to relocate Mr X to a similar establishment in country B.
Illustrative example 8: Relocation of a vulnerable adult with change of protection measure	Mr X lives in country A. He is cared for by the social services of country A. It arises that a relative of Mr X, in country B, is ready to assist Mr X, provided that he moves to country B. Mr X is willing to do so.

Table 4 below provides an overview of the impacts of the different policy options on costs according to the categories of stakeholders and types of costs. A more detailed description of the evolution of each Illustrative Example depending on the Policy Option can be found in Table 26 in Annex III.

Table 4: Impact of options on costs per cost category and type of stakeholder

Cost category/policy option	Option 1 - Baseline (BAU)	Option 2	Option 3	Option 4
Costs for public authorities				
PA procedural costs	Costs in terms of hours of labour required to handle the cases are estimated at 1-4 hours depending on the illustrative example. The costs are higher for MS not being parties to the HC. In four out of eight of the illustrative examples (1, 6, 7, and 8), there are no PA procedural costs for the parties to the Convention, due to the measures resulting from the Convention	With all MS ratifying the HC, the costs of handling cross-border cases in four out of eight illustrative examples (1, 6, 7, and 8) for all MS are eliminated, which results in overall cost savings as compared to BAU	Due to the Regulation, the costs in terms of hours of labour required to handle the cases in six out of eight illustrative examples (1, 3, 4, 6, 7, and 8) are eliminated; in the illustrative example 5 they are reduced, and in the illustrative example 2 they increase due to the need to arrange certificates for protection measures. There are overall cost savings as compared to BAU (higher than in Option 2)	Cost savings as in Option 3, and additional costs savings on labour costs for handling the cases involving third countries
One-off adjustment costs	No adjustment costs (no new legal instruments)	No adjustment costs (the Council decision on ratification of the HC would not result in establishing any new instruments; the existing structures would be used for the enforcement of the Hague Convention)	Costs of setting up an interconnected digital register for all MS (costs of labour, hardware and software) – an increase in costs as compared to BAU	Costs of setting up an interconnected digital register for all MS (costs of labour, hardware and software) – an increase in costs as compared to BAU (the same as in Option 3)
Recurrent adjustment costs	Labour costs related to the implementation of the HC occur only in MS which are parties to the HC	Labour costs related to the implementation of the HC for all MS, which implies an increase in this cost category as compared to BAU due to these costs applying also to the MS which under the BAU were not parties to the HC	Maintenance costs (labour) for the interconnected digital registers occur for all MS, which implies an increase in this cost category as compared to BAU (higher than in Option 2)	Labour costs related to the implementation of the Hague Convention for all MS, which implies an increase in this cost category as compared to BAU due to these costs applying also to the MS which under the BAU were not parties to the HC; Maintenance costs of the interconnected digital registers for all MS, which implies an increase in this cost category as compared to BAU

Cost category/policy option	Option 1 - Baseline (BAU)	Option 2	Option 3	Option 4
Costs for vulnerable adults, their families and representatives				
VA procedural costs	<p>Costs depending on the nature of the illustrative examples, including among others (administrative costs are marked in bold):</p> <ul style="list-style-type: none"> • Medical assessment costs including travel costs • Sworn translation • Registered letters • Certificates • Legal assistance <p>The costs are higher for the MS not being parties to the HC (in four out of eight of the illustrative examples: 1, 6, 7, and 8, there are no procedural costs for the MS being parties to the Convention)</p>	<p>With all MS ratifying the HC, the VA procedural costs in four out of eight illustrative examples (1, 6, 7, and 8) are eliminated in all the countries (depending on the example, these are costs of legal assistance, travel, medical expertise, sworn translation, etc.), which results in overall cost savings as compared to BAU</p>	<p>Due to the Regulation, the costs in four out of eight illustrative examples (1, 3, 4, and 6) are eliminated and in two examples (2 and 5) they are reduced¹⁵⁶ (depending on the example, these are costs of legal assistance, travel, medical expertise, sworn translation, etc.), which results in cost savings as compared to BAU (higher than in Option 2)</p>	<p>Cost savings as in Option 3, and additional savings for the cases involving third countries</p>

¹⁵⁶ In two remaining illustrative examples (7 and 8), there were no procedural costs included in the baseline.

Different policy options can mitigate the costs (i.e. the procedural costs for public authorities and VA) occurring under the baseline scenario to various degrees. **Policy Option 2** would imply a partial reduction of these costs only for the Member States which are currently not parties to the Hague Convention. **Policy Option 3** would reduce these costs to a higher degree, implying cost reduction in a higher number of illustrative examples and for all Member States. **Policy Option 4** would have similar effects in terms of cost reduction as Option 3, with the main difference being that in this option, the scope of VA covered would extend to third countries.

At the same time, policy options 2, 3, and 4 would imply additional costs for public authorities. In **Policy Option 2**, the adjustment costs would be relatively modest and would relate to the labour costs of implementation of the Hague Convention (only for the Member States currently not being parties to the Convention). The same costs would apply to **Policy Option 4**. In addition, adjustment costs related to setting up and maintenance of an interconnected digitalised register of protection measures would emerge in options 3 and 4.

Estimates of all the types of costs are provided in Section 5, in efficiency sections devoted to each policy option. Further details on costs are provided in Annex III.

4.2 Social impacts

The initiative in the area of protection of vulnerable adults in cross-border situations would be in line with the goals of the European Pillar of Social Rights, the Strategy for the Rights of Persons with Disabilities and the commitment of the EU in scaling up its action in the area. The next two sections will provide a brief overview of the literature centred on the link between well-being and vulnerability and between poverty and vulnerability, assessing the different types of impact that Policy Options have on the ability of EU policies to tackle these issues.

4.2.1 Well-being

Although studies investigating the correlation between well-being and protection in cross-border situations of vulnerable adults do not exist in academic literature, several studies emphasise the connection between vulnerable adults' well-being and the quality of support and protection measures. This strand of research emphasises how the presence of effective support and protection of vulnerable adults positively impacts on their well-being and psychological health.

A study carried out by Sherwood-Johnson demonstrates how the adult support and protection itself can support or damage 'adult's strengths, skills and sense of self' depending on the way in which it is carried out¹⁵⁷. A qualitative study focused on vulnerable adults who have been abused shows how protection procedures, expectations of vulnerable adults as well as availability of support impact on the well-being and psychological status of vulnerable adults¹⁵⁸. The study investigates the impact of a vulnerable adult protection policy on the psychological and emotional well-being of adults with a learning disability, arguing that a necessary element of the protection procedure is the 'quality' of the support network¹⁵⁹. Another study carried out by Beadle-Brown provides evidence of the positive impact of

¹⁵⁷ Sherwood-Johnson, F., Cross, B., & Daniel, B., 2013, The experience of being protected. *Journal of Adult Protection*, 15(3), 115-126. <https://doi.org/10.1108/JAP-06-2012-0012>

¹⁵⁸ Bruder, C., Kroese, B., & Bland, S., 2005, The impact of a vulnerable adult protection policy on the psychological and emotional well-being of adults with a learning disability. *The Journal of Adult Protection*, 7(3), 4-18. <https://doi.org/10.1108/14668203200500014>

¹⁵⁹ Ibid.

active support on the lives of people with intellectual disabilities¹⁶⁰. When it comes to the relationship between elder abuse and poor psychological status, a review of the literature addressing such a relationship identifies psychological distress both as a risk factor as well as a consequence of elder abuse¹⁶¹. Some studies associate increased mortality or shorter survival rates with the cases of mistreatment and abuse¹⁶². Among the main risk factors of elder abuse there are poor physical and mental health as well as low income, while social support has a positive effect on risk mitigation¹⁶³.

The link between the well-being of vulnerable adults and the quality of support and protection measures as well as the identification of poor physical health, poor mental health and low income as risk factors of elder abuse¹⁶⁴ appear relevant for the situation described in the baseline scenario of Policy Option 1. Based on what has been reported in the above-mentioned literature, as well as by the stakeholders consulted, the lack of consistency in ensuring protective measures, the difficulty in identifying them, as well as the lack of access to justice and risk of financial spoliation are factors that can lead to a detrimental impact on the vulnerable person's well-being. **Policy Option 1**, by not addressing any of the issues, would **not advance the EU baseline scenario**. The objective of increased legal certainty and recognition of protection measures is not fully achieved under **Policy Option 2**, which results also in partial progress towards a consistent protection system ensuring the well-being of vulnerable adults. **Policy Options 3 and 4** would ensure the most progress towards the well-being of vulnerable adults by best achieving legal certainty and recognition of protection measures.

4.2.2 Poverty and social exclusion

The relationship between health and poverty is difficult to examine because of the identification of causality insofar as high poverty goes hand in hand with poor health status. Although many empirical studies tend to focus on poverty as one of the social determinants of health, some studies nevertheless focus on health as a determinant of both material and financial poverty.

Among the studies focusing on European countries, one conducted in France using advanced statistics shows that a deterioration in health status is associated with a higher probability of being poor relative to remaining in good health, and this probability is all the more pronounced the greater the deterioration is. Conversely, a strong improvement in health status coincides with a decrease in the risk of poverty¹⁶⁵. Difficulties in or exclusion from education, healthcare, and employment contribute to establishing a vicious cycle between disability and poverty in which social exclusion plays a very important role.

The different policy options can help mitigate the negative effect of poverty and related social exclusion experienced more particularly by vulnerable adults to the extent that different policy options aim to enhance equality of vulnerable adults, in particular by avoiding

¹⁶⁰ Beadle-Brown, J., Hutchinson, A., & Whelton, B., 2012, Person-centred active support - increasing choice, promoting independence and reducing challenging behaviour. *Journal of Applied Research in Intellectual Disabilities*, 25(4), 291-307. <https://doi.org/10.1111/j.1468-3148.2011.00666.x>

¹⁶¹ Dong, X., Chen, R., Chang, E. S., & Simon, M., 2013, Elder abuse and psychological well-being: a systematic review and implications for research and policy - a mini review. *Gerontology*, 59(2), 132-142. <https://doi.org/10.1159/000341652>

¹⁶² Lachs, M. S., Williams, C. S., O'Brien, S., Pillemer, K. A., & Charlson, M. E., 1998, The mortality of elder mistreatment. *Jama*, 280(5), 428-432. <https://doi.org/10.1001/jama.280.5.428>

¹⁶³ Pillemer, K., Burnes, D., Riffin, C., & Lachs, M. S., 2016, Elder Abuse: Global Situation, Risk Factors, and Prevention Strategies. *Gerontologist*, 56 (Suppl 2), S194-205. <https://doi.org/10.1093/geront/gnw004>

¹⁶⁴ Bruder, C., Kroese, B., & Bland, S., 2005, The impact of a vulnerable adult protection policy on the psychological and emotional well-being of adults with a learning disability. *The Journal of Adult Protection*, 7(3), 4-18. <https://doi.org/10.1108/14668203200500014>, Sherwood-Johnson, F., Cross, B., & Daniel, B., 2013, The experience of being protected. *Journal of Adult Protection*, 15(3), 115-126. <https://doi.org/10.1108/JAP-06-2012-0012>

¹⁶⁵ Clément, M., 2014, Mieux comprendre les facteurs de risque de pauvreté en conditions de vie en contrôlant les caractéristiques inobservées fixes. *Economie et Statistique*, 469(1), 37-59. https://www.persee.fr/doc/estat_0336-1454_2014_num_469_1_10423

costly proceedings and ensuring access to justice. In this context as well, enhanced equality derives from increased legal certainty. Therefore, as above, Policy Options 3 and 4 would be the most likely to avoid social exclusion and ensure equality.

4.3 Other Impacts

Digitalisation

The positive impact of the increased use of digital technologies has been endorsed by the EU, as evidenced by various initiatives such as the EU digital strategy "A Europe fit for the digital age"¹⁶⁶. One of the four cardinal points for shaping the EU's path towards the 2030 digital goals is the **digital transformation of public services**.

This would ensure full online accessibility of public services, including for people with disabilities. It would also include **interoperability** between different levels of public services. Already in 2016, in its "Communication EU eGovernment Action Plan 2016–2020: Accelerating the digital transformation of government"¹⁶⁷, the Commission showed its commitment to further developing e-justice and e-government and to modernising public services. In this Communication, the Commission inter alia pledged to ensure the 'long-term sustainability of cross-border digital services infrastructure'¹⁶⁸. The 2021 Communication "2030 Digital Compass: the European Way for the Digital Decade" further highlights the need to modernise public services through further digitalisation.

Furthermore, this objective is also reflected in the adoption of a package of initiatives related to the modernisation of the EU justice system and aimed to make digital the default option in the field of cross-border judicial cooperation, as well as enhancing access to information and the use of IT tools in cross-border cooperation. The usefulness of the e-Justice portal in accessing legal and practical information is also stressed in the 2020 Communication "Digitalisation of Justice in the European Union: A Toolbox of Opportunities"¹⁶⁹. In this Communication, the European Commission further stresses the need for digitalising public services, notably by facilitating the interconnection of national registers and encouraging digital communication channels between competent authorities.

In this context, the Commission proposed a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters¹⁷⁰, which would lead to the establishment of a decentralised IT system for courts and competent authorities in particular. This proposal is currently being negotiated, and an impact assessment is being carried out.

Thus, a European initiative on the cross-border protection of vulnerable adults therefore takes place in a particular context of increased digitalisation. Simultaneously, an EU initiative could also influence this context to some extent. **Option 1** would have no impact on digitalisation, as the very limited degree of digitalisation would be maintained in the area. **Option 2** would not have a significant impact on the development of digitalisation either, as the Hague Convention does not contain specific provisions on the subject, nor does it oblige Contracting parties to set up new methods of communication. **Options 3 and 4**, on the other hand, could have a greater impact on the digitalisation of the area of civil cross-

¹⁶⁶ European Commission. *A Europe fit for the digital age*. https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_en

¹⁶⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU eGovernment Action Plan 2016-2020 Accelerating the digital transformation of government, COM/2016/0179 final.

¹⁶⁸ Ibid.

¹⁶⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Digitalisation of justice in the European Union A toolbox of opportunities, COM/2020/710 final, 2020.

¹⁷⁰ Proposal for a Regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, 2021/0394 (COD), 2021.

border cooperation, as they could include developments and innovations regarding the interconnection of registers and the digital communication of central authorities, which could encourage moving in the same direction for similar topics. The interconnection of national registers or an EU Registry could encourage the further development of digital registers and push Member States to modernise them for greater efficiency. National registers that could record judicial and administrative decisions concerning vulnerable adults, such as protection measures or private mandates, could be interconnected with other registers of civil status or will, thus promoting the use of such registers and extending their possibilities. Options 3 and 4 could also allow innovative digital projects to be more widely tested and introduced at European level. The prototype of a validity register for notarial powers of attorney and certificates of inheritance set up by the German Federal Chamber of Notaries could be an example of an initiative that could have a wider impact on the EU's digitalisation strategy.

Impact on third countries

Accession of the EU Member States to the Hague Convention envisaged under **Options 3 and 4** would encourage other countries to follow suit, which would in turn improve the protection of VA in those countries. In addition, the benefits for VA in the three non-EU countries that are already Contracting parties to the Convention would be immediate.

Impact on SDGs

The impacts of the options on Sustainable Development Goal 1 (reduction of poverty), Goal 3 (access to health), Goal 10 (reduction of inequalities) and Goal 16 (peace and justice) are directly linked to the social impacts described above. Consequently, Options 3 and 4 have here as well the strongest positive impact on reaching the SDGs.

5 Assessment of the policy options

5.1 Approach and assumptions

In this chapter, we present the assessment of the options presented above. The assessment criteria covered are i) effectiveness in achieving the policy objectives, ii) efficiency in terms of costs and benefits from the option, iii) relevance of the option in addressing the problems identified, iv) coherence of the option with existing policy initiatives and legal frameworks, in particular in the area of fundamental rights.

The analyses of the impacts of the policy options on fundamental rights incorporate the analysis of coherence with existing policy and legal instruments. This is because the instruments which are relevant in the context of the cross-border protection of vulnerable adults are primarily related to fundamental rights (UNCRC, Charter of Fundamental Rights).

The analysis of the effectiveness, relevance and coherence is mainly qualitative. The analysis of efficiency is based both on a quantitative and a qualitative analysis. Given the scarcity of quantitative data, the assessment draws heavily from qualitative evidence. Nevertheless, basic quantitative estimates of the different options in terms of costs and cost savings are presented.

The main sources for the assessment are legal analysis, literature review and desk research, answers to the interviews, expert judgments from Senior Experts, and focus groups with practitioners, competent authorities, NGOs and academia.

In terms of impacts analysed, the economic and social impacts are mainly relevant for the options proposed. The environmental impact of this area is minimal, if not non-existent, and is therefore not covered in the analysis. The analysis also includes a foresight component¹⁷¹ as it takes into consideration the impact of the policy options on the increase in migration within the EU.

As indicated in Section 3.1. above, the policy options may to some extent contribute to achieving UN SDGs. These are primarily social goals (Goal 1 (no poverty), Goal 3 (good health and well-being), Goal 10 (reduced inequalities) and Goal 16 (peace, justice and strong institutions)). The corresponding indicators are taken into consideration where relevant in the analysis presented below.

The economic impact is reflected in the section on economic impacts, which provides the general explanations and typology of costs, as well as in the efficiency analysis provided for each policy option and in the section comparing the policy options (these sections focus on quantitative estimates).

5.2 Policy option 1: Baseline scenario

The baseline scenario corresponds to the situation presented in Section 2 above. The effectiveness, efficiency, relevance and impacts on fundamental rights of this option are presented below.

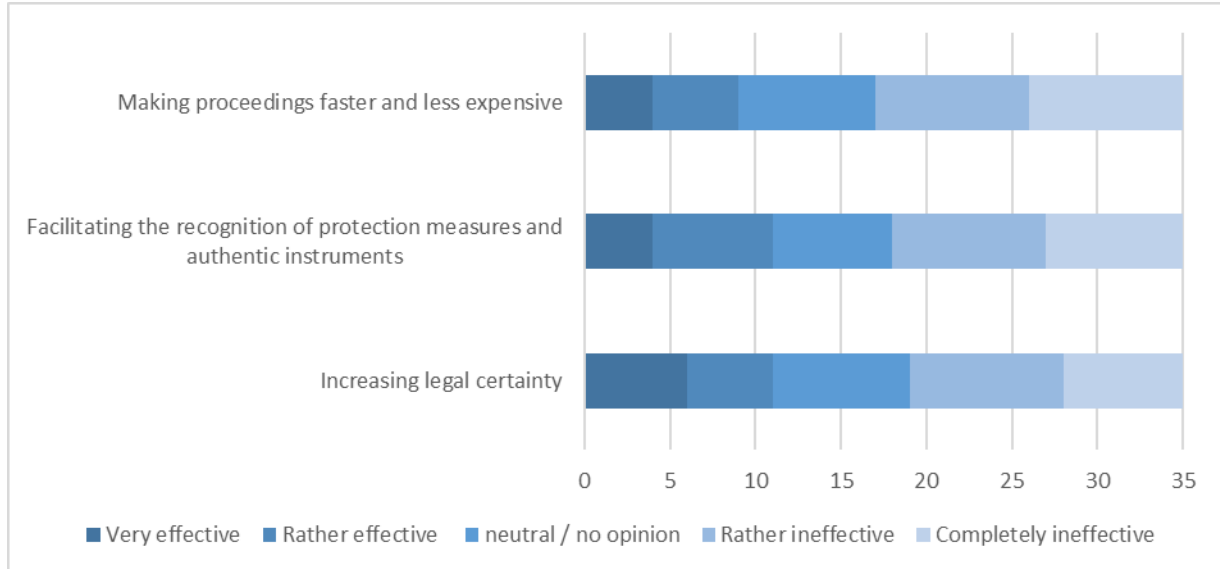
5.2.1 Effectiveness

Without further EU intervention beyond continuing awareness-raising activities, the situation is likely to worsen with the increasing population of vulnerable adults within the EU (see Section 2.1.2. on this point). The **general objective** of safeguarding the rights of vulnerable adults will only be achieved to a limited extent, and the **specific objectives**

¹⁷¹ In accordance with Better Regulation Toolbox, Chapter 3, Tool #20: Strategic Foresight for Impact Assessments and Evaluations, 2021c.

will not be addressed satisfactorily, as the problems presented in Section 2.2. will not be solved. This is also the view shared by the stakeholders consulted in the context of this study, as illustrated in Figure 6 below.

Figure 6: Effectiveness of Policy Option 1



Source: Stakeholder interviews

Increasing legal certainty

As indicated in Figure 6, approximately 46% of **stakeholders** (16 out of 35 respondents) perceived Policy Option 1 as completely ineffective or rather ineffective at increasing legal certainty. Almost 23% (8 out of 35) of interviewees had no opinion, while only 31% consider this option to be effective. Considering the divisions per stakeholder group, 57% (8 out of 14) of the practitioners interviewed viewed Option 1 as completely or rather ineffective. In contrast, 50% (6 out of 12) public authorities believe that Option 1 would be very or rather effective. Lastly, 5 out of 9 representatives of associations indicated that this Option would be ineffective, while only 2 associations perceived it as effective. Overall, it appears that a majority of stakeholders consider Option 1 to not be very effective in the provision of legal certainty.

This is substantiated by the feedback on individual issues pointed out in the **literature** and by **stakeholders** in the various consultation activities presented in Section 2.2. Section 2.2 also demonstrates that adherence to the Hague Convention solves some, but not all, of the problems related to legal certainty (especially with regard to the conflicting rules on applicable law, jurisdiction and recognition). With soft measures at EU level, it is likely that adhesions to the Convention will increase on a slow path – due to lengthy internal procedures or lack of political will – thus providing a slow increase in legal certainty. External factors, such as increasing migration, will not impact on legal certainty.

Facilitating recognition of protection measures, authentic instruments and private mandates

Approximately 48% (17 out of 35) of the stakeholders interviewed believe that Policy Option 1 would not be effective in facilitating the recognition of protection measures, authentic instruments and private mandates. Conversely, only 31% perceive this option as effective. As for legal certainty, 57% of the practitioners interviewed viewed Option 1 as completely or rather ineffective in facilitating recognition; while 50% of public authorities believe that Option 1 would be very or rather effective. Lastly, most representatives of associations (66%) believe Option 1 would be ineffective. In general, according to the

stakeholder consultation, Policy Option 1 does not appear to be effective at facilitating recognition of protection measures, authentic instruments and private mandates.

As explained above, all sources point to the Hague Convention as providing a helpful mechanism to facilitate the recognition of protection measures. As indicated in Section 2, the acknowledgment of private mandates however remains an issue, regardless of being a party to the Convention. With a slow pace of adhesion to the Convention anticipated under Option 1, **progress towards the achievement of this specific objective would be minimal.** As mentioned above, this observation would remain regardless of future trends.

Making proceedings faster and less expensive

More than 50% of the interviewees indicated that Policy Option 1 would not be effective at making proceedings faster and less expensive, while only 26% believe that this Option could be at least to some extent effective. Only 2 out of 12 practitioners consider Option 1 to be at least to some extent effective compared to 6 out of 12 representatives of public authorities. Similarly to practitioners, most associations do not believe Option 1 could be effective at making proceedings faster and less expensive, with only 1 out of 9 interviewees perceiving this Option as effective. Overall, stakeholder consultation indicates that Option 1 would not be effective at making proceedings faster and less expensive.

As explained under Section 2.2., the clear set of rules provided by the Hague Convention facilitates proceedings, which has a positive effect on the length and costs of procedures engaged by stakeholders. However, evidence shows that, even when ratified, the Convention is not always applied, primarily due to the lack of awareness of the competent authorities. The awareness-raising activities proposed under Option 1 would therefore **potentially very partially achieve this specific objective.**

Overall, the effectiveness of Option 1 is **close to neutral**, as progress towards the achievement of the general and specific objectives would be slow and uncertain.

5.2.2 Efficiency

Under the assumptions presented in Annex III, costs per case have been estimated per Member State for each of the illustrative examples, with the use of some country-specific data (such as cost of labour and cost of sworn translation per page).

Procedural costs

The estimates of average procedural costs both for public authorities and vulnerable adults (across all the Member States included in the analysis) are summarised in the following table, with a distinction between Member States which are parties to the Hague Convention and the Member States which are non-parties, and with breakdown into PA procedural costs and VA procedural costs. The costs are presented in ranges, where 'low' was calculated by applying all low-end assumptions regarding elements such as the number of hours of legal assistance needed, the number of pages of sworn translation etc., while 'high' was calculated by applying the high-end assumptions. These are costs that are currently incurred given the existing legislative framework and problems as presented in the problem tree (see section 2.2.1.). Some of these costs can be avoided by modifying the legislative framework, which will be presented in the assessment of the efficiency of policy options 2-4 (see the subsequent sections).

Table 5: Average procedural costs for vulnerable adults and public/judiciary authorities per case in Option 1 (baseline)

Illustrative example	Party to the Hague Convention	Category of stakeholders bearing the costs	Low estimate (EUR)	High estimate (EUR)
Example 1	HC	VA procedural costs	360	360
		PA procedural costs	21	31

Illustrative example	Party to the Hague Convention	Category of stakeholders bearing the costs	Low estimate (EUR)	High estimate (EUR)
	Other MS	Total	381	392
		VA procedural costs	4 080	5 397
		PA procedural costs	30	46
		Total	4 110	5 442
Example 2	HC	VA procedural costs	7 966	10 877
		PA procedural costs	17	17
		Total	7 983	10 894
	Other MS	VA procedural costs	7 622	10 559
		PA procedural costs	15	15
		Total	7 638	10 574
Example 3	HC	VA procedural costs	1 180	1 562
		PA procedural costs	21	42
		Total	1 201	1 604
	Other MS	VA procedural costs	1 550	2 070
		PA procedural costs	25	50
		Total	1 576	2 121
Example 4	HC	VA procedural costs	1 874	2 626
		PA procedural costs	35	52
		Total	1 909	2 678
	Other MS	VA procedural costs	2 084	2 879
		PA procedural costs	30	46
		Total	2 115	2 924
Example 5	HC	VA procedural costs	1 400	4 000
		PA procedural costs	35	69
		Total	1 435	4 069
	Other MS	VA procedural costs	1 400	4 000
		PA procedural costs	30	61
		Total	1 430	4 061
Example 6	HC	VA procedural costs	360	360
		PA procedural costs	42	62
		Total	402	423
	Other MS	VA procedural costs	6 297	15 297
		PA procedural costs	61	91
		Total	6 358	15 388
Example 7	HC	VA procedural costs	0	0
		PA procedural costs	21	42
		Total	21	42
	Other MS	VA procedural costs	0	0
		PA procedural costs	30	61
		Total	30	61
Example 8	HC	VA procedural costs	0	0
		PA procedural costs	570	591
		Total	570	591
	Other MS	VA procedural costs	0	0
		PA procedural costs	922	953
		Total	922	953

The highest costs per case are estimated for the illustrative example 6, where vulnerable adults may incur costs in the range between c. EUR 6 000 and 15 000 per case. Illustrative example 2 also implies very high costs for vulnerable adults being in the range of c. EUR 8 000 – 11 000. In the Member States party to the Hague Convention, due to certain measures adopted under the Convention, there are no costs in options 1, 6, 7, and 8. The relative burden of costs lies primarily on vulnerable adults, with the exception of example 8, where public authorities bear the costs of the establishment of a new protection measure.

Compliance costs for public authorities

In the category of **compliance/adjustment costs**, for the Member States being parties to the Hague Convention, the annual costs of maintenance of the central authority or a department of the existing authorities responsible for the implementation of the provisions of the Hague Convention are reported¹⁷². The table below provides the responses on full-time-employment (FTE) positions engaged in handling the matters concerning the implementation of the Convention in the Member States being parties to the Convention which reported this information. It can be seen that the workload reported by five Member States which provided data is very low and in all the reported cases amounts to less than one full-time position per year (i.e. the persons responsible for the enforcement of the Hague Convention are charged in parallel with other tasks).

Labour costs per hour for administrative employees as reported by Eurostat have been used to calculate the annual cost burden. The estimated number of hours worked annually in the EU was obtained by multiplying 52 weeks by the average number of working week hours in the EU, which in May 2022 was reported by Eurostat as 36.4 hours¹⁷³.

Table 6: Estimate of costs per year of enforcement of the Hague Convention in the selected Member States

Member State	Number of FTEs working on matters related to the Hague Convention per year	Labour costs for administrative and support service activities, EUR/h ¹⁷⁴	Annual cost estimate in EUR
Austria	0.1	26.3	4 978
Cyprus	0.01	11.1	210
Germany	0.5		23 471
France	0.3		14 877
Latvia	0.5	9.8	9 275
Average			10 562

The annual costs of enforcement of the Hague Convention by public administration/judicial authorities range from EUR 210 in Cyprus to over EUR 23 000 in Germany, with an average of EUR 10 562. In the absence of any clear trend in these data (e.g. Latvia being a much smaller country than Austria but having reported much higher costs), this average was applied to the remaining parties to the Hague Convention which did not report data related to the implementation of the Hague Convention. This resulted in the following estimates (see Table 7 below). Estimates per country can be found in Annex III.

Table 7: Annual costs of implementation of the Hague Convention in Option 1

	Annual aggregate enforcement cost in EUR
Parties to the Hague Convention	116 184
Non-parties to the Hague Convention	0
Total	116 184

¹⁷² Estimated on the basis of the information obtained from the Responses to the Permanent Bureau of the Hague Conference on Private International Law, 2022, *Questionnaire to assess the need to convene a possible meeting of the Special Commission in 2022 to review the practical operation of the 2000 Protection of Adults Convention*. <https://www.hcch.net/en/publications-and-studies/details4/?pid=6660&dtid=33>

¹⁷³ Eurostat, 2022a, *Hours of work - annual statistics*. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Hours_of_work_-_annual_statistics#General_overview

¹⁷⁴ Eurostat, 2022b, *Labour cost levels by NACE Rev. 2 activity*. https://ec.europa.eu/eurostat/databrowser/view/LC_LCI_LEV__custom_3330366/default/table?lang=en

5.2.3 Relevance

Under the status quo, the problems identified in Section 2 would not be overcome.

The **legal analysis** shows that this option would basically fail to address the difficulties observed. The picture would improve only if, and to the extent to which, the Hague Convention attracted additional ratifications on the part of the Member States. Experience with recent ratifications suggests that if the Union is to content itself with promoting the Convention, without making use of its competences to achieve this goal, such additional ratifications are unlikely to materialise soon.

The **stakeholders** consulted in the context of this study support this view. Approximately 47% (16 out of 34) of the stakeholders interviewed do not consider the ratification of the Hague Convention as a relevant option, while 12% remained neutral. Fifty percent of the practitioners believe that Option 1 is irrelevant, compared to only 18% of public authorities and 77% of associations.

Thus, looking at the trends, if this option were to be adopted, the practical difficulties illustrated above would continue to occur. In fact, over time the expectation would be that the **situation may even worsen** as the number of vulnerable adults in cross-border situations is only set to increase.

Option 1 is therefore not relevant to address the current and upcoming needs.

5.2.4 Coherence and Impact on fundamental rights

Policy Option 1 would not provide any **coherence** at all in this matter. The current situation would simply be exacerbated, as the number of vulnerable adults in cross-border situations is only set to increase. The coherence across the EU would be completely lacking, and the coherence between various fields of family law, inheritance law and the law of persons would also be lacking.

As pointed out above, the current legal framework puts **under risk** the **fundamental rights** of the vulnerable adults to receive **sufficient protection** in cross-border situations. The EU and Member States are parties of the UNCRPD, and therefore have to comply with its provisions, including Article 12(2) that affirms that 'persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.'¹⁷⁵ Article 12(3) specifies that the EU and its Member States must 'take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity on an equal basis with others.'¹⁷⁶ However, these obligations are not properly fulfilled. For instance, associations criticise the current legal framework as 'people with intellectual disabilities are too often denied their legal capacity and are subjected to substituted decision-making regimes.'¹⁷⁷ They also argue that in the current legal framework, vulnerable adults face many **obstacles when accessing justice**, including inter alia obstacles in accessing legal assistance and representation¹⁷⁸.

5.3 Policy option 2: Adoption of a minimum set of common rules (based on the Hague Convention)

Option 2 corresponds to the mandatory ratification of the Hague Convention by all Member States. The effectiveness, efficiency, relevance and impact on fundamental rights of this option are analysed below.

¹⁷⁵ European Association of Private International Law, 2022, *Position paper in response to the European Commission's public consultation on an EU-wide protection for vulnerable adults*.

¹⁷⁶ Ibid.

¹⁷⁷ Inclusion Europe, 2022, *Consultation on Civil aspects of the Cross-border protection of vulnerable adults*.

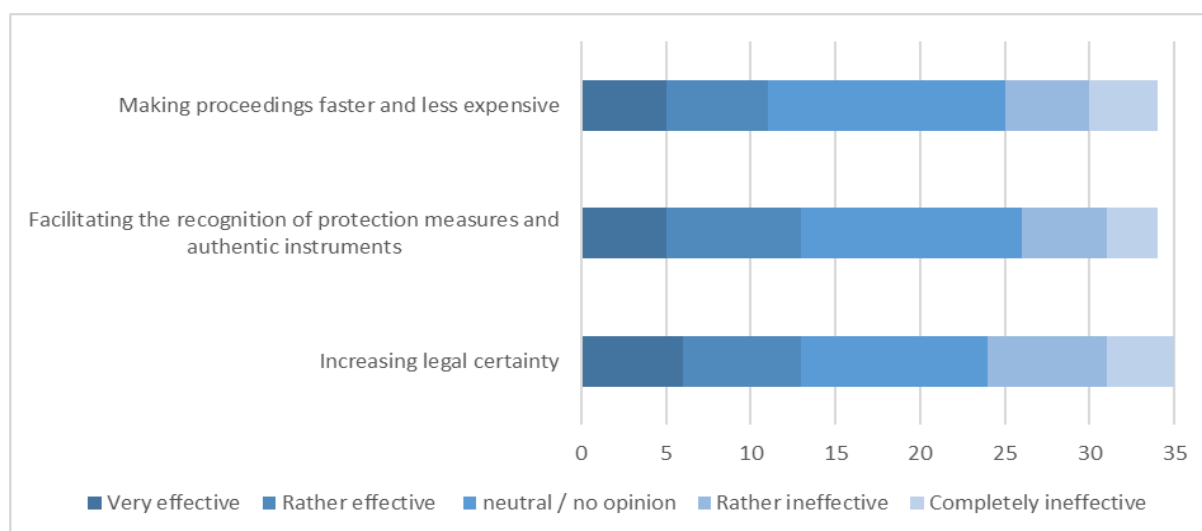
¹⁷⁸ Ibid.

5.3.1 Effectiveness

The extent to which Option 2 would contribute to the **general objective** of safeguarding the rights of vulnerable adults, and hence to the **specific objectives** of increasing legal certainty, facilitating recognition of measures, and making proceedings faster and less expensive, depends directly on whether the rules set out in the Hague Convention themselves contribute to these objectives.

The stakeholders consulted in the context of this study assessed such contribution as illustrated below.

Figure 7: Effectiveness of Policy Option 2



Source: Stakeholder consultation

Increasing legal certainty

As indicated in Figure 7, the views of **stakeholders** on the contribution of Option 2 in achieving legal certainty are mixed. Approximately 35% (12 out of 34) of interviewees believe that an obligatory ratification of the Hague Convention by the Member States would not be effective at increasing legal certainty, while 38% believe that Option 2 could be at least to some extent effective. Fifty percent of practitioners believe that an obligatory ratification could be effective, in comparison with 33% of public authorities and 22% of associations.

These nuanced perceptions correspond to the ambiguities raised by the **legal analysis** regarding the degree of legal certainty brought by the Hague Convention. Option 2 would improve the current situation in several respects, but would leave some of the identified issues unanswered. The harmonisation of the rules on jurisdiction through the application of the Hague Convention would **dramatically decrease the risk of conflicts of jurisdiction** between Member States. Together with the unification of the rules on the recognition and enforcement of measures, this development would **improve legal certainty** and mitigate the danger that adults benefiting from measures of protection granted in one State could be prevented from relying on those measures in another State. On the other hand however, the Convention also presents gaps and areas of unclarity (see Section 5.3.3. below), which effectively reduce such contribution. The implementation of the Convention with third States, and the practical tools developed to help practitioners, depend entirely on the resources of the Permanent Bureau and the decision-making body of the Hague Conference on Private International Law (Council on General Affairs and Policy). Only one Special Commission has been organised in the 13 years if the Hague Convention application, and until now, little post-Convention work has been carried out by the Permanent Bureau.

Facilitating the recognition of protection measures, authentic instruments and private mandates

Approximately 38% of **stakeholders** indicated that Policy Option 2 could be effective at facilitating the recognition of protection measures, authentic instruments and private mandates. Thirty eight percent had no opinion about the Option, and almost 24% of interviewees perceived it as ineffective. Thirty eight percent of practitioners regard the option as either very effective or rather effective, compared to 33% of public authorities and 44% of associations.

These low numbers are substantiated by the **legal analysis**, as whereas the Hague Convention provides for rules on the recognition and enforcement of protection measures, it does not prohibit exequatur, nor does it cover the recognition of authentic instruments and private mandates. The insufficiencies of the Hague Convention regarding recognition are also confirmed by concrete examples shared by stakeholders of Member States party to the Convention, which report recurring difficulties regarding recognition (see Section 2.2. above). In addition, as pointed out by a competent authority, the rules of the Convention only apply to the recognition of protection measures when the relevant decision has been taken after the entry into force of the Convention, which is limitative. **The objective of increased legal certainty is thus not fully achieved under Option 2.**

Making (judicial and administrative) proceedings faster and less expensive

Approximately 32.3% of **interviewees** believe that the Policy Option 2 could be effective at making proceedings faster and less expensive. Furthermore, roughly 41.2% stayed neutral. Depending on the type of stakeholder, 38.3% of practitioners consider Option 2 to be effective, compared to 33.3% of public authorities, and 22.2% of associations.

As pointed out in **literature** and based on **legal analysis**, harmonisation of the rules across the EU and setting up central authorities in all Member States would indeed contribute to simplifying the procedures and facilitate exchange of information between Member States, which would most likely speed up procedure and reduce the number of unnecessary proceedings. According to Franzina¹⁷⁹, the role of the 2000 Hague Convention is also aimed at creating a permanent framework of international cooperation between the Contracting States. The multilevel cooperation of the authorities of the Contracting States represents an element which enhances the protection of the adult concerned. On the other hand, experience among the Member States of the Hague Convention shows that the procedures remain expensive and long (due to the enforcement procedures), and that cooperation between Member State authorities is not used to the full extent of its possibilities. **Option 2 thus only partially makes proceedings faster and less expensive.**

5.3.2 Efficiency

Procedural costs

Procedural costs for vulnerable adults and for public authorities: these costs were estimated following stakeholder consultations and consultations with the Senior Experts – as a result, it was assumed that due to the adoption of the Hague Convention, costs in some of the illustrative examples will be reduced: this would occur in the examples 1, 6, 7, and 8 (see Annex III for more details).

The resulting estimates are presented in Table 8 below. In addition to the costs per case calculated for each illustrative example, the table presents gains in terms of cost savings and additional costs as compared to the baseline scenario.

¹⁷⁹ Franzina, P. (2022). The Protection of Adults. In *A Guide to Global Private International Law* (pp. 553-565). Bloomsbury Publishing.

Table 8: Average procedural costs for vulnerable adults and public/judiciary authorities per case in Option 2 and savings per case as compared to the baseline

			Procedural costs in Option 2 per case (EUR)		Gain (cost savings)/Loss (cost increase) in EUR	
			Low	High	Low	High
Example 1	HC	VA procedural costs	360	360	0	0
		PA procedural costs	7	10	14	21
		Total	367	371	14	21
	Other MS	VA procedural costs	297	297	3 783	5 100
		PA procedural costs	6	9	24	37
		Total	303	306	3 807	5 137
Example 2	HC	VA procedural costs	7 966	10 877	0	0
		PA procedural costs	17	17	0	0
		Total	7 983	10 894	0	0
	Other MS	VA procedural costs	7 622	10 559	0	0
		PA procedural costs	15	15	0	0
		Total	7 638	10 574	0	0
Example 3	HC	VA procedural costs	1 180	1 562	0	0
		PA procedural costs	21	42	0	0
		Total	1 201	1 604	0	0
	Other MS	VA procedural costs	1 550	2 070	0	0
		PA procedural costs	25	50	0	0
		Total	1 576	2 121	0	0
Example 4	HC	VA procedural costs	1 874	2 626	0	0
		PA procedural costs	35	52	0	0
		Total	1 909	2 678	0	0
	Other MS	VA procedural costs	2 084	2 879	0	0
		PA procedural costs	30	46	0	0
		Total	2 115	2 924	0	0
Example 5	HC	VA procedural costs	1 400	4 000	0	0
		PA procedural costs	35	69	0	0
		Total	1 435	4 069	0	0
	Other MS	VA procedural costs	1 400	4 000	0	0
		PA procedural costs	30	61	0	0
		Total	1 430	4 061	0	0
Example 6	HC	VA procedural costs	360	360	0	0
		PA procedural costs	14	21	28	42
		Total	374	381	28	42
	Other MS	VA procedural costs	297	297	6 000	15 000
		PA procedural costs	12	18	49	73
		Total	309	315	6 049	15 073
Example 7	HC	VA procedural costs	0	0	0	0
		PA procedural costs	7	14	14	28
		Total	7	14	14	28
	Other MS	VA procedural costs	0	0	0	0
		PA procedural costs	6	12	24	49
		Total	6	12	24	49
Example 8	HC	VA procedural costs	0	0	0	0
		PA procedural costs	190	197	380	394
		Total	190	197	380	394
	Other MS	VA procedural costs	0	0	0	0
		PA procedural costs	189	195	733	757
		Total	189	195	733	757

Gains in Option 2 as compared to Option 1 arise in the illustrative examples 1, 6, 7, and 8, and are due to the adoption of certain measures under the Hague Convention, which reduces the costs for vulnerable adults and public authorities in the Member States that are currently not parties to the Convention. In examples 1 and 6, the reduction in costs occurs both for vulnerable adults and public authorities, while in examples 7 and 8, the

reduction applies to public authorities only. In all the examples, the highest gains arise in the countries which are currently not parties to the Hague Convention. The scale of cost reduction is particularly high in Example 6, where the savings amount to c. EUR 6 000 – 15 000 per case. Also in Example 1, the reduction is substantial and lies in the range of c. EUR 3 800 – 5 100 per case.

It can be noted that VA would not incur any new costs as a result of the initiative undertaken under Option 2. Additional costs would only have to be borne by public authorities (see below).

Compliance costs for public authorities

One-off adjustment costs for public authorities might occur due to the establishment of a central authority responsible for handling cross-border cases following the ratification of the Hague Convention. However, according to the Questionnaire replies of several Member States on the practical operation of the 2000 Protection of Adults Convention, none of the reporting Member States have created any new authorities for the implementation of the Convention provisions. Thus, only annual labour costs are relevant to this aspect, and these are summarised below.

The annual **recurrent adjustment costs** of the central authority responsible for the implementation of the Hague Convention have been estimated on the basis of the information obtained from the responses to the Questionnaire on the practical operation of the 2000 Protection of Adults Convention, using the same method as described under the baseline. In this option, the costs would apply to all Member States. There would be no additional costs of this option for Member States being parties to the Convention; aggregate costs for non-parties would amount to approximately EUR 158 000 annually – these would be the additional costs for the EU-26 in this option. The aggregate estimates are provided in the Table below.

Table 9: Annual costs of implementation of the Hague Convention in Option 2 and change as compared to Option 1

	Annual aggregate implementation costs in EUR in Option 2	Additional costs as compared to Option 1
Parties to the Hague Convention	116 184	0
Non-parties	158 433	158 433
Total	274 617	158 433

5.3.3 Relevance

The **legal analysis** shows that the problems that have been identified would only be partially addressed with Option 2. The situation would remain problematic in some respects if no legislation were adopted with a view to complementing and improving the Convention.

Specifically: (a) a **choice of court** made by the adult at the time when they were in a position to self-determine, e.g. by private mandate, would have no more than the effects attached to it under Article 8 of the Convention, i.e. it would not as such confer jurisdiction on the chosen court; (b) reliance on domestic, i.e. non-harmonised, rules, will arguably remain inevitable for the purpose of identifying the **law applicable** to ex lege powers of representation of vulnerable adults, since the Hague Convention does not include any provision to this effect; (c) doubts will likely remain as regards the conditions subject to which **powers of representation** granted to a person for the protection of a vulnerable adult under a foreign measure of protection may be relied upon in a Member State: experience with the Convention shows that, even in the relations between Contracting States, private entities (e.g. banks) and public authorities, it is often required that the measure in question is declared enforceable as a precondition for its use or that the power of representation be enforceable; (d) the fate of **authentic instruments** relating to the protection of adults would remain uncertain, as this issue is not addressed by the Convention; (e) the potential of Article 38 **certificates** will remain under-explored, as is currently the case, because Member States would not be bound to deliver such certificates, and because the rules

governing the issuance of the certificates and the effects arising therefrom will keep on lacking the required degree of detail; (f) the benefits of **digitalisation** will remain theoretical, absent an appropriate normative framework.

A limited support for Option 2 was also expressed in the **stakeholders** consultation. Only 38.2% of interviewees believe that Option 2 could be relevant in overcoming the identified problems; roughly 26% remained neutral and the remaining 35.3% perceive this option as irrelevant. More specifically, 46% of practitioners considered Policy Option 2 to be very relevant or rather relevant compared to 36.3% of public authorities and only 22% of associations.

Even though a competent authority expressed the view that ratification of the Convention would foster **cooperation** between national authorities¹⁸⁰, research indicates that even when the Hague Convention is ratified and applies to two Contracting States, its rules are not applied, in particular because of a lack of awareness of these rules, lack of training but also in some cases because of enforcement difficulties due to contradictions in domestic public policy rules¹⁸¹.

Several of the stakeholders consulted considered that the ratification of the Hague Convention would be a **first step** towards solving the problems observed, and some even considered that the sole ratification would be the **best option**, as it would avoid a potential confusion of having a set of rules at EU level in parallel to the Convention¹⁸². On the contrary, a number of stakeholders also expressed **doubts** as to mandatory ratification, pointing out that a minimum level of political will would be needed in order to ensure that the Convention rules are implemented in practice, for Member States which have so far shown reluctance to ratification.

Option 2 is thus to some extent relevant to address the issues observed in the current legal system. Relevance is however only partial, as a number of problems are not addressed by this option.

5.3.4 Coherence and Impact on fundamental rights

Several **stakeholders**¹⁸³ stressed that the obligation to ratify the Hague Convention was not a sufficient increase in the protection and promotion of fundamental rights, as the Convention does not include health and social rights. An association also pointed to the 'risks to contribute to the fragmentation of international law' that parallel ratification of the Hague Convention and UNCPRD would entail¹⁸⁴.

The **articulation between the UNCPRD and the Hague Convention**, and in particular the question of the compatibility of the Convention with the rules of the UNCPRD is essential here, as the mandatory ratification of the Hague Convention would necessitate ensuring that the rules do not contravene the CRPD to which the EU is bound.

The representatives of several NGOs considered that obliging Member States to ratify the Hague Convention could be detrimental and contravene Article 12 of the CRPD on equal recognition before the law. Several associations stressed that the way the text of the Convention is drafted, notably referring to **guardianship**¹⁸⁵, and the explanatory report of the Convention, which is quite recent, do not promote the rights of persons with disabilities.

¹⁸⁰ Representative of the Ministry of Justice of France – Focus Group 2.

¹⁸¹ European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults*.

¹⁸² Interview with guardianship authority, Member States competent authorities in Focus Group 2.

¹⁸³ Interviews with academia and practitioner.

¹⁸⁴ European Disability Forum, 2022, *Ensuring disability rights in civil judicial cooperation - Recommendations on civil aspects of the cross-border protection of vulnerable adults*.

¹⁸⁵ Among others, AGE Platform Europe, 2022a, *Answer to the Interview questionnaire on the Civil aspects of the cross-border protection of vulnerable adults* [Interview]. https://www.age-platform.eu/sites/default/files/Consultation-Hague-Convention2022_AGE_response.pdf

One of them also pointed out that other rights enshrined in the CRPD, such as Article 5 of the CRPD on equality and discrimination and Article 14 on deprivation of liberty, would be negatively affected by this option if the Convention is applied following the explanatory report. Overall, from the perspective of associations dealing with the protection of vulnerable adults, the second option would be detrimental to the protection of fundamental rights of vulnerable adults. According to several NGOs, the EU should promote the issue of guidelines for the protection of vulnerable adults for EU Member States based on the CRPD¹⁸⁶. Acknowledging this view, the European Network of Justice Inspection Services stresses that Member States should work towards the replacement of measures substituting the rights of the individual with measures of support and assistance based on the primary recognition of the adult's will¹⁸⁷.

This perspective is not shared by all types of stakeholders though. Practitioners, for instance, argued that Option 2 would have a significant impact on the promotion of fundamental rights, as the Convention pursues some important objectives of the CRPD, in particular those of Article 12 on equal recognition before the law. **Literature** also concludes that there is an absence of incompatibility between the two Conventions. As noted by Rolland and Keene, although the UNCRPD and the Hague Convention are different in nature, as the former is indeed aimed at establishing minimum requirements whereas the latter addresses PIL issues, they have some interaction points. Article 49(1) of the Hague Convention states that the Convention itself is subordinate to any other international instrument, thus including the UNCRPD. Article 4(4) of the UNCRPD affirms that in case of conflict with a law of the State Party or international law, the laws 'which are more conducive to the realisation of the rights of persons with disabilities' should prevail¹⁸⁸.

Coherence with international law and in particular the UNCRPD would thus not necessarily be impeded by Option 2, even though mandatory ratification would not on its own significantly contribute to the protection of human rights.

5.4 Policy option 3: Adoption of an extensive set of common rules applying in the EU only

Policy Option 3 corresponds to the adoption of an EU Regulation with provisions similar to the Hague Convention, as well as additional measures, and could include:

- a) the recognition of the choice of court in **private mandates**;
- b) the application to **ex lege powers of representation**;
- c) the simplification of the rules on **recognition** and **enforcement** with limited grounds for non-recognition and the adoption of rules on the recognition and enforcement of authentic instruments and private mandates, as well as the abolition of exequatur;
- d) the establishment of a **European mandatory certificate of representation**;
- e) **reinforced powers attributed to national authorities** in order to facilitate the obtention of information, with increased digital communication (e.g. standardised forms) and guidance regarding the steps that need to be taken by a court when transferring its jurisdiction to another court;
- f) rules regarding **legal aid** covering every situation and all types of costs;
- g) rules on **access to registries** of measures and certificates (with the interconnection of

¹⁸⁶ AGE Platform Europe, 2022b, Response to the European Commission Public consultation on the cross-border protection of vulnerable adults in the European Union. https://www.age-platform.eu/sites/default/files/EUSurvey2022_vulnerable_adults-AGE_response.pdf, *European Disability Forum*. (2022). *Ensuring disability rights in civil judicial cooperation - Recommendations on civil aspects of the cross-border protection of vulnerable adults*.

¹⁸⁷ European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults*.

¹⁸⁸ Rolland, S. E., & Ruck Keene, A., 2021, *Interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the 2007 UN Convention on the Rights of Persons with Disabilities (study commissioned by the Special Rapporteur on the Rights of Persons with Disabilities)*.

national registries or an EU registry);

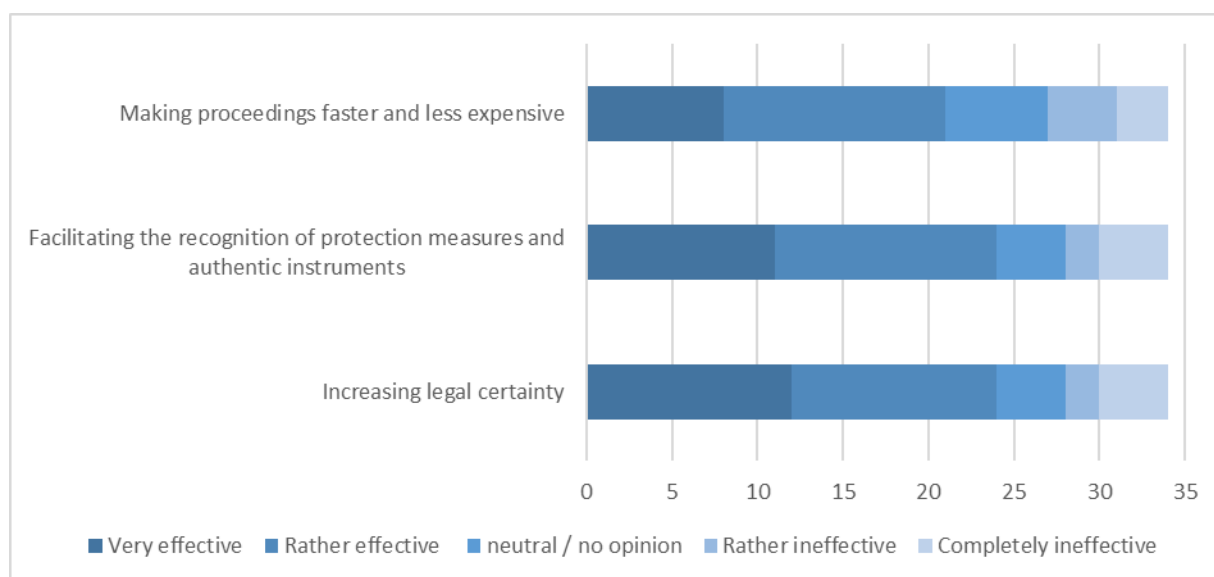
h) provisions regarding the **designation of a representative abroad**, by which it would be possible for a court to appoint representatives abroad for a specific act or to follow up on a protection measure.

5.4.1 Effectiveness

The extent to which Option 3 would contribute to the **general objective** of safeguarding the rights of vulnerable adults, and hence to the **specific objectives** of increasing legal certainty, facilitating recognition of measures, and making proceedings faster and less expensive, is analysed in this section.

The **stakeholders** consulted in the context of this study assessed such contribution as illustrated below.

Figure 8: Effectiveness of Policy Option 3



Source: Stakeholder consultation

Increasing legal certainty

Based on **stakeholders'** feedback, Option 3 would appear to be effective at increasing legal certainty, with slightly more than 70% of stakeholders indicating this Option would be either very effective or rather effective. Approximately 12% of interviewees remained neutral, while only 18% believed this Option would not be effective. Considering the divisions by stakeholder group, 77% of practitioners believe this Option would be effective, in comparison to 58% of public authorities and 78% of associations.

A few **practitioners and authorities** expressed the view that an EU Regulation could remedy the absence of common rules, and contribute to reducing the lack of clarity of the current situation. However, a number of stakeholders (practitioners and authorities) in interviews, focus groups and other consultations also raised concerns that having two different sets of rules (Hague Convention and EU Regulation) for Contracting States could cause confusion among practitioners¹⁸⁹.

From a **legal perspective**, indeed legal certainty would only increase, especially in Contracting States, if the basic rules set in the EU Regulation and the Hague Convention are aligned. Under Option 3, Member States which are party to the Hague Convention will remain bound to the international commitments they have undertaken towards States other than the EU Member States that are parties to the Convention (Scotland, Monaco

¹⁸⁹ Interviews and Focus groups.

and Switzerland). The contemplated regulation will probably be without prejudice to any prior international commitments undertaken by individual Member States vis-à-vis one or more third States. Provisions to this effect are found in almost all the legislative texts adopted by the Union in the field of judicial cooperation in civil matters¹⁹⁰. Thus, if the Regulation contemplated under Option 3 were to depart significantly from the Convention, the Regulation would apply in full only for such Member States that are currently not bound by the Convention, whereas the Member States that are parties to the Convention would see their commitments preserved vis-à-vis third countries and would accordingly be required to follow the Regulation only insofar as its application does not violate the Convention for third countries. This would eventually lead to the creation of two different regimes within the EU: on the one hand, the regime laid down in the Regulation; on the other hand, as regards the States bound by the Convention, the regime resulting from the Convention itself, as complemented by the provisions of the Regulation whose application does not entail a breach of the Convention.

If the rules are aligned, the EU could draw inspiration from the Hague Convention, without being bound by the solutions therein. Additionally, the Regulation would provide solutions to issues that the Convention has simply failed to consider, such as the law applicable to private mandates. The Court of Justice, for its part, would be in a position to contribute to the uniform interpretation of the contemplated regulation, by giving preliminary rulings. Under such circumstances, Option 3 would fully achieve the objective of an **increase in legal certainty**.

Facilitating the recognition of protection measures, authentic instruments and private mandates

Similarly to increasing legal certainty, **stakeholders** tended to assess Option 3 as effective at facilitating the recognition of protection measures, authentic instruments and private mandates, with approximately 70.5% of stakeholders supporting it versus 18% perceiving it as ineffective (most stakeholders indicating that Policy Option 3 may not be effective were in favour of the Hague Convention and believed that an additional Regulation would bring confusion and uncertainty as to which regulation should be followed). More specifically, 61.5% of practitioners, 66.6% of public authorities and 77.7% of associations considered this option to be very or rather effective.

Based on **legal analysis**, Option 3 includes the possibility to include in the EU instrument measures on the simplification of the rules on recognition and enforcement, with limited grounds for non-recognition and the adoption of rules on the recognition and enforcement of authentic instruments and private mandates, as well as the abolition of exequatur. **This would fully fulfil the specific objective of facilitating the recognition of protection measures, authentic instruments and private mandates.**

Making (judicial and administrative) proceedings faster and less expensive

61.7% of **stakeholders** interviewed indicated that Option 3 would be very or rather effective at making the judicial proceedings faster and less expensive. 17.6% had no opinion and 20.6% perceived it as ineffective. More particularly, 50% of practitioners believe that a common set of rules at EU level would be very or rather effective, compared to 58.3% of public authorities and 66.6% of associations.

From a **legal perspective**, a number of measures such as the simplification of the rules on recognition and enforcement and the abolition of exequatur would reduce unnecessary proceedings, and thus save costs. Similarly, an efficient coverage of expenses via legal aid would significantly contribute to making proceedings less expensive. Rules such as the establishment of a European mandatory certificate of representation, rules on access to

¹⁹⁰ See, for example, Article 75 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012.

registries, and mechanisms such as digitalisation and standardised forms facilitating cooperation between authorities, would also significantly speed up proceedings. In comparison with Option 2, the adoption of a Regulation, with direct application in the Member States legal framework, would ensure better implementation of the cooperation mechanisms between authorities.

Option 3 thus fully achieves the objective of making procedures faster and less expensive.

5.4.2 Efficiency

Procedural costs

Procedural costs for vulnerable adults and their families and for public authorities were estimated in the same way as in options 1 and 2, on the basis of the illustrative examples. In this option, several elements of costs as described in the illustrative examples are either reduced or eliminated (see Annex III for details).

The modelling concerning the illustrative examples resulted in the estimates as presented in Table 10 below. In addition to the costs per case calculated for each illustrative example, the table presents gains in terms of cost savings as well as additional costs (negative) as compared to the baseline.

Table 10: Average procedural costs for vulnerable adults and public/judiciary authorities per case in Option 3 and savings per case as compared to the baseline

			Average costs per case in Option 3 (EUR)		Gain (cost savings)/Loss (cost increase, negative numbers)	
			Low	High	Low	High
Example 1	HC	VA procedural costs	0	0	360	360
		PA procedural costs	0	0	21	31
		Total	0	0	381	392
	Other MS	VA procedural costs	0	0	4 080	5 397
		PA procedural costs	0	0	30	46
		Total	0	0	4 110	5 442
Example 2	HC	VA procedural costs	10	45	7 956	10 832
		PA procedural costs	35	35	-17	-17
		Total	45	80	7 939	10 815
	Other MS	VA procedural costs	10	45	7 612	10 514
		PA procedural costs	30	30	-15	-15
		Total	40	75	7 597	10 498
Example 3	HC	VA procedural costs	0	0	1 180	1 562
		PA procedural costs	0	0	21	42
		Total	0	0	1 201	1 604
	Other MS	VA procedural costs	0	0	1 550	2 070
		PA procedural costs	0	0	25	50
		Total	0	0	1 576	2 121
Example 4	HC	VA procedural costs	0	0	1 874	2 626
		PA procedural costs	0	0	35	52
		Total	0	0	1 909	2 678
	Other MS	VA procedural costs	0	0	2 084	2 879
		PA procedural costs	0	0	30	46
		Total	0	0	2 115	2 924
Example 5	HC	VA procedural costs	800	1 100	600	2 900
		PA procedural costs	35	35	0	35
		Total	835	1 135	600	2 935
	Other MS	VA procedural costs	800	1 100	600	2 900
		PA procedural costs	30	30	0	30
		Total	830	1 130	600	2 930

			Average costs per case in Option 3 (EUR)		Gain (cost savings)/Loss (cost increase, negative numbers)	
			Low	High	Low	High
Example 6	HC	Total	830	1 130	600	2 930
		VA procedural costs	0	0	360	360
		PA procedural costs	0	0	42	62
	Other MS	Total	0	0	402	423
		VA procedural costs	0	0	6 297	15 297
		PA procedural costs	0	0	61	91
	Total	0	0	6 358	15 388	
Example 7	HC	VA procedural costs	0	0	0	0
		PA procedural costs	0	0	21	42
		Total	0	0	21	42
	Other MS	VA procedural costs	0	0	0	0
		PA procedural costs	0	0	30	61
		Total	0	0	30	61
Example 8	HC	VA procedural costs	0	0	0	0
		PA procedural costs	0	0	570	591
		Total	0	0	570	591
	Other MS	VA procedural costs	0	0	0	0
		PA procedural costs	0	0	922	953
		Total	0	0	922	953

Gains in Option 3 as compared to the baseline arise in all the illustrative examples, and are due to the adoption of a set of measures, which in this option go beyond the measures envisaged under the Hague Convention. The savings are very substantial and range between c. EUR 6 000 and EUR 15 000 per case in example 6 and c. EUR 7 500 and 10 500 per case in example 2. The highest reductions in costs occur for vulnerable adults. Additional costs on a small scale (EUR 15-17 per case) arise for public authorities in example 2, due to the increased time needed for public authorities to handle the cases.

It can be noted that VA would not incur any new costs as a result of the initiative undertaken under Option 3. Additional costs would only have to be borne by public authorities (see below).

Compliance costs for public authorities

One-off adjustment costs for public authorities. This option would imply adjustment costs for public authorities related to the establishment of a digital interconnected register concerning protective measures and/or powers of representation for vulnerable adults. These costs have been estimated on the basis of the actual costs of setting up a similar tool that was implemented as a result of the adoption of the Regulation (EU) 2015/848 on insolvency proceedings (recast)¹⁹¹. While the actual costs for setting-up a digitalised interconnected register of the protection measures for VA might differ from the register for insolvency cases due to the different nature of the data (e.g. the number of the cases handled, the duration of keeping the data), it proved to be impossible to establish any clear differences among these two types of registers, which would allow adjusting the estimate. Thus, the data obtained from the survey of Member State judicial authorities on the costs of setting up and maintenance of the insolvency register carried out by DG JUST have been used to provide a rough proxy of the costs concerning a similar register for the protective measures for vulnerable adults.

According to the survey, the costs of setting up an electronic register for the insolvency regulation ranged between EUR 122 050 and 618 634. The survey data were obtained from ten Member States. An average of set-up costs equal to EUR 303 954 and an average of

¹⁹¹ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), L 141/19.

annual maintenance cost amounting to EUR 203 641 is used in our calculations to extrapolate to the countries which did not provide data. For more information on the results of the survey, see Annex III. It can also be noted that the impact assessment of the insolvency regulation¹⁹² provided an estimate of the costs of establishing a digital insolvency register in the range of EUR 0.5 – 1 million per Member State, which was probably a slight overestimate of the actual costs for some of the countries.

In addition, the costs of setting up a decentralised IT system on the e-Justice portal at EU level must be taken into account. These costs are also based on the information related to the insolvency register. According to the interviews and further exchange of information with DG JUST, the cost of the development of new functionalities in the digital system to accommodate the need to store, process and transfer the interconnected data from Member States amounted to EUR 2.4 million across the period 2021-2022. Since this work was reported to be close to its finalisation, we assume that the total amount for these two years represents the total costs of setting up such a system at EU level. This estimate is used as an estimate of the costs of setting up a similar interconnected digital register for measures concerning vulnerable adults.

The table below provides the summary of the aggregate costs. The setting up of the interconnected register would imply the aggregate costs of c. EUR 8 million falling on Member States' administration and EUR 2.5 million falling on EU administration, with a total exceeding EUR 10 million. Estimates of the costs per country are provided in Annex III.

Table 11: Aggregate costs for establishment of a digital interconnected register (one-off costs)

	Costs of setting-up a digital interconnected register (EUR)
Member States (EU-26)	7 902 794
EU level	2 400 000
TOTAL	10 302 794

In the category of compliance costs, we also include the annual costs of maintenance of the digitalised interconnected registry – these were calculated based on the estimates related to the insolvency register, according to the same survey as for the set-up costs. The annual maintenance costs range from EUR 19248 to EUR 2.5 million. Since the highest estimate (for Belgium) seems to be an outlier, with all other estimates as reported by the remaining Member States being much lower, it was excluded from the calculation of the average (amounting to EUR 203 641) that was used to extrapolate the costs to the Member States which did not provide data on this issue. It can be noted that the impact assessment of the insolvency regulation provided an estimate of the maintenance costs in the range of EUR 100 000 – 150 000, which is lower (but not substantially) than this estimate.

Furthermore, the costs of maintenance of the decentralised IT system at EU level must also be included. According to the information received from DG JUST, the costs of maintenance of the insolvency register are in the range of EUR 215 000 – 261 000 annually, with an average of EUR 238 000.

The table below provides the summary of the aggregate maintenance costs. Estimates of the costs per country are provided in Annex III.

¹⁹² COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Revision of Regulation (EC) No 1346/2000 on insolvency proceedings, 2012.

Table 12: Aggregate maintenance costs of a digital interconnected register (annual costs)

	Costs of maintenance of a digital interconnected register (EUR)
Member States (EU-26)	5 294 675
EU level	238 000
TOTAL	5 532 675

The annual **recurrent adjustment costs** related to the implementation of the new Regulation are assumed to be approximately the same as the costs of implementation of the Hague Convention. Thus, there would be no additional costs of this option for Member States being parties to the Convention; aggregate costs for non-parties would amount to approximately EUR 158 000 annually (which is the same amount as estimated for Option 2) – these would be the additional costs of this option for the EU-26, estimated using FTE labour costs for the public authorities. The aggregate estimates are provided in the Table below.

Table 13: Annual costs of implementation of the Hague Convention in Option 3 and changes as compared to Option 1

	Annual aggregate implementation costs in EUR in Option 3	Additional costs as compared to Option 1
Parties to the Hague Convention	116 184	0
Non-parties	158 433	158 433
Total	274 617	158 433

5.4.3 Relevance

From a **legal perspective**, by enacting legislation aimed at harmonising the rules of PIL regarding the protection of adults, the Union would be able to address the whole range of difficulties that practitioners and stakeholders are currently coming across in this area. Option 3 would however potentially raise a few issues. In particular, beyond a potential **different set of rules applying to Contracting States and other Member States** should the ground rules be different, another difficulty relates to the fact that situations exist where the protection of one and the same adult requires **cooperation**, either at the same time or at different moments, **between the authorities of both Member States and third States**. If, for instance, the need arises to protect a vulnerable adult living in Scotland with assets located in Germany and Italy, the authorities of Germany and Scotland would cooperate based on the Convention, whereas the authorities of Germany and Italy would cooperate under the Regulation. For the latter reason, the authorities of Italy and Scotland would not cooperate at all. The protection of the adult would thus run the risk of being discontinuous and insufficient. This is not a rare occurrence. It is important to remember that adults may experience a situation of vulnerability for several years, often decades, and that throughout such a long period it is not unlikely that their personal interests or their property moves from one country to another. Such mobility may involve any States, Member States of the EU or third countries.

Approximately 53% of **stakeholders** interviewed believe that Policy Option 3 would be relevant to overcoming the identified problems. Approximately 15% remained neutral, while the remaining 32% perceived this option as rather or completely irrelevant. When assessing the relevance by stakeholder group, 50% of practitioners believe this option is at least to some extent relevant, compared to 41.6% of public authorities and 66.6% of associations. A judge interviewed stressed that for judicial cooperation in civil matters, EU

regulations have always been effective. The representatives of a Contracting State emphasised the importance of having a legal framework for all Member States.

The doubts raised by public authorities mainly stem from the concern about having parallel or inconsistent **rules on jurisdiction and applicable law** between the EU Regulation and the Hague Convention explained above^{193 194 195}. Several authorities also expressed concerns regarding the 'double-standard' between Contracting and non-Contracting States on the rules applying to third countries with a sole EU Regulation. For that reason, one of the stakeholders interviewed¹⁹⁶ stressed that the third option could only be considered as a good temporary measure.

However, the adoption of clear rules on **private mandates** foreseen under Option 3 seems very relevant. As indicated by available data¹⁹⁷, and as confirmed by several interviewees, the use of private mandates is increasing. They provide an excellent solution for safeguarding autonomy and self-determination, as well as relieving courts. Nevertheless, their non-recognition in other countries greatly reduces their benefits. Given the increasing trend, the need for an instrument allowing for the recognition of private mandates in other Member States is key, as was stressed by several stakeholders among associations and practitioners.

More broadly, the **simplification of the rules on recognition and enforcement** would address a current need. Several stakeholders, among which authorities and practitioners, in particular emphasised the benefits of rules on the abolition of *exequatur*, which would avoid lengthy and costly procedures. For instance, competent authorities, in their response to the public consultation, also mentioned that the abolition of *exequatur* procedures, or the use of a declaration of enforceability procedure (on the model of Article 28 et seq. of the Brussels IIa Regulation), should be pursued¹⁹⁸. The European Law Institute indicates the *exequatur* procedures as established in the Succession Regulation and the Property Regime Regulation as a pattern to be followed for the introduction of a uniform European *exequatur* procedure¹⁹⁹.

The **European certificate of representation** envisaged under Option 3 is perceived by stakeholders as a key element for improving cooperation within EU Member States²⁰⁰. However, some also considered that this introduction should not be on a mandatory basis²⁰¹. The European Network of Justice Inspection Services also recommended the creation of a European certificate of representation, similar to the European Certificate of Succession, which could take the form of a multilingual form delivered by post or online by the designated national judicial authorities²⁰². A participant of the Focus Group also suggested a certification mirroring the one adopted under the Succession Regulation, as the workload for practitioners would be easier and faster and thus costs faced by the vulnerable adults would be reduced²⁰³. This would allow a representative to prove their authority in any EU

¹⁹³ Representative of the Ministry of Justice of Germany – Focus group 2.

¹⁹⁴ Representative of the Ministry of Justice of Austria – Focus group 2.

¹⁹⁵ Representative of the Ministry of Justice of Czech Republic – Focus group 2.

¹⁹⁶ Interview with one academic/practitioner.

¹⁹⁷ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

¹⁹⁸ French authorities, 2022, *Responses of the French authorities to the public consultation on the initiative on the cross-border protection of vulnerable adults - Note by the French authorities*.

¹⁹⁹ European Law Institute, Fountoulakis, C., Mäsch, G., Bargelli, E., Franzina, P., & Ward, A., 2022, *Public Consultation on the 'Initiative on the Cross-Border Protection of Vulnerable Adults'*.

²⁰⁰ Representative of the Ministry of Justice of Austria – Focus group 2. Interview with a Council of Notaries.

²⁰¹ Representative of the Ministry of Justice of Austria – Focus group 2. Interview with a Council of Notaries.

²⁰² European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults*.

²⁰³ Notary from the Netherlands – Focus Group 1.

country if such a certificate were issued systematically²⁰⁴. The European Network specified that this European certificate would need to specify the scope of the protection by indicating the capacity of the representative and the powers conferred²⁰⁵. As reported by Karjalainen²⁰⁶, in 2012 the Society of Trust and Estate Practitioners (STEP) proposed an instrument called the European Power of Representation, a form that facilitates the recognition of the general power of attorney in the EU, overcoming the current practical barriers²⁰⁷.

Increased digitalisation envisaged under Option 3 also addresses a current need. Firstly, it responds to the commitment made at EU level. As stated in the "Political Guidelines for the next European Commission 2019-2024", digitalisation of justice is one of the key elements of a "Europe fit for the digital age"²⁰⁸. The European Commission, underlining the impact that COVID-19 had on cross-border judicial cooperation, also recently stressed the importance of national reforms aimed at digitalising judicial institutions²⁰⁹. Secondly, according to the Impact Assessment Proposal for a Regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border cases²¹⁰, inefficient cross-border judicial cooperation and the barriers to accessing justice in cross-border cases negatively impact on the ability of national authorities to process cases, leading to delays, security concerns and lack of reliability in the cross-border communication process²¹¹.

Access to registries would not only benefit courts dealing with protection measures, but could also be useful to prosecutors in criminal proceedings, land registrars or business registrars, and this could be important to ensure the registration of companies or reassure creditors. When it comes to the rules of **access to registries and certificates, through**

²⁰⁴ European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults*.

²⁰⁵ Ibid.

²⁰⁶ Karjalainen, K., 2022, Strengthening the Right to Personal Autonomy and Protection of Vulnerable Adults: from Human Rights to Domestic and European legislation on Voluntary Measures. In Karjalainen K., Tornberg I., & Pursiainen A., (Eds.), *International Actors and the Formation of Laws* (pp. 65-87). Springer. https://doi.org/10.1007/978-3-030-98351-2_4

²⁰⁷ STEP. <https://www.step.org/>

²⁰⁸ European Commission, Directorate-General for Communication, & Von der Leyen, U., 2020, *Political guidelines for the next European Commission 2019-2024; Opening statement in the European Parliament plenary session 16 July 2019; Speech in the European Parliament plenary session 27 November 2019* <https://op.europa.eu/en/publication-detail/-/publication/62e534f4-62c1-11ea-b735-01aa75ed71a1/language-en>

²⁰⁹ European Commission, 2020, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Digitalisation of justice in the European Union, A toolbox of opportunities*. (COM(2020) 710 final).

²¹⁰ European Commission, 2021e, *Commission staff working document, Impact assessment report, Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the digitalisation of judicial cooperation and access to justice in crossborder civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation*. (SWD(2021) 392 final). See also: European Commission, 2018, *COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters*. (SWD(2018) 285 final).

²¹¹ European Commission, 2021e, *Commission staff working document, Impact assessment report, Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the digitalisation of judicial cooperation and access to justice in crossborder civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation*, . (SWD(2021) 392 final).

the interconnection of national registries or the EU Registry, it was usually considered a useful option by stakeholders²¹².

It was pointed out by the authorities of a Contracting State that **interconnection of electronic registers** at EU level could improve the legal security of protected adults while ensuring the implementation of the objective currently pursued by Articles 22 and 38 of the Hague Convention²¹³. In 2017, the European Parliament recommended that timely access to information on the legal situation of a vulnerable adult under a protection measure or a private mandate would tend to strengthen their rights, recommending access to files and registers of protection measures and private mandates, in compliance with the GDPR²¹⁴. The European Network of Justice Inspection Services also advocates the **creation of interconnected national adult protection registers**²¹⁵. These national registers would record judicial and administrative decisions on protection measures and private mandates for vulnerable adults, and they could be interconnected with other registers such as civil status or will registers²¹⁶. Several representatives of national authorities consulted considered that the interconnection of registers would be a key measure that would help implementing other rules. One representative considered that this would avoid situations where it is discovered that a person is already subject to a protection measure in another country, without the competent authorities of both countries being aware of the coexistence of these two measures^{217 218}. A practitioner interviewed noted that projects are being developed at national level to enhance the protection of vulnerable adults. They gave the instance of the German Federal Chamber of Notaries, which developed the **prototype of a validity register** for notarial powers of attorney and certificates of inheritance. Based on blockchain technology, the register shows at any time whether a power of attorney or a certificate of inheritance is still valid. The respondents therefore mentioned that in the future, national registers of this kind could be linked at European level in order to be usable across national borders.

The European Law Institute, emphasising the importance of the establishment of a **European Register of Certificates of Representative Powers** (ECPR), proposes two alternative options for safeguarding the exercise of the rights of vulnerable persons, also in cases of cross-border situations²¹⁹. The first option proposed is a centralised system that would achieve greater efficiency, ensuring that the computer system at national level would feed updated information into the ECPR Register²²⁰. The second option entails the creation of a decentralised system for the interconnection of national registers, modelled on the national insolvency registers as envisaged under Article 25 of the Insolvency Regulation (Recast)²²¹.

The representatives of one Member State suggested that a **mechanism for transferring jurisdiction between courts** (on the model of Article 15 of the Brussels IIa Regulation) could be introduced. It would for instance enable the requesting court to inform the court to which the request is being made of the relocation of a protected adult within its

²¹² E.g. Representative of the Ministry of Justice of Germany – Focus group 2.

²¹³ Interview with the French authorities.

²¹⁴ European Parliament resolution of 1 June 2017 with recommendations to the Commission on the protection of vulnerable adults. https://www.europarl.europa.eu/doceo/document/TA-8-2017-0235_EN.html

²¹⁵ European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults*.

²¹⁶ Ibid.

²¹⁷ Czech Presidency (20 September 2022). Workshop on the Cross-border Protection of Vulnerable adults.

²¹⁸ Ibid.

²¹⁹ European Law Institute, Fountoulakis, C., Mäsch, G., Bargelli, E., Franzina, P., & Ward, A. 2022, *Public Consultation on the 'Initiative on the Cross-Border Protection of Vulnerable Adults'*.

²²⁰ Ibid.

²²¹ Ibid.

jurisdiction and inviting it to find itself competent²²². This addresses a very frequent situation of relocation of vulnerable adults which often results in the issuance of a new protection measure in the second Member State. In the absence of feedback from other stakeholders, this measure is not currently considered relevant.

5.4.4 Coherence and Impact on fundamental rights

As indicated above, Policy Option 3 could potentially create problems of **coherence with the Hague Convention**. Adopting one set of rules for intra-EU situations and another for Hague cases can lead to lack of coherence, even though more situations are harmonised. The current situation regarding the interaction between the Brussels IIb Regulation and the Hague Child Protection Convention 1996 provides a perfect example. Within the EU, the principle of *perpetuatio fori* applies; once the case has been filed and the court is seized, then the court remains seized until a final and binding decision has been issued. This principle is diametrically opposed to the position adopted by the Hague Child Protection Convention 1996 in which a court loses jurisdiction if the habitual residence changes during the procedure. Recently, the Court of Justice of the EU has even been called upon to adjudicate on which principle should apply when a child moves from an EU Member State that has already been seized of a case and settles in a state that is party to the Hague Child Protection Convention. The Court of Justice held that the EU court would lose jurisdiction and thus the principles of the Hague Child Protection Convention would need to apply²²³. On the other hand, as pointed out by a representative of Member State authorities, as long as there is no contradiction between the Convention and the EU instrument, there is ample experience of two sets of rules, between the Hague Convention and a Regulation, which coexist and are not contradictory²²⁴.

Several Member State authorities interviewed considered that compared to the baseline scenario, Option 3 would enhance the **protection of fundamental rights** by improving legal certainty, and thus ensuring enhanced equality, self-determination, access to justice and freedom of movement across Member States for vulnerable adults. In particular, stakeholders pointed to the improvements brought by the simplification of recognition procedures and the abolition of *exequatur* and the regulation of private mandates. Precisely for that reason, it was the option favoured by several stakeholders (practitioners, associations).

An association stressed that the third option seemed the most likely to have a significant impact on vulnerable adults' fundamental rights, as an EU instrument would **have to be in line with the obligations of the EU under the CRPD**. This stakeholder also considered that in order for the proposed EU Regulation to have a positive impact, it should support, facilitate and coordinate the implementation of the CRPD. Another association mentioned that an EU Regulation should contain guidelines, in the provisions or in the recitals, to explain how it is to be applied in a way that is compliant with the CRPD. Along the same lines, the report issued by the European Network of Justice Inspection Services suggested that a new EU instrument could include in its recitals the useful mechanisms and the principles of the Hague Convention, the CRPD and the Charter of Fundamental Rights of the EU and invite the States to adapt their national legislation in order to move towards a more effective and fluid framework for judicial cooperation²²⁵. In addition, in the framework of the Focus group organised for this study, several associations pointed to the gaps in the Hague Convention in terms of compliance with the UNCRPD and other human

²²² French authorities, 2022, *Responses of the French authorities to the public consultation on the initiative on the cross-border protection of vulnerable adults - Note by the French authorities*.

²²³ Case C-572/21, CC v. VO 22 July 2022, OJ C 481, 29-11-2011, ECLI:EU:C:2022:562.

²²⁴ For example in the Maintenance Regulation, the 1996 Convention and the Brussels II Regulation, the Hague Convention of 1980, the Brussels IIa and IIb Regulation. Representative of the Ministry of Justice of France – Focus Group 2.

²²⁵ European Network of Justice Inspection Services. (2022). *Mission to assess European civil judicial cooperation for the protection of adults*.

rights standards, and suggested that an EU Regulation could in fact address potential similar problems of compliance^{226 227 228}.

Thus, while the EU Regulation envisaged under Option 3 may result in increased coherence issues with the Hague Convention, the contribution of Option 3 to the protection of fundamental rights seems undisputed both in literature and among stakeholders.

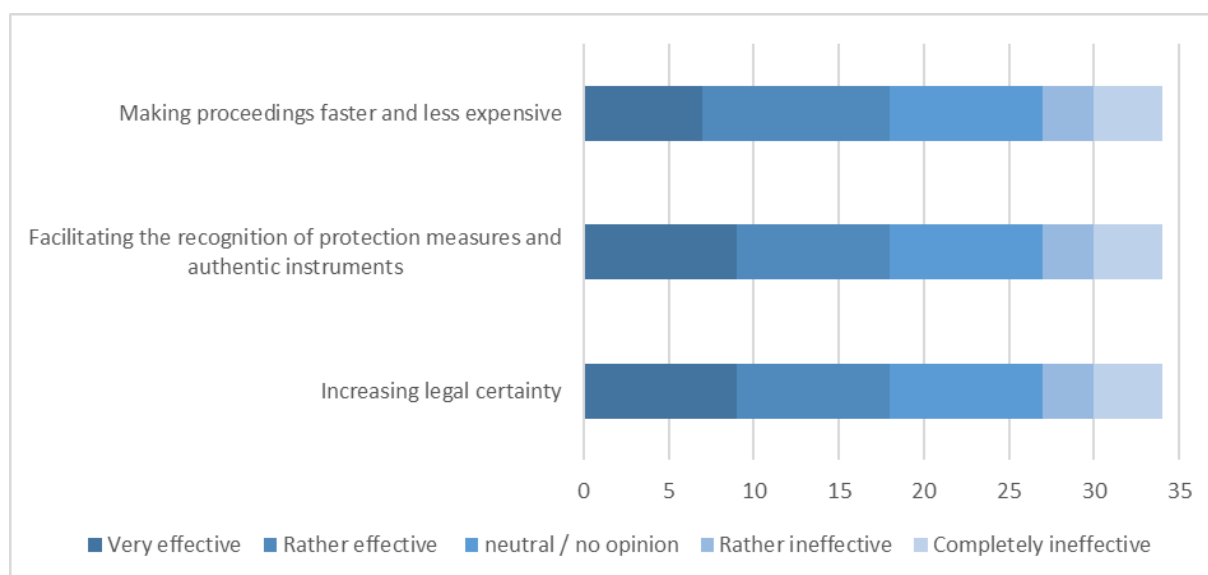
5.5 Policy option 4: adoption of an extensive set of rules in the EU and minimum set of rules with third states

Policy Option 4 consists of a combination of Options 2 and 3. The analysis therefore consists primarily of assessing whether the negative and positive impacts observed for each Option are increased or reduced by their cumulation.

5.5.1 Effectiveness

The extent to which Option 4 would contribute to the **general objective** of safeguarding the rights of vulnerable adults, and hence to the **specific objectives** of increasing legal certainty, facilitating recognition of measures, and making proceedings faster and less expensive, is analysed below.

Figure 9: Effectiveness of Policy Option 4



Source: Stakeholder consultation

Increasing legal certainty

Approximately 54.5% of **stakeholders** believe that Policy Option 4 could be very or rather effective in increasing legal certainty, as opposed to 21.2% of interviewees who perceived this option as ineffective. Considering the divisions by stakeholder groups, 46.2% of practitioners considered this Option to be very or rather effective, in comparison with 64% of public authorities and 55.5% of associations.

In **literature**, a study of the European Parliamentary Research Service underlines how the ratification of the Hague Convention and additional legislative measures at EU level would

²²⁶ Representative of European Disability Forum – Focus Group 2.

²²⁷ Representative of Mental Health Europe – Focus Group 2. Representative of European Disability Forum – Focus Group 2.

²²⁸ Representative of the AGE Platform - Focus Group 2.

contribute to creating more legal certainty²²⁹. This view is also expressed in a recent position paper of the European Association of Private International Law.

From a **legal perspective**, the discrepancies observed under Option 3, whereby two different regimes would co-exist within the EU, one exclusively based on the Regulation and another resulting from the Hague Convention complemented by the provisions of the Regulation whose application does not entail a breach of the Convention, would no longer be possible. In that scenario, it would however be essential to ensure that the rules set in the Regulation are fully aligned with the rules of the Convention. In such a situation, the Regulation would, to a certain extent, 'complete' the Convention. In addition, with the ratification of the Convention, the same rules would apply in all EU Member States vis-à-vis third countries, thus ensuring continuity of the protection in a broader geographical area than the EU.

The objective of increased **legal certainty would be achieved** under Option 4.

Facilitating the recognition of protection measures, authentic instruments and private mandates

As indicated in Figure 8, 53% of the **stakeholders** interviewed believe that Policy Option 4 could be effective at facilitating the recognition of protection measures, authentic instruments and private mandates. 26.4% had no opinion and approximately 20.5% perceives this Option as ineffective. More specifically, Option 4 appears effective to 46% of practitioners, 64% of public authorities and 55.5% of associations. Option 4 appears to be perceived as significantly less effective than Policy Option 3 (53% vs. 70%). At least some of the stakeholders did not adhere to the obligation to ratify the Hague Convention, or were uncertain about the mechanisms through which the EU could oblige the Member States to ratify.

From a **legal perspective**, Option 4 presents the same benefits as Option 3 in the achievement of the facilitation of recognition, since recognition rules are simplified and extended in the EU Regulation as opposed to the Hague Convention. In addition, the recognition rules set out in the Convention would apply similarly for all Member States towards third countries.

Making (judicial and administrative) proceedings faster and less expensive

Approximately 53% of **stakeholders** interviewed indicated that Policy Option 4 could be, at least to a certain extent, effective at making the judicial and administrative proceedings faster and less expensive. Furthermore, roughly 26.5% had no opinion, while the remaining 20.5% did not perceive this Option to be effective. Considering the divisions by stakeholder group, 46% of interviewees believe that Option 4 would be at least to some extent effective, while this percentage is at 63.6% for public authorities, and 55.5% for associations.

The **legal analysis** would also tend to demonstrate effectiveness in making proceedings faster and less expensive. Indeed, as above, the benefits of Options 2 and 3 would cumulate, primarily due to the absence of conflicting rules across the EU, as well as the additional mechanisms (in particular legal aid) provided in the EU Regulation.

Overall, the **objective would be reached under Option 4**, thus ensuring effectiveness.

5.5.2 Efficiency

This option is very similar to Option 3, with the only difference being that in addition to the

²²⁹ See also: Sumner, I. (2016). *Vulnerable adults in Europe: European added value of an EU legal instrument on the protection of vulnerable adults*. European Parliament. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU\(2016\)581388_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU(2016)581388_EN.pdf) ; See also: Franzina, P., & Long, J. (2016). *The Protection of Vulnerable Adults in EU Member States: The added value of EU action in the light of The Hague Adults Convention*. European Parliament. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU\(2016\)581388_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581388/EPRS_STU(2016)581388_EN.pdf)

new EU Regulation, the Member States which are currently not parties to the Convention would be obliged to ratify the Hague Convention. Thus, a **combination of costs for Options 2 and 3 would apply in this case.**

In this option, the savings on procedural costs for vulnerable adults and their representatives dealing with their cases within the EU would be the same as in Option 3. Also the savings on procedural costs for the administrative and judicial authorities dealing with cases involving EU countries would be the same as in Option 3.

Two differences as compared to Option 3 would apply:

- Additional benefits of this option as compared to Option 3 would arise from savings on costs of handling cross-border cases involving third countries. Currently, the number of such cases is not high because only three countries from outside the EU have ratified the Convention, namely: Switzerland, Scotland and Monaco. The number of VA in these three countries was estimated (using the same methods as for the population in the EU) in the range of 2 700 – 14 400 VA (see detailed estimates in Annex III), which constitutes c. 2% of the number of VA estimated for the whole EU. In the future, the group of countries from outside the EU which will become parties to the Convention is likely to increase, which will imply **further benefits for all the vulnerable adults potentially affected.** The scale of this increase cannot be estimated as the developments regarding ratification of the Convention by additional countries cannot be credibly predicted.

5.5.3 Relevance

Approximately 55% of **stakeholders** believe that Policy Option 4 could be at least to some extent relevant, while 19% remained neutral and approximately 25.8% of stakeholders perceived this option as irrelevant. Considering the divisions by stakeholder group, 60% of practitioners indicated that this Policy Option would be very or rather relevant, in comparison with 36.3% of public authorities and approximately 66.6% of associations. The representative of vulnerable adults perceived Policy Option 4 as very relevant.

For a number of stakeholders consulted, the combination of an EU Regulation and the ratification of the Hague Convention addresses the need for harmonisation across the EU. A practitioners' association, in its response to the Commission's consultation on the cross-border protection of vulnerable adults, suggested that the EU should work with and complement the Convention, in order to update it and address its weaknesses (in particular regarding the power of representation), while working in parallel on an EU regulation covering all relevant aspects, including an explanation of the articulation of the two instruments.²³⁰ The representative of the public authority of a non-contracting State mentioned that harmonised rules at EU level would improve the functioning of the Hague Convention in areas requiring improvement or integration. An academic interviewed considered Option 4 as very relevant because it covers all areas and could cover healthcare and social care, which are not covered by the Hague Convention, as well as create a link between third countries and EU countries. They added that having a uniform legislation that also takes into consideration non-EU countries is a very important aspect, because there are many cases of cross-border situations between EU countries and the UK for instance. The representative of a European association pointed out that the combination of external action and internal legislation would strengthen cooperation between Member States and improve the operation of the Convention in their relations. Furthermore, they added that if the Convention were merely taken as a model for the EU legislation, without actually ratifying the international instrument, Member States that are not currently a party to the

²³⁰ Council of Bars and Law Societies of Europe (CCBE), 2022, *CCBE response to the EC consultation on the cross-border protection of vulnerable adults*.
https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/FAMILY_SUCCESSION_LAW/FSL_Position_papers/EN_FLS_20220225_CCBE-response-to-the-EC-consultation-on-the-cross-border-protection-of-vulnerable-adults.pdf

Convention would in fact be deprived of the main benefit of the Convention, namely reciprocity with other Contracting States of the Convention.

On the other hand, representatives of public authorities of one Contracting State believed that Option 4 would not be as clear as a single instrument and could raise the question of the interpretation of the Convention by the Court of Justice of the EU if the text of the EU Regulation made references to the text of the Convention.

Looking at the question from a **legal point of view**, Option 4 would combine the benefits of Option 2 with those of Option 3. The Member States would all join the global standards that are set out in the Hague Convention. This means, in practice, that they would follow the same rules when dealing with situations connected with third countries (notably, such third countries as are, or may become, bound by the Hague Convention). The rules provided in the Hague Convention on jurisdiction and applicable law would additionally apply in their mutual relations, but it would be complemented (or derogated from, to the extent permitted under Article 49) by the Union's legislation. The resulting picture would feature both a global outlook (based on the Convention) and an EU element, the latter consisting of provisions on choice of court by the adult, *ex lege* powers of representation, simplified recognition and exequatur, authentic instruments, a European certificate on powers of representation and digitalisation.

The shortcomings illustrated above with respect to both Option 2 and Option 3 would either disappear in this scenario, or lend themselves to significant mitigations.

Additionally, under Option 4, the Union would have an interest in promoting the Convention worldwide, so that it attracts additional ratifications from third States (this would facilitate the handling, by Member State authorities, of cases connected with the third States concerned). The Union's action would thus be consistent, policy-wise, with that of the Hague Conference itself.

Option 4 is therefore considered very relevant to addressing the existing problems and needs.

5.5.4 Coherence and Impact on fundamental rights

In contrast to the other policy options, Policy Option 4 would provide for the most **coherence** both in terms of internal coherence (within the field of protection of adults), as well as with other solutions adopted elsewhere.

Examples of EU instruments going one step further than an applicable international Convention are illustrative of the possibilities available within Policy Option 4. According to the Brussels IIb Regulation, reference is made to the application of the Hague Child Abduction Convention 1980. The Convention is supplemented by virtue of Chapter III Brussels IIb Regulation in intra-EU cases. Supplementary rules serve to complement the application of the international legal system established by the Hague Convention yet ensuring that the extra level of mutual trust present in the EU is harnessed to further remove legal and practical barriers. Accordingly, such an approach can ensure a higher level of protection for intra-EU situations, whilst adhering to the continued application of a larger global framework. Such an approach has also been adopted with respect to the Maintenance Regulation, where the rules on recognition and enforcement of decisions go further than their Convention counterparts, ensuring that maintenance decisions within the EU are entitled to automatic recognition and enforcement without the need for acquiring an *exequatur*.

These solutions serve to illustrate that such an approach would not only be in line with techniques adopted in other fields of private international family law (external coherence), but would at the same time ensure decisional harmony within the field of protection for vulnerable adults (internal coherence) Ultimately, such an approach ensures that citizens can rely on a legally certain outcome, whilst at the same time reflecting the diversity and complexity of the various interests of the States involved in these topics.

Also regarding coherence with the CRPD, and the **protection of fundamental rights**, the observations made under Option 3 are also valid. The rules set out in the EU Regulation could cover the aspects which are missing or unclear in the Hague Convention, and ensure full alignment with the CRPD.

In fact, for a number of stakeholders and according to a number of literature sources, Option 4 is the most likely to contribute to the protection of fundamental rights and to the implementation of the CRPD. The representative of a European association highlighted that as long as the EU provides guidelines or soft law instruments on the implementation of an EU regulation and the Hague Convention, the fourth option could lead to further improvement in the cross-border protection of vulnerable adults and be beneficial in terms of protection of fundamental rights. The stakeholder added that this option would be all the more beneficial if it were encouraging Member States to change their legal systems and to support the legal changes towards greater assisted decision-making. As pointed out by an academic interviewed, regarding mental capacity, there is pressure to implement the CRPD, but its implementation is rather slow and the ratification of the Convention together with an EU regulation could facilitate progress in this area. Along the same lines, the European Law Institute considers that the harmonisation of the PIL framework at EU level would correspond to a promotion of Article 12 of the UNCRPD as well as Article 26 of the Charter of Fundamental Rights of the European Union²³¹. Additionally, it would also increase the autonomy and social inclusion of vulnerable adults, as well as enhancing the effectiveness of the protection provided to the vulnerable adults²³². Similarly, the representative of a European association argued that although all options would have a positive impact on the realisation of the fundamental rights of vulnerable adults, the impact of the fourth option would arguably be greater as it would likely produce the highest degree of cross-border continuity of protection both for intra-EU situations and situations connected with one or more third countries.

²³¹ European Law Institute, 2020, *The Protection of Adults in International Situations*.

²³² *Ibid.*

6 Comparison of the options and preferred option

6.1 Comparison of options

The following section presents a comparison between the policy options on the basis of the assessment carried out under Section 4 above.

The comparison considers all four options separately. The options are mutually exclusive, and their potential combination is therefore not taken into consideration for the comparison.

The options are compared against the four criteria analysed under Section 4: 1) Effectiveness in achieving the policy objectives; 2) Efficiency in terms of costs and benefits of the options; 3) relevance of addressing the needs identified in Section 2; and 4) Impact on fundamental rights and coherence with existing legal frameworks, in particular the UNCRPD.

6.1.1 Effectiveness

The chosen policy option should ensure a higher level of protection of vulnerable adults by increasing legal certainty, facilitating the recognition of protection measures, authentic instruments and private mandates, and making proceedings faster and less expensive.

The objective of increasing the **level of legal certainty** is achieved most satisfactorily under Option 4. Options 1 and 2 enable an increase because of the common rules under the Hague Convention, though at a much slower pace under Option 1. These two options do not fully achieve legal certainty, due to the areas of unclarity and the gaps in the rules set by the Convention. Option 3 fully achieves legal certainty, but only provided that the basic rules set in the Regulation are aligned to those of the Hague Convention. Option 4 achieves the highest increase in legal certainty, as it ensures a full harmonisation of the rules across Member States both within the EU and vis-à-vis third countries.

The objective of **facilitating the recognition of protection measures, authentic instruments and private mandates** is best achieved under Options 3 and 4. Options 1 and 2 partially achieve the objective, mainly because the Hague Convention regulates the recognition of protection measures but does not cover the recognition of authentic instruments and private mandates. Option 2, however, achieves the objective more satisfactorily, as at least recognition of protection measures would be ensured across all Member States. Options 3 and 4 both fully achieve the objective, as all types of measures would be covered. Option 4 would in addition expand the scope of recognition to third countries party to the Convention.

The objective of making **proceedings faster and less expensive** is most achieved under Options 3 and 4. Under Option 2, and to a much lesser extent under Option 1, the objective is partially achieved: whereas the minimum degree of harmonisation of the rules across the EU and the setting up of central authorities in all Member States would most likely speed up procedure and reduce the number of unnecessary proceedings, thus reducing costs, experience among the Contracting States shows that the procedures remain expensive, and that cooperation between Member State authorities remains difficult. Option 3, and, a fortiori, Option 4 provide for added security in that regard with additional mechanisms for cooperation. In addition, the EU Regulation would provide for rules not foreseen in the Convention, in particular the abolition of exequatur and rules on legal aid, which would have a significant impact on costs.

Based on the above, Options 3 and 4 provide for the highest level of effectiveness, with a slightly higher increase in legal certainty under **Option 4**.

6.1.2 Efficiency

Analysis of the efficiency regarding each policy option as presented in Chapter 5 is based on the set of eight illustrative examples (see more explanation regarding the illustrative examples in section 4.1 and in Annex III). In Chapter 5, comparison of options is presented per illustrative example and case, without aggregation of the costs across the EU. In this chapter, we provide rough estimates of the scale of costs and cost savings using our estimate of the number of VA.

As indicated in Section 2.1.2.1.1., the **estimate of the vulnerable adults** affected by legal uncertainty in cross-border contexts posed multiple challenges due to the lack of robust data. Our attempts to capture this group resulted in a range of c. 145 000 – 780 000 vulnerable adults (base period 2020) who live in a country different than their original nationality. However, this does not encompass the other groups (vulnerable adults who did not migrate but have assets abroad and vulnerable adults who engage in short-term travel).

Another uncertainty is related to the **procedural costs** arising in the specific cases. As indicated by the consulted stakeholders, these are very different depending on the type of the situation. Furthermore, the stakeholders were not able to provide concrete estimates of the relative recurrence of the different types of cross-border cases which may occur, other than indicating that some of the cases are likely to be more prevalent than others. In order to provide an indication of the aggregate costs and benefits pertaining to each option, we estimated the **range of total procedural costs for the eight typical illustrative examples** as described in Annex III, assuming the **estimated number of the vulnerable adults affected** (145 000 – 780 000). The results of this exercise are presented in the table below.

Table 14: Aggregate procedural costs for the range of VA potentially affected per illustrative example under the baseline scenario (EUR thousands)

	Low ²³³	High	Average
Example 1 (<i>not very common</i>)	238 091	1 437 312	837 701
Example 2 (<i>common</i>)	1 244 104	9 009 053	5 126 579
Example 3 (<i>rare</i>)	145 747	940 653	543 200
Example 4 (<i>common</i>)	205 006	1 688 172	946 589
Example 5 (<i>rare</i>)	209 045	3 191 817	1 700 431
Example 6 (<i>common</i>)	339 372	3 450 850	1 895 111
Example 7 (<i>quite common</i>)	4 613	48 917	26 765
Example 8 (<i>quite common</i>)	98 741	546 086	322 413

The highest total costs have been estimated in example 2, and the lowest costs in example 7. The aggregate costs lie thus in the range of EUR 27 million to EUR 5 billion. Assuming that each person from the estimated range of the vulnerable adults affected is likely to experience in their lifetime at least one cross-border case similar to the examples described in our study²³⁴, this range can be seen as the representation of the range of total costs for the affected group of vulnerable adults under the baseline scenario.

In a similar way, we can estimate the **benefits in the form of cost-savings** pertaining to each policy option and illustrative example aggregated for the estimated group of vulnerable adults affected. For the estimation of the low and high ends of the range for the

²³³ For the low estimate, we have included in the calculation the low end of the range for the estimated group of vulnerable adults and the low end of the estimates of the costs per illustrative example (taking the average for all the stakeholders affected).

²³⁴ This is likely to overestimate the number of *actual* cases, however according to the argumentation provided in section 2.1.2.1.1., there are reasons to argue that the range of VA used throughout our study is underestimated – thus, these two effects are roughly cancelled out.

different policy options, it is sufficient to take into account in the calculations only the illustrative examples which result in the highest and the lowest overall cost savings. For the assessment of the range of cost savings under Policy Option 2, for the estimate of the high and low ends of the range of savings on procedural costs, we take into account the range between zero (which occurs in examples 2-5) and the savings obtained under the Illustrative Example 6, as this is the example with the highest savings. For the calibration of savings under options 3 and 4, these will be illustrative examples 2 and 7. The tables below provide estimates of total (i.e. including savings for VA and public administration) procedural costs savings per illustrative example per case, averaged across the 26 Member States that are included in our analysis.

Table 15 Total procedural cost savings per case averaged across all Member States in Option 2 (EUR)

	Gains (cost savings)		
	Low	High	Average
Illustrative Example 1	2 202	2 972	2 587
Illustrative Example 2	0	0	0
Illustrative Example 3	0	0	0
Illustrative Example 4	0	0	0
Illustrative Example 5	0	0	0
Illustrative Example 6	3 501	8 714	6 108
Illustrative Example 7	20	40	30
Illustrative Example 8	584	604	594

Table 16 Total procedural cost savings per case averaged across all Member States in Option 3 (EUR)

	Gains (cost savings)		
	Low	High	Average
Illustrative Example 1	2 533	3 306	2 919
Illustrative Example 2	7 742	1 0632	9 187
Illustrative Example 3	1 417	1 902	1 660
Illustrative Example 4	2 028	2 820	2 424
Illustrative Example 5	1 432	4 064	2 748
Illustrative Example 6	337	343	340
Illustrative Example 7	26	53	40
Illustrative Example 8	773	800	786

It can be seen that the average cost savings per case range from zero to c. EUR 6 000 for Option 2 and from EUR 40 to c. 9 000 for Option 3, depending on the example.

The estimates of the cost savings on aggregate procedural costs for Options 2, 3 and 4 as compared to the baseline (only for the illustrative examples that set the range of cost savings, as explained above) are presented in the following table. For calibration of cost savings in Option 4, the number of VA affected has been increased by 2% following the estimates of VA in third countries as presented in section 2.1.2.

Table 17: Comparison of aggregate cost savings on procedural costs in Options 2, 3 and 4 vs the baseline, based on the illustrative examples setting the ranges (EUR thousands); PA stands for public authorities

	Option 2 vs Option 1			Option 3 vs Option 1			Option 4 vs Option 1		
	Low	High	Average	Low	High	Average	Low	High	Average
Highest cost example Total	268 229	3 047 262	1 657 746	1 236 121	8 938 375	5 087 248	1 260 843	9 117 143	5 188 993
Highest cost example VA	261 617	2 995 228	1 628 423	1 239 389	8 956 161	5 097 775	1 264 177	9 135 284	5 199 730
Highest cost example PA	6 612	52 033	29 323	-3 268	-17 785	-10 527	-3 334	-18 141	-10 737
Lowest cost example Total	0	0	0	-3 370	48 917	22 774	4 706	49 895	27 300
Lowest cost example VA	0	0	0	0	0	0	0	0	0
Lowest cost example PA	0	0	0	4 613	48 917	26 765	4 706	49 895	27 300

Average total savings on procedural costs aggregated across the estimated population of VA range between 0 (in Examples 2-5) and EUR 1.7 billion (in Example 6) for Option 2, between EUR 22.7 million (in Example 7) and EUR 5.1 billion (in Example 2) for Option 3, and between EUR 27.3 million (in Example 7) and 5.2 billion (in Example 2) for Option 4. It can be noted that the bulk of savings on procedural costs would be gained by vulnerable adults in all the Policy Options.

This range of cost savings (i.e. benefits) can be compared with the compliance costs related to the necessary adjustments for public administration authorities (i.e. the costs of setting up and maintenance of the digitalised interconnected registry, and the labour costs of implementation of the Hague Convention and the new Regulation). For a comparison of the annual costs that occur for public authorities with those of procedural costs, we adopt a perspective of 10-15 years²³⁵. Furthermore, an average of the estimates of the savings on procedural costs across the examples with the lowest and the highest cost savings is used for the calculations. The costs of setting up the digitalised register, since these are one-off costs, stay the same across the Options, while the annual costs of maintenance of the digital register and the annual costs related to the implementation of the Hague Convention are multiplied by 10 and 15, depending on the time perspective scenario.

Results of the estimates of costs and benefits per option, according to the 10- and 15-year perspectives, are presented in Table 18 below.

Table 18: Comparison of costs and benefits per option (EUR thousands); negative numbers indicate additional costs

	Option 2		Option 3		Option 4	
	10 years	15 years	10 years	15 years	10 years	15 years
Savings on procedural costs for vulnerable adults	814 211	814 211	2 548 887	2 548 887	2 599 865	2 599 865
Savings on procedural costs for public authorities	14 661	14 661	8 119	8 119	8 282	8 282

²³⁵ This seems to be a plausible assumption aligned with the assumption that each of the vulnerable adults affected is likely to experience cross-border problems once in their lifetime. Indeed, since the vast majority of the vulnerable adults considered in our study are people of an older age, it seems reasonable to assume 10-15 year perspectives as their approximate further life expectancy.

	Option 2		Option 3		Option 4	
	10 years	15 years	10 years	15 years	10 years	15 years
Setting up of a digitalised register (one-off adjustment cost)	0	0	10 303	10 303	10 303	10 303
Implementation of the Hague Convention/Regulation (recurrent adjustment costs)	1 584	2 376	1 584	2 376	1 584	2 376
Maintenance of the digitalised register (recurrent adjustment costs)	0	0	55 327	82 990	55 327	82 990
Saldo (benefits - costs)	827 288	826 496	2 489 793	2 461 337	2 540 933	2 512 477

According to our estimates, Option 2 would result in net savings of c. EUR 827 million from a perspective of 10 years and EUR 826 million from a perspective of 15 years. Options 3 and 4 would result in much higher savings, in the range of EUR 2.46 - 2.54 billion, with Option 4 being slightly more beneficial than Option 3 due to higher savings on procedural costs.

Based on the cost-benefit analysis for the EU, **Option 4 is thus the most efficient.**

6.1.3 Relevance

The policy option selected should address current and upcoming needs, and thus provide the most satisfactory solutions to the problems observed in the current situation.

Option 1 has a negative balance in that respect, as status quo does not address the problems identified and thus the current needs; on the contrary, without an EU intervention beyond awareness raising, it is likely that the situation would worsen, bearing in mind the increasing number of vulnerable adults moving across the EU.

Despite being more relevant to addressing needs, **Option 2** remains of limited relevance. Indeed, whereas mandatory ratification of the Hague Convention would solve some of the current issues stemming from the lack of harmonisation of basic rules across Member States, and has the benefit of avoiding a parallel set of rules at EU and at international level, these advantages do not outweigh the difficulties currently experienced with the application of the Convention (e.g. limited cooperation, gaps in the scope regarding private mandates), and the risks linked to imposing ratification of a voluntary instrument, which has raised limited interest from Member States so far.

Option 3 is relevant, as the envisaged EU Regulation would address similar needs to Option 2 (need for more harmonisation of the ground rules in cross-border cases). But it would also provide additional elements which would significantly contribute to addressing **current needs**, such as increased cooperation among authorities, the abolition of exequatur, or facilitated access to information via interconnection of registries or an EU Register. In addition, the Regulation would also address **future needs**, in particular in relation to the increasing use of private mandates in Member States and the EU objectives in the area of digitalisation. However, Option 3 presents a number of shortcomings which mitigate its relevance. In particular, the need for harmonised rules would not be satisfactorily addressed by a single EU Regulation, due to the existence of different regimes between Member States party to the Hague Convention and Member States which would only be bound by the EU Regulation.

In that perspective, **Option 4 is the most relevant option**, as in addition to addressing current and future needs similarly to Option 3, it also avoids or at least significantly

mitigates, the shortcomings identified for Option 2 and Option 3.

6.1.4 Coherence and Impact on fundamental rights

Option 1 does not ensure coherence at all in this matter. On the contrary, the current legal framework puts under risk the fundamental right of the vulnerable adults to receive sufficient protection in cross-border situations. Their right to equality and access to justice is impeded, which affects coherence with the UNCPRD to which the EU is a party.

The contribution of **Option 2** to coherence and to the protection of fundamental rights is intimately linked to the question of compatibility between the Hague Convention and the UNCPRD. The assessment here is mitigated. The analysis shows that coherence with international law and in particular the UNCPRD would not necessarily be impeded by Option 2, as the instruments are in principle compatible. At the same time, mandatory ratification would not on its own significantly contribute to the protection of human rights, as the Hague Convention only addresses fundamental rights to a limited extent.

The analysis shows that **Option 3** also has a mitigated impact on coherence. On the one hand, discrepancies between Member States party to the Hague Convention and others would remain, which would negatively impact coherence. On the other hand, an EU Regulation has the potential to contribute significantly to coherence, as it would have to be in line with the EU's obligations under the UNCPRD, and would provide the opportunity to clarify grey areas in the articulation between the PIL rules and the protection of fundamental rights set in the UNCPRD and the Charter of Fundamental Rights of the EU. The impact of Option 3 on coherence is thus overall positive.

Under **Option 4**, the benefits mentioned in Option 3 with regard to coherence with the UNCPRD and the protection of fundamental rights would also apply. In addition, the discrepancies raised in Option 3 would not occur, as all Member States would be subjected to a similar regime, and articulation between the EU Regulation and the Hague Convention would not create an issue, as illustrated in other fields of private international family law.

Option 4 would therefore ensure the most coherence, while not presenting any major shortcoming.

6.2 The preferred option

Summary of the performance of the options

Table 14 provides a summary of the performance of the options against the four criteria. For each policy and criteria, a qualitative score is assigned which summarise the performance of the option against the baseline. The score in the individual criteria theoretically goes from "---" to "+++":

"+++" signifies that the option addresses the evaluation criterion very well, with minimal shortcomings. "++" indicates that the option addresses the evaluation criterion well but a number of shortcoming are present, "+" means that the option broadly addressed the evaluation criterion but there are significant weaknesses, "+/-" means that the option does not significantly impact on the criterion, "-" means that the evaluation criterion is impacted on slightly negatively, "--" indicates that the evaluation criteria is inadequately addressed, and "---" that the evaluation criterion is not addressed at all.

Options 2, 3, and 4 are assessed in comparison with the status quo, whose scores for the different criteria are set to +/- . Options 2, 3, and 4 show positive performance against the baseline for all the criteria. However the extent of this performance varies across the options and criteria.

The total is the net of the scores over the four criteria. For the efficiency criteria the different signs of the scores should be read as benefits and costs.

Table 19: Overall performance of the policy options

	Option 1: Status quo	Option 2: Mandatory ratification of the Hague Convention	Option 3: Adoption of an EU Regulation	Option 4: Mandatory ratification of the Hague Convention plus adoption of an EU Regulation
Effectiveness				
<i>Legal certainty</i>	+/-	+	++	+++
<i>Recognition of foreign measures</i>	+/-	++	+++	+++
<i>Reducing costs and length</i>	+/-	++	+++	+++
Overall	+/-	++	+++	+++
Efficiency	+/-	++	+++	+++
Relevance	+/-	+	++	+++
Impact on fundamental rights and coherence	+/-	+/-	++	+++
TOTAL	0	5	10	12

The total corresponds to the sum of '+' and '-', where one + equals 1 point, +/- equals 0 points, one - equals -1 point, two + equals 2, and three + equals 3.

Based on the analysis carried out above, **Option 4 seems to be the most satisfactory option**. This is overall also consistent with the views of most stakeholders. For instance, five out of six participants in one Focus Group indicated Option 4 as the preferred option.

The table below provides a summary of costs and cost savings for Option 4 by types of stakeholders affected, for the time perspective of 10 and 15 years.

Table 20 Additional costs and cost savings of Option 4 as compared to the baseline, 10 years and 15 years scenario (EUR thousands)

Type of costs/time perspective	10 years	15 years
Savings on procedural costs for vulnerable adults (benefits)	2 599 865	2 599 865
Savings on procedural costs for public authorities (benefits)	159 062	159 062
One-off adjustment costs: setting-up digitalised registers	10 303	10 303
Recurrent adjustment costs: implementation of the Hague Convention	1 584	2 376
Recurrent adjustment costs: maintenance of the digitalised register	55 327	82 990
Saldo (benefits - costs)	2 540 933	2 512 477

It should be noted that in the above table, a separate calculation was performed for public authorities to calibrate the average cost savings across the illustrative examples which provide the highest and lowest savings because while the procedural cost savings for vulnerable adults appear to be the highest in illustrative example 2 and the lowest in illustrative example 7, for public authorities the situation is different. The highest procedural cost savings appear in Example 8 (in this example, the baseline costs were estimated at 2-4 hours of labour and they are eliminated in Options 3 and 4). These cost savings thus set the upper end of the range of savings, while the lower end is calculated in illustrative example 2, which in fact implies an increase in PA procedural costs i.e. negative savings. Aggregate procedural cost savings in illustrative example 8, averaged across low and high estimates for Option 4 amount to EUR 328.9 million while in illustrative example 2, additional costs were estimated at EUR 10.7 million. The resulting average savings thus amount to c. EUR 159 million (as presented in the above table).

It can be seen that while public authorities would incur some additional costs (with the highest costs attributed to the maintenance of the interconnected digitalised registers), **these costs would be outweighed by savings on procedural costs (i.e. benefits).** At the same time, **vulnerable adults, their families and representatives would not incur any additional procedural costs, while enjoying very substantial savings on procedural costs.**

One in, one out estimate

In this section, we provide an estimate with respect to the '**one in, one out' rule (OIOU)**, which refers to the extent to which the preferred policy option reduces the administrative cost burden on citizens. As indicated in section 4.1.1., in our study, administrative costs are defined as a sub-category of procedural costs and include translation costs, costs of preparation and sending registered letters, costs related to administering medical assessment and obtaining related certificates, and costs of additional expertise.

The preferred Policy Option 4 will not create any new administrative requirements on citizens and will thus add no additional administrative costs. On the contrary, Option 4 will significantly reduce the administrative costs. The scale of this reduction can be estimated on the basis of our analysis of costs per option presented in the sections above. Since the comparison of the options presented in section 6.1.2. was based on the analysis of illustrative examples 2 and 7, which set the high and low boundaries for the costs and the related cost savings, the same logic can be applied for the estimation of the reduction in administrative costs.

In illustrative example 2 which sets the higher boundary of the range of procedural costs and their reduction, all the procedural costs for citizens (i.e. for vulnerable adults) fall into the category of administrative costs (see Table 24 in Annex III), which means that savings on administrative costs are identical with the savings in the broader category of 'VA procedural costs'. In illustrative example 7, there are no procedural costs incurred by vulnerable adults (i.e. they equal zero). The resulting average savings across these two examples (OIOU cost savings under the Option 4) are thus equal to half of the savings achieved in illustrative example 2, i.e. EUR 1 299 933 thousand, which can be rounded to approximately EUR **1.3 billion over the period of 10-15 years**²³⁶.

Sensitivity analysis

The above summary of the performance of the different options is based on four criteria: effectiveness, relevance, efficiency, and impact on fundamental rights and coherence. The selection of Option 4 as the preferred option is based on the assumption that these four criteria have the same importance (i.e. weight) in the selection process. Nevertheless, the importance given to each of these criteria can vary. For instance, relevance can be given a lesser importance given that all the options at stake are already assumed to be relevant in meeting the needs of stakeholders since some of them were not discarded early in the analysis. Moreover, it is reasonable to give more importance to the criterion of impact on fundamental rights and coherence given the area under investigation, i.e. the protection of vulnerable adults.

Table 21 presents the results of the sensitivity analysis based on the **average scores of criteria per option**. We apply **two different series of weights** to calculate **these average scores: a series with equal weights and a series with unequal weights**. The first series gives an equal weight of 25% to each of the criterion. The second series gives a weight of 15% for relevant, 25% for effectiveness and efficiency respectively, and 35% for the impact on fundamental rights and coherence. **In both cases, the preferred**

²³⁶ The estimated amount for 10 and 15 years is the same, following the assumption that every vulnerable adult would, over his/her lifetime, encounter one situation similar to one of the illustrative examples (see also the explanation in section 6.1.2.).

option is Option 4.

Table 21: Results of the sensitivity analysis

	Option 1: Status quo	Option 2: Mandatory ratification of the Hague Convention	Option 3: Adoption of an EU Regulation	Option 4: Mandatory ratification of the Hague Convention + adoption of an EU Regulation
Effectiveness	0	2	3	3
Efficiency	0	2	3	3
Relevance	0	1	2	3
Impact on fundamental rights and coherence	0	0	2	3
Sum of scores	0	5	10	12
Average performance (equal weights)	0	1.25	2.5	3
Average performance (unequal weights)	0	1.05	2.4	3

The average performance (equal weights) corresponds to the result of an unweighted average of the scores of criteria per option. The average performance (unequal weights) corresponds to the result of a weighted average of the scores of the criteria per option.

Proportionality

It is necessary to assess the extent to which the proposal does not exceed what is necessary for achieving its objectives. In principle, both Options 2 and 3 achieve the objectives of the initiative to the fullest extent, while Option 4 is the most ambitious in terms of modification of the current legislative framework. Nevertheless, the analysis above also shows that, taking into consideration the primary importance of protection of fundamental rights, and the positive balance in terms of costs engaged, Option 4 remains proportionate.

7 Monitoring and evaluation framework

This section describes for the preferred option, i.e. Option 4, the operational objectives and the corresponding indicators, as well as from when monitoring should start, by whom and how the results should be used, and when the evaluation should be undertaken.

The table below provides a snapshot of the objectives to be achieved and indicators to be monitored, the timeframe anticipated for the monitoring, as well as the persons responsible for gathering the relevant data.

Table 22: Monitoring and evaluation framework

Objective	Indicator	Timeframe	Responsible for gathering data
Legal certainty	Signature and Ratification of the Hague Convention	Deadline set by Council Decision	Notification to the Commission by the Member State competent authorities ('MSCA')
Implementation and enforcement of the rules set in the Regulation and the Convention	Adoption of national measures to ensure implementation of the rules set in the Convention and Regulation (e.g. legal aid, attribution of powers to the competent authorities)	Within a limited timeframe after adoption of the EU Regulation	Idem
	Designation of a Central Authority in all Member States	Upon ratification of the Convention	Notification to the Permanent Bureau of the Hague Conference (Art. 43 of the Hague Convention)
	Reporting activities under the Hague Convention	Upon ratification of the Convention	Monitoring by European Commission of information published by the Hague Conference
	Number of protection measures registered in each Member State	Annually, upon adoption of the Regulation	Gathered by competent authorities (e.g. court or agency) Reporting by MSCA to the European Commission
	Number of private mandates registered or activated in each Member State	Annually, upon adoption of the Regulation	Gathered by e.g. notaries. Reporting by MSCA to the European Commission
	Number of mandatory certificates of representation issued	Annually, upon adoption of the Regulation	Gathered by courts. Reporting by MSCA to the European Commission
	Number of court cases relating to cross-border issues involving vulnerable adults	Annually, upon adoption of the Regulation	Gathered by courts. Reporting by MSCA to the European Commission
Increased cooperation among national authorities	Set up of interconnection system of national registries via EU portal ²³⁷	After a transitional period (e.g. 5 years)	Ensured by MSCAs. Notification to the Commission by the MSCA

²³⁷ If based on the same model as adopted for the Insolvency Regulation.

Objective	Indicator	Timeframe	Responsible for gathering data
	Number of applications for a measure via the E-Justice portal	Idem	Gathered by MSCAs. Reporting by MSCA to the European Commission.

An indicator of the success of Option 4 would be the fact that the initiative meets its objectives and thus safeguards the rights of vulnerable adults in cross-border situations. However, as this would likely not be empirically measurable as such, a combination of the above indicators could be used instead to assess the success rate of the Option. Indeed, the current report has shed light on the scarcity of quantitative data regarding the situation of vulnerable adults in cross-border situations. Even though trends tend to indicate an increasing phenomenon, it would for instance be meaningful to gather data on the number of adults subject to protection measure or private mandate in order to monitor more closely the evolution of the number of vulnerable adults. This is relevant in the context of cross-border protection as well, as any vulnerable adult is likely to consider moving abroad, and/or find themselves in a cross-border situation. The number of certificates of representation issued or of applications via the e-Justice Portal would also be helpful. The obtention of quantitative data would heavily rely on practitioners (in particular for private mandates) and would thus need to be coordinated by the national authorities. The perception of civil society, NGOs and Member State public authorities, as well as the opinion expressed in academic literature or reports by individuals, organisations or international organisations could also constitute additional criteria for assessing the implementation of the preferred option.

Given the variety and complexity of the various measures envisaged under Option 4, an evaluation of the implementation of the option would only take place after several years. In addition, as a rule, the application of the EU legislation in the area of civil justice is monitored through regular meetings of the European Judicial Network (EJN) in civil and commercial matters, and this initiative would not be an exception. Thematic meetings of the EJN, where the EJN contact points from Member States discuss the practical aspects of the application of the legislation, could play an essential role in assessing how the Regulation is applied in practice and what its impact is. The EJN could also help to address any potential practical problems that would arise in the application of the legislation.

In addition, the number of European certificates of representation issued to adults in cross-border situations in the EU could also be an additional means of measuring the success of the vulnerable adults regulation in quantitative terms.

Annex I Methodological approach

The methodological approach is based on the tasks outlined in the Service Request and the approach presented in the Inception Report. The progress made during the different phases of the project; problems encountered as well as any changes to the methodology are summarised below.

Overview of the project tasks and interlinkages

Our methodology is structured around six tasks:

- Task 0: Inception
- Task 1: Problem analysis and intervention logic
- Task 2: Data collection and analysis
- Task 3: Refinement of the policy options
- Task 4: Assessment of impacts and comparison of options
- Task 5: Preparing the study.

Task 0 Inception

The inception phase provided the initial groundwork needed to start implementing the project. The aims of this phase were to ensure a common understanding of the scope and objectives of the study and to refine and finalise the methodological approach and data collection tools for DG JUST's approval.

Under the guidance of the Project Management Team, the Research Team undertook a **preliminary review of desk resources** and started to collect the previous relevant studies and available data sources and extract key information to be used during the following phases of the project.

A list of literature sources that was gathered in a dedicated database in the previous study carried out by Milieu regarding this issue²³⁸ was used as a starting point for this study. Other recent impact assessment studies in the area of judicial cooperation and other policy areas that cover actions similar to those that will be proposed in this initiative were also reviewed.

The preliminary review of resources allowed the Research Team to identify which information was readily available and could be used in the study and to identify outdated information and data gaps to be completed using stakeholder consultations or analytical techniques such as extrapolation and aggregation.

During the inception phase, on 8 March 2022, a **kick-off meeting** was organised with DG JUST (online), attended from Milieu's side by the Project Management Team. The results of the preliminary review of resources and exchange of views with DG JUST during the kick-off meeting were then discussed during an **internal online meeting**, which gathered the Project Management Team, the Senior Expert on Impact Assessment and the Project Quality Assurance Expert. This meeting focused on the methodological aspects, compliance with Better Regulation Guidelines and the structure of the study as well as on ensuring adequate staff resources for the implementation of the project. A separate online meeting/workshop was carried out with the Advisory Board (the Senior Experts). This meeting focused on the possible additional sources of information and on the approach to potential case studies. Following these online discussions, the Project Management Team refined the methodology and finalised the Inception Report. The Final Inception Report was approved on 22 March 2022.

²³⁸ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N. (2021). *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

Task 1 Problem analysis and intervention logic

This task aimed at providing a comprehensive analysis of the problems related to lack of cross-border alignment of procedures concerning vulnerable adults in civil proceedings and developing an intervention logic. In the context of an Impact Assessment, an intervention logic should present a causal chain: drivers – problems – general objective-specific objective, which leads to the identification of policy options²³⁹. It is an integral part of the Impact Assessment, underpinning the legislative proposal of DG JUST which will be drafted on the basis of the study resulting from this study.

The previous study contains a comprehensive **analysis of the problems** underlying the work being subject of this study. The intervention logic was developed based on a summary of the main points of this analysis, formulating the specific objectives for addressing the identified problems and updating the existing knowledge with the findings of the desk research. The draft intervention logic presented with the Inception Report was developed further by the Research Team with advice from the Advisory Board. An online brainstorming meeting was organised to discuss these aspects. The intervention logic was also drawn up in close cooperation with DG JUST and subject to several iterations, incorporating comments obtained from DG JUST.

The data collection and analysis as described in the following task, in particular the inputs of various consulted stakeholders, were taken into account during the various revisions of the intervention logic.

Task 2 Data collection and analysis

This task aimed to gather all necessary information to inform the further assessment of impacts of the regulatory options as identified in the Request for Service and refine these options.

Data collection was initiated in two steps:

First, the Research Team completed the desk research to gather additional data, as well as to analyse the sources of information provided by DG JUST, including the replies to the Public Consultation and the Call for Evidence as well as other data and information sources. The results of the Public Consultation and Call for Evidence were analysed and are described in the synopsis report attached to this Report as Annexe V. The summary report for the Public Consultation was prepared in May 2022, and was already approved by the Commission. It forms Annex VII to the present report.

The second step aimed at filling the gaps in knowledge as identified in the mapping indicated above, using stakeholder consultations as well as extrapolation and aggregation of the available data.

The methods used in this task included **desk research** and **consultation with stakeholders** as well as various **analytical methods** allowing to provide robust estimates for situations where hard data are scarce or missing. The findings are presented in Section 2 and 4 of this Report.

Consultation with stakeholders took the form of semi-structured interviews with a selection of stakeholders falling into various categories, i.e. legal practitioners and experts, NGOs and public authorities. A total of 81 stakeholders were contacted for interviews. They covered EU institutions, EU organisations, as well as stakeholders from 23 Member States and from Switzerland.

Eventually, 37 interviews were carried out²⁴⁰. The list of interviewees is presented in Annex VI to this report. The interviews aimed at gathering additional data on the magnitude of

²³⁹ Better Regulation Toolbox, Chapter 2, Tool #7: What is an Impact Assessment and when it is necessary, (2021b).

²⁴⁰ Seven further stakeholders who had primarily agreed to be interviewed eventually declined the interview.

problems experienced by stakeholders, gaining an understanding of the types of costs involved in practice by the cross-border protection of vulnerable adults, and obtaining the stakeholders' feedback on the relevance of the possible policy options.

Data collection continued after the submission of the Interim Report, in particular with the organisation of focus groups. The final results feed into the present Report.

Task 3 Refinement of policy options

The Request for Service presented four options and the status quo (baseline option), as well as a list of possible rules the EU could adopt within the policy options. In parallel with the development of the intervention logic, the options were further refined, in close cooperation with the Commission.

Stakeholders' views on the policy options were gathered during the interviews as well as on the basis of the analysis of the Public Consultation and feedback received as a response to the Call for Evidence. We also organised two focus groups to gather additional feedback on the options.

Task 4 Assessment of impacts and comparison of policy options

The objective of this Task is to assess the most relevant policy options and compare them using several criteria such as effectiveness, efficiency, relevance, coherence with EU policies and compliance with fundamental rights. The assessment includes a mapping of impacts on specific Member States or groups thereof, distinguishing, wherever relevant and possible, between the Member States which are parties to the Convention and those which are not.

The impacts of each option were assessed for various stakeholders affected according to the categorisation presented in the Request for Service (economic, social, impacts on fundamental rights, impacts on the relevant sustainable development goals). Each policy option was analysed taking into account the specific measures identified during the refinement of the policy options stage.

Following the assessment of the impacts, which was performed by the Data Collection and Analysis Team under the supervision of the Impact Assessment Experts, a multi-criteria analysis (MCA) was applied for the comparison of the policy options²⁴¹. This approach can best be used to make a comparative assessment of options that involve both quantitative and qualitative impact elements, which was the case here (i.e. the economic impacts are mostly expressed in quantitative terms while the impact on fundamental rights are expressed in qualitative terms; other impacts involve both types of information).

In the MCA, the impacts were aggregated to feed to the main assessment criteria for the MCA. For instance, the efficiency criterion is primarily based on the assessment of the economic impacts (cost-benefit analysis), but also partly relies on the social and environmental impacts identified. Effectiveness shows the extent to which a given option is likely to achieve the policy objectives. The analysis of this criterion partly relies on foresight analysis²⁴², i.e. it involves forecasting, on the basis of the statistics and stakeholder opinions gathered, of the approximate number of VA who will benefit from each option (see sections 2.1.2.2. and 5.5.2). Effectiveness also relates to the level of harmonisation that can be achieved by MS in the area of the protection of VA in cross-border context. Other criteria include coherence with EU policy and fundamental rights as well as EU added value encompassing the subsidiarity and proportionality principles.

For both quantified and non-quantified impacts, a scale showing the magnitude of various types of impacts within each criterion was developed, according to a '+'/'-' type of scoring. The final assessment involved developing scores for each criterion resulting from

²⁴¹ Better Regulation Toolbox, Chapter 8, Tool #62: Multi-criteria decision analysis, (2021d).

²⁴² Better Regulation Toolbox, Chapter 3, Tool #20: Strategic Foresight for Impact Assessments and Evaluations, (2021c).

aggregating the assessment of the specific impacts/sub-criteria feeding into each of the main assessment criteria.

Each assessment criterion was attached to certain weight to show their relative importance. The baseline scenario served as the basis for the comparison: the analysis of impacts related to this scenario were performed prior to the comparative assessment of all the options. The scoring for each of the policy options forms a scoring and ranking matrix. Each score is backed up by a narrative explaining the score for each cell (a combination of a policy option and each criterion). The matrix presents how each option compares to all the other options, both overall and with respect to each of the established criteria. The final ranking for each option results from the scoring received from applying the (weighted) criteria – this process indicates the most optimal policy option. A sensitivity analysis can be performed by changing the relative weights of some of the criteria.

The assessment and scoring of options are presented in this Report.

Task 5 Preparing the impact assessment support study

The objective of this task is to prepare for DG JUST a study providing a comprehensive assessment of the selected policy options, to support the impact assessment accompanying a possible legal instrument that will facilitate cross-border protection of vulnerable adults within the EU. The study carefully follows the requirements of Better Regulation.

Preparation of the impact assessment support study was performed on the basis of the results of all the previous tasks. This task was performed by the Project Management Team with inputs from the Research Team and the Advisory Board. The Quality Assurance and Support Team made sure that the final study conforms with the highest standards regarding the content, form and language. The main elements of the study include the description of the analysed problems, the intervention logic and the assessment of impacts and selected policy options.

Problems encountered, solutions and changes to the methodology

It was already pointed out in the Inception Report that it is difficult to obtain statistics regarding cases of cross-border issues involving vulnerable adults, and thus to understand the **magnitude of the problems** uncovered in the data collection phase. To address this issue, data was gathered via the stakeholders consulted as well as via statistics available at EU level. Since only a few stakeholders provided statistics related to the number of vulnerable adults in their country, there was a need for extrapolation in order to produce estimates at the EU level. Most of the data were collected from Eurostat, especially the databases concerning health statistics. The data about population ageing and mobility trends were used to anticipate possible future trends. Furthermore, scientific journals and reports of International Organisations were used to gather additional data related to vulnerable adults. The outcome is presented below.

The data collection exercise has identified two additional key difficulties:

Regarding the identification and the measurement of costs involved in the cross-border protection of vulnerable adults and the potential impact of the proposed options on such costs: Desk research has not allowed to clearly identify the types of costs entailed by the cross-border protection of vulnerable adults. It was therefore one of the key purposes of the interviews to gather information on this issue and to properly identify the nature of the costs involved, before being able to actually understand the magnitude of such costs. The interviews enabled to clarify this aspect satisfactorily. However, the data gathered at this point on the **actual costs** remains very weak.

As explained above, the primary aim of the interviews was to gather information enabling to measure the impacts of the proposed options. The options were reshaped and refined while the interviews were already

underway, partly due to time constraints, partly because they turned out to create confusion for the stakeholders interviewed. The changes implemented (even though not fundamental) however make it difficult to have a **streamlined assessment of the options** from the stakeholders interviewed depending on when the interviews took place.

To mitigate these difficulties, we held two focus groups to gather additional data:

The first focus group aimed at gathering information on **costs**: this focus group gathered **selected practitioners** who provided helpful information on that aspect during interviews and represent different professions; the idea was to present them with a typology of costs and to ask them for estimates of corresponding costs;

The second focus group aimed at measuring the **impacts of policy options**: the interviews have shown that, while practitioners were more able to provide information on costs, national authorities and EU associations could more easily give insights as to the impacts of the proposed changes to the current regulatory framework. The focus group thus gathered national authorities as well as other types of stakeholders who provided relevant input on options during the interviews or in the Call for Evidence, and presented them with the latest set of options to gather their views on impacts.

Annex II Complementary analysis to the problem (Section 2)

The problems described under Section 2.2 stem from a number of indirect causes such as choice of court in private mandates, authentic instruments and private mandates not recognised abroad, grounds for refusal to recognise a foreign decision, optional use of electronic channels, non-acceptance of electronic documents, absence of harmonised rules on cross-border protection, existence of national enforcement proceedings, lack of cooperation between authorities, the absence of information on foreign laws, the absence of accessibility of national registries from abroad and language barriers. These are further described below.

Indirect causes

A number of elements were identified as contributing to the problems existing in the current protection of vulnerable adults in cross-border situations, but in less direct ways than those cited in the previous section. They contribute to some of the direct causes, which will in turn create the problems. To understand how to effectively tackle these problems, it is important to dismantle the different layers of causes and understand which ones tend to create the identified problems.

The **choice of court in private mandates** enables people having their full capacity to choose the court that will have jurisdiction over their case if they become adults in need of protection. This instrument will only be respected abroad if the national PIL rules of the foreign State allow to do so; this is however not the case in most Member States. In addition, for Member States party to the Convention, Article 8 of the Hague Convention enables the authorities with initial jurisdiction to request the authorities of another State to take measures of protection in the interest of the adult. This means that if an adult chose another court in a private mandate, the court chosen cannot directly be seized by the adult who first needs to seize the court having jurisdiction and then request a transfer of jurisdiction. This involves more costs and a significant lack of legal certainty, as it entails the risk that the court having jurisdiction refuses to request a transfer or that the court chosen refuses the decision on transfer. This contributes to complicate cooperation between national authorities, and it also adds to the conflicting rules on recognition of foreign decisions, authentic instruments and private mandates.

Authentic instruments and private mandates are not necessarily recognised abroad, as in some jurisdictions, judicial oversight of vulnerable adult protection issues is essential, and the authentic act done abroad must be confirmed by a domestic court. Additionally, for Member States party to the Hague Convention, the provisions of the Convention do not cover authentic acts, and only allow their recognition if a public authority (not necessarily a court nor domestic authorities) has confirmed them. This contributes to creating conflicting rules on recognition of foreign decisions, authentic instruments and private mandates.

The **grounds for refusal to recognise a foreign decision** in the field of protection of vulnerable adults in cross-border situations vary across Member States. For States party to the Hague Convention, the grounds for refusal to recognise a measure are listed by Article 22(2) of the Convention, but the issue is in practice not that straightforward, as there are still five grounds for non-recognition, which means that the possibility that a measure is not recognised remains high. For Member States which are not party to the Convention, grounds for refusal are different from one country to another, leading to conflicting rules on recognition. Some countries have a high number of grounds for non-recognition, including grounds that are different from the ones listed in the Hague Convention,

which increases the risk of non-recognition.²⁴³

Member States have different degrees of digitalisation and although some Member States have a high digital performance, it does not automatically imply that their digital services are available in cross-border cases.²⁴⁴ The **optional use of electronic channels** indirectly contributes to the problems because it tends to complicate the cooperation and communication between national authorities. It also indirectly makes the process longer and more expensive (for example, it requires the use of expensive postal services for international shipments). The European Network of Justice Inspection Services found that one of the challenges that all the national inspection services are facing is the lack of digital traceability of cross-border cases due to the absence of an instrument allowing specific computer records on the topic.²⁴⁵ The experts of the evaluation mission also noted the lack of national register of cross-border measures that would enable the existence and content of a protection measure or of a private mandate to be verified. Digitalisation on a voluntary basis implies that the interconnection of Member States in the future would not be guaranteed.²⁴⁶ If the communication processes and registries were compulsorily digitalised and were therefore faster, this could also eventually encourage authorities to cooperate and communicate more and more efficiently. Additionally, the use of videoconference for conducting hearings could enable vulnerable adults, their representatives or their families to be heard in cross-border cases, thus better safeguarding the vulnerable adults' access to justice and autonomy.

Related to this last indirect cause, the fact that **electronic documents are not necessarily accepted** also contributes to bad cooperation between national authorities.²⁴⁷ As for the optional use of electronic channels, the non-acceptance of electronic documents leads to an increase in costs and the length of the procedures as a whole, for vulnerable adults, their families, their representatives and for public authorities.

The **absence of harmonised rules** (on applicable laws, jurisdiction, recognition and enforcement) on cross-border protection across Member States is a key indirect cause and leads to conflicting rules on applicable laws, jurisdiction and recognition of foreign decisions, authentic instruments and private mandates. It was mentioned many times during the interviews by different types of stakeholders, and some thought that it was the root

²⁴³ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N. (2021). *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

²⁴⁴ European Commission. *Commission Staff Working Document Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Digitalisation of justice in the European Union A Toolbox of Opportunities*. (SWD(2020) 540 final). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=SWD:2020:540:FIN>, European Commission, 2021e, *Commission staff working document, Impact assessment report, Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the digitalisation of judicial cooperation and access to justice in crossborder civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation*. (SWD(2021) 392 final).

²⁴⁵ European Network of Justice Inspection Services, 2022, *Mission to assess European civil judicial cooperation for the protection of adults*

²⁴⁶ European Commission, 2021e, *Commission staff working document, Impact assessment report, Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the digitalisation of judicial cooperation and access to justice in crossborder civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation* (SWD(2021) 392 final).

²⁴⁷ Ibid.

cause of all the problems. Some respondents believed that if all Member States had ratified the Hague Convention, the issues could be solved or close to a solution, while some believed that only an EU instrument could reach all areas needed for a real change.

Another element which has consequences on the impossible or limited cooperation between national authorities is the **lack of information available on foreign laws**. Obtaining information on foreign law can be very complex, due to the differences in legal systems, the fact that it is often necessary to go through the Central Authority to obtain answers, and the fact that it is in a foreign language. This was mentioned by several stakeholders, including a judge, who described it as a very important factor in the difficulties that exist on the ground, and the representative of a pan-European organisation representing the interests of vulnerable adults, who mentioned that it was indeed a significant problem encountered in practice.

The majority of Member States hold registries for protective measures of vulnerable adults.²⁴⁸ However, these **national registries are generally not accessible from abroad**, not all of them are digitalised and their access are mainly restricted to national competent authorities. This indirect cause also tends to complicate even more the cooperation between national authorities.

The **language barrier** was included in the problem tree under a different system of colour, because although it is an indirect cause, it is also an external factor to some extent. Indeed, the language barrier will always represent an obstacle to quick and easy exchanges between the competent authorities, however, this obstacle can be significantly mitigated by a legislative intervention at the EU level, which is why it is placed among the indirect causes. Language barriers were brought up several times in the interviews, both in terms of communication problems between national authorities and in terms of the difficulties faced by vulnerable adults.

Indirect Effects

The risks of physical and psychological abuse resulting from the lack of protection, the risks of financial spoliation or denial of access to the adult's property abroad, obstacles to access to justice and freedom of movement and the impediment to self-determination and autonomy- all contribute to the wider risk of **breach of vulnerable adults' rights**. This goes against the EU's obligation to protect the fundamental rights enshrined in the Charter of Fundamental Rights of the Union, and also runs counter to the objective of creating, maintaining and developing an area of freedom, security and justice, in which principles of equality and freedom would be guaranteed for all.

The EU has signed the UN Convention on the Rights of Persons with Disabilities in 2007 and ratified it in 2010. The Union therefore has a duty to comply with its provisions, including those that apply to vulnerable adults, namely the freedom to make one's own choice (Article 3(1)), the equal recognition before the law (Article 12), the access to justice (Article 13), and the freedom of movement and nationality (Article 18). The EU Strategy for the Rights of Persons with Disabilities 2021-2030 includes among its priorities, the protection of persons with disabilities from all forms of discrimination as well as an effective right of access to justice.²⁴⁹ However, the indirect effects of the issues discussed in the previous sections do not allow the requirements of this UN Convention to be satisfactorily met, and this was stressed during the interviews by several European organisations active in the protection of vulnerable adults.

²⁴⁸ European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N., 2021, *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

²⁴⁹ European Commission. (2021f). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions empty. Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030*. (COM(2021) 101 final). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0101>

Finally, the current situation also puts at risk the objectives set out by the European Council in the Stockholm Programme in 2009.²⁵⁰ Indeed, the Programme reemphasises the will to see a Europe built on fundamental rights, with a full exercise of the right to free movement and access to justice, a protected area for the most vulnerable, in which all exequatur proceedings as regards civil matters would be abolished.²⁵¹

²⁵⁰ Council of the European Union, The Stockholm Programme – An Open and Secure Europe Serving and Protecting the Citizens, 2 December 2009, 17024/09.

²⁵¹ Ibid.

Annex III Complementary analysis on costs and efficiency

METHODOLOGY FOR THE ASSESSMENT OF COSTS PER POLICY OPTION

In our assessment, we are using estimates related to a set of 'typical illustrative examples', which have been developed on the basis of the information and data compiled from literature and stakeholder consultations. These are the following illustrative examples:

Table 23: Description of typical illustrative examples

	Scenario	Costs
Illustrative example 1: Establishing a protection measure abroad	Mr X is a national of country A and has moved to country B. A protection measure is requested in country A (e.g. by family).	<p>Potential costs (case by case basis) related to: A. The procedure to establish the protection measure:</p> <p>Additional costs relating to cross-border situation:</p> <ul style="list-style-type: none"> • travel for the medical assessment • translation costs linked to the procedure
		<p>B. Potential judicial procedure to contest the decision by the vulnerable adults (or other members of his/her family) because the law applicable or jurisdiction competent is contested:</p> <ul style="list-style-type: none"> • access to justice costs (incl. lawyer) • travel costs (e.g. for the family)
		<p>C. Risk of duplicate proceedings in country A and country B over the protection of the same vulnerable adults (see illustrative example 6).</p>
Illustrative example 2: Implementing a protection measure abroad	A protection measure has been adopted by the authorities of country A for Mr. X. Mr X. moves to country B. The person charged with assisting Mr X must act in country B (e.g. to rent an apartment or open a bank account).	<p>Potential costs (case by case basis) related to:</p> <ul style="list-style-type: none"> • travel of the guardian to country B • translation of document attesting of the protection measure • administrative procedures by the guardian, entailing exchanges by registered letters (several letters for each procedure)
Illustrative example 3: Exequatur	Mr X lives in country A, but has assets in country B. A protection measure has been adopted by the authorities of country A. The guardian decides to sell the assets in country B. The bank in country B asks for the exequatur of the decision taken in country A.	<p>Potential costs (case by case basis) related to the exequatur procedure (depending on national law):</p> <ul style="list-style-type: none"> • application lodged by a lawyer • sworn translation of proof of protection measure • apostille or other proof of authenticity of the judgment • certificate established by a lawyer or by the authorities • proof of enforcement of the foreign judgment
Illustrative example 4: Activating a private mandate abroad	A private mandate has been concluded by Mr X in accordance with the law of country A (where he used to live at the time the mandate was made) providing for his protection in the event of incapacity. Mr X moves to country B and his health deteriorates; the private mandate needs to be activated.	<p>Potential costs (case by case basis) related to:</p> <ul style="list-style-type: none"> • involvement of competent authorities; • procedure for the recognition of the private mandate in country B, i.e. judicial proceedings • if the private mandate is not recognised in country B, establishment of a new protection measure: costs of the whole procedure: introducing the application, legal representation, medical assessment (NB: renewal of the protection measure in a

	Scenario	Costs
		second country may also occur in other cases, e.g. where it is put an end to the protection measure in the first country when the person moves abroad).
Illustrative example 5: Contesting a guardianship or a guardian's decision abroad	Mr X lives in country B, but is under a protection measure decided in country A. The guardian designated in country A takes a decision that affects Mr. X's assets (e.g. contracts a life insurance with suspicious beneficiaries or decides to sell all assets in country A). Mr X wants to contest the guardianship or the decision of the guardian.	Potential costs (case by case basis) related to: <ul style="list-style-type: none"> access to justice costs: NB: the costs of a lawyer are likely to increase due to the cross-border nature of the case, especially if the applicable law or jurisdiction needs to be determined.
Illustrative example 6: Conflict of jurisdiction	Mr X is subject to a procedure to establish a protection measure in country A, and he initiates a procedure in country B to obtain a less intrusive protection measure—there is a case of conflict of jurisdiction.	<ul style="list-style-type: none"> access to justice costs in both countries
Illustrative example 7: Relocation of a vulnerable adults without change of protection measure	Mr X lives in country A, in an establishment where his protection can be ensured. He enjoys the company of his sister, Ms Y, who also lives in country A. Now Ms Y has found a job in country B, and seeks to relocate Mr X in a similar establishment in country B.	<ul style="list-style-type: none"> Costs required to ensure that the competent authorities in country A and B agree on the relocation.
Illustrative example 8: Relocation of a vulnerable adults with change of protection measure	Mr X lives in country A. He is cared for by the social services of country A. It arises that a relative of Mr X, in country B, is ready to assist Mr X, provided that he moves to country B. Mr X is willing to do so.	<ul style="list-style-type: none"> Costs required to ensure that the competent authorities in country A and B agree on the relocation, and provide for a smooth transition from the protection measures in country A to those in country B (including the appointment of the relative of Mr X as the new administrator of Mr X, as a result of the termination of the appointment of the previous administrator).

Procedural costs for vulnerable adults and public authorities, respectively, as occurring in the baseline scenario, have been estimated according to the results of the discussion with stakeholders concerning the typical illustrative examples. Such a discussion was conducted on 14 September 2022 during the focus group dedicated to this topic.

Tables below provide a summary of the assumptions emerging from the discussion carried out during the focus group, which were supported with additional desk research. These assumptions have been used for the calculation of costs per illustrative example in the analysis of policy options. Ranges (e.g. 20-50 h of legal assistance) have been used to calculate high-low estimates for the aggregate costs per case. The table below indicates also (in the first column) the relative prevalence of the typical examples as reported by the consulted stakeholders.

Table 24: Assumptions regarding the costs incurred by vulnerable adults and public/judiciary authorities²⁵²

Illustrative example	Procedural costs for vulnerable adults	Procedural costs for public/judicial authorities
Illustrative example 1 <i>Not very common</i>	Medical assessment costs Travel costs: 5 travels Translation costs: ca. 10 p. Legal assistance: 20-50 h	2-3 h per case
Illustrative example 2 <i>Common</i>	Travel cost: 5 travels for the establishment of the protection measure; additionally, annual travel by a guardian might be needed (10 travels assumed for the low end and 15 for high end) Translation costs: 8-50 p. Registered letters: 2-5 letters	1 h per case
Illustrative example 3 <i>Rare</i>	Legal assistance: 10-14 h, Translation: 10-20 p.	2-4 h per case
Illustrative example 4 <i>Very common</i>	Legal assistance: 6-10 h 1 travel for establishment of a new protection measure Translation costs: 4 p.	2-3 h per case
Illustrative example 5 <i>Rare</i>	Legal assistance: 6-20 h Additional expertise	2-4 h per case
Illustrative example 6 <i>Quite common</i>	Translation: 10 p. Legal assistance: 40-100 h	
Illustrative example 7 <i>Very common</i>	No costs	2-4 h per case
Illustrative example 8 <i>Very common</i>	No costs	2-4 h per case Cost of establishment of a new protection measure

Quantitative estimates of the categories of costs pertaining to the illustrative examples as described in the above table have been derived from the data sources summarised in Table 25.

Table 25: Cost estimates per category

Cost category	Cost (cost ranges) in EUR	Sources and comments
Medical assessment	183-600	EUR 183 in FR, 200-1000 in LV; range 183 low and 600 high assumed in all cases; stakeholder consultations
Travel	600	EUR 600 per travel; the costs may differ per case and distance, not country-specific; stakeholder consultation
Translation costs	Varying per country	Costs of sworn translation per country based on data gathered via internet search (see Annex III for details)
Legal assistance costs	150 per hour of work of a legal representative	Based on literature ²⁵³ , validated during stakeholder consultations; not differentiated per country; in cross-border situations, the costs may involve two different rates from two countries involved, in various configurations
Registered letters	10-15 per letter	Stakeholder consultations

²⁵² Description of the illustrative examples to be found in Annex V of this Report (Synopsis Report).

²⁵³ European Parliament. *Cost of Non-Europe Report, European Code on Private International Law, CoNE 3/2013*.

Cost category	Cost (cost ranges) in EUR	Sources and comments
Labour costs for public/judicial administration	Varying per country	Eurostat labour cost data per country for the category 'Administrative and support service activities' ²⁵⁴
Costs of establishment of a protection measure per individual (only for illustrative example 8)	916 per case	Based on the French estimate on the cost of protection measures that are financed by public funds ²⁵⁵

Table 26 below explains how the procedural costs per illustrative example change as compared to the baseline depending on the policy option. Description of procedural costs per illustrative example (in the baseline scenario) are provided in Table 24 above. Summaries of the quantitative results per policy option emerging from the illustrative examples are presented in the efficiency sections in Chapter 5 devoted to the assessment of each policy option.

Table 26: Procedural costs pertaining to the illustrative examples according to the policy options

Illustrative example	Baseline	Option 2	Option 3	Option 4
Illustrative example 1: Establishing a protection measure abroad	Procedural costs for VA are calculated only for the Member States not being parties to the HC (except for translation costs, which are calculated for VA in all countries); procedural costs for public authorities are 40% lower for MS being parties to the HC.	With all MS ratifying the HC, procedural costs for VA in the MS not being parties to the HC are eliminated (except for translation costs), while procedural costs for public authorities in MS not being parties to the HC are reduced by 40%. Procedural costs for public authorities in the Member States party to the HC are further reduced by 40% compared to BAU	Due to the Regulation, procedural costs for VA in MS that are and are not yet parties to the HC are eliminated. Procedural costs for public authorities in MS that are and are not Contracting parties to the HC are eliminated.	Cost savings as in Option 3, additional savings for the cases involving 3 rd countries.
Illustrative example 2: Implementing a protection measure abroad	Procedural costs are calculated for all MS.	The same as in the baseline scenario (no costs savings as compared to the baseline).	Due to the Regulation, procedural costs for VA are reduced (no travel and sworn translation needed, number of registered letters reduced by half), procedural costs for public authorities increase. Overall,	Cost savings as in Option 3, additional savings for the cases involving 3 rd countries.

²⁵⁴ Eurostat. (2022b). *Labour cost levels by NACE Rev. 2 activity*. https://ec.europa.eu/eurostat/databrowser/view/LC_LCI_LEV__custom_3330366/default/table?lang=en

²⁵⁵ Sénat français. (2022). *Projet de loi de finances pour 2020 : Solidarité, insertion et égalité des chances*. <https://www.senat.fr/rap/l19-140-329/l19-140-3297.html>

Illustrative example	Baseline	Option 2	Option 3	Option 4
			cost savings.	
Illustrative example 3: Exequatur	Procedural costs are calculated only for the Member States which are likely to require <i>exequatur</i> , i.e. excluding EL, HU, SE, DE, AT, and LV.	The same as in the baseline scenario (no costs savings as compared to the baseline).	Due to the Regulation, procedural costs are eliminated, which results in cost savings.	Cost savings as in Option 3, additional savings for the cases involving 3rd countries.
Illustrative example 4: Activating a private mandate abroad	Procedural costs are calculated only for the Member States where activation of private mandate is needed (thus excluding 15 countries where private mandates exist: AT, BE, CZ, FI, FR, DE, PT, IE, ES, HR, LT, HU, MT, RO, SE).	The same as in the baseline scenario (no costs savings as compared to the baseline).	Due to the Regulation, procedural costs are eliminated, which results in cost savings.	Cost savings as in Option 3, additional savings for the cases involving 3rd countries.
Illustrative example 5: Contesting a guardianship or a guardian's decision abroad	Procedural costs are calculated for all MS.	The same as in the baseline scenario (no costs savings as compared to the baseline).	Due to the Regulation, procedural costs for VA are reduced (lower costs of access to justice, court costs and additional expertise), procedural costs for public administration are also reduced; overall cost savings.	Cost savings as in Option 3, additional savings for the cases involving 3rd countries.
Illustrative example 6: Conflict of jurisdiction	Procedural costs for VA are calculated only for Member States not being parties to the HC (except for translation costs). Procedural costs for public authorities are 40% lower for the MS being parties to the HC.	With all MS ratifying the HC, procedural costs for VA are eliminated (except for translation costs) and the procedural costs for public authorities for the MS not being parties to the HC are reduced by 80%. Costs for MS parties to the HC are further reduced by 40% compared to BAU.	Due to the Regulation, procedural costs for VA are eliminated and the procedural costs for public authorities for all MS previously and newly parties to the HC are eliminated.	Cost savings as in Option 3, additional savings for the cases involving 3rd countries.
Illustrative example 7: Relocation of a vulnerable adults without change of protection measure	Procedural costs for public authorities are by 40% lower for the Member States being parties to the HC.	With all MS ratifying the HC, procedural costs for public authorities in MS not being parties to the HC are reduced by 80%; costs for Member States party to the HC are reduced by further 40% compared to BAU.	Due to the Regulation, procedural costs (for public authorities) in all MS previously or newly parties to the HC are eliminated.	Cost savings as in Option 3, additional savings for the cases involving 3rd countries
Illustrative example 8: Relocation of a vulnerable adults with	There are no procedural costs for VA. Procedural costs for public authorities are by 40% lower for the	With all MS ratifying the HC, procedural costs for public authorities in MS not being parties to the HC are	Due to the Regulation, procedural costs (for public authorities) in all MS are	Cost savings as in Option 3, additional savings for the cases

Illustrative example	Baseline	Option 2	Option 3	Option 4
change of protection measure	Member States being parties to the HC.	reduced by 80%, which results in cost savings; costs for Member States party to the HC are further reduced by 40% compared to BAU.	eliminated.	involving 3rd countries

Estimates of the number of vulnerable adults in cross-border situations

Table 27: Estimates of a number of vulnerable adults involved in cross-border situations – analysis based on protection measures²⁵⁶

Country	Number of adults	Number of adult migrants	Share of adult migrants	Adults under protection measures	Percentage share of vulnerable adults	Vulnerable adults living abroad
Austria	7355291	507224	6.9%	110013		7587
Belgium	9198461	625117	6.8%	210696	2.29%	14319
Cyprus	715902	19261	2.7%	10708		288
Czech Republic	8696919	199937	2.3%	130080		2990
Estonia	1072524	16727	1.6%	16042		250
Finland	4476253	65059	1.5%	74335	1.66%	1080
France	52777556	1053562	2.0%	724100	1.37%	14455
Germany	69411906	3251128	4.7%	1200000	1.73%	56206
Latvia	1548774	5226	0.3%	23165		78
Portugal	8571731	125862	1.5%	128208		1883
Greece	8861223	127727	1.4%	132538		1910
Ireland	3764380	245929	6.5%	56304		3678
Spain	39015465	1269234	3.3%	583555		18984
Croatia	3357548	13369	0.4%	50219		200
Italy	50191300	983583	2.0%	267000	0.53%	5232
Lithuania	2292790	6440	0.3%	34293		96
Luxembourg	506032	157935	31.2%	7569		2362
Hungary	8055592	66430	0.8%	120488		994
Malta	432118	11113	2.6%	6463		166
Netherlands	14051991	416132	3.0%	210176		6224
Bulgaria	5761438	9345	0.2%	86174		140
Poland	31024120	24042	0.1%	464028		360
Romania	15682115	54679	0.3%	234558		818
Slovenia	1723822	18301	1.1%	25783		274
Slovakia	4436502	52501	1.2%	66357		785
Sweden	8151423	219939	2.7%	121921		3290
Switzerland	7057747			98120	1.39%	
Aggregate for parties to the HC				2759884		
Aggregate for non-parties to the HC				2334888		
TOTAL EU-26	365.796.853	9545803	0.02609591	5094772.286	1.52%	144649
EU-26 + Switzerland					1.50%	

²⁵⁶ Data based on data collection marked in black; extrapolated data highlighted in bold (blue colour)

Table 28: Sources used for the calculations in Table 27

Population data	Population on 1 January by age group and sex [DEMO_PJAN-GROUP_custom_3318291]
Share of migrants	Population on 1 January by age group, sex and citizenship [MIGR_POP1CTZ_custom_3327076]
Protection measures BE	https://www.fednot.be/communiquede-presse/les-mandats-de-protection-extrajudiciaire-belges-sont-desormais-aussi-reconnus-dans-dautres-pays-europeens
Protection measures FI	Interview
Protection measures FR	https://www.fednot.be/communiquede-presse/les-mandats-de-protection-extrajudiciaire-belges-sont-desormais-aussi-reconnus-dans-dautres-pays-europeens
Protection measures DE	Focus group 2
Protection measures IT	Focus group 2

Table 29: Estimates of a number of vulnerable adults involved in cross-border situations – analysis based on self-perceived health difficulties²⁵⁷

Country	Self-perceived long-standing limitations in usual activities due to health problem	Number of adults with self-perceived difficulties	Adults with severe health difficulties living abroad
Austria	9%	625200	43114
Belgium	8.30%	763472	51885
Cyprus	7.30%	52261	1406
Czech Republic	7.20%	626178	14395
Estonia	11.20%	120123	1873
Finland	7.30%	326766	4749
France	8.30%	4380537	87446
Germany	10.80%	7496486	351122
Latvia	7.80%	120804	408
Portugal	9.60%	822886	12083
Greece	9.40%	832955	12006
Ireland	5.30%	199512	13034
Spain	5.40%	2106835	68539
Croatia	9%	302179	1203
Italy	6.50%	3262435	63933
Lithuania	5.80%	132982	374
Luxembourg	6.10%	30868	9634
Hungary	5.80%	467224	3853
Malta	3.80%	16420	422
Netherlands	4.30%	604236	17894
Bulgaria	3.40%	195889	318
Poland	6.90%	2140664	1659
Romania	5.60%	878198	3062
Slovenia	6.60%	113772	1208
Slovakia	9.70%	430341	5093
Sweden	4.30%	350511	9457
Aggregate for parties to the HC	9%	16167669	580487
Aggregate for non-parties to the HC	5.90%	11232067	199682
Total EU-26 aggregate		27399736	780169

²⁵⁷ Data based on data collection marked in black; extrapolated data highlighted in bold (blue colour)

Table 30: Sources used for calculations in Table 29

Population data	Population on 1 January by age group and sex [DEMO_PJAN-GROUP_custom_3318291]
Share of migrants	Population on 1 January by age group, sex and citizenship [MIGR_POP1CTZ_custom_3327076]
Self-perceived health difficulties	https://ec.europa.eu/eurostat/data-browser/view/HLTH_SILC_06_custom_3401600/default/table?lang=en

Table 31: Estimated number of vulnerable adults in third countries²⁵⁸

Country	Percentage of people with protection measures	Percentage of people with severe perceived difficulties	Adult population	Share of adult migrants	vulnerable adults based on protection measures	Vulnerable adults based on health difficulties	Adults involved in cross-border situation - protection measure	Adults involved in cross-border situation - health difficulties
Monaco			33300		462.9517	2464.2	7.861737	41.84646
Switzerland	0.013902	0.074	7057747	0.016982	98120	522273.3	1666.251	8869.122
Scotland			4372800		60792.65	323587.2	1032.366	5495.082
Aggregate							2706.479	14406.05

Table 32: List of sources used for Table 31

Population of Scotland	https://data.un.org/en/iso/mc.html
Monaco demographics profile	https://www.indexmundi.com/monaco/demographics_profile.html
Share of migrants	Eurostat migration statistics
Self-perceived health difficulties	https://ec.europa.eu/eurostat/databrowser/view/HLTH_SILC_06_custom_3401600/default/table?lang=en

²⁵⁸ Data based on data collection marked in black; extrapolated data highlighted in bold (blue colour)

Table 33: Estimates of a number of vulnerable adults involved in cross-border situations in 2030 – analysis based on self-perceived health difficulties²⁵⁹

Country	The percentage of adults aged 18-65 with self-perceived health difficulties 2021	The percentage of adults over 65 with self-perceived health difficulties 2021	Share of adult migrants (2017-2019)	Population over 65 2030	Population aged 18-65 2030	Vulnerable adults 2030 health difficulties	Vulnerable adults cross-border 2030 health difficulties
Austria	0.059	0.185		2100942	5469082	711350.1	27031.3
Belgium	0.065	0.144		2656024	6898525	830871.6	31573.12
Cyprus	0.04	0.216		187816	594014	64328.82	2444.495
Czech Republic	0.043	0.164		2371321	6408123	664445.9	25248.95
Estonia	0.066	0.25		303290	774834	126961.5	4824.539
Finland	0.045	0.143		1422569	3182982	346661.6	13173.14
France	0.055	0.159		16422407	38599345	4734127	179896.8
Germany	0.065	0.217		21193302	47905790	7712823	293087.3
Latvia	0.038	0.193		426203	975677	119332.9	4534.65
Portugal	0.056	0.208		2648038	5875487	879819.2	33433.13
Greece	0.044	0.234		2661650	6054504	889224.3	33790.52
Ireland	0.042	0.099		967878	3378123	237701.1	9032.641
Spain	0.034	0.119		11591288	29744535	2390677	90845.74
Croatia	0.045	0.226		960152	2254051	318426.6	12100.21
Italy	0.029	0.162		16200770	35337492	3649312	138673.9
Lithuania	0.028	0.15		640798	1480597	137576.4	5227.904
Luxembourg	0.054	0.099		125189	444480	36395.63	1383.034
Hungary	0.033	0.139		2079342	5882422	483148.5	18359.64
Malta	0.024	0.088		123465	370920	19767	751.146
Netherlands	0.031	0.084		4221565	10473002	679274.5	25812.43
Bulgaria	0.017	0.085		1564210	3811640	197755.7	7514.718
Poland	0.043	0.153		8396653	22483878	2251495	85556.8
Romania	0.023	0.168		3880918	10846528	901464.4	34255.65
Slovenia	0.043	0.146		514740	1244472	128664.3	4889.245
Slovakia	0.056	0.247		1138472	3319915	467117.8	17750.48
Sweden	0.045	0.143		2363649	6466169	628979.4	23901.22
Switzerland	0.042	0.074		2021484	5460673	378938.1	14399.65
EU-26	0.047	0.165	0.038	1.09E+08	2.64E+08	29607701	1125093

Table 34: Sources used in the Table 33

Population projections	Population projections [proj_19np] https://ec.europa.eu/eurostat/databrowser/view/proj_19np/default/table?lang=en
Share of migrants	Population on 1 January by age group, sex and citizenship [MIGR_POP1CTZ__custom_3327076]
Self-perceived health difficulties	https://ec.europa.eu/eurostat/databrowser/view/HLTH_SILC_06_custom_3401600/default/table?lang=en

²⁵⁹ Data based on data collection marked in black; extrapolated data highlighted in bold (blue colour)

Table 35: Estimates of a number of vulnerable adults involved in cross-border situations in 2030 – analysis based on protection measures²⁶⁰

Country	Share of adult migrants 2020	Population over 65 2030	Population aged 18-65 2030	Protection measures 18-65	Protection measures over 65	Vulnerable adults 2030 protection measures	Vulnerable adults cross-border 2030 protection measures
Austria		2100942	5469082			102589.2	3898.391
Belgium		2656024	6898525			129517.2	4921.655
Cyprus		187816	594014			10367.58	393.9681
Czech Republic		2371321	6408123			118469.5	4501.842
Estonia		303290	774834			14642.59	556.4184
Finland		1422569	3182982			63542.12	2414.601
France		16422407	38599345	0.011385	0.019194	754653.7	28676.84
Germany		21193302	47905790			952177.7	36182.75
Latvia		426203	975677			19288.34	732.9568
Portugal		2648038	5875487			117717.2	4473.253
Greece		2661650	6054504			120016.5	4560.626
Ireland		967878	3378123			57036.15	2167.374
Spain		11591288	29744535			561115.3	21322.38
Croatia		960152	2254051			44090.86	1675.453
Italy		16200770	35337492			713264.9	27104.07
Lithuania		640798	1480597			29155.64	1107.914
Luxembourg		125189	444480			7463.12	283.5986
Hungary		2079342	5882422			106880.3	4061.452
Malta		123465	370920			6592.585	250.5182
Netherlands		4221565	10473002			200260.6	7609.903
Bulgaria		1564210	3811640			73417.8	2789.877
Poland		8396653	22483878			417137	15851.21
Romania		3880918	10846528			197974.5	7523.03
Slovenia		514740	1244472			24047.85	913.8185
Slovakia		1138472	3319915			59647.94	2266.622
Sweden		2363649	6466169			118983.1	4521.358
Switzerland		2021484	5460673			100968.4	3836.797
EU-26	0.038	1.09E+08	2.64E+08			5020049	190761.9

Table 36: Sources used in the Table 35

Population projections	Population projections [proj_19np] https://ec.europa.eu/eurostat/databrowser/view/proj_19np/default/table?lang=en
Share of migrants	Population on 1 January by age group, sex and citizenship [MIGR_POP1CTZ]
The number of protection measures	<u>Ministère de la justice/SG/SEM/SDSE : Exploitation statistique du Répertoire Général Civil</u>

Individual costs

Table 37: Translation costs by Member State

Country	Translation
Austria	55.00

²⁶⁰ Data based on data collection marked in black; extrapolated data highlighted in bold (blue colour)

Country	Translation
Belgium	31.50
Cyprus	24.30
Czech Republic	25.00
Estonia	38.50
Finland	35.00
France	52.00
Germany	56.00
Latvia	18.50
Portugal	42.00
Greece	18.60
Ireland	24.00
Spain	45.00
Croatia	19.60
Italy	50.00
Lithuania	25.00
Luxembourg	37.00
Hungary	25.00
Malta	24.00
Netherlands	52.20
Bulgaria	24.30
Poland	12.00
Romania	17.50
Slovenia	30.00
Slovakia	15.00
Sweden	44.50

Table 38: Administration labour costs per country

Country	Labour cost per hour
Austria	26.3
Belgium	22.6
Cyprus	11.1
Czech Republic	10.4
Estonia	11.4
Finland	25.1
France	26.2
Germany	24.8
Latvia	9.8
Portugal	9.4
Greece	13.4
Ireland	26.6
Spain	16.4
Croatia	8.3
Italy	20.1
Lithuania	9.2
Luxembourg	26.2

Country	Labour cost per hour
Hungary	7.9
Malta	12
Netherlands	24
Bulgaria	5.2
Poland	8.6
Romania	6.4
Slovenia	15.4
Slovakia	10.6
Sweden	31.8

Source: Eurostat, Labour cost levels by NACE Rev. 2 activity [LC_LCI_LEV__custom_3330366]

Table 39: Annual adjustment costs for implementation of the HC by country

Option 1		Option 2 & 4		Option 3	
Country	Annual costs	Country	Annual costs	Country	Annual costs
Austria	4978	Austria	4978	Austria	4978
Belgium	1056210562	Belgium	1056210562	Belgium	1056210562
Cyprus	210	Cyprus	210	Cyprus	210
Czech Republic	10562	Czech Republic	10562	Czech Republic	10562
Estonia	10562	Estonia	10562	Estonia	10562
Finland	10562	Finland	10562	Finland	10562
France	14877	France	14877	France	14877
Germany	23471	Germany	23471	Germany	23471
Latvia	9275	Latvia	9275	Latvia	9275
Portugal	10562	Portugal	10562	Portugal	10562
Greece	10562	Greece	10562	Greece	10562
Ireland	0	Ireland	10562	Ireland	0
Spain	0	Spain	10562	Spain	0
Croatia	0	Croatia	10562	Croatia	0
Italy	0	Italy	10562	Italy	0
Lithuania	0	Lithuania	10562	Lithuania	0
Luxembourg	0	Luxembourg	10562	Luxembourg	0
Hungary	0	Hungary	10562	Hungary	0
Malta	0	Malta	10562	Malta	0
Netherlands	0	Netherlands	10562	Netherlands	0
Bulgaria	0	Bulgaria	10562	Bulgaria	0
Poland	0	Poland	10562	Poland	0
Romania	0	Romania	10562	Romania	0
Slovenia	0	Slovenia	10562	Slovenia	0
Slovakia	0	Slovakia	10562	Slovakia	0
Sweden	0	Sweden	10562	Sweden	0
HC parties	116 184	HC parties	116184	HC parties	116184
non-parties	0	non-parties	158433	non-parties	0

Digitalisation and costs of interconnection of electronic registries

Under Policy Option 3, one of the possible EU measures to be adopted by Member States concerns the interconnection of national registers on protective measures and/or powers of representation. In assessing the financial costs that such measures could imply, a potential benchmark refers to the costs faced by Member States in the context of similar EU initiatives, such as the initiative which concerns the interconnection of national insolvency registers provided for in Article 24 of Regulation (EU) 2015/848 on insolvency proceedings (recast). A questionnaire was developed, under this study, with the aim to identify the expenses that Member States faced in the framework of such initiative, which can represent a benchmark to assess the costs of setting up or adapting similar electronic registers, as

in the framework of cross-border protection of vulnerable adults. The questionnaire proposed to Member State authorities the following three questions:

- If your Member State had to establish an electronic register under Article 24 (in the absence of previous insolvency register), how much would estimate the cost of developing this register, from conception to implementation (excluding subsequent maintenance costs) and connecting it to the decentralised system developed by the Commission under Article 25 (excluding subsequent maintenance costs)?
- If your Member State already had an electronic insolvency register at the time of the adoption of the Regulation, how much would you estimate the cost of i) Making the necessary adaptations to ensure compliance with the requirements of Article 24 (if applicable), ii) Connecting it to the decentralised system developed by the Commission under Article 25 (excluding subsequent maintenance costs)?
- What are the yearly maintenance costs of the national electronic register?

The table shows the main findings per Member State:

Table 40: Costs of interconnection of registries under the Insolvency Regulation

Member State	Set-up costs ²⁶¹	Adaptations and/or connection of an already existing electronic insolvency register ²⁶²	Annual maintenance costs	Comments
Belgium	-	Connection costs: € 30.000	€2.5 million ²⁶³	-
Croatia	€ 166.000	-	Not available	-
Czech Republic	€ 400.000	-	€34.100 ²⁶⁴	In the field of cross-border protection of vulnerable adults, the costs, which depend largely on the system's business requirements, can be estimated at € 400.000-700.000
Estonia	-	€65 000	Not available	-
France		€410.000 ²⁶⁵ €40.000 ²⁶⁶	Recurring TMA (application management + monitoring): €96000. ²⁶⁷	French authorities underlined that is not possible any

²⁶¹ If the Member State did not already have a system in place.

²⁶² If the Member State already had a system in place.

²⁶³ Plus, a €1.5 million development budget for functional or legal evolutions. NB: This data is not in line with the costs of other MS. No explanation could be collected from the authorities on the reason for this discrepancy.

²⁶⁴ Annual cost of operating a small information system. While, in terms of the annual cost of operating the current insolvency information system (ISIR), the amount cannot be conclusively calculated.

²⁶⁵ In the framework of the BRIS project, which entails the interconnection of business registers within the Union, pursuant to Directive 2012/17/EU. The scope of the project is therefore much broader than insolvency registers

²⁶⁶ Under the framework of the IRI project, which concerns the interconnection of insolvency registers (based in France on the *Registre du Commerce et des Sociétés*).

Total project cost:

²⁶⁷ Under the BRIS project.

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Member State	Set-up costs ²⁶¹	Adaptations and/or connection of an already existing electronic insolvency register ²⁶²	Annual maintenance costs	Comments
			Recurring outsourcing (shared infrastructure, virtual servers, production engineers): €55000. ²⁶⁸ Recurring TMA (application management + monitoring): 6500€ / year. Recurring Outsourcing (infrastructure based on a shared infrastructure, virtual servers, production engineers): 9000€ / year.	meaningful comparison between the two subjects, insolvency on the one hand and legal protection on the other.
Germany	-	(CONFIDENTIAL)	(CONFIDENTIAL)	-
Hungary	-	€214.858 (VAT not included)	€188.000 (VAT not included)	The costs are estimated.
Ireland	-	€85.000	Not available	-
Italy	-	€ 63,084.00 (VAT not included) ²⁶⁹	Not available	
Lithuania		€200.000	€23.000	
Luxembourg	Not available	Not available	Not available	Not available
Malta	€66,050.00 ²⁷⁰	€56,000.00 ²⁷¹	€19,348/year ²⁷² €80,000 for the year 2023/2024 for the further development of the Register under the requirements of Article 29 of Directive 2019/1023.	Malta representatives consider that it is a complex and costly measure.
Portugal	Not available	Not available	Not available	Portugal is currently implementing the national insolvency register

²⁶⁸ Under the BRIS project.

²⁶⁹ Including a) interconnection services between the "Back End" of the "PRP" and the "Domibus connector", b) Services for the management of the "Requests" received from the "IRI" portal and generation of the related "Responses" c) "Consultation logging" module, d) study and training e) software distribution support.

²⁷⁰ From conception to implementation, and excluding subsequent maintenance costs, of the electronic register under Article 24 of the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), L 141/19.

²⁷¹ This cost entails the connection of electronic register to the decentralised system developed by the Commission under Article 25 (excluding subsequent maintenance costs).

²⁷² Excluding data aggregation and reporting required by Article 29 of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

Member State	Set-up costs ²⁶¹	Adaptations and/or connection of an already existing electronic insolvency register ²⁶²	Annual maintenance costs	Comments
Slovenia	€618.634 ²⁷³	€300.000–500.000	Publication of data from the register, user education: €100.000 Average upgrade costs (JN) – external contractors approx. €50.000 annually	-
Sweden	-	€1.135.546	-	-

According to the Impact Assessment accompanying the proposal for a Regulation in matters of successions and on the introduction of inter alia the European Certificate of Succession²⁷⁴, the harmonisation of conflict of law rules and jurisdiction rules together with the introduction of a European Certificate of Succession was considered as the best option to reduce costs. According to the Impact Assessment, the entire set of measures (Regulation harmonising rules at EU level plus European Certificate of Succession) lead to a cost reduction of up to 30%.²⁷⁵

According to the impact assessment, the cost of an inheritance certificate is around EUR 60, assuming there are no special technical requirements and that the necessary checks are similar to those required for obtaining a passport.²⁷⁶ When it comes to the legislative sphere, the introduction of the certificate entails the establishment of new rules. For the countries that do not already issue the certificate the introduction of it entails legislative changes.²⁷⁷ On the other hand, the Member States that already issued the certificate, a legislative adjustment would be needed.²⁷⁸

The following table provides data used in the extrapolation of set-up and maintenance costs in the calculation of costs pertaining to options 3 and 4.

Table 41: Country costs of setting up a digital register [EUR]

Country	set-up costs	annual maintenance costs
Austria	303954	203641
Belgium	303954	203641
Cyprus	303954	203641
Czech Republic	550000	203641
Estonia	303954	203641
Finland	303954	203641
France	303954	166500

²⁷³ Connection with the decentralised system amounts to €15.000–50.000.

²⁷⁴ Commission staff working document accompanying the proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of successions and on the introduction of a European Certificate of Inheritance - Impact Assessment, (2009). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009SC0410>

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

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Country	set-up costs	annual maintenance costs
Germany	303954	675000
Latvia	303954	203641
Portugal	303954	203641
Greece	303954	203641
Ireland	303954	203641
Spain	303954	203641
Croatia	166000	203641
Italy	63084	203641
Lithuania	303954	23000
Luxembourg	303954	203641
Hungary	303954	188000
Malta	122050	19348
Netherlands	303954	203641
Bulgaria	303954	203641
Poland	303954	203641
Romania	303954	203641
Slovenia	618634	150000
Slovakia	303954	203641
Sweden	303954	203641
Aggregates		
HC parties	3589536	2674272
non-parties	4313258	2620403
Total	7902794	5294675

ANNEX IV Literature reviewed

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ANNEX V Synopsis report

INTRODUCTION

This Synopsis Report accompanies and complements the study on the ‘*Civil aspects of the cross-border protection of vulnerable adults*’ (JUST/2021/PR/JCOO/CIVI/0094). It provides an overview of the stakeholder consultation activities conducted in accordance with Better Regulation Tool#54 and gives information on:

The consultation strategy for the different types of stakeholders;

The outcome and results of consultation activities per stakeholder’s category;

How stakeholder input was taken into account.

CONSULTATION STRATEGY

CONSULTATION ACTIVITIES

Consultation of several types of stakeholders is an essential part of the data collection activities and is key to triangulating the results of the desk research. It comprises several interconnected activities (illustrated in the next figure):

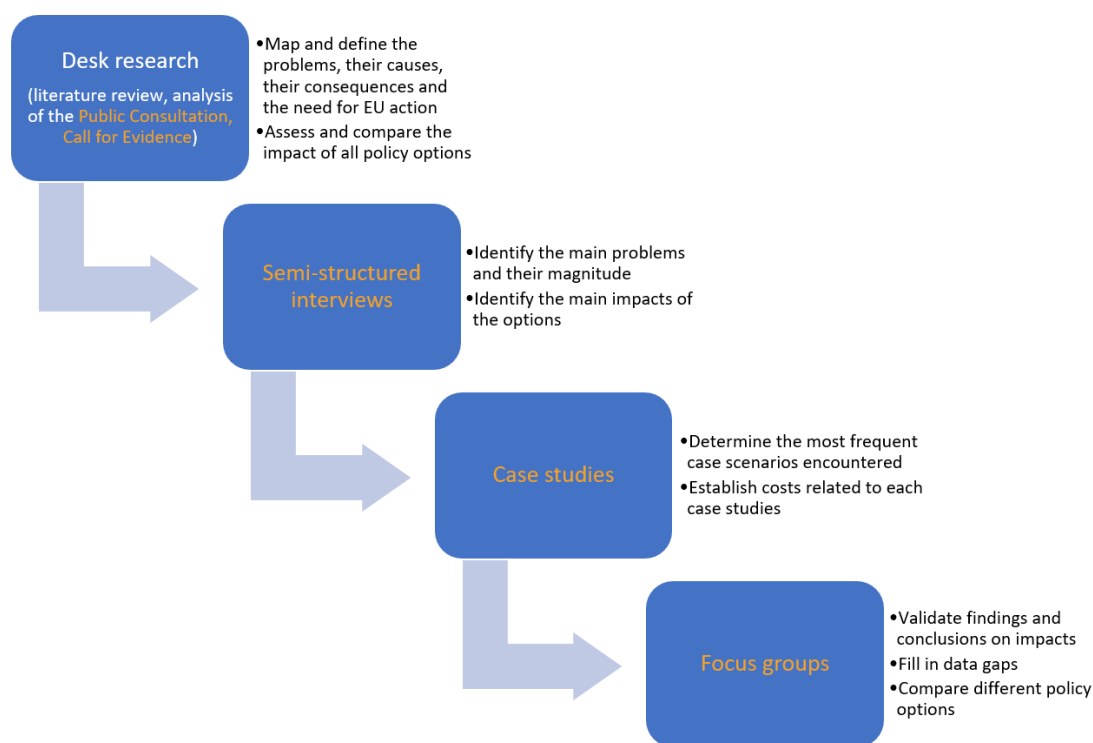
Public Consultation and Call for Evidence – to scope the main problems and the impacts of policy options;

Semi-structured interviews – to confirm the main problems and identify the possible impacts of the different policy options;

Case studies – to better grasp the cross-border situations in which vulnerable adults might find themselves and to determine which costs would be required in each scenario and quantify them;

Focus groups – to discuss and confirm the findings of the study, in particular in terms of costs and impacts of measures in each policy option.

Figure 10: Overview of data collection tools



STAKEHOLDER GROUPS

The following table provides an overview of the types of consultation activities undertaken to gather feedback from different stakeholder groups.

Table 42: Consultation activities per stakeholder group

Type of stakeholder	Type of information covered (non-exhaustive list)	Main consultation activities
Member States (Central Authorities, Ministries, other relevant public authorities)	Issues encountered under the current situation Challenges and gaps concerning the Hague Convention and its implementation Acceptance/opinion of different policy options Resources expected to implement the policy options Magnitude of the impacts of the options (economic, social, impact on fundamental rights)	Public Consultation and Call for Evidence Semi-structured Interviews Case studies Focus groups
Practitioners (judicial representatives, notaries, lawyers,	Issues encountered under the current situation Challenges and gaps concerning the Hague Convention and its implementation Acceptance/opinion of different policy options Magnitude of the impacts of the options (economic, social, impact on fundamental rights)	Public Consultation and Call for Evidence Semi-structured Interviews Case studies Focus groups
Non-Governmental Organisations (NGOs)	Issues encountered under the current situation Challenges and gaps concerning the Hague Convention and its implementation	Public Consultation and Call for Evidence Semi-structured Interviews Case studies Focus groups

Type of stakeholder	Type of information covered (non-exhaustive list)	Main consultation activities
	Acceptance/opinion of different policy options Magnitude of the impacts of the options (economic, social, impact on fundamental rights)	
Academics and researchers	Issues encountered under the current situation Challenges and gaps concerning the Hague Convention and its implementation Acceptance/opinion of different policy options Magnitude of the impacts of the options (economic, social, impact on fundamental rights)	Public Consultation and Call for Evidence Semi-structured Interviews Case studies Focus groups
EU citizens	Perceptions of the practical problems Opinion of different policy options	Public Consultation and Call for Evidence

ANALYTICAL METHODS AND TOOLS

To conduct and analyse the findings of each consultation activity, a number of tools were used:

Statistical analysis – to build conclusions based on the closed questions of the interview and to provide trends and statistics (e.g. per category of stakeholder).

Qualitative summary of position papers and answers to the Call for Evidence – to identify key elements raised by the stakeholders that should be included in subsequent interviews and focus groups.

Interview questionnaire – to provide stakeholders with information on the study and the questions of the semi-structured interviews.

Interview notes – to gather and summarise the information collected during the interviews.

Discussion papers for each focus groups – to map the findings from the stakeholder consultations, desk research and expert analysis.

RESULTS OF THE CONSULTATION ACTIVITIES

CALL FOR EVIDENCE AND PUBLIC CONSULTATION

A **Call for Evidence** for an Impact Assessment on the civil aspects of the cross-border protection of vulnerable adults was launched by the European Commission and a feedback period was open from 21 December 2021 to 29 March 2022.²⁷⁹ It aimed to gather evidence on the problems and their consequences while giving all interested parties the chance to share their points of view. It also introduced the initiative that the Commission could put forward to address the lack of EU cooperation and the practical problems that currently exist in this area. 8 answers were received, including 4 from EU citizens, 2 from non-governmental organisations, 1 from a research institution, and 1 from a business association. Two non-governmental organisations submitted answers raising concerns about the promotion of the ratification of the Hague Convention, due to the possible direct violations of the UN Convention on the Rights of Persons with Disabilities (CRPD) and they both formulated recommendations for the European Commission to consider for the following developments in this field. The answer from the research institution highlighted the need for an EU action, suggested an approach and legal bases for such an approach, and pointed that the choice of court and the *ex lege* powers of representation should be integrated to a future EU initiative. One of the EU citizens showed enthusiasm for an EU initiative and described it as 'sensible and necessary'. The other two relevant answers²⁸⁰ from EU citizens rather focused on the existing problems and one of them additionally stressed the need to introduce a mandatory hearing of the persons concerned. The answer from the business association also supported the Commission's initiative and formulated some recommendations. The content of these eight answers was analysed and integrated into the main report.

A total of 42 contributions were submitted in the framework of the **Public Consultation**, and included feedback from public authorities (23.8%), EU citizens (21.4%), non-governmental organisations (14.3%), business associations (9.5%), academics/ research institutions (2.4%), companies/business organisations (2.4%) and others (26.2%). The questionnaire of the Public Consultation was divided into two main parts, one covering the current situation and problems relating to the protection of adults, and the other one

²⁷⁹ European Commission. (2021-2022). *Call for Evidence - Civil judicial cooperation – EU-wide protection for vulnerable adults*. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12965-Civil-judicial-cooperation-EU-wide-protection-for-vulnerable-adults_en

²⁸⁰ One of the answers to the Call for Evidence was considered irrelevant for the purpose of the study, as it did not provide an analysis of the possible European initiative, and did not address the points raised by the Call for Evidence.

covering the possible EU action on the cross-border protection of vulnerable adults between Member States. The 20 questions of the questionnaire covered the rights of vulnerable adults, trends in protection measures and cross-border cases, challenges encountered, the need for EU action, the scope and content of an EU initiative. One contribution came from the UK and all the others from the EU, mainly from Belgium (26%), Italy (17%) and France (12%). The majority of stakeholders (66%) fully agreed to the need for the EU to adopt a specific legislation to facilitate cross-border protection of vulnerable adults and the majority of stakeholders (63%) considered that if the EU was adopting a legislation, the new EU instrument should regulate all issues that might arise in cross-border cases (jurisdiction, applicable law, recognition and enforcement, and cooperation between authorities). The content of some of the answers to open questions of the Public Consultation was analysed and integrated into the main report. A factual summary report analysing the answers to the Public Consultation was prepared and submitted in May 2022,²⁸¹ and is included as an annex to the main report.

SEMI-STRUCTURED INTERVIEWS

After contacting over 80 stakeholders involved in the field of cross-border protection of vulnerable adults, a series of 36 interviews were conducted by the project team from 23 May 2022 to 14 June 2022. A detailed interview questionnaire was distributed to the interviewed stakeholders before the interview. The questionnaire included a background section, an explanation of the purpose of the study and the interview, and was then divided into three parts, with questions related to the problems and their causes in the cross-border protection of vulnerable adults, the assessment of the options proposed by the European Commission to address the problems, and additional questions about the number of vulnerable adults and future participation of stakeholders in the focus groups. The interviewees belonged to different groups of key actors in the cross-border protection of vulnerable adults, namely 14 practitioners (lawyers, judicial representatives, judges and notaries), 12 public authorities (Ministries of Justice, Central Authorities, national agencies), 9 associations (European and national associations representing vulnerable adults) and a representative of a vulnerable adult. Among the representatives of the Member States, 10 Member States were represented,²⁸² seven of which are Contracting States to the Hague Convention.²⁸³

The questionnaire consisted of a set of open and closed questions in the form of tables with boxes to be ticked. The open-ended questions were analysed and included in the text of the main report, and the closed-ended questions were collected and statistically analysed to produce the tables presented in the second part of the main report. The closed questions about the problems presented a series of identified problems (lack of legal certainty, the lack of recognition of protection measures, authentic instruments and private mandates, the length and costs of proceedings and the costs and workload for public authorities) and invited participants to estimate whether these were very important, rather important, neutral, rather unimportant or not at all important problems in the field of cross-border protection of vulnerable adults. The closed questions on policy options invited participants to assess the relevance and effectiveness in addressing each of the problems identified. Open-ended questions complemented these sections, and were also formulated to ask stakeholders about the costs they experience in cross-border cases involving vulnerable adults, and the impact of the problems and policy options on the human rights of vulnerable adults (particularly in relation to the Charter of Fundamental Rights and the CRPD). The answers on the costs (procedural and implementation costs) in the current situation and the impact of different policy options on these costs helped the project team

²⁸¹ European Commission. (2022b). *Protection of the vulnerable adults Initiative - Factual summary report - Open Public Consultation*. 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

²⁸² BE, CZ, DE, FI, FR, IT, LV, MT, NL and PT.

²⁸³ BE, CZ, DE, FI, FR, LV and PT.

to identify the most relevant people to invite to participate in the first focus group, which focused on the issue of costs in cross-border cases involving vulnerable adults.

CASE STUDIES

A series of eight illustrative case studies were developed, based on case law analysis, desk research, input from a Senior Expert and examples described during interviews. These case studies cover the typical situations encountered by vulnerable adults and their families while encompassing the types of costs that may be triggered in each of these situations.

These case studies were developed to support the discussions on costs in cross-border protection of vulnerable adults during the two focus groups. They were distributed to all participants in advance of the two meetings, along with guiding questions for each case study in order to collect in-depth and targeted contributions. The case studies were then presented and detailed during these two meetings, and fed the reflections of the participants, who commented on the recurrence of these situations, the documents required in each of them, the existing or missing costs and their magnitude. The contributions from stakeholders helped to better understand which situations were most common, and to refine the cost estimates for each of them, which in turn were essential to calculate the cost reductions that could be achieved by each of the policy options formulated by the European Commission.

The table below describes the eight case studies and their associated costs.

Table 43: Illustrative cross-border situations and related costs

	Scenario	Costs
Case study 1: Establishing a protection measure abroad	Mr X is a national of country A and has moved to country B. A protection measure is requested in country A (e.g. by family).	<p>Potential costs (case by case basis) related to:</p> <p>A. The procedure to establish the protection measure:</p> <p>Additional costs relating to cross-border situation:</p> <ul style="list-style-type: none"> • travel for the medical assessment • translation costs linked to the procedure <p>B. Potential judicial procedure to contest the decision by the VA (or other members of his/her family) because the law applicable or jurisdiction competent is contested:</p> <ul style="list-style-type: none"> • access to justice costs (incl. lawyer) • travel costs (e.g. for the family) <p>C. Risk of duplicate proceedings in country A and country B over the protection of the same VA (see case study 6).</p>
Case study 2: Implementing a protection measure abroad	A protection measure has been adopted by the authorities of country A for Mr. X. Mr X. moves to country B. The person charged with assisting Mr X must act in country B (e.g. to rent an apartment or open a bank account).	<p>Potential costs (case by case basis) related to:</p> <ul style="list-style-type: none"> • travel of the guardian to country B • translation of document attesting of the protection measure • administrative procedures by the guardian, entailing exchanges by registered letters (several letters for each procedure)
Case study 3: Exequatur	Mr X lives in country A, but has assets in country B. A protection measure has been adopted by the authorities of country A. The guardian decides to sell the assets in country B. The bank in country B asks for the exequatur	<p>Potential costs (case by case basis) related to the exequatur procedure (depending on national law):</p> <ul style="list-style-type: none"> • application lodged by a lawyer • sworn translation of proof of protection measure • apostille or other proof of authenticity of the judgment

	Scenario	Costs
	of the decision taken in country A.	<ul style="list-style-type: none"> • certificate established by a lawyer or by the authorities • proof of enforcement of the foreign judgment
Case study 4: Activating a private mandate abroad	A private mandate has been concluded by Mr X in accordance with the law of country A (where he used to live at the time the mandate was made) providing for his protection in the event of incapacity. Mr X moves to country B and his health deteriorates; the private mandate needs to be activated.	<p>Potential costs (case by case basis) related to:</p> <ul style="list-style-type: none"> • involvement of competent authorities; • procedure for the recognition of the private mandate in country B, i.e. judicial proceedings • if the private mandate is not recognised in country B, establishment of a new protection measure: costs of the whole procedure: introducing the application, legal representation, medical assessment (NB: renewal of the protection measure in a second country may also occur in other cases, e.g. where it is put an end to the protection measure in the first country when the person moves abroad).
Case study 5: Contesting a guardianship or a guardian's decision abroad	Mr X lives in country B, but is under a protection measure decided in country A. The guardian designated in country A takes a decision that affects Mr. X's assets (e.g. contracts a life insurance with suspicious beneficiaries or decides to sell all assets in country A). Mr X wants to contest the guardianship or the decision of the guardian.	<p>Potential costs (case by case basis) related to:</p> <ul style="list-style-type: none"> • access to justice costs: NB: the costs of a lawyer are likely to increase due to the cross-border nature of the case, especially if the applicable law or jurisdiction needs to be determined.
Case study 6: Conflict of jurisdiction	Mr X is subject to a procedure to establish a protection measure in country A, and he initiates a procedure in country B to obtain a less intrusive protection measure—there is a case of conflict of jurisdiction.	<ul style="list-style-type: none"> • access to justice costs in both countries
Case study 7: Relocation of a VA without change of protection measure	Mr X lives in country A, in an establishment where his protection can be ensured. He enjoys the company of his sister, Ms Y, who also lives in country A. Now Ms Y has found a job in country B, and seeks to relocate Mr X in a similar establishment in country B.	<ul style="list-style-type: none"> • Costs required to ensure that the competent authorities in country A and B agree on the relocation.
Case study 8: Relocation of a VA with change of protection measure	Mr X lives in country A. He is cared for by the social services of country A. It arises that a relative of Mr X, in country B, is ready to assist Mr X, provided that he moves to country B. Mr X is willing to do so.	<ul style="list-style-type: none"> • Costs required to ensure that the competent authorities in country A and B agree on the relocation, and provide for a smooth transition from the protection measures in country A to those in country B (including the appointment of the relative of Mr X as the new administrator of Mr X, as a result of the termination of the appointment of the previous administrator).

FOCUS GROUPS

At the end of the analytical phase of the study, two focus groups were held to discuss the preliminary findings of the evaluation, confirm the data collection findings, and fill the remaining information gaps. The focus groups gathered 14 participants in the first focus group and 21 in the second, from different stakeholder categories to ensure a more exhaustive coverage of the topic and a productive discussion. The focus groups were held in a fairly informal albeit structured way to make it easier for participants to share their experiences and expertise in detail.

The two online focus groups took place on 14 September 2022 and lasted two hours each. The two focus groups gathered different types of participants, in order to have a better overview of trends and perceptions by stakeholder group. The **first focus group** targeted practitioners and associations having expertise in the field of cross-border protection of vulnerable adults. It included 8 practitioners (lawyers – including Council of Bars -, notaries – including Chamber of notaries, and judicial representatives), 3 judges and 3 representatives of associations. It was divided into two parts, with the first longer part starting by asking participants for their views on estimates of the number of vulnerable adults in cross-border situations, followed by a discussion of the costs encountered in cross-border situations based on the eight case studies developed. The second part was a shorter discussion on the measures of the proposed policy options and their impacts. The **second focus group** gathered representatives of 10 Member States²⁸⁴ and 3 representatives of European non-governmental organisations. This focus group was also divided into two parts, and also began by inviting participants to give their opinion on the estimated number of vulnerable adults in cross-border situations in the EU, followed by a question on the use of private mandates in their Member State and related figures, and questions about their perception of the cooperation between national authorities under the current situation. The main part of the discussion then focused on the stakeholders' perceptions of the different options proposed, the measures they contain and their impacts. The second part of the focus group was dedicated to the presentation of the eight case studies and the gathering of the participants' experiences and views on the costs of cross-border protection of vulnerable adults.

Regarding the participants' views on the four policy options presented by the European Commission during the focus groups, it is worth noting that the participants of the first focus group were mostly in favour of EU legislation and more substantial EU intervention, whereas the participants of the second focus group (mostly representatives of public authorities of Member States - 78.6%) were rather in favour of a less extensive EU intervention or even Option 1. It is also important to note that the options and measures corresponding to them were not always clear to the participants of the second group.

The focus groups gave stakeholders the opportunity to learn more about the progress of the reflection process within the European Commission in this area, to take part in the validation process, to confirm or invalidate the findings of the assessment, and to express their views on the comparison of policy options, both their advantages and disadvantages.

²⁸⁴ AT, BE, CZ, FR, DE, LT, LU, NL, MT and SI.

Annex VI List of interviews carried out

Table 44 List of interviews carried out

	MS/EU	Organisation
1	Luxembourg	European Association of Private International Law (EAPIL)
2	Portugal	General Prosecutor 's Office (PT Central Authority)
3	EU	Individual
4	France	JCP Paris (Judge in Paris)
5	France	Permanent representation of France in the EU
6	Latvia	University of Latvia, Faculty of Medicine
7	France	Adultes Vulnérables
8	Latvia	Ministry of Justice, Department of International Cooperation, Department of Civil Law
9	Austria	Austrian Chamber of Civil Law Notaries (Österreichische Notariatskammer)
10	France	Mikael Roy (mandataire judiciaire à la protection des majeurs)
11	Slovenia	Chamber of Notaries of Slovenia
12	Belgium	SRL Cabinet de l'avocat Luc COLLART
13	Italy	Ministry of Justice - Generale Directorate for International Affairs and Judicial Cooperation - Office II
14	EU	Council of the Notariats of the European Union - CNUE
15	Romania	Uniunea Națională a Notarilor Publici din România
16	Romania	Asociația Magic Seniors (Magic Seniors Association)
17	Italy	Tribunale Milano
18	Switzerland	Office fédéral de la justice suisse
19	Belgium	Inclusion Europe
20	Finland	Digital and Population Data Services Agency (Guardianship authority in Finland)
21	Germany	Bundesministerium der Justiz
22	Czech Republic	Ministry of Justice, International Department for Civil Matters
23	Belgium	STAN vzw
24	Italy	Italian judge
25	Malta	Ministry for Inclusion and Social Wellbeing
26	Belgium	Federal Public Service Justice
27	Portugal	Directorate-General of Justice Policy with the contribution of the Central Authority
28	EU	European Disability Forum
29	Netherlands	Mentorschap Nederland; Organisation of personal guardians for vulnerable adults; the guardianship measure is carried out by volunteers
30	Austria	Österreichischer Rechtsanwaltskammertag (ÖRAK)
31	Belgium	International Council of the Belgian Notariat
32	EU	AGE Platform Europe
33	EU	Mental Health Europe
34	Netherlands	Directorate for Legislation and Legal Affairs of the Ministry of Justice and Security
35	Germany	Bundesnotarkamer
36	EU	DG JUST A.1 - (national solvency registers and their interconnection at EU level)
37	EU	DG JUST B.3 (e-Justice policy and grant management)

Annex VII Public consultation factual summary report

INTRODUCTION

The public consultation aimed to seek information and feedback from the relevant stakeholders, notably representatives of public authorities including judicial authorities, as well as legal practitioners, NGOs and the wider public in relation to the cross-border protection for vulnerable adults.

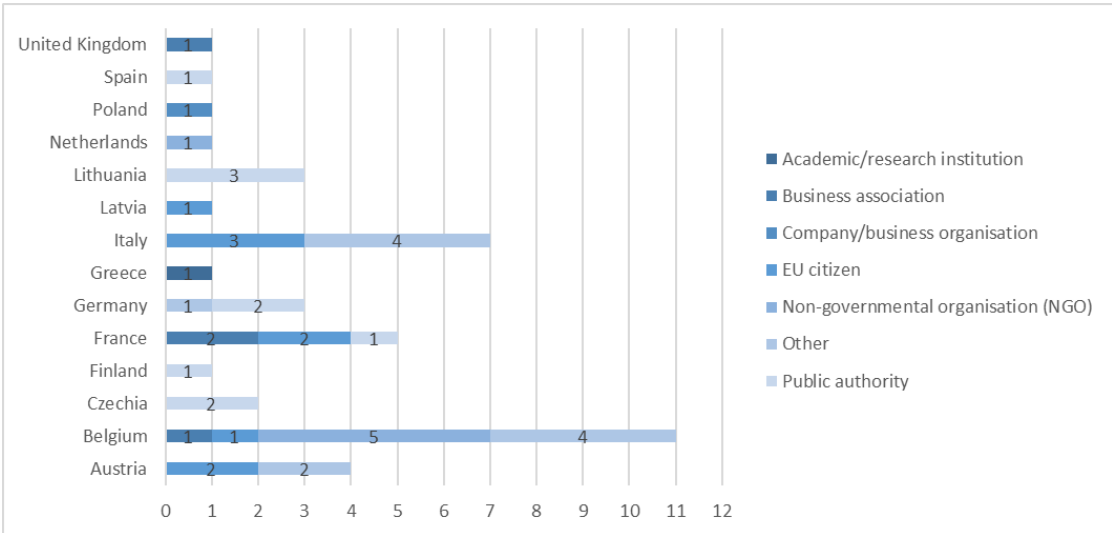
This summary report was prepared within the framework of the study ‘Civil aspects of the cross-border protection of vulnerable adults’ (Contract No. JUST/2021/PR/JCOO/CIVI/0094). The overall objective of this study is to support the impact assessment, which will accompany the proposal for an EU legislation concerning improved EU cooperation in the area of cross-border protection of vulnerable adults. The study will identify and analyse quantitative and qualitative data on the expected significant economic, social and environmental impacts of the identified policy options.

The public consultation was conducted between 21 December 2021 and 29 March 2022 using EU Survey. The questionnaire was provided in English, and it consisted of two main parts. The first part focused on the awareness of the current situation and problems relating to the protection of vulnerable adults while the second part aimed at gathering opinions about the possible EU action on the cross-border protection of vulnerable adults. It contained twenty-one questions. The outcome of the public consultation on these questions, pertinent to the above study, is presented in the following sections.

OVERVIEW OF RESPONSES

During this public consultation (PC), a total of 42 contributions (and 4 documents annexed to contributions) were received from 13 EU Member States and the United Kingdom.

Figure 11: Number of respondents to the open public consultation by nationality and type of respondent



Most contributions to this consultation accounting for 26% of all respondents (number of responses N=11) was provided by respondents falling in the category ‘other’, followed by representatives of public authorities accounting for 24% of all respondents (N=10), EU citizens 21% (N=9), NGOs 14% (N=6), business associations 10% (N=4), company/business organisations 2% (N=1), and academic/research institutions 2% (N=1).

The highest number of respondents (N=11) had Belgian origin, followed by Italian (N=7) and French origin (N=5). Four respondents originated from Austria, three from Lithuania and three from Germany. The remaining countries represented in the consultation included only one or two respondents.

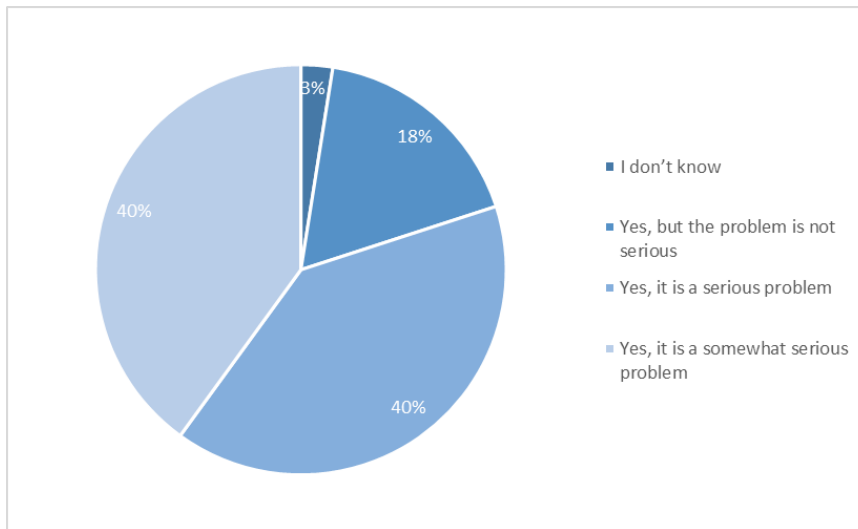
ANALYSIS OF RESULTS

Due to a small number of respondents to this consultation and lack of representation of several Member States, the results reported below do not distinguish between specific groups of respondents. The number of valid responses to each question is provided in captions of each figure.

I Current situation and problems relating to the protection of adults

A majority of PC respondents considered the differences between Member States regarding the rules applying to the protection of vulnerable adults a serious or a somewhat serious problem. This opinion was shared by 80% of respondents, including 40% (N=16) who found it a serious problem and 40% (N=16) who found it a somewhat serious problem. 18% of the respondents who provided valid responses (N=7) found that this is not a serious problem. 18% of the respondents who provided valid responses (N=7) found that this is not a serious problem.

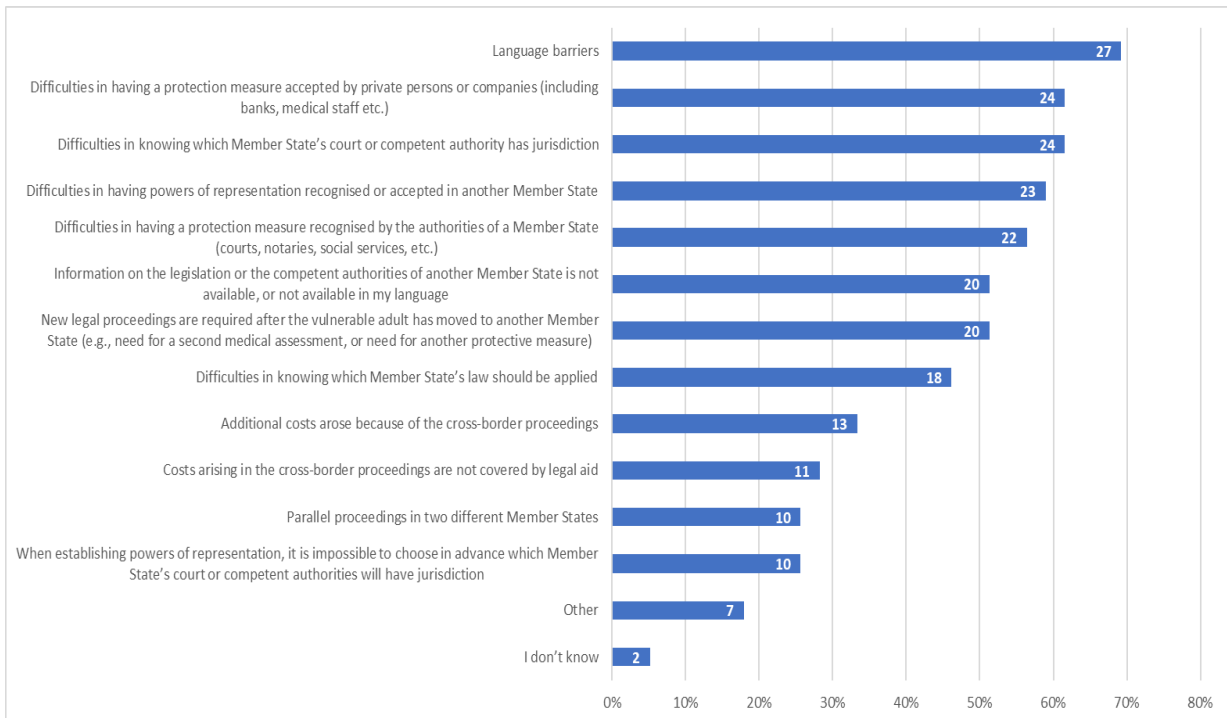
Figure 12: Question 1: Do you think that the differences between Member States as regards the rules applying to the protection of vulnerable adults in cross-border cases pose a problem? (N=40)



Over 80% of the respondents (N=29) knew about situations where vulnerable adults faced problems with protection of their rights in another Member State. The number of valid responses to this question (Q2) amounted to 36.

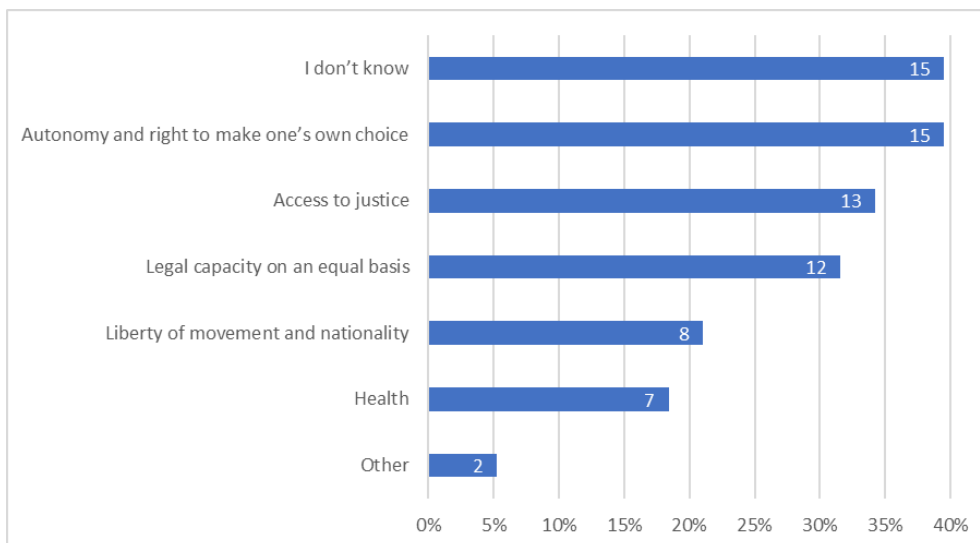
Among the types of problems encountered, the respondents most often selected language barriers (69% of valid responses, N=27), followed by difficulties in having a protection measure accepted by private persons or companies, and difficulties in knowing which Member State's court or competent authority has jurisdiction (both options selected by 62% of respondents). Difficulties in having powers of representation recognised or accepted in another Member State and difficulties in having a protection measure recognised or accepted in another Member State were reported by 59% and 56% of respondents, respectively. Statistics regarding all the options are presented in the figure below (note that more than one option could be selected).

Figure 13: Question 3: In instances where their rights were not adequately protected in another Member State, what were the types of problems encountered? (N=39)



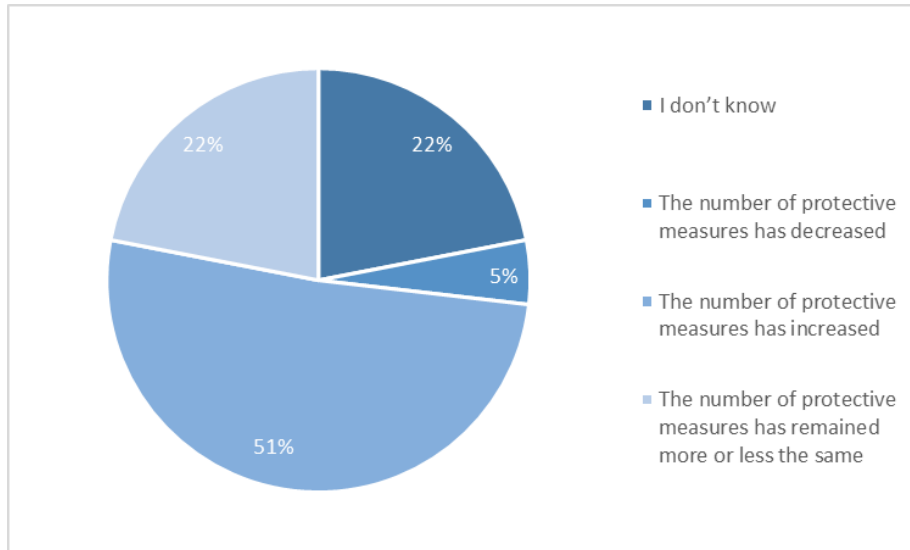
Among the types of breaches of fundamental rights of vulnerable adults in cross-border situations, PC respondents most often selected autonomy and right to make one's own choice, followed by access to justice. These options were selected by 39% and 34% of respondents providing valid answers, respectively. Legal capacity on equal basis was indicated as a breach of fundamental rights by 32% of respondents (N=12). More details regarding all the options are presented in the figure below. It can be noted that quite a high share of PC respondents selected the category 'I don't know' (39%, N=15).

Figure 14: Question 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? (N=38)



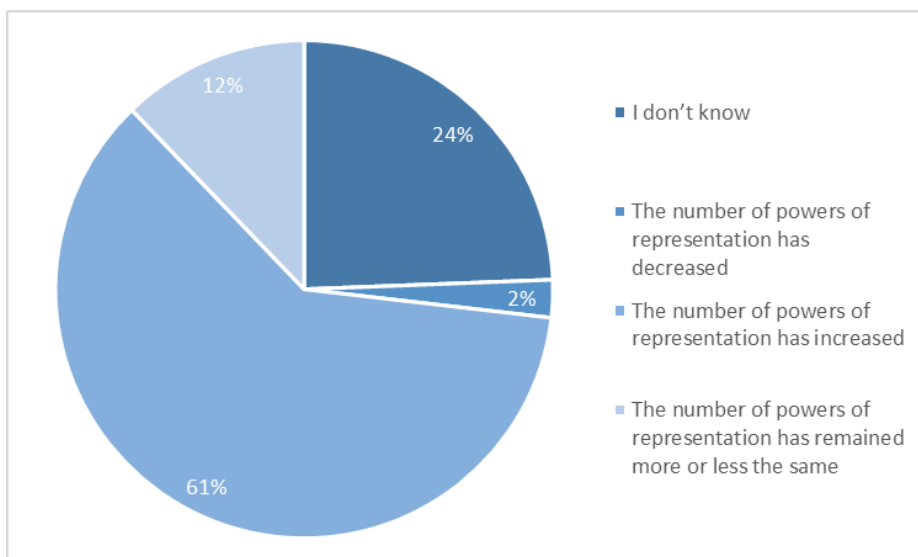
A majority of PC respondents (51%, N=21) expressed an opinion that the number of protective measures taken for vulnerable adults over the past five years has increased. A different view was expressed by 22% of PC respondents (N=9), who think that the number of protective measures has decreased; the same share of the respondents have an opinion that in has remained more or less the same.

Figure 15: Question 5: In your opinion, how has the number of protective measures taken for vulnerable adults evolved over the past 5 years in your country? (N=41)



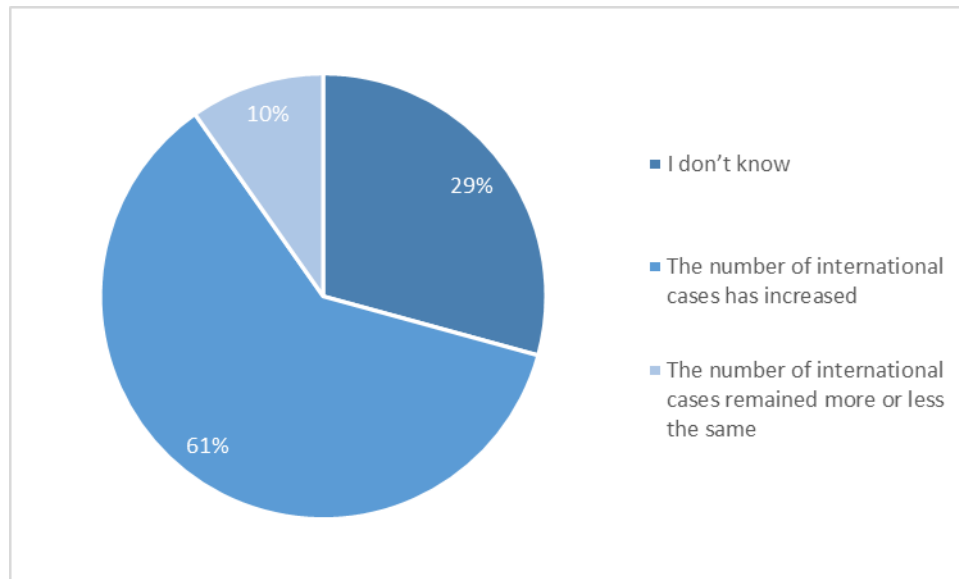
Regarding the specific protection measure of the powers of representation (private mandates), according to the majority of PC respondents (61%, N=25), their number has recently increased. Almost a quarter of the respondents (24%, N=10) don't have knowledge about this issue while 12% (N=5) thought that the number of powers of representation has not significantly changed.

Figure 16: Question 6: In your opinion, how has the number of protective measures taken for vulnerable adults evolved over the past 5 years in your country? (N=41)



A majority of PC respondents (61%, N=25) expressed the opinion that the number of cross-border cases involving the protection of vulnerable adults over the past 5 years in their country has increased, as compared to 10% (N=4) who thought that the number of international cases remained more or less the same, and 29% (N=12) who did not know how the situation in this area has recently evolved. The number of valid responses to this question (Q7) was equal to 41.

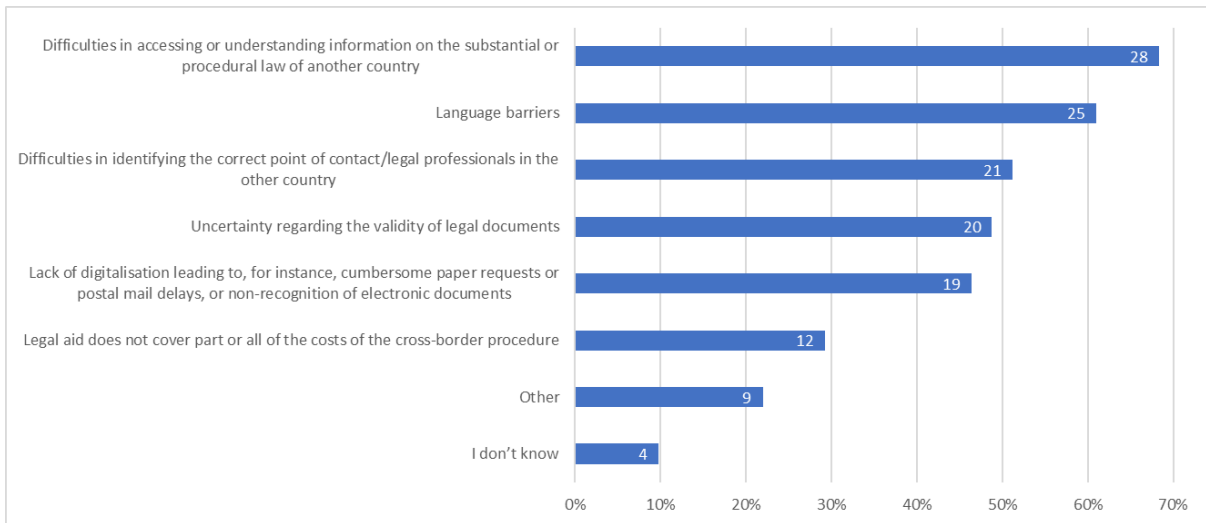
Figure 17: Question 7: In your opinion, how has the number of cross-border cases involving the protection of vulnerable adults evolved over the past 5 years in your country (N=41)?



A majority of PC respondents (68%, N=28) reported being aware of instances 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. This compares to 15% of the respondents (N=6) reporting that they are not aware of such situations, and 17% (N=7) selecting the option 'I don't know'. The number of valid responses to Q8 amounted to 41.

Regarding the main challenges encountered by the competent authorities (courts, notaries, other public bodies in charge of the protection of vulnerable adults) and lawyers in cross-border cases, a majority of respondents indicated three challenges: 1) difficulties in accessing or understanding information on the substantial or procedural law of another country, 2) language barriers, and 3) difficulties in identifying the correct point of contact/legal professionals in the other country. These challenges were selected by 68% (N=28), 61% (N=25), and 51% (N=21) respondents, respectively. The figure below provides more details with respect to this question.

Figure 18: Question 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? (N=41)

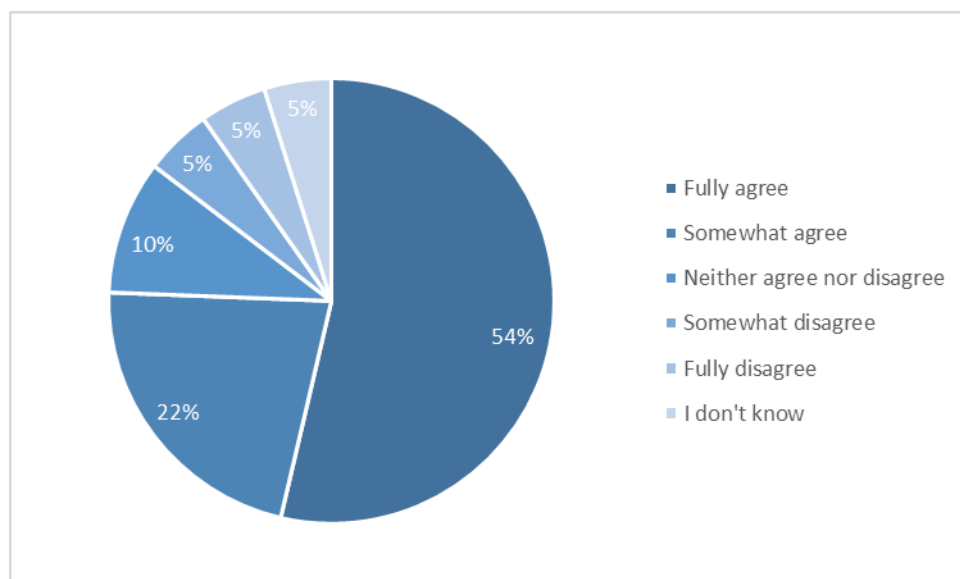


According to the majority of PC participants, vulnerable adults would be better protected in cross-border cases if the 2000 Adults Convention, which lays down common rules to resolve conflicts of jurisdiction, conflicts of laws and to organise judicial cooperation, was in force in all EU Member States. Such an opinion was expressed by 88% of respondents (N=36), with only two respondents (5%) having a contrary opinion, and three respondents (7%) declaring that they do not know. There were 41 valid responses to Q10.

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

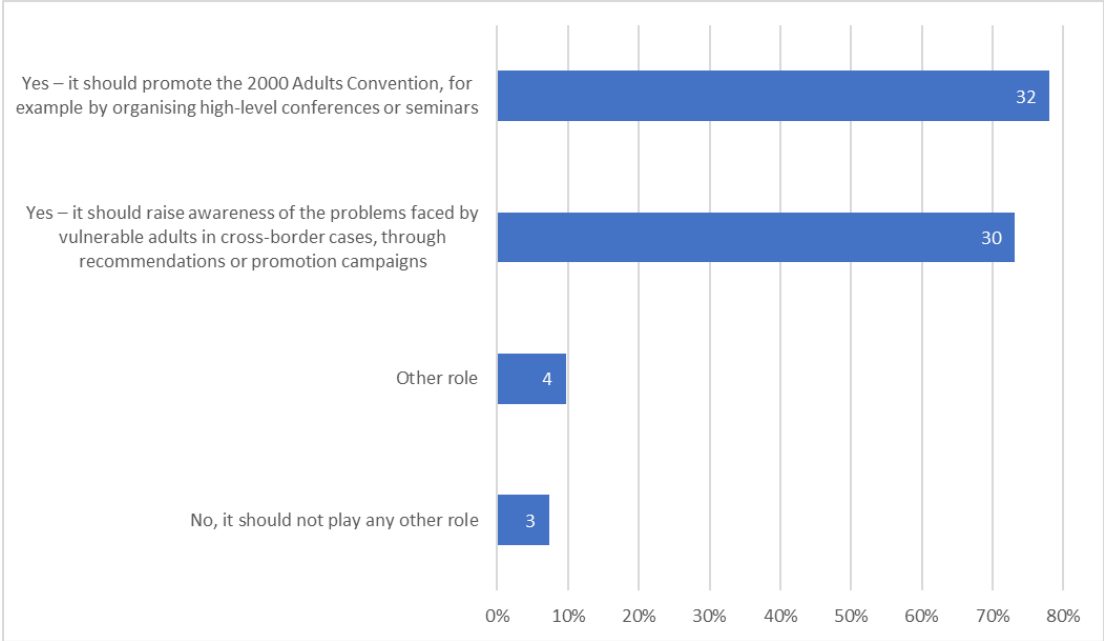
A majority of PC respondents agreed (76%, N=31) that the EU should adopt legislation to oblige Member States to ratify the 2000 Adults Convention in a limited timeframe, with 54% (N=22) stating that they 'fully agree', and 22% (N=9) that they 'somewhat agree'. More details are given in the figure below.

Figure 19: Question 11: The EU should adopt legislation to oblige Member States to ratify the 2000 Adults Convention in a limited timeframe: what do you think? (N=41)



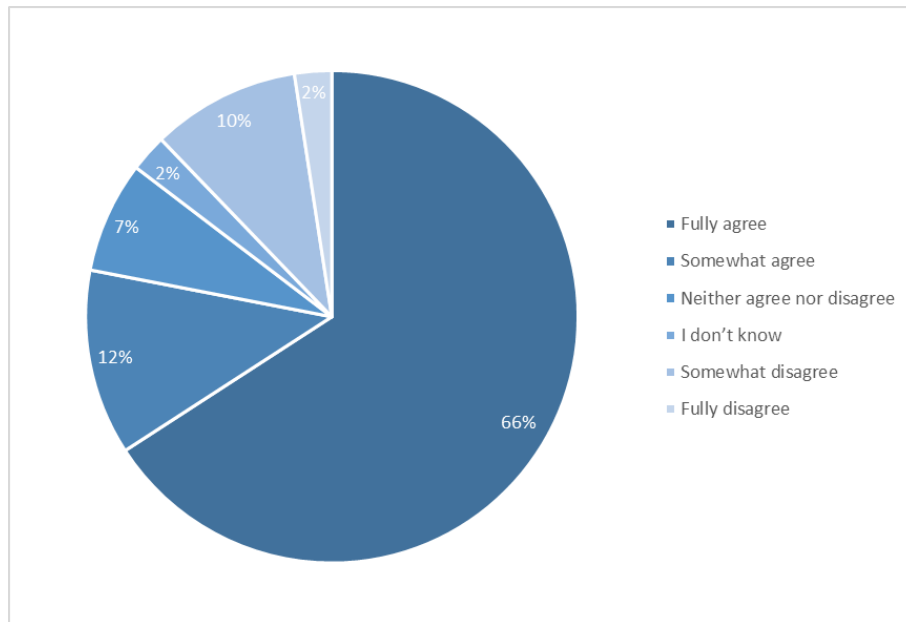
Regarding other roles which the EU could play in facilitating the ratification of the 2000 Adults Convention, 78% of PC respondents (N=32) expressed an opinion that the EU should promote the Convention, for example by organising high-level conferences or seminars, while 73% (N=30) stated that the EU should raise awareness of the problems faced by vulnerable adults in cross-border cases, through recommendations or promotion campaigns. Four respondents (10%) would see another role for the EU in this area and three respondents (7%) thought that the EU should not play any other role.

Figure 20: Question 12: In your opinion, should the EU play any other role in facilitating the ratification of the 2000 Adults Convention by all Member States? (N=41)



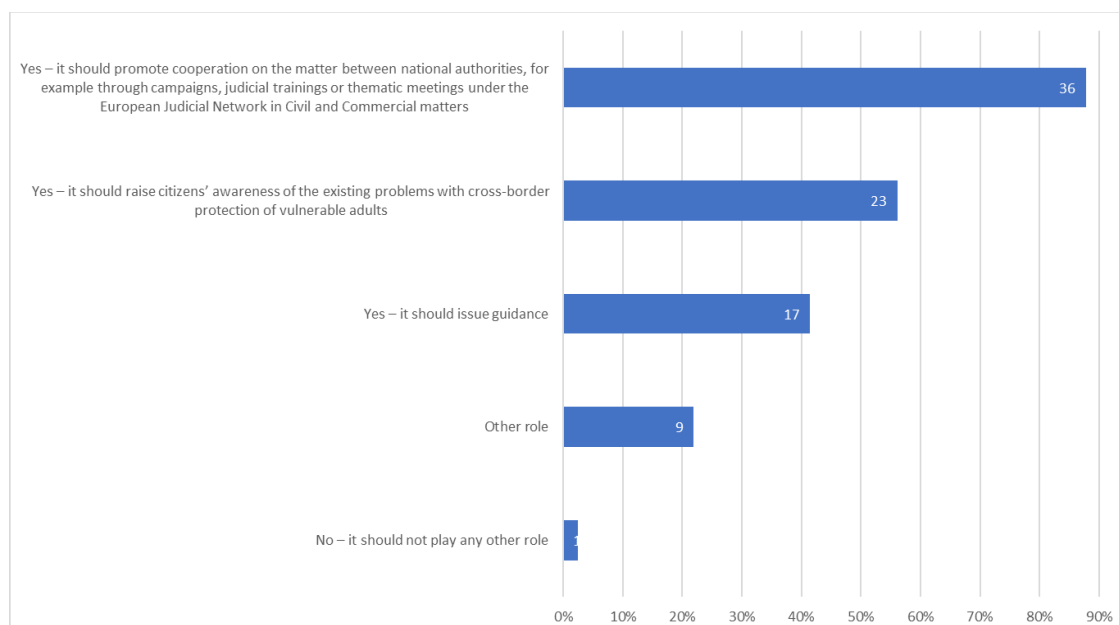
Regarding the question if the EU should adopt specific European legislation to facilitate cross-border protection of vulnerable adults, 78% of PC respondents agreed with this statement, including 66% (N=27) who fully agreed and 12% (N=5) who somewhat agreed. Q13 was answered by 41 respondents.

Figure 21: Question 13: The EU should adopt specific European legislation to facilitate cross-border protection of vulnerable adults: what do you think?



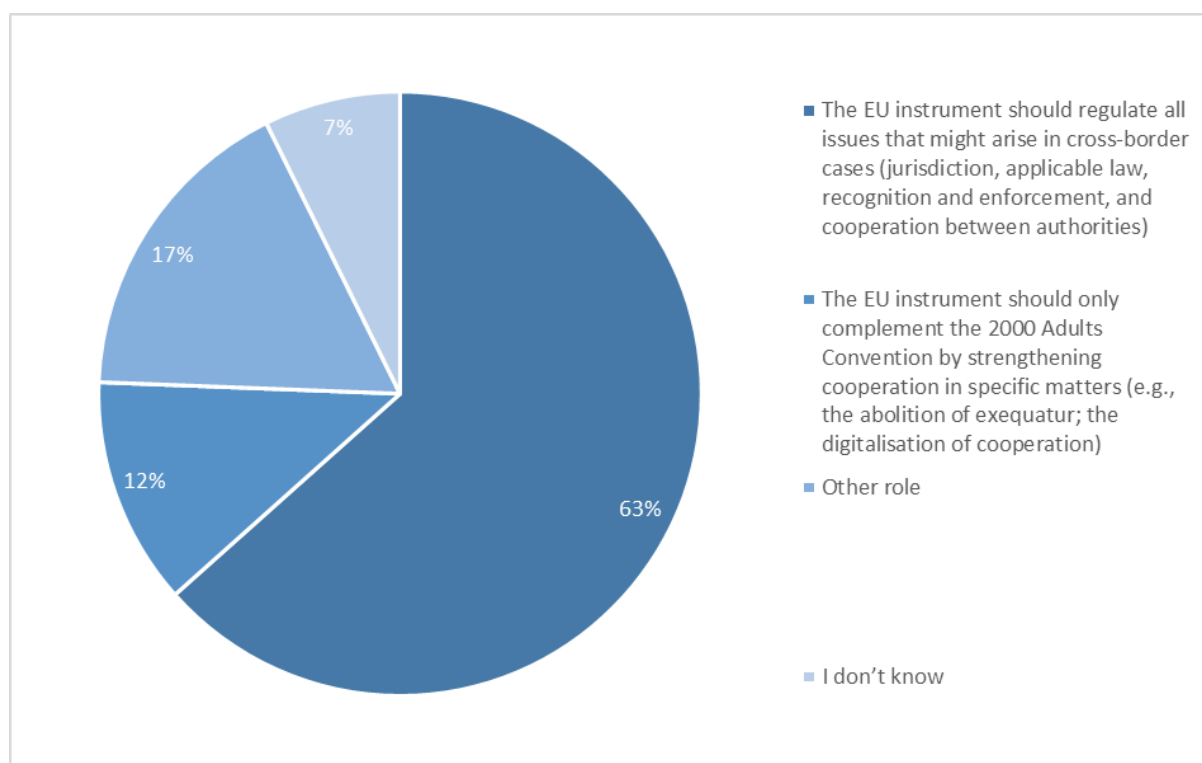
Vast majority of PC respondents (88%, N=36) shared an opinion that the EU should promote cooperation on the matter of cross-border protection of vulnerable adults between national authorities, for example through campaigns, judicial trainings or thematic meetings under the European Judicial Network in Civil and Commercial matters. Majority of the respondents (56%, N=23) also agreed that the EU should raise citizens' awareness of the existing problems with cross-border protection of vulnerable adults. A smaller share of PC respondents (41%, N=17) supported the idea that the EU should issue guidance regarding these matters.

Figure 22: Question 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)? (N=41)



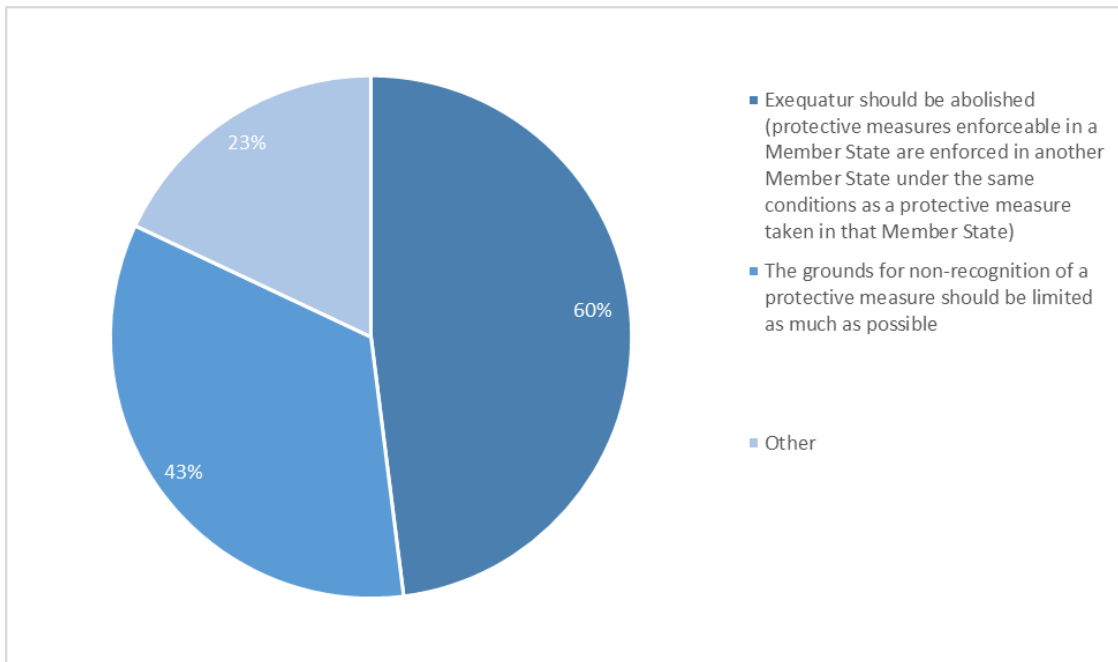
A majority of PC respondents (63%, N=26), expressed an opinion that the EU instrument should regulate all issues that might arise in cross-border cases (jurisdiction, applicable law, recognition and enforcement, and cooperation between authorities), as compared to 12% (N=5) who thought that the EU instrument should only complement the 2000 Adults Convention by strengthening cooperation in specific matters (e.g., the abolition of *exequatur*; the digitalisation of cooperation). Seven respondents (17%) would see another role for the EU and three respondents (7%) did not have an opinion regarding this issue. The total number of valid responses in this question (Q15) was equal to 41.

Figure 23: Question 15: If the EU adopts legislation to more effectively protect vulnerable adults in cross-border cases, which option is most appropriate in your opinion? (N=41)



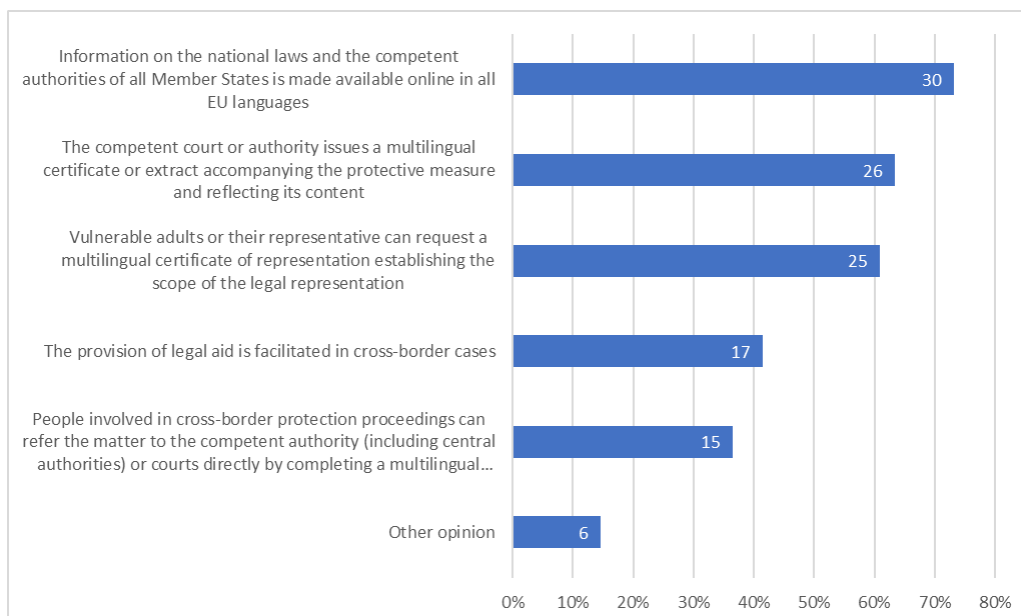
Regarding the most appropriate procedure to facilitate the recognition and enforcement of a protective measure, a majority of PC respondents (60%, N=24) expressed an opinion that *exequatur* should be abolished (protective measures enforceable in a Member State are enforced in another Member State under the same conditions as a protective measure taken in that Member State). The opinion that the grounds for non-recognition of a protective measure should be limited as much as possible was shared by 43% (N=17) of the respondents, while 9 respondents (23%) had other opinions regarding this issue. Forty respondents in total provided their answers to this question (Q16).

Figure 24: Question 16: What would be the most appropriate procedure to facilitate the recognition and enforcement of a protective measure? (N=40)



Among the most appropriate measures to accommodate the needs of vulnerable adults or their representatives in cross-border cases the PC respondents most often selected information on the national laws and the competent authorities of all Member States being available online in all EU languages (73%, N=30), multilingual certificates or extracts issued by the competent courts (63%, N=26) or multilingual certificates of representation which vulnerable adults could request (61%, N=25). More details regarding this question can be found in the figure below.

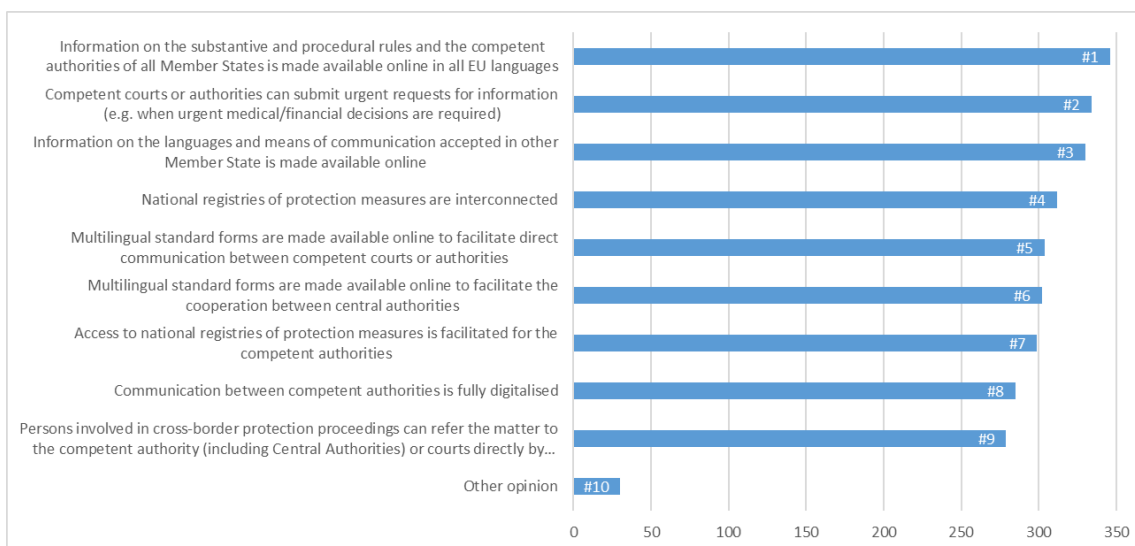
Figure 25: Question 17: What would the most appropriate measure(s) be to accommodate the needs of vulnerable adults or their representatives in cross-border cases, in particular when they travel or manage assets in another Member State? (N=41)



Regarding the question if it should be made possible for individuals, when establishing powers of representation, to decide in advance which Member State’s court will have jurisdiction, half of the PC respondents agreed that it should be possible (N=20) while 13% (N=5) disagreed that there should be such a possibility. 18% of the respondents (N=7) had an alternative opinion and 20% (N=8) chose the option ‘I don’t know’. The number of valid responses to this question (Q18) amounted to 40.

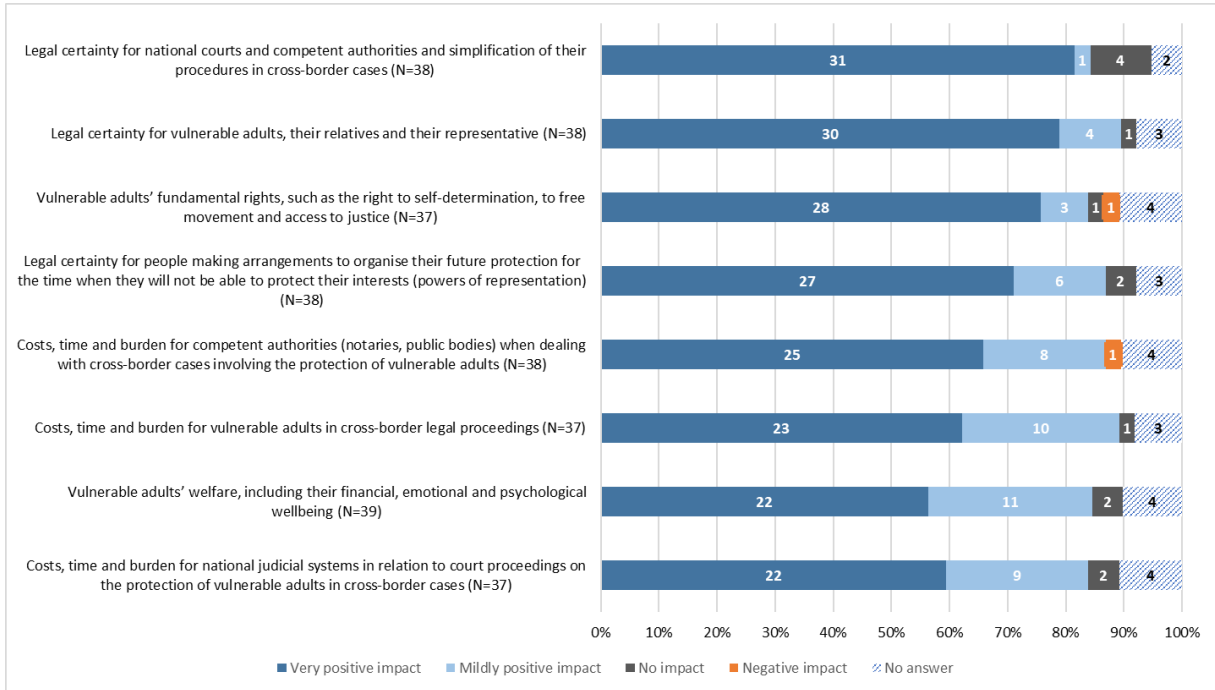
As for the most appropriate measures to facilitate cooperation between courts, competent authorities or central authorities in cross-border cases involving the protection of vulnerable adults, PC respondents attached the highest ranking to online availability of information on the substantive and procedural rules and the competent authorities of all Member States, followed with the possibility of submission of urgent requests for information and online availability of information about the languages and means of communication accepted in other Member States. The figure below presents full ranking of options used in question 19 (N=40). The scale in the figure reflects relative importance of the ranking according to the scale 1-10, where 10 points were assigned if a given option was ranked as first, 9 points were assigned if a given option was ranked as second, etc.

Figure 26: Question 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? (N=40)



According to the majority of PC respondents, an EU initiative in the area of cross-border protection of vulnerable adults would have a very positive effect on all the aspects listed in Question 20 – see the details in the figure below. Legal certainty for national courts and competent authorities and legal certainty for vulnerable adults, their relatives and representatives ranked the highest among the presented options.

Figure 27: Question 20: In your opinion, to what extent would an EU initiative facilitating the cross-border protection of vulnerable adults impact the following?



Annex VIII Jurisdiction and applicable law in non-contracting states

Table 45: Jurisdiction and applicable law in the Member States that are not party to the Convention²⁸⁵

MS	Jurisdiction	Applicable law
BG	<p>Jurisdiction for the limitation or deprivation of legal capacity is based on nationality.</p> <p>Jurisdiction for the establishment and termination of guardianship or trusteeship is based on habitual residence.</p>	<ul style="list-style-type: none"> Foreign procedural actions or official documents, are governed by the law of the State from which the actions/documents originate. The conditions and the consequences of the limitation or deprivation of legal capacity of the person are settled by the law of nationality of the person; when that person has habitual residence in Bulgaria, Bulgarian law applies. Establishment and the termination of the guardianship and trusteeship is governed by the law of the State of habitual residence of the protected person or guardian. For temporary and urgent protective measures, Bulgarian law may be applied.
DK	Jurisdiction seems based on the habitual residence of the person concerned.	<ul style="list-style-type: none"> Lex fori seems to apply.
ES	<p>Jurisdiction in matters related to the capacity of persons and in matters related to the protection measures of vulnerable adults or their property is based on habitual residence.</p> <p>Jurisdiction for the adoption of provisional or protective measures (provided that the measures must be fulfilled in Spain) is based on the location of the person or property in Spain.</p>	The applicable law for the protection of adult persons is the law of habitual residence .
HR	<p>Jurisdiction in matters related to the personal status of a person, such as deprivation and restoration of legal capacity, may be based on nationality or habitual residence.</p> <p>Jurisdiction for the adoption of provisional or protective measures is based on the location of the person or property in Croatia.</p>	<ul style="list-style-type: none"> Restrictions of legal capacity are regulated by the law of nationality of the person concerned. The preconditions for deprivation and regain of legal capacity, placement under guardianship and termination of guardianship, are regulated by the law of habitual residence. For temporary and urgent protective measures, Croatian law applies.
HU	Jurisdiction for the adoption of protective measures may be based on nationality or habitual residence .	<ul style="list-style-type: none"> Deprivation and restrictions of capacity are regulated by the law of nationality. The conditions for placement under guardianship, or for other protection measures, that do not affect the capacity of an adult to act, are regulated by the law of habitual residence.

²⁸⁵ Table taken from previous legal study, European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N. (2021). *Study on the cross-border legal protection of vulnerable adults in the EU: final report*. ; EL was removed from the table as it has ratified the Hague Convention in the meantime.

MS	Jurisdiction	Applicable law
IE	Jurisdiction for the determination of incapacity and for the application of protective measure may be based on nationality or habitual residence .	<ul style="list-style-type: none"> Protective measures are regulated by the law of habitual residence. Enduring powers of attorney are regulated by law of nationality, <i>lex rei sitae</i> or law of habitual residence.
IT	<p>Jurisdiction is based on nationality or habitual residence.</p> <p>Italy is the competent jurisdiction for provisional and urgent measures of protection of vulnerable adults with regard to property if the property is located in Italy and where it is necessary to supplement or modify a foreign decision which is recognised in Italy.</p>	The conditions for adopting protective measures and the relationship between the caregiver and the protected person are governed by the law of nationality of the person to whom these measures relate. Under the rule on <i>renvoi</i> , cases exist where the law governing the protection of a foreigner is eventually Italian law.
LU	Jurisdiction is based on nationality .	For the status of a person (including vulnerability), the law of nationality applies.
LT	Jurisdiction for the declaration of incapacity is based on the location of property in Lithuania, nationality or permanent residence (for stateless persons) in Lithuania.	Guardianship and curatorship are governed by the law of the domicile of the person to whom the measures relate.
MT	<p>Jurisdiction is based on nationality (for Maltese citizens, provided they have not fixed their domicile outside of Malta), residence (persons domiciled, resident or present in Malta), or place of property (property situated or existing in Malta).</p> <p>Maltese courts are also competent to implement an obligation contracted or to be implemented or enforced in Malta, or if designated as a competent court by the parties.</p>	The law of the nationality or place of domicile, residence or presence of the vulnerable adult applies.
NL	Jurisdiction is based on habitual residence .	Following the decision of the Supreme Court, the applicable law in cases on the protection of vulnerable adults in cross-border situations is determined by the rules of the 2000 Hague Convention, i.e. <i>lex fori</i> .
PL	<p>Jurisdiction may be based on nationality or habitual residence.</p> <p>Polish courts may also have jurisdiction for the protection of the property of a foreigner with habitual residence abroad if this is necessary with regard to the interest of the foreigner.</p> <p>Polish courts may also be competent if the case shows a sufficient connection with the Polish legal order or if there is an urgent need to ensure the protection of a foreigner with their habitual residence abroad.</p> <p>There are also specific cases of exclusive jurisdiction, e.g. in case of incapacitation, if the person to whom the petition for incapacitation relates is a Polish citizen, residing and habitually</p>	<ul style="list-style-type: none"> The establishment of guardianship, curatorship or other protective measures for an adult is governed by that person's law of nationality or Polish law if the domicile or habitual residence is in Poland. Enforcement of protective measures is subject to the law of habitual residence. The termination of a protection measure is governed by the national law of the adult.

MS	Jurisdiction	Applicable law
	residing in Poland.	
RO	<p>Jurisdiction for guardianship and curatorship may be based on nationality or domicile (or habitual residence if no domicile).</p> <p>For placement under judicial interdiction, only Romanian courts are competent irrespective of the citizenship, if the person has their domicile in Romania.</p>	<ul style="list-style-type: none"> • The state and capacity of natural persons are governed by the law of nationality. • Protective measures to be taken in the case of a fully capacitated person are governed by the law of habitual residence. • When powers of representation are stipulated, there is the possibility to choose the applicable law.
SE	<p>Jurisdiction in proceedings of guardianship and trusteeship may be based on nationality or domicile.</p> <p>Swedish courts have jurisdiction in proceedings of protective measures for Swedish citizens residing abroad.</p>	In cases concerning conservatorship and administratorship of vulnerable adults, lex fori applies.
SI	Regarding guardianship measures, Slovenian authorities have exclusive competence for Slovene citizens .	<ul style="list-style-type: none"> • In guardianship cases, the law of nationality of the protected person applies. • In guardianship cases, Slovene law applies (lex fori).
SK	Jurisdiction in proceedings on protective measures is based on habitual residence .	<ul style="list-style-type: none"> • Legal capacity of a person shall be governed by the law of nationality. • The applicable law for the conditions for establishment or termination of guardianship is the law of habitual residence. • The obligation to accept and carry out the guardianship is regulated by the law of nationality of the guardian. • Legal relations between the guardian and the protected person are regulated by lex fori of the guardianship court.

Annex IX access rights to registries

Table 46: Access rights to registries²⁸⁶

MS	Registry	Persons concerned	Representative	Judiciary	Competent admin. authority	Notary	Lawyer	Social welfare	Medical bodies	Social insurance institutions	General public	Other
AT	Central Registry	x	x			x	x	x		x		
BE	Central registry of mandate contracts	x	x	x		x						
	Central registry of protection of persons	x	x	x								
CZ	Registry on declarations on the appointment of a guardian			x		x						
DE	Registry on lasting powers of attorney and advanced decisions			x								
DK	Danish Persons Registry	x	x	x	x	x	x			x	x	
	Future Mandate Register	x		x	x							
ES	Civil Register	x	x									
FI	Registry of guardianship affairs	x	x	x	x	x	x	x	x	x	x	
FR	Civil Register	x	x	x	x	x	x	x	x	x	x	
H R	Registry of private mandates and of powers of attorneys		x	x				x	x			
H U	Registry on people placed under guardianship			x	x	x						
	Registry on prior juridical acts: courts and prosecutor's office, investigating authority and national security services.			x								Enforcement authorities
IE	Wardship of court and powers of attorney			x			x		x			
IT	Registry of Civil Status (extracts)	x	x	x	x	x	x	x	x	x	x	

²⁸⁶ Table taken from previous legal study, *ibid.*

Civil aspects of the cross-border protection of vulnerable adults

MS	Registry	Persons concerned	Representative	Judiciary	Competent admin. authority	Notary	Lawyer	Social welfare	Medical bodies	Social insurance institutions	General public	Other
	Registry of Civil Status (full copies)	x										Person with personal and concrete interest for the protection of a legally relevant situation
	Registries on protective measures	x	x	x	x	x	x	x	x	x	x	
LU	Special registry for safeguards of justice		x	x		x	x		x			
LT	Registry of Legally Incapable Persons and Persons with Limited Legal Capacity			x		x						Enforcement authorities
LV	Registry for guardianship and trusteeship	x	x	x		x						
M T	Registry for guardianship orders											Person which is recognised as a legitimate interest by the Guardian Board
	Registry for interdiction or incapacitation orders			x		x	x				x ²⁸⁷	Commissioner for the Promotion of Rights of Persons with Mental Disorders
	Public Registry of Malta (private mandates)											Not accessible to the public
NL	Central registry for curatorship and administration	x	x	x	x	x	x	x	x	x	x	
PT	Civil Registry	x	x	x	x	x	x	x	x	x	x	
SE	Registries of representations				x							For internal use only Extracts upon request
SI	Civil Registry	x	x	x	x	x						Inspectorates
	Databases of the Social Work Centres											For internal use only
SK	Registry (Certified copies)	x	x									Persons proving a legal interest

²⁸⁷ under supervision of the Court.

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