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IMPACT ASSESSMENT REPORT

Accompanying the documents

Proposal for

a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults

and

proposal for a Council decision authorising Member States to become or remain parties, in the interest of the European Union, to the Convention of 13 January 2000 on the International Protection of Adults

{COM(2023) 280 final} - {SEC(2023) 208 final} - {SWD(2023) 154 final} -
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GLOSSARY

Throughout the report, where a term is marked with an *, the **reader is invited to consult this Glossary** for an explanation of the term.

Term or acronym	*Meaning or definition*
Adjustment costs	In this report, direct costs borne by competent authorities related to a possible EU intervention. They include 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, and training[1].
Advance directives	Instructions given or wishes made by a capable adult concerning issues that may arise in the event of his or her incapacity*. They concern, most commonly, matters of health, end-of-life decisions, or other personal matters, such as the place of care/treatment of the adult. They may be addressed to the world at large, without necessarily identifying who should carry them out, or be addressed to (a) specific person(s). Advance directives may be included in powers of representation* or not.
Adult	In this report, person aged 18 years old or more who (i) has established powers of representation* or (ii) is a vulnerable adult, i.e. not in a position to protect his or her financial and personal interests, regardless of whether the powers of representations have been confirmed (*see the definition*) or a measure has been ordered.
Applicable law rules	Provisions designating, on the basis of certain criteria (known as connecting factors), the law applicable to a situation in which the laws of different jurisdictions may apply.
Brussels IIb Regulation	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 (recast). The Brussels IIb Regulation establishes PIL rules* governing cross-border cases in matters such as divorce, parental responsibility or child abductions.
Call for evidence	Consultation activity conducted through the Commission's 'Have your say' portal between 21 December 2021 and 29 March 2022. It presented the initial thinking of the Commission behind the PA initiative* and gathered the public's views. See the replies here: Civil judicial cooperation – EU-wide protection for vulnerable adults (europa.eu).
Charter	Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012. Article 26 of the Charter provides that *'The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.'*
Central Authorities	Public agencies or organisations (mostly ministries of justice) that have been designated by Contracting Parties to the *HCCH 2000 Protection of Adults Convention** in accordance with Article 28 of the Convention. They play a key role in facilitating the implementation and operation of the Convention.

[1] For details regarding costs and methodology for their calculation, see Annex 4. See also the typology of costs in Better Regulation Toolbox (November 2021).

Choice of jurisdiction	In this report, an agreement or a unilateral act by an adult, which provides that future proceedings concerning his or her protection should be resolved by a particular court or a court in a particular Member State.
Choice of law	In this report, an agreement or a unilateral act by an adult, which provides that future proceedings concerning his or her protection should be resolved under the law of a particular State.
CJEU	Court of Justice of the European Union.
CNUE	Council of the Notariats of the EU (*Conseil des notaires de l'Union européenne*). CNUE represents 24 national notariats and 45 000 civil law notaries in the EU.
Competent authority	A public authority of a Member State, or an entity acting in an official capacity and authorised under national law to establish, control, terminate or register a protection measure*, or powers of representation* in the field of adults' protection. Competent authorities can be public bodies, courts or notaries for example.
Confirmed powers of representation	In some States, powers of representation* only enter into force when they are confirmed, i.e., when a judicial or administrative authority, a public body or an appropriate professional confirm that they are in force and in conformity with the law applicable[2]. Powers of representation* are established when the adult concerned is still in a position to protect his or her interests (full legal capacity). Depending on the applicable legislation, they do not necessarily enter into force immediately, but only when, for instance, the insufficiency of the faculties of the adult is established.
Contracting States/Parties	States/Parties who have ratified or acceded to the *HCCH 2000 Protection of Adults Convention** and where it is applicable. This includes the following Member States: Belgium, the Czech Republic, Germany, Estonia, Greece, France, Cyprus, Latvia, Austria, Portugal and Finland. It also includes the following non-EU Contracting States: Monaco, the United Kingdom (in respect to Scotland) and Switzerland.
Council decision on adults / Council decision	A decision that would be proposed by the Commission and adopted by the Council of the EU (with the consent of the European Parliament) and which would oblige Member States to join the *HCCH 2000 Protection of Adults Convention** within an agreed timeframe. Those Member States that are already party to the Convention would be authorised to remain parties to the Convention. The adoption of the Council decision on adults is included as a part of policy options 2 and 4.
Cross-border situations / Cross-border cases / Cases with cross-border implications	Situations and/or judicial or administrative proceedings which are connected to two or more States. In the context of this report, a case with cross-border implications arises, for instance, in the following situations: - where a protection measure taken by the authority of one State has effect in another State (where the adult owns assets for instance); - where powers of representation* established in one State have effect or are to be confirmed* in another State; - where measures aimed at the protection of an adult who lives in one State, or has the nationality of one State, are sought in another State;

[2] Conclusions and Recommendations n° 43 and 44 of the 2022 Special Commission.

	- 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 contemplated.
DG JUST	Directorate-General for Justice and Consumers of the European Commission.
Digitalisation proposal	The Commission's proposal for a Regulation 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. (COM (2021) 759). This proposal builds on the precedent of the recasts of the Service of Documents* and Taking of Evidence Regulations*, which have, *inter alia*, improved the transmission of cooperation requests by obliging authorities to use secure electronic channels of communication. The mandatory digitalisation part of both Recast Regulations will start applying from 1 May 2025.
Legal Aid Directive, or the Directive	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*. The Directive applies to cross-border cases as defined in its Article 2. Among others, it establishes the right of people habitually resident in a Member State who are unable to meet the costs of judicial proceedings to benefit from legal aid in another Member State.
EAVA Study	European Parliament's study accompanying the European Parliament's Legislative Initiative Report: Salm Ch. (2016). *Protection of Vulnerable Adults – European Added Value Assessment.*
ECR	European Certificate of Representation. For details of this Certificate to be introduced under policy options 3 and 4, see Annex 6 of this report.
EJN-civil	The European Judicial Network in civil and commercial matters, set up by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters. It is a network of contact points (one or more contact point in each Member State) replying to daily requests for assistance in cross-border cases. The members of the network are, in addition to the contact points, judicial authorities and other national authorities, representatives of the legal professions (lawyers, notaries, bailiffs) who are involved in the application of the EU instruments. EJN-civil meets several times a year to discuss the application of these EU instruments (plenary meetings) and also to solve difficulties in sensitive or complex individual cases (bilateral meetings). EJN-civil also prepares factsheets on national law and practice guides on EU instruments.
e-Justice Portal	European e-Justice Portal. A EU website that provides information to the public and the practitioners in all official EU languages on EU law and national justice. In addition, the e-Justice Portal provides multilingual forms, most of them in a dynamic format, which can be completed online, and generated in any official EU language.
EJTN	European Judicial Training Network. Platform and promoter for training and exchange of knowledge of the European judiciary. The EJTN has 36 members representing Member States and other bodies. The EJTN aims to foster a common legal and judicial European culture, by coordinating judicial training exchanges and programmes.
ELI	European Law Institute.
(cross-border) Enforcement	In this report, the process by which the consequences of a protection measure taken by a competent authority in one State are given effect in another State, through the use of coercive action. For the sake of simplicity, the term 'enforcement' covers (i) the procedure required for a decision enforceable in the country of origin to be declared enforceable in the State where enforcement is sought (also called *declaration of enforceability*, *registration*, or *exequatur**), and (ii) the actual procedure of forced execution.

	Enforcement is rarely needed in cases involving the protection of adults, and may only be necessary to implement medical treatments or to manage assets in case a third party refuses to cooperate (transferring money from an account or selling a property).
Enforcement costs	Costs borne by Member States associated with activities linked to the implementation of a possible EU initiative. They may include costs for monitoring and possible inspections or litigation. They may also include costs for running the Central Authorities*[3].
EU	European Union.
EU-26	All Member States of the European Union with the exception of Denmark[4].
EUDPR	Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data by the Union institutions and bodies.
EUR/€	Euro.
Ex lege powers of representation	In some Member States, the protection of an adult by a spouse or by other relative is provided by law. In those cases, the spouse or the relative is automatically vested with the power to represent the adult in the event that the latter is not in a position to protect his or her interest.
Exequatur	Formal court procedure by which a foreign judgment is declared enforceable (i.e. 'validated' before it can be enforced) in the State where enforcement is sought. In this report, it is also included in the term enforcement*.
Explanatory Report	Explanatory Report on the Hague Convention* of 13 January 2000 on the International Protection of Adults by Paul Lagarde.
External contractor	Milieu Consulting SRL. The external contractor prepared a study* that supported the preparation of this report.
Free movement, free movement right	Right to move and reside freely within the territory of the Member States as provided for in Articles 21, 45, 49 and 56 TFEU*, Directive 2004/38/EC and relevant case law of the CJEU.
FTE	Full-Time Equivalent.
Focus group(s)	Focus groups with key stakeholders were organised in September 2022 in the context of the consultations by the Study by an external contractor* to complete the data collection. The first focus group gathered Member States' competent authorities and EU level NGOs, primarily to collect information on the available policy options. The second focus group, gathering practitioners and academic experts, collected quantitative data on the costs of the existing procedures on the basis of 8 illustrative scenarios.

[3] For details regarding costs and methodology for their calculation, see Annex 4. See also the typology of costs in Better Regulation Toolbox (November 2021).

[4] In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the TFEU, Denmark does not take part in any measures adopted under Title V TFEU (thus including Article 81 TFEU). As a result, Denmark would not take part in any EU PIL* initiative aimed at the protection of adults. **Since the Protection of adults initiative* would not apply in Denmark, this Member State is excluded from this report.**

	For details, see Annex 9 – Consultations by the external contractor.
GDPR, General Data Protection Regulation	Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
Ground for refusal, refusal ground	A reason that can be invoked by the courts (or the competent authorities*) to refuse the recognition* or enforcement of a measure or of authentic instrument*.
HCCH, Hague Conference on Private International Law	Intergovernmental organisation with its seat in The Hague, which is working for the progressive unification, by means of international conventions, of the rules of private international law. The HCCH currently has 91 members: 90 States and the EU. Since its inception, over 40 conventions and instruments have been adopted under the auspices of the HCCH, including the HCCH 2000 Protection of Adults Convention*.
HCCH 2000 Protection of Adults Convention / the Convention	The Hague Convention of 13 January 2000 on the International Protection of Adults. The Convention was adopted on 13 January 2000 under the auspices of the *Hague Conference on Private International Law**. The Convention deals with the cross-border protection of vulnerable adults in *cases with cross-border implications**. The Convention provides a set of rules that determine, in cross-border cases, the State whose authorities have jurisdiction to take protection measures and the law to be applied. It also ensures the automatic recognition and rapid enforcement of protection measures between its Contracting States. Finally, it establishes cooperation between the authorities of those States. It has been ratified by 11 EU Member States, as well as Monaco, Switzerland and the United Kingdom (in respect to Scotland only). For details about the Convention, see Annex 5.
IA	Impact Assessment.
(legal) Incapacity	The legal status of an adult who is living with mental, intellectual, physical or sensory impairments and is not in a position to protect their own interests by reason of such an impairment or insufficiency of their personal faculties, and whose legal capacity to act is limited or supported.
ISG	Inter-Services Steering Group.
Jurisdiction/international jurisdiction	The power conferred upon a court or tribunal to hear a specific case; international jurisdiction is the competence of the courts of a particular country to hear a case.
2021 Legal Study	L. Adriaenssens, C. Borrett, S. Fialon, P. Franzina, N. Rass-Masson and I. Sumner (2021). *Study on the cross-border legal protection of vulnerable adults in the EU.* The 2021 Legal Study was commissioned by DG JUST* to examine the national laws and practices of Member States and evaluate the current main legal difficulties and practical challenges in the field of the protection of vulnerable adults.
MS, Member State	Member State of the European Union.
NGO	Non-governmental organisation.
Non-EU countries	Countries which are not members of the European Union.
Non-EU Contracting Parties / States	Contracting Parties to the *HCCH 2000 Protection of Adults Convention**, i.e. States which have ratified, or acceded to, this Convention and which are not EU Member States.
Non-contentious matter(s)	Legal matter(s) that do(es) not involve a dispute, a conflict or a litigation between two or more parties, but where courts may still be required to issue a decision, in order to achieve the protection of a single (vulnerable) party (protection of children or adults), and/or the protection of overriding social interests (adoption, nationality).

OIOO / One in, one out	One in, one out. The 'one in, one out' approach requires offsetting new burdens resulting from a Commission proposal by reducing existing burdens in the same policy area[5].
OIOO costs savings	Costs saved by adults and their representatives and families under the Policy Option 4 that can qualify as cost savings under the *one in, one out approach*. These cost savings concern only savings on administrative costs, such as costs for translations, supporting documentation and evidence, and thus do not include the savings on administrative fees and court fees and costs for legal representation. For details, see Annex 4: Costs reduction estimates under the 'One in, one out' approach.
OPC, Open Public Consultation	Open Public Consultation conducted through the Commission's 'Have your say' portal between 21 December 2021 to 29 March 2022 to gather data and the views of stakeholders with regard to a possible initiative on the protection of adults in cross-border situations. See the Summary Report here: 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.
PA initiative / Protection of adults initiative	For the purposes of this report, it refers to any of the possible policy options that the Commission may undertake to enhance the legal protection of vulnerable adults in cross-border situations in civil matters in the EU, in particular the PA Regulation* and the Council decision on adults*.
PA Regulation / Protection of adults Regulation / Regulation	A regulation that would be proposed by the Commission and adopted by the co-legislators which would lay down EU-wide harmonised rules concerning the PIL* aspects of the protection of vulnerable adults. The adoption of a PA regulation is included in the policy options 3 and 4. The possible scope of such regulation is detailed in Section 5 and Annex 6 of this report.
PIL, Private International Law	A branch of law governing the rules to be applied in cases with an international dimension, to solve conflicts of jurisdiction and conflicts of law (e.g. where the laws of two different States could potentially apply, or the courts of two different States could have jurisdiction). Those rules also govern the recognition and enforcement of foreign court decisions. They also often establish judicial and administrative cooperation between the authorities of the States concerned. Within the same State, PIL rules differ depending on the matter (for instance courts will have jurisdiction based on the nationality of the applicant for the protection of an adult but they will have jurisdiction based on the habitual residence of a spouse for divorce proceedings). Despite the adjective 'international', PIL is the national law (legislation or case-law) that governs cases with a cross-border element. However, EU regulations and international conventions (whether bilateral or multilateral, such as the HCCH conventions) may replace these national PIL rules in certain matters and areas.
PO	Policy Option.
Powers of representation	A document (unilateral act or agreement) which enables the adult to plan, in advance, how they want to be supported in the exercise of their legal capacity and autonomy when such adult is not in a position to protect their interests. The powers of representation often involve the conferral of particular powers on one or several natural persons, or an institution, charged with representing and/or assisting the adult concerned regarding his or

[5] See Tool #59, Better Regulation Toolbox (November 2021).

	her personal or financial interests. Powers of representation may contain a choice of jurisdiction* and a choice of law*. They may also contain advance directives*. Depending on the national law, powers of representation may be established without any formal requirement (in writing on a simple sheet of paper) or have to be drawn up and registered by a specific authority (such as notary). Depending on the national law, powers of representation must or can be registered, either when they are established or at a later stage when they are confirmed. See also Confirmed powers of representation*.
Procedural costs	In this report, costs related to administrative and court procedures borne by competent authorities and by vulnerable adults and their representatives under the baseline and all policy options [6]. The procedural costs borne by competent authorities relate to handling administrative and judicial procedures involving vulnerable adults in need to arrange cross-border cases and correspond primarily to the working time needed to implement these procedures, as well as translation in the language of the requested State*. The procedural costs borne by vulnerable adults and their representatives encompass charges and other costs in relation to various judicial procedures and administrative arrangements. These include for instance the costs of arranging recognition of powers of representation*, various certificates, exequatur, sworn translation of documents, sending registered letters, etc. Vulnerable adults or their families often hire representatives who make all or some of these arrangements for them, which implies costs of legal assistance. These costs can be very substantial and, in some cases, may include also costs of medical assessment and travel abroad.
Protection measures	Protection measures are those measures directed at the protection of the person or property of a vulnerable adult. They could be imposed on the basis of judicial decisions, but can also be taken by administrative authorities or any competent authority under the law of the State where the measure is taken. They include *inter alia*: - the determination of incapacity* and the institution of a protective regime; - the placing of the adult under the protection of a judicial or administrative authority; - guardianship, curatorship and analogous institutions, including the designation and functions of any person or body having charge of the adult's person or property, representing or assisting the adult; - the placement of the adult in an establishment or other place where protection can be provided; - the administration, conservation or disposal of the adult's property; - the authorisation of a specific intervention for the protection of the person or property of the adult.
Competent authorities	In this report, judicial and / or administrative authorities which are competent in accordance with national law in the field of the protection of adults to: - take (and terminate) protection measures and / or decisions (depending on the context) in individual cases; - draw up powers of representation; - confirm powers of representation; - register powers of representations; - monitor or implement protection measures or powers of representation.

[6] For details regarding costs and methodology for their calculation, see Annex 4. See also the typology of costs in Better Regulation Toolbox (November 2021).

Recognition	For the purposes of this report, recognition should be understood broadly as any legal technique that makes a measure taken or authentic instrument drawn up in one State valid also as regard another ('Requested') State*. For the purposes of this report, 'recognition' should thus include also 'acceptance' (of authentic instruments). Recognition may require a formal (judicial) procedure for recognition, or can be automatic.
REIO	Regional Economic Integration Organisation.
Requested State	The State in which the protection measure* or powers of representation* are invoked, or where recognition, enforcement or assistance from other authorities is sought.
RESIJ fact-finding mission	A fact-finding mission commissioned by DG JUST and conducted by the European Network of Justice Inspection Services (RESIJ) to assess European civil judicial cooperation in the field of the protection of adults in 7 Member States. The fact-finding mission is based on visits to courts, interviews of adults' representatives, stakeholders (including judges, lawyers and notaries) and governmental experts. For the final report from the mission and its annexes including reports from Bulgaria, Spain, France, Italy, Portugal and Romania, see: https://www.i-justitia.eu/en/network-news/.
Representative	In this report, any person who has been entrusted with the protection and the support of an adult, in relation to financial or personal interests. The extent of the powers conferred or the support provided vary depending on the faculties of the protected adult, and the national legislation. A representative may carry out (on behalf of the adult) the acts of disposal of his or her assets, or may provide support in decision making. A representative may also take all financial and personal decisions, if the adult is not at all able to express his or her will (for instance, when the adult is in a coma). A representative can be a partner, a family member, a third party or an organisation/public institution.
RSB	Regulatory Scrutiny Board.
Service of Documents Regulation	Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast). OJ L 405, 2.12.2020, p. 40.
SDGs	United Nations' Sustainable Development Goals. The 17 SDGs are at the heart of the 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015.
2022 Special Commission	Special Commission on the practical operation of the *HCCH 2000 Protection of Adults Convention** held in The Hague from 9 to 11 November 2022. During the 2022 Special Commission, the practical operation of the Convention was discussed by the representatives of the Contracting States and legal practitioners. For details, see: HCCH | First meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention.
State of origin	The State in which the court that rendered a judgment is situated.
Study supporting the impact assessment / Study / Study by an external contractor	Milieu Consulting SRL (2022). *Final Report – Civil aspects of the cross-border protection of vulnerable adults.* This study supporting the impact assessment was commissioned by DG JUST to inform the preparation of this report.
Substantive law(s)	Set of legislation governing purely domestic cases. The term substantive law is used in this report as opposed to private international law ('PIL') rules*.

	In the field of the protection of adults, substantive law rules include the rules governing the conditions and consequences of a protection measure, as well as, where applicable, the rules governing the establishment, the extent, the validity and the termination of powers of representation*. They also include procedural rules (how to seize a court, how to serve a decision etc.).
Taking of Evidence Regulation	Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast). OJ L 405, 2.12.2020, p. 1.
TEU	Treaty on European Union.
TFEU	Treaty on the Functioning of the European Union.
UN	United Nations.
UNCRPD	The United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities. The UNCRPD aims to ensure that persons with disabilities enjoy their human rights and are treated as full and equal members of society.
Vulnerable adult(s)	Adults who are unable to protect their interests because of an impairment or insufficiency of their personal faculties. In this report, included in the term adult*. 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. In practice, there are several situations triggering the need for legal protection, in particular: a) cognitive disability; b) physical disability preventing the adult to express his/her opinion; c) temporary physical illness preventing the adult to express 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).
WHO	World Health Organisation.

1 1 INTRODUCTION: POLITICAL AND LEGAL CONTEXT

Vulnerable adults are defined as persons aged 18 or more who are not in a position to protect their interests, due to an impairment or insufficiency of their personal faculties[7]. They are dependent on others for actions or decisions concerning their health and welfare, and/or their property. If not organized in advance (through powers of representation*), their protection involves the adoption of court or administrative measures (protection measures*) to provide the support they need to exercise their legal capacity (from signing rental contracts to opening bank accounts or consenting to medical treatments). The support provided preserves vulnerable adults from significant risks, such as undue influence or neglect.

Over the last two decades, an Area of Justice has been established in the EU. More than 20 EU regulations harmonising rules of Private International Law* ('PIL') have been adopted in the field of civil and commercial matters to provide full legal certainty to people and companies crossing EU borders, who thus benefit from the same legal protection as the nationals of the EU Member State in which they happen to be. Those EU regulations do not affect Member States' domestic substantive legislation, they simply determine which rules apply to cross-border contexts. In particular, these PIL* rules aim to provide efficient solutions to determine i) the courts of which Member State have jurisdiction ('international jurisdiction'); ii) which law is applicable ('rules on applicable law'); iii) the rules governing the recognition and enforcement of decisions made in one Member State in other Member States; and iv) the rules on cooperation among authorities of Member States. Finally, for instance in cases of parental child abduction or child support recovery, Central Authorities* have been established and provide their assistance to the most vulnerable people, who are even more vulnerable in an international situation.

Questions relating to the legal capacity of adults and in particular protection measures for vulnerable adults have however been excluded from the scope of all those EU instruments to date. As a result, **no EU common PIL rules governing the cross-border cases involving the protection of adults** exist and this area continues to be regulated by Member States' national PIL rules. This creates a patchwork of (often diverging) PIL rules applicable to the protection of adults throughout the EU. As a result of these discrepancies, vulnerable adults and their representatives currently **face multiple barriers** when they move abroad, buy or sell property, or simply manage their bank accounts in another Member State.

Due to the ageing of the population and a frequent decline in the faculties of **elderly people,** as well as the increasing number of persons with disabilities of all ages[8], the number of persons in need of legal protection is increasing and will continue to increase. Combined with the mobility of the European population within the internal market, the number of adults in the need of protection in cross-border cases will only grow. A significant part of the persons needing legal support to handle their personal or financial interests are **persons with disabilities**[9]. Their rights, including their right to autonomy, access to justice, or right to property, are safeguarded by the *United Nations Convention on the Rights of Persons with Disabilities (UNCRPD*)*. Their rights must be protected also in cross-border cases to afford continued protection and full legal certainty within the EU.

The right to self-determination[10] is the cornerstone of the rights of persons with disabilities, in particular those with mental impairments or psychiatric diseases. However, this right may be violated for example

[7] Like many other legal concepts in the EU, the concept of vulnerable adult varies among the Member States. This report uses the definition provided by the *HCCH 2000 Protection of Adults Convention** (as agreed by the delegates of the 30 States which negotiated the Convention in 1999).

[8] See e.g. the *World Health Organisation factsheet on disability* from 2 December 2022 and the 2011 *World Report on Disability*.

[9] Notably, not all persons with a disability are vulnerable adults, as defined for the context of this impact assessment. See the definition in the *Glossary* above.

[10] Article 3 and 19 of the UNCRPD* and Article 26 of the Charter*.

when adults are placed in institutions and denied the right to decide on the conditions of their care[11]. A solution exists in the legislation of 16 Member States: the possibility for people to make arrangements in advance for a time when they will no longer be in a position to protect their interests *('powers of representation'*).* Contrary to protection measures taken by competent authorities, powers of representation are established by the adult. An efficient protection of the right to autonomy in cross-border cases requires that those arrangements are recognised swiftly without the need for complex proceedings. This applies in particular in the 11 Member States whose legislation does not provide for such arrangements[12]. At the moment, the recognition* abroad of powers of representation is highly uncertain.

The international legal context

The international instrument currently applying to the PIL* aspects of the cross-border protection of vulnerable adults is the ***HCCH 2000 Protection of Adults Convention****[13]. The Convention provides solutions to the questions arising in cross-border cases. In summary, and subject to a number of exceptions and special cases, it provides rules to establish jurisdiction (with the main criterion being the habitual residence of the adult), and to determine which law applies to a case. It provides for an automatic recognition of foreign protection measures and creates a system of cooperation between Central Authorities* to facilitate the management of cross-border cases[14]. The Convention allows one or more Contracting States to conclude agreements on the same matters[15].

It is in force in 14 States in total. The Convention is only open to sovereign States; therefore the EU cannot become a party to the Convention itself, only its Member States can ratify* it. Only 11 of the 27 Member States have ratified the Convention so far[16]. While ratification is largely uncontroversial[17], several possible factors for its low uptake by the Member States[18] were identified, including:

a) The protection of adults is **a non-contentious matter*** with only one party involved, and most of the time without an intervention of an attorney, as opposed to other contentious matters where the two parties assisted by a lawyer are more likely to challenge the first instance decision. Thus, the protection of adults generates less case law (despite the high number of first instance decisions) and does not involve legal professionals to a great extent. Therefore, it also attracts less attention from authorities or media. More generally, vulnerability limits the ability of people to express themselves and assert their rights. Due to their own limitations, it is much more difficult to seek the assistance of an attorney or to bring their case to the media.
b) In the area of the adults' protection, cross-border cases are much **less frequent** than purely domestic ones and therefore attract less political attention. The prevalence of cross-border cases involving the protection of adults is also relatively lower than in other areas of civil justice (like divorce or maintenance recovery).
c) The uptake of international conventions, especially in the field of PIL, requires **promotion work among potential future Contracting Parties**. The lower uptake of the HCCH 2000 Protection

[11] Council of Europe Report on The right of people with disabilities to live independently and be included in the community (coe.int), p. 35 and following.
[12] BG, EE, EL, IT, CY, LV, LU, NL, PL, SI, and SK.
[13] For more information on the functioning of the *HCCH 2000 Protection of Adults Convention*, see Annex 5.
[14] The limits of the Convention* that have been observed and the potential for closer cooperation between the EU Member States will be further described below, especially in Section 5 and in Annex 6.
[15] See Section 5 of Annex 5.
[16] Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Latvia, Portugal are party to the Convention. Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland have signed the Convention (without ratifying it), thus indicating the political commitment to become Contracting Parties to the Convention.
[17] See for instance the 2021 Council Conclusions, where all Member States called for the ratification of the Convention.
[18] In contrast, based on the available evidence and consultations, the low uptake is not caused by ineffectiveness of the Convention or by the fact that the rules are not fit for purpose.

of Adults Convention could thus be partially influenced by the fact that it was promoted internationally less than other comparable conventions[19].

d) The above factors contribute to a lower visibility of the problem, thus leading to the most important reason for the low uptake of the Convention, which is **the political prioritisation of the ratification of the Convention** by national legislators. The prioritisation problem was raised not only during the consultations in the context of this impact assessment[20], but also by the recent *report by the European Law Institute*[21] that noted that one of the reason for the low ratification rate by Member States was that this topic was not high on governmental agendas given its political nature and a limited number of beneficiaries as compared to other regulatory areas. This report further noted that some States consider **substantive reforms of their national legislation** on the protection of adults in view of the UN Convention on the Protection of Persons with Disabilities and have therefore postponed the ratification of the Convention (envisaging a legislative package for both measures together).

The above factors seem to contribute to a lower ratification rate of the HCCH 2000 Protection of Adults Convention.

The **2006 United Nations Convention on the Rights of Persons with Disabilities** ('UNCRPD') is an 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'. The UNCRPD* was signed by the EU in 2007 and entered into force for the EU on 22 January 2011. All EU Member States are also party to this Convention. However, the UNCRPD Committee, in its 2015 report on the implementation of the UNCRPD in the EU, expressed its concern when it comes to the barriers faced by persons with disabilities when moving from one Member State to another. The Committee recommended that the EU 'takes 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'[22].

The UN Special Rapporteur on the Rights of Persons with Disabilities and the Independent Expert on the enjoyment of all human rights by older persons made a joint statement concerning the relationship between the HCCH 2000 Protection of Adults Convention* and the UNCRPD* in 2021 clarifying that **both conventions are complementary and are not in contradiction with each other**[23]. The HCCH 2000 Protection of Adults Convention* at times refers to measures that should be avoided to ensure a human rights approach, save in exceptional cases where no other solution exists (such as 'guardianship' as a protective measure which may be necessary in case of a coma for instance). However, the Convention

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[19] This can be inferred for instance from the fact that the first Special Commission on the functioning of the HCCH 2000 Protection of Adults Convention was organised only in 2022, *i.e.* twenty years after the adoption of the Convention. In comparison, eight special commissions have already been organised on the operation of the HCCH 1996 Child Protection Convention.

[20] During the consultations, representatives of Member States which are currently not parties to the Convention stated that they would prefer to join the Convention following a coordinated EU-level action, which would not only provide the necessary impetus for them to prioritise this topic in their legislature but would also simplify their national internal processes leading to the ratification of the Convention.

[21] The report states on p.10: *Different reasons have been put forward to explain the limited number of ratifications of, and accessions to, the Hague Convention, including the fact that some States are reviewing their legislation on the protection of adults and will only consider joining the Convention after they have made such review. Be that as it may, the described state of affairs is unsatisfactory.*

[22] Concluding observations on the initial report of the European Union: Committee on the Rights of Persons with Disabilities, (2015) draft prepared by the Committee.

[23] See the Joint statement by the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, and the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler – Reflections on the Hague Convention (2000) on the International Protection of Adults from July 2021. The statement was drawn up on the basis of a study on *Interpreting the 2000 Hague Convention on the International Protection of Adults consistently with the 2007 UN Convention on the Rights of Persons with Disabilities* commissioned by the UN Rapporteur on the rights of persons with disabilities.

only establishes PIL rules* and can and shall be interpreted flexibly to accommodate any development in substantive laws of its Contracting States without locking any concepts or approaches into place.

The national legal context

The national substantive law rules differ among Member States. For instance, the 2021 Legal Study* found that **protection measures*** for vulnerable adults differ considerably from one Member State to another. Protection measures are available in all Member States, whether adopted by courts or administrative authorities. However, only 16 out of the 27[24] substantive laws of the Member States provide for the possibility that **powers of representation*** are used in case of incapacity*[25].

This report does not in principle deal with the differences in the substantive laws* of Member States but mainly addresses the differences in their **private international law rules** concerning the protection of adults in cross-border situations as each Member States has their own PIL* rules governing cases with an international element (governing international jurisdiction, applicable law, recognition and enforcement and cooperation among competent authorities). First, in States that are not party to the *HCCH 2000 Protection of Adults Convention**, those rules often significantly differ from one another. For instance, five Member States that are not party to the Convention[26] consider that their courts have jurisdiction if the adult concerned is habitually resident in their Member State, two Member States if the adult is a national of their State. The other Member States have both of these 'connecting' criteria[27, 28]. In addition, a specific procedure to obtain recognition or enforcement of a foreign protection measure is almost always required. The courts responsible for recognition and enforcement are different in each Member State and this information is not available from abroad. When seeking recognition of a measure in a cross-border case, no assistance can be provided to foreign practitioners.

Second, by contrast, the Member States that are Contracting States* apply the (same) PIL* rules included in the Convention* to cases that involve other Contracting States to the Convention[29].

Besides the diversity of PIL* rules, several other legal aspects affect vulnerable adults specifically in cross-border cases. These include the (limited) **access to legal aid** in other Member States. Legal capacity proceedings involve going to court, with experts' evidence (usually medical reports) and increased costs compared to other fields of law. All Member States grant access to legal aid to the most disadvantaged people who cannot afford legal representation. In cross-border cases, the 2003 Directive on legal aid* establishes the right to legal aid for persons who are habitually resident in the EU, subject to the legislation of the requested State*, as well as a cooperation mechanism for sending a cross-border request for legal aid. However, the scope of the Directive* is limited, and it is ultimately for the requested State*, based on the information submitted and under the conditions set by its domestic law, to decide on the application. There are significant differences between the national legal aid systems. In some Member States the eligibility criteria for legal aid are restricted to people with very low income only, and the scope of this legal aid may also be very narrow[30].

Information about protection measures* adopted and powers of representation confirmed* in a particular State is mostly only accessible to the national authorities. When an individual shows some vulnerabilities

[24] AT, BE, CZ, DE, DK, ES, FI, FR, HR, HU, IE, LT, MT, PT, RO, and SE.
[25] In addition, 7 Member States provide in their national law for automatic **conferral of representative powers to a relative** or a spouse of a vulnerable adult (*ex lege* powers of representation*).
[26] DK, EL, ES, NL and SK.
[27] BG, HR, HU, IE, IT, LT, MT, PL, RO and SE.
[28] A table giving an overview of the content of the PIL* rules of non-Contracting Parties to the Convention can be found in Annex 10 of this report. This analysis has been prepared by the authors of the 2021 Legal Study*.
[29] In relation to non-Contracting States*, they generally apply their national PIL* rules. To some aspects, such as the applicable law, they will apply the rules of the Convention with non-Contracting Parties*.
[30] European e-Justice Portal. *Legal Aid*.

and has connections with another State, authorities need to access the information on (i) the existence of protection measures in another Member State(s) and (ii) the resulting need of the adult to be supported. This can occur in cross-border cases in civil, commercial, and criminal matters. By 2021, all but six Member States had set up registries for protection measures[31]. Registries in those Member States that have a registry tend to be managed centrally[32], with the exception of three Member States[33] where the registries are handled by local or municipal authorities. While some registries include information on the protection measures[34], others only contain information on powers of representation*[35]. Fifteen Member States have a digitalised registry[36]. The access to these registries is generally limited to competent authorities, although some Member States also enable the protected adult or their representatives to have access to them[37]. Cross-border access to registers is only possible in five Member States[38], one of which only partially[39].

The political context

The cross-border protection of adults. To enhance and facilitate cross-border protection of vulnerable adults*, EU institutions have, since the adoption of the *HCCH 2000 Protection of Adults Convention**, continuously promoted the ratification of this instrument by the Member States.

The European Commission has been encouraging Member States to ratify the Convention for several years[40]. It granted financial support to improve cooperation in that field (for instance the project 'The Vulnerable'[41]), translated the *Explanatory Report to the Convention** into the official languages of the EU, co-organised a joint conference with the HCCH called 'Cross-border Protection of Vulnerable Adults' in 2018 and included the cross-border cooperation in the *Strategy for the rights of persons with disabilities 2021–2030*[42].

The European Parliament has been supporting a possible EU legislative initiative to ratify and complement the Convention since 2008. 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 to ensure 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) TFEU[43].

The Council has likewise encouraged ratification of the Convention by the Member States since 2008[44]. 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 Convention to raise awareness among courts, practitioners and all stakeholders involved in the implementation of the Convention, and those Member States that are not yet Contracting States 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 UNCRPD*[45].

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[31] BG (however Bulgarian law provides for the establishment of a registry), CY, EE, EL, PL and RO.
[32] This is the case for AT, BE, CZ, DE, DK, FI, ES, HR, HU, IE, LU, NL and SK.
[33] All Member States, except of BG (would be managed by local and municipal authorities once set up), IT and SI.
[34] AT, BE, ES, FR, HU, IT, IE, LV, MT, PT, SE, SI and SK.
[35] AT, BE, DE, DK, ES, HR, IE and PT.
[36] IT, MT and SI have only partially digitalised their registries.
[37] AT, BE, DK, ES, HR, LU and SI.
[38] DK, FI, IT, NL and SI.
[39] SI.
[40] European Commission. (2017). *Answer given by Ms Jourová on behalf of the Commission to the parliamentary question E-003844/2017.*
[41] Council of the Notariats of the European Union. *The Vulnerable*. http://www.the-vulnerable.eu/?lang=en
[42] European Commission. (2021). *Union of Equality Strategy for the Rights of Persons with Disabilities 2021–2030*.
[43] European Parliament resolution of 1 June 2017 with recommendations to the Commission on the protection of vulnerable adults.
[44] Council Conclusions adopted at the 2899th Council meeting of 24 October 2008.
[45] Council Conclusions on the Protection of Vulnerable Adults across the European Union 2021/C 330 I/01, (2021).

Synergies with the digitalisation of judicial cooperation. With the COVID-19 pandemic, the trend towards increased **digitalisation** has been reinforced in the EU[46]. The increased importance of digital technologies also impacts cross-border judicial cooperation, as the use of digital means of communication has the potential to improve access to justice, facilitate the cooperation between the competent authorities* of different Member States, improve their efficiency and resilience, and alleviate some obstacles in cross-border cases (e.g. language or legal barriers)[47]. In its Communication of 2 December 2020[48], the Commission committed to **make the digital channel the default option in EU cross-border cooperation ('digital by default' principle)**. Consequently, on 1 December 2021, the Commission tabled a digitalisation proposal*[49]. The proposal aims at fully digitalising the written communication inherent to judicial cooperation in 23 existing EU legal instruments on civil, commercial and criminal matters.

2 2 PROBLEM DEFINITION

In cross-border cases, adults* are confronted with a **patchwork of different PIL rules** which makes it difficult, if not **impossible, to know in advance** which court will have jurisdiction over their case, which law will apply, and at the end of the day whether or not protection measures already taken, or arrangements made in advance will be accepted abroad. Outside the borders of their Member State, **adults cannot predict how their case will be handled**. The same goes for legal practitioners advising clients or drawing up legal acts (e.g. powers of representation). As soon as action needs to be taken abroad, for instance when it is necessary to close or open a bank account, transfer funds, sell a property, move, accept a succession, stop a medical treatment, consent to a surgery, be placed in an institution etc., an additional burden in the form of **lengthy and expensive proceedings** is put on the adults, and in turn on their families, representatives and on competent authorities.

In some instances, domestic law requires the initiation of court proceedings to obtain the recognition of the protection measures or the powers granted in another Member State[50]. Eventually, at the end of this long process, the **recognition may be refused** by a court or by other actors in a State other than the State where the measure was adopted. In that scenario, even though a measure is in place in the State of origin, a new procedure will have to be initiated in that other State to advance the case[51].

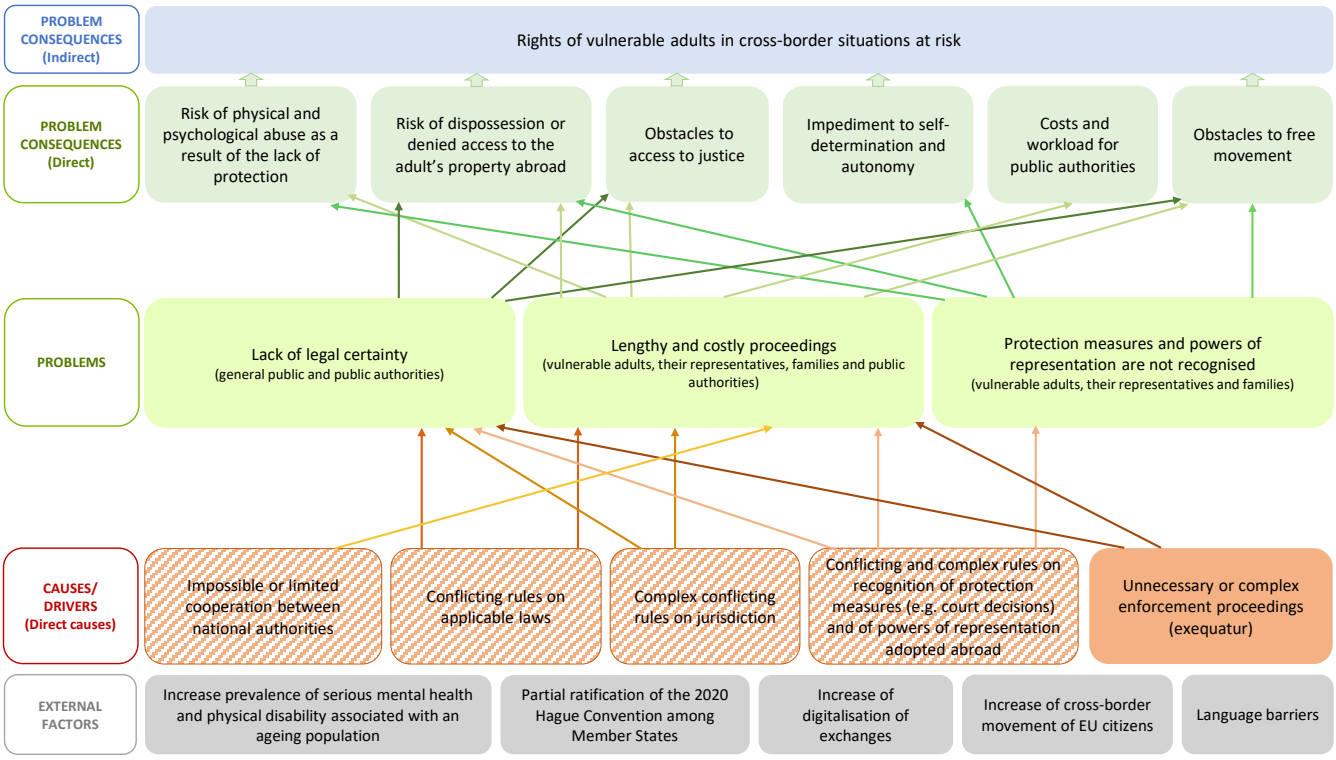
Despite the lack of statistical information (and the lack of comparability of such information where it exists), the findings on the existence of these challenges are based on solid evidence gathered, e.g. through fact-finding missions, consultations of practitioners and experts, online surveys, interviews, case law, and multiple reports from the academia and the European Parliament[52].

It must be noted that in describing the problems, the upcoming section differentiates between Member States that are and that are not Contracting Parties to the HCCH 2000 Protection of Adults Convention only partially. This is because the Convention can only solve problems in Contracting Parties in relation to other Contracting Parties and not where one of the Member States involved is not a Contracting Party. The problems thus remain when cross-border cases involve one of the 15 EU Member States that have

[46] Economist Intelligence. (2021). *Digitalisation surges in Europe during the pandemic*.
[47] European Commission. (2021). Impact assessment of the digitalisation proposal*.
[48] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions on digitalisation of justice in the EU: a toolbox of opportunities.
[49] EUR-Lex - 52021PC0759 - EN - EUR-Lex (europa.eu).
[50] In 12 non-Contracting Member States, recognition of a foreign protection measure requires judicial proceedings, see Annex 10.
[51] For a list of all Member States where recognition is not automatic and has to be granted by a court, see Annex 10.
[52] For details concerning the sources of evidence for this report, see Annex 1 (Evidence, sources and quality) and Annex 2 (Stakeholder consultations).

not ratified the Convention[53]. In addition, the Convention provides only 'core' private international law rules suitable for international context but does not go as far as is the standard in the EU justice area, thus leaving some issues unaddressed. **Annex 7 of this report elaborates in more detail which problems could be solved if all Member States were Contracting Parties to the Convention and which problems the Convention does not address.**

Figure 1: *Problem Tree*



2.1 2.1 What are the problems?

Understandably, cross-border cases have been identified by many stakeholders as more complex than domestic ones, since they always involve the prior application of PIL* rules on top of the national rules, to establish jurisdiction and the applicable law, and, if applicable, to assess whether a foreign measure can be given legal effects[54]. This complexity is also *per se* problematic for the adults, their families or representatives as well as for authorities and legal practitioners, and should be therefore reduced to the extent possible in all cases.

In this context, three specific problems were identified: (**i) the lack of legal certainty; (ii) lengthy and costly proceedings; and (iii) non-recognition of court decisions and non-acceptance of powers of representation***.

2.1.1 2.1.1 The problems

2.1.1.1 The lack of legal certainty

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

[53] Currently, among the total of 220 possible bilateral relationships that the 11 Contracting EU Member States can have with the other EU Member States, only 55 are covered by the Convention (25% of the cases), while 165 (75%) are not covered. The prevalence of the problems and their consequences in Contracting EU Member States is therefore currently only reduced to a limited extent by the operation of the Convention.

[54] French judge and representatives from Council of Bars and Law Societies of Europe (CCBE) – the first focus group*.

the subjects of a legal system know exactly what to expect and how to adapt their conduct. This principle is therefore fundamental for preserving individual freedom[55].

In cross-border situations, the principle of legal certainty implies that adults themselves, but also their relatives and representatives should be assured that their rights and protection granted in one EU Member State will be recognised and guaranteed in all other Member States, and should know under which law their case will be considered and by which authority. Legal certainty also entails for competent authorities of Member States to know which foreign body to communicate with, to ensure that their nationals are protected abroad, and to be able to have a reliable and quick access to foreign law when necessary.

Legal certainty is considered a significant problem by the stakeholders consulted in the context of this impact assessment. Out of 33 stakeholders interviewed by an external contractor* about the importance of the lack of legal certainty as an obstacle to the protection of vulnerable adults in cross-border situations, 29 (88%) considered this issue as very or rather important. Of all problems identified, the lack of legal certainty was regarded as the most important problem by the stakeholders. This conclusion is corroborated by many other sources beyond the interviews. For instance, concerns based on broad practical experience in multiple cases have been expressed by stakeholders representing a large number of legal practitioners[56]. This issue was also expressly mentioned by stakeholders in replies to the Call for Evidence*, where a number of practitioners reported experiencing practical difficulties related to the lack of legal certainty in cross-border situations[57]. It follows from the nature of this problem that statistical data on the phenomenon of legal uncertainty could not be collected.

2.1.1.2 Lengthy and costly proceedings

Despite the fragmented data on the average length and costs of cross-border proceedings[58], it is estimated that the average duration of cases involving the protection of adults and having cross-border aspects is considerably longer than that of comparable national cases[59]. An extreme example of such long duration was a case concerning the recognition of a protection measure between Germany and Greece which lasted 12 years[60].

There are inherent factors to those cross-border cases that automatically increase their length and the costs incurred, such as the language difference, the geographical distance, or the different legal systems. In addition, courts have the obligation to verify their international jurisdiction and applicable law which is an additional procedural step that takes time. In some cases, they will also have to rule on the recognition of a foreign measure.

The most frequent case scenarios and the corresponding **types of costs that the adults* may incur in cross-border situations are illustrated in Table 1**: *Costs borne by adults in cross-border context: current situation - illustrations per various scenarios.*

When asked about the problems impeding the protection of vulnerable adults in cross-border situations, 20 out of 33 stakeholders interviewed by the external contractor estimated that the length and costs of

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[55] Fenwick, M., & Wrbka, S. (2016). The Shifting Meaning of Legal Certainty. In M. Fenwick & S. Wrbka (Eds.), *Legal Certainty in a Contemporary Context: Private and Criminal Law Perspectives* (pp. 1–6). Springer Singapore.

[56] This issue was for instance raised during the interviews by a representative of the CNUE* – an organisation representing over 45 000 notaries from the EU.

[57] 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*, indicating that it was 'frequent' for persons protected in Luxembourg to have assets abroad, and that managing such assets was 'very problematic' and required representation by a lawyer. The small Court of Valenciennes (France) indicated having approx. 1300 cross-border cases concerning the protection of adults.

[58] The computer system of national courts does not allow the foreign element in a case to be recorded, making it thus impossible to compare the duration of national and international cases. For more details, see the report from the RESIJ fact-finding mission*. Out-of-court cases are by definition not recorded and not subject to statistical data.

[59] See the 2021 Legal Study*.

[60] Anthimos, A. (2019). *International Civil Litigation in Greece – The Odyssey of a legal guardian*.

judicial or administrative proceedings for vulnerable adults, their families and representatives were very or rather important problems. An association representing a category of vulnerable adults also highlighted to the external contractor the importance of the length and costs of judicial and administrative proceedings for vulnerable adults, their families and representatives. The report of the RESIJ fact-finding mission* underlined that in the absence of well-known and efficient tools, vulnerable adults and their families have to turn to lawyers to solve their cross-border issues. The report added that professional representatives have to take complex steps and activate their network to solve the problems arising from cross-border situations. Although legal aid can be granted to adults to help them meet the costs of legal proceedings, it does not cover all costs[61], is only attributed to people with very limited income, and does not apply in all cross-border cases. The Legal Aid Directive* has a limited scope and does not apply to the recognition of protection measures*, or to service of documents for instance. Legal aid lawyers designated by the requested State* often do not (properly) speak the language of the applicant which adds to the duration and complexity of the case. In addition, only 12% of the people are aware of the existence of cross-border legal aid, and therefore 88% are unlikely to benefit from this possibility. In summary, the current situation and the excessive duration and costs of proceedings significantly affect the most vulnerable people[62].

Additionally, as explained by a judicial representative interviewed, some national specific requirements to give effect to a foreign measure can add to the length and costs of proceedings, such as time-consuming medical examinations that were not required in the State of origin*.

2.1.1.3 Non-recognition of court decisions and non-acceptance of powers of representation

Depending on the application or not of the *HCCH 2000 Protection of Adults Convention*, or on the nature/origin of the protection (judicial decision or powers of representation*), a protection effective in one Member State may not be recognised, and thus implemented, in other Member States. This occurs: (i) either when a judicial measure is not recognised by the court of the requested State* which rejects the application for recognition under its own PIL* rules; or (ii) when powers of representation* are not accepted by private actors (banks, insurances, real estate agents, medical staff etc.) who refuse to give effect to foreign measures/mandates, and do not allow the representative to act on behalf of the adult concerned.

Finally, when it is not known that a protection measure in another Member State exists, authorities (for instance registrars and notaries) and the general public will logically not be able to act according to it (and the measure will thus remain *de facto* unrecognised as if it did not exist). The situations described above occur in particular when adults live abroad for part of the year, or own assets abroad that they wish to dispose of or simply to manage efficiently. In that case, contradictory protection measures may be adopted across the Member States.

Overall, 24 out of 32 stakeholders (75%) interviewed by the external contractor regarded the **non-recognition of protection measures and confirmed powers of representation** in cross-border situations as a very or rather important obstacle to the protection of vulnerable adults. This issue was also substantiated by **numerous examples of non-recognition provided by stakeholders during the consultations undertaken in the context of this impact assessment,** which are summarised in the illustrative scenarios in Annex 4.

[61] Transportation, translation costs or costs incurred abroad are not covered by this financial support. See the 2021 Legal Study*.

[62] Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of directive 2003/8/EC to improve access to justice in cross border disputes by establishing minimum common rules relating to legal aid for such disputes, and European Parliament Resolution of 11 June 2013 on improving access to justice: legal aid in cross-border civil and commercial disputes.

2.1.2 2.1.2 The consequences of the problems

These problems have several **adverse consequences,** and jeopardise the protection, and therefore, the health and the assets of the adults at risk. Several fundamental rights are directly jeopardized, such as the right to property, to autonomy, to access to justice and to free movement*. Courts and authorities are affected by the additional workload entailed by the cross-border nature of the cases and do not receive any assistance.

2.1.2.1 Health risks

The length and costs of proceedings in cross-border situations create a risk to the physical and mental health of vulnerable adults. For instance, delays in obtaining necessary medical treatment may occur in cross-border situations*[63]. Some stakeholders explained that the physical and moral integrity of vulnerable persons may not be adequately protected in cross-border cases where these adults have to go through burdensome proceedings. According to them, these cases where the physical and mental integrity of adults* is not adequately protected could be in contradiction with the obligations for the EU and Member States under the UNCRPD*[64].

The non-recognition in some Member States of protection measures adopted in other Member States can also create a risk to the physical and mental health of vulnerable adults due to the discontinuity of the protection across borders (the vulnerable adult is under certain safeguards in one Member State and under different or no safeguards in another Member State). This can create an environment prone to abuse of the adult[65]. In that regard, situations of neglect in cross-border cases* or even abductions or dispossessions were reported on numerous occasions by practitioners and judges[66] in the context of consultations, including during the focus groups* organised in the context of this impact assessment, as well as various conferences involving stakeholders over the past couple of years[67]. In addition, the non-recognition of protection measures in one Member State that have already been adopted in another Member State can create distress for and have negative psychological and mental impacts on the persons concerned and their families.

2.1.2.2 Access to justice

The **lack of legal certainty** can become a barrier to **access to justice** for vulnerable adults[68]. This is highlighted by a report from the *Centre for Disability Law and Policy* and the *Institute for Lifecourse and Society,* which underlined that access to information for people with disabilities is particularly hampered in cross-border cases*[69] due to: (i) the very impairments of the people; and (ii) the inability of the justice system to provide adequate assistance; and (iii) the additional barriers in international situations (distance, language, etc.). The same could be inferred not only for persons with disabilities, but for vulnerable adults in general.

Specifically in the context of this impact assessment, **access to justice** for vulnerable adults can be hindered by the **length and costs of proceedings** in cross-border cases. The sometimes exorbitant costs

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[63] Representative of the Council of Bars and Law Societies of Europe (CCBE) – during the first focus group*.
[64] European Disability Forum. (2022). *Ensuring disability rights in civil judicial cooperation – Recommendations on civil aspects of the cross-border protection of vulnerable adults*.
[65] Indeed, protection of adults is considered by WHO* as an efficient strategy to avoid abuses. WHO Factsheet on abuse of older people Abuse of older people (who.int).
[66] Cases presented in the first focus group* 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.
[67] 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.
[68] Inclusion Europe. (2022). *Consultation on Civil aspects of the Cross-border protection of vulnerable adults*.
[69] Flynn, E., Moloney, C., Fiala-Butora, J., & Echevarria, I. V. (2019). *Access to Justice of Persons with Disabilities*.

of particularly complex proceedings, the fact that these costs are not necessarily covered by 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 justice[70]. This is especially true in a cross-border context[71].

2.1.2.3 Dispossession and financial loss

The lack of legal certainty can also lead to **reluctance by third parties** to enter into transactions with the vulnerable person. One example pointed out by a report of the European Law Institute (ELI)[72], 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 latter[73].

The excessive length and costs of proceedings in cross-border situations involving vulnerable adults lead to a significant **risk of dispossession and/or denied access to the adult's property abroad.** In cross-border situations, vulnerable adults can be deprived of their ability to manage their financial affairs abroad due to the proceedings they would have to go through. From the interviews carried out, it appears that private institutions like banks are particularly demanding and require steps that vulnerable adults often cannot take, such as travelling to a foreign country and being present during the transaction in question. This consequently restricts the vulnerable adult's access to their bank accounts and assets. Additionally, the issue of the language barriers (and the requirement of costly translations) tends to exacerbate the pre-existing difficulties that vulnerable adults may face in their interactions with foreign institutions[74]. Finally, the costs entailed because of the cross-border nature of the proceedings may discourage adults from asserting the rights related to their assets abroad.

A **risk of dispossession and/or denied access to the adult's property abroad** can also arise from **non-recognition**, in particular when national PIL* rules do not provide for automatic recognition or, even when they do so, when private actors refuse to recognise a measure or powers of representation*. The costs linked to the non-automatic recognition of a measure and the need to start judicial proceedings can be very high (hiring a foreign lawyer, travel costs, etc.). In cases where the measure is not recognised, vulnerable adults or their representatives will not be able to access assets located abroad at least during the proceedings, and even indefinitely if they are deterred from starting judicial proceedings. In cases where an adult moves to another country, the absence of recognition of a prior decision in that country may also cause disruption in the protection, with no support to claim e.g. social welfare. One representative of a vulnerable adult interviewed by the external contractor experienced a non-recognition of a protection measure of the adult 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 report the relevant person to police earlier.

The inability 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 in the context of this impact assessment[75].

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[70] Ibid.
[71] Element raised by a representative of the Council of Bars and Law Societies of Europe (CCBE) during the first focus group*.
[72] European Law Institute. (2020). *The Protection of Adults in International Situations*.
[73] Ibid.
[74] See the 2021 Legal Study*.
[75] Indicated by the CNUE*.

2.1.2.4 Right to self-determination and autonomy

Not recognising powers of representation* may result in impeding the adults' **right to self-determination and autonomy.** Powers of representation give people the opportunity to decide for themselves (in advance) who will look after their personal and financial interests and thus promote personal autonomy. If powers of representation are not accepted in another country, the wish of an adult to assign powers of representation to a specific person, or to choose a law/court can be ignored[76,77], in breach of Article 12(3) of the UNCRPD*.

Even when powers of representation* are in principle accepted abroad, the **long, uncertain and complicated procedures** that vulnerable adults experience in cross-border situations[78] may lead to the non-respect of their wishes or preferences. For instance, when powers of representation* established abroad need to be confirmed in another country where the adult resides and has become incapacitated, competent authorities tasked with the confirmation of powers often need assistance since they have to assess the conditions of the entry into force of the powers under another law which they have to find, understand (legally and linguistically) and interpret, if necessary, in addition to applying some of their own substantive rules. Without proper guidance and assistance to these authorities, the respect of the wishes expressed in a foreign mandate may be hindered[79].

2.1.2.5 Freedom of movement

The freedom of movement* of adults (and their families) may be hindered by the lack of legal certainty. Factors that may deter adults from travelling or moving abroad may be for instance: (i) the uncertainty as to whether protective instruments will be recognised abroad; (ii) the uncertainty as to which law will be applicable; (iii) the expected difficulties with the communication with foreign legal actors; and (iv) the likelihood of having to face multiple procedures in different Member States and related costs. According to the ELI* report, such difficulties cause indirect discrimination, as mobility across borders for vulnerable adults becomes significantly more difficult to enjoy compared to that of people who have full legal capacity[80].

The **length and costs of proceedings** can additionally be a strong deterrent for vulnerable adults who would have wanted to move abroad, and some might not have the necessary resources to go through these proceedings[81]. Thus, the right to **free movement*** of vulnerable adults may also be disproportionally hampered by the prospect and/or the experience of **having to go through judicial proceedings,** while again, people enjoying full capacity will never have to go through those proceedings in cross-border cases.

2.1.2.6 Increased workload of competent authorities

Finally, the length and costs of proceedings also have an impact on competent authorities who experience increased workloads and costs when dealing with cross-border cases involving vulnerable adults. It can take courts longer to process cross-border cases dealing with the protection of adults than similar

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[76] European Law Institute. (2020). *The Protection of Adults in International Situations*.
[77] See the report from the *RESIJ fact-finding mission**.
[78] As an example of such proceedings which lasted more than three years, see the case *Civ. 1ère, 27 janvier 2021* n°19-15.059, where a French court of appeal refused the recognition of a Swiss mandate based on a range of additional criteria imposed by French law. The decision was later overturned by the French Supreme Court.
[79] Problems with circulation of foreign mandates were reported even by the Contracting States to the Convention at the 2022 Special Commission* (https://assets.hcch.net/docs/06db03d0-812c-42fb-b76d-4e6e05a91b3b.pdf). These problems are even more pertinent among non-Contracting States.
[80] European Law Institute. (2020). *The Protection of Adults in International Situations*.
[81] See the report from the RESIJ fact-finding mission* on the discrimination found by the inspectors between well-off litigants and others.

domestic cases[82]. The lack of harmonised rules on the matter adds to the workload of courts, as they have to deal not only with the application of their national law but also apply complex PIL* rules and eventually research on the application of foreign law[83]. In order to avoid additional costs and workload, judges sometimes tend to simply ignore the international element[84]. If they do so, they only apply their substantive law rules without verifying their jurisdiction and that their law should apply to the matter. In such circumstances (non-respect of international jurisdiction and applicable law), the chances are great that the decision will not be recognised abroad, and that adults or their representatives will have to start new proceedings in the requested State[85]. Difficulties encountered by competent authorities in obtaining information and cooperating with institutions of other Member States or non-EU 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 are usually even higher, especially as their competent authorities* do not have the assistance of a Central Authority*[86].

National provisions instituting powers of representation* have the objective of decreasing the workload of courts and encouraging non-judicial handling of protection cases. Where those mandates are not accepted by private actors (which will force representatives of the adults to start new protection proceedings*), or are only recognised after lengthy and costly proceedings, the objective of alleviating the workload of courts is not met.

2.1.3 2.1.3 The size of the problem

2.1.3.1 The number of vulnerable adults in the EU

The calculations based on different assumptions and the methodology detailed in Annex 4 resulted in two sets of estimates of the number of vulnerable adults in the EU: The first one is based on the number of protection measures taken by an authority in the EU, based on which there are approximately 5.1 million vulnerable adults (1.4% of the EU population). This estimate does not include the high number of adults protected by powers of representation and thus in reality underestimates the number of protected adults by some margin. The second estimate, based on the criteria of health complications, accounts for approximately 27.4 million of adults in a situation of vulnerability and in an assumed need of legal support (7.5% of the EU population).

2.1.3.2 The number of vulnerable adults in cross-border situations in the EU

This being said, not every vulnerable adult needs a cross-border arrangement. This report only concerns adults who need legal protection in cross-border situations.

There are no statistics available at EU level on the number of cross-border cases of protection. The IT systems of Members States' courts do not record the cross-border element. The available data are hence scattered and do not reflect the number of cross-border cases (79 cases of recognition proceedings in one Member State over a period of 5 years, 100 cases with a cross-border element in the court of another Member State over a period of 3 years). The RESIJ fact-finding mission* also revealed that most complex situations involving foreign aspects were settled without judicial intervention (with no record of those cases). The number of cross-border cases recorded by Central Authorities* remains low; however, these authorities are only involved in relation to cases involving two Contracting States to the Convention and out of these cases only in those where specific support of the Central Authorities is needed[87]. Therefore, all cases registered by Central Authorities* are by definition cases where one or several problems arose. A large proportion of the total number of problematic cross-border cases is however not reported to them,

[82] See the 2021 Legal Study*.
[83] Interview with the representative of a public authority of a non-Contracting State.
[84] See the report from the RESIJ fact-finding mission*.
[85] The German-Greek case referred to above provides a good illustration of the disastrous consequences of a court decision ignoring the PIL* rules: Anthimos, A. (2019). *International Civil Litigation in Greece – The Odyssey of a legal guardian*.
[86] A judge from the Court of Verona, Italy – 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.
[87] For the number of cases recorded by Central Authorities*, see Annex 4, Section 1.3.

for instance due to the lack of visibility and knowledge among competent authorities on the existence of the Central Authorities.

In the absence of data reflecting the actual number of cross-border cases, applying the methodology described in Annex 4 (based on EU population and mobility statistics), the number of vulnerable adults living abroad in the EU and potentially experiencing problems in cross-border context due to legal uncertainties can be estimated between ca. **144 649** (lower estimate calculated from the number of protection measures) and **780 169** (higher estimate calculated based on the reported health complications). See more details including estimates per country in Annex 4.

It **could be estimated that 100% of the population of vulnerable adults** in cross-border cases experience at least one of the problems described above in their lifetime[88]. For instance, the **problem of legal uncertainty affects by definition all adults in cross-border cases**, not only those that are vulnerable. Even in cases where the cross-border nature of the case is solely related to the foreign nationality of the adult (without having assets abroad), the rather likely possibility of a succession abroad, or a travel or return to the State of their nationality creates legal uncertainty.

Furthermore, the problems actually affect a much larger population. For instance, in all 16 Member States that provide for powers of representation* in their legislation, **virtually all adults living in those Member States are covered by the initiative,** since everyone has the possibility to establish powers of representation* (including advance directives* for future medical treatments) and would expect that they are respected not only in their Member State but also everywhere in the EU. Unlike other areas of law that cover only certain categories of persons or activities (children/parents in family law or companies in insolvency law), the issue at hand concerns the general public. Moreover, the **number of adults having been granted powers of representation cannot be estimated** (and is partly not reflected in the figures above), but it is in millions. However, **all of those who are in cross-border situations are affected by the legal uncertainty,** even if the powers of representation have not been activated yet[89]. In addition, **most competent authorities who by law need to assess the legal capacity of individuals, like notaries or land or civil registrars, are confronted with the lack of legal certainty** each time they have a case involving a foreigner[90]. This is because they do not have access to the registries of protection measures of the State of which this person is a national or where the person lived before.

Finally, given the duration of the cases, the problems of **lengthy and costly proceedings and non-recognition of measures and powers of representation*** are likely to affect all adults protected by a measure or powers of representation. They will necessarily arise when the adult owns property or financial assets abroad, moves abroad, inherits from a relative abroad, or has a medical emergency abroad.

Furthermore, in addition to the quantitative size of the problem in terms of the absolute number of adults affected, the seriousness of the problems encountered by this population also underlines that the current situation is highly undesirable. Where the problems described above arise, serious violations of the adults' rights take place (as illustrated in the Section 2.1.2 – *The consequences of the problems).* Under international law, EU law and Member States' law, persons with disabilities and mental disorders and older persons are granted the same rights as other persons. Situations in which those rights are fully not protected pose a grave problem in the EU, which has set itself the objective of creating, maintaining and developing an area of justice in which the free movement of persons is ensured[91].

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[88] This represents a conservative estimate since the percentage corresponds only to the number of vulnerable adults who are in cross-border situations and takes into account their whole lifetime. These estimates however underestimate the real situation as explained further. As regards the methodology behind the estimates in this impact assessment, see Annex 4.

[89] They may in their lifetime cross borders (for recreational, professional or personal purposes) and have emergencies abroad requiring that the powers of representation and the advance directives are immediately invoked.

[90] The first focus group*.

[91] Art. 3 TEU.

2.2 2.2 What are the problem drivers?

The problems, namely (i) lack of legal certainty; (ii) the lengthy and costly proceedings; and (iii) the absence of recognition of protection measures*, powers of representation* described above stem from a number of indirect causes. Some of the causes are of a legal nature and linked to the **complexity of the legal picture in cross-border cases,** which can be broken down into different drivers, but should also be considered as a whole. This complexity is a deterrent against vulnerable adults asserting their rights, as demonstrated by the RESIJ fact finding mission*: '[as a result of this disparity in cross-border cases], *most difficulties are ultimately resolved by the efforts and ingenuity of the representatives of the protected person who manage to obtain information or documents through an informal network of stakeholders. However, in addition to the energy and time required, this reality most often requires a financial outlay on the part of the vulnerable adult* [resulting in] *a breach of equality between European citizens, as their protection is facilitated when they have the financial means to pay the services of professionals (lawyers, notaries and other professionals, including translators).'* Some other drivers relate to **practical issues,** in particular the lack of modernisation and lack of guidance.

2.2.1 2.2.1 Conflicting and complex rules on applicable law

Conflicting rules on applicable law[92] are a direct cause of the **lack of legal certainty.** Depending on the legal systems of Member States, several connecting factors (nationality, habitual residence, location of the property, law of the competent authority) may apply to the cross-border cases concerning the protection of adults and thus designate different applicable laws in the same cross-border- case. This leads to uncertainties as to the legal regime applicable to the subject matter of the case and can result in practical issues. In addition, national rules on protection measures* and powers of representation* significantly vary from one Member State to the other. In the absence of identical and simple conflict of law rules, it is impossible to predict whether a mandate or a measure will be implemented in another State as was intended. Indeed, if the intended law is not applied, there is a **great risk that the measure or the mandate will be distorted and that their implementation will not correspond to what was initially envisaged.**

21 out of 29 respondents (72%) to the interviews carried out by the contractor* considered Member States' conflicting applicable law rules to be a very important or rather important factor explaining the lack of legal certainty. Literature indicates that, for instance, the determination of the law applicable to *ex lege* powers of representation* is problematic[93, 94]. Several stakeholders representing competent authorities and courts of the non-Contracting States* considered that the lack of legal certainty is important in **States that have not ratified the Convention*.** The same point was made at a workshop on cross-border protection of vulnerable adults organised by the Czech Presidency[95].

Even for **Contracting Parties*** to the Convention that all apply the rules provided for in the Convention*, the lack of proper guidance for the authorities can make the application of these rules complex. An illustration provided by a representative of a Council of Notaries (CNUE) refers to the issues encountered by practitioners when identifying which law applies to the authorisation of a donation abroad when powers of representation* have been established.

Conflicting applicable law rules* also lead to the 'non-recognition' of powers of representation*. The

[92] See Annex 10.
[93] 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*.
[94] 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'*.
[95] A Professor from the University of Milan, Czech Presidency. (20 September 2022). Workshop on the Cross-border Protection of Vulnerable adults.

acceptance of powers of representation* is not governed by the provisions on recognition, but by the applicable law provisions[96]. 11 Member States do not provide for such mandates in their national law[97], meaning that foreign mandates will be considered non-existent in those States.

2.2.2 2.2.2 Conflicting rules on jurisdiction

Member States' **conflicting rules on jurisdiction** impact **legal certainty**, as it may be difficult for vulnerable adults to know which court will have jurisdiction to hear their case. **Where the Convention does not apply,** Member States' PIL* laws contain different grounds for jurisdiction, such as the nationality of the person to be protected, or their habitual residence or domicile, and in some cases both or either of these two elements[98]. Two courts of different Member States can therefore be competent for the same case, for instance on the ground of nationality in State A and on the ground of habitual residence in State B.

Nineteen out of 28 respondents to interviews replied that **conflicting rules between Member States on jurisdiction** is a very or rather important factor explaining the lack of legal certainty. An organisation representing the interests of vulnerable adults 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 competent authority that referred to a case where two courts in two Member States had been seized of the same case, which was only discovered when the adult moved away[99]. In general, the transfer of a case from one court to another is also problematic in practice in the absence of common rules[100].

2.2.3 2.2.3 Conflicting or complex rules on recognition of foreign measures and powers of representation

Conflicting (and/or complex) rules on recognition* of foreign decisions (protection measures*) contribute greatly to **legal uncertainty,** as vulnerable adults, their representatives, and practitioners are not ensured that the protection measures adopted in one State will be recognised in other States where they move or where they own assets. Out of 28 respondents to the public consultation, 19 considered that conflicting rules between Member States on recognition of foreign decisions were very or rather important to explain the lack of legal certainty. According to the RESIJ fact-finding mission* in seven Member States, lawyers consider that the differences between the rules in the Member States constitute a serious difficulty for their work in cross-border cases. Even among Member States that provide for similar protection measures, differences remain regarding for instance the scope, duration and review, as well as forms of control of measures and representatives and remedies. Such differences may result, in the absence of a common rule on automatic recognition, in hurdles in the circulation of protection measures adopted in one Member State in another Member States with different rules.

The conflicting and complex rules on recognition of foreign measures and powers of representation indirectly lead to an increase of the length and costs of proceedings, as recognition procedures are complex and lengthy (thus generating costs), as identified by 15 out of 20 respondents (75%) to the open public consultation. In addition, in cases where the foreign protection measure or powers of

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[96] This is because, contrary to a court order, they are private instruments and their effects can always be challenged and are assessed according to the applicable law. In case they are challenged, courts shall rule on their existence and validity under the law designated by the national conflict of law rules.

[97] BG, CY, EE, EL, IT, LV, LU, NL, PL, SK and SI.

[98] See the 2021 Legal Study* and Annex 10 of this report.

[99] Feedback from the French authorities provided in the context of (i) a workshop organised by the Czech Presidency. (20 September 2022). Workshop on the Cross-border Protection of Vulnerable adults and (ii) *Responses of the French authorities to the public consultation on the initiative on the cross-border protection of vulnerable adults.*

[100] A judge from the Court of Verona, Italy – 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.

representation are ultimately not recognised (see below), applicants have to file a new request for protection/establish a new mandate in the Member State where recognition was refused, which will take time and generate new costs[101].

In States that are not party to the Convention and where the recognition is not automatic[102], recognition requires the initiation of judicial proceedings, thus entailing costs e.g. with regard to legal representation, court fees, legalisation and sworn translation of documents.

Quite evidently, **conflicting and complex rules on recognition diverging** from one Member State to another lead to **non-recognition of protection measures or powers of representation**[103]. According to one national authority, the refusal of recognition by a foreign private or public entity of a protection measure is one of the most recurring issues observed[104]. 12 out of 24 persons (50%) interviewed by an external contractor found the absence of harmonised rules on cross-border protection of vulnerable adults across Member States very or rather important to explain the non-recognition of protection measures.

A court may refuse to recognise a foreign decision based on the grounds for non-recognition listed in national law and in the Convention*. The grounds for refusal* are considered important by Member States to block foreign decisions that do not comply with their fundamental principles or for other reasons. However, 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 also not be recognised by non-judicial actors (e.g. banks), as they may not be familiar with foreign formats and languages, and could not know how to apply the complex recognition rules. 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 Convention (see below Section 2.2.4 *unnecessary and complex enforcement proceedings).*

Finally, in some Member States, powers of representation* are established and registered by a competent authority (such as notaries), and have a much higher evidential value than in other Member States. Neither the Convention* nor national PIL* rules provide for rules on the recognition of such powers of representation. Such rules could only be adopted at EU level, as was done in succession or matrimonial property matters[105].

2.2.4 2.2.4 Unnecessary or complex enforcement proceedings

The protection of adults is a non-contentious matter*, which rarely involves enforcement[106] of a court decision. Most court decisions consist in establishing a protection measure (e.g. designation of a representative and restrictions to the legal capacity or support in some activities) and authorising the adult or the representative to take certain types of actions (sell a property or invest the funds in a life insurance policy). Those decisions only need to be recognised (i.e. to be given a legal effect in another country), hence forced enforcement is almost never needed However, on many occasions, unnecessary exequatur* proceedings (which are a precondition for enforcement) are still requested.

Fifteen respondents out of twenty (75%) considered that the question of unnecessary enforcement

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[101] Lawyer from Belgium – the first focus group*.
[102] 12 Member States do not automatically recognise foreign decisions on the protection of adults: BG, ES, HR, HU, IE, LU, LT, MT, NL, RO, SE, and SK.
[103] See the 2021 Legal Study*.
[104] 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.*
[105] Articles 59 and 60 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 and Articles 58 and 59 of Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.
[106] See the term 'enforcement' in the Glossary.

proceedings is either very important or rather important. Several stakeholders interviewed by the external contractor* described situations where a protection measure taken in one Member State was not accepted in another Member State (mostly by non-judicial actors), with the requirement that an exequatur* procedure had to be carried out to ensure that the representative is authorised to act on behalf of the adult[107]. In these cases, it is often necessary to hire a foreign lawyer, to carry out various administrative procedures abroad, to send numerous letters or emails, documents and sometimes to organise a trip to the other country. In States that are not party to the Convention, there is no provision simplifying exequatur proceedings and a declaration of enforceability is required which delays the procedure. 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 abroad[108]. In terms of costs, a judicial representative gave the example of a case where all the costs associated with an exequatur procedure* and other ancillary costs were higher than closing the foreign account itself, which was the originally intended step.

In Contracting States to the Convention, Article 25(2) of the Convention provides that the enforcement of protection measures taken in another Contracting State shall be done via simple and rapid procedures. Nevertheless, the Convention leaves it to the Contracting States to implement such procedures, with no prescription regarding the costs. In fact, most Contracting States* have not put in place such simple and rapid procedures[109]. A respondent to interviews highlighted that the procedure in their country (a 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 document by post. Therefore, in the rare cases where enforcement is actually needed, the simplification brought by the Convention is not always a reality in practice[110]. Finally, in Contracting States as well, private actors such as banks, insurance companies, medical staff or real estate agents sometimes unduly require an exequatur of foreign decisions by the courts of their country (even though those decisions should be automatically recognised), in order to ensure that they will not be liable for damages caused by the guardian.

Those unnecessary proceedings automatically prolong procedures and generate significant additional costs for vulnerable adults, their families and representatives.

2.2.5 2.2.5 Absent or limited cooperation among national competent authorities

The representative of a competent authority of a non-Contracting State underlined that all the problems in the cross-border protection of vulnerable adults were to some extent related to the lack of cooperation among Member States. This is the case in particular for those countries that have not ratified the Convention, which thus cannot rely on the assistance of Central Authorities*. Central Authorities communicate with each other, provide information in their State regarding the international protection of adults or assist their authorities as well as foreign authorities in specific cross-border cases[111]. The difficulty of determining the competent foreign authorities and persons in non-Contracting States*, the need for translations on one hand, and the lack of imposed deadlines to provide a response on the other hand, mean that competent authorities spend more time and therefore more money on cases of vulnerable adults in cross-border situations.

Even among those Member States which have ratified the Convention and cooperate with each other, legal uncertainty for competent authorities remains to some extent. It is linked to the absence of an international court that would settle the differences of interpretation of the Convention between the Contracting Parties, and of a forum to discuss different interpretations of certain terms, such as the notion

[107] For more details on the situations at hand, see the illustrative example 3 in Section 4.
[108] Representative of the Council of Bars and Law Societies of Europe (CCBE) – the first focus group*.
[109] See the 2021 Legal Study*.
[110] Based on that observation, the 2022 Special Commission* issued C&Rs n°32 and 34.
[111] For more details on the role of Central Authorities, see Annex 5.

of 'habitual residence'[112]. While the Convention provides for open notions allowing flexibility and facilitating adaptation to all situations[113], in practice, this can lead to a lack of clarity and legal certainty for the public and professionals, as pointed out by literature[114] and stakeholders[115].

The **lack of legal certainty** is closely linked to either **complex or conflicting rules, or lack of knowledge of the PIL* rules.** Practitioners (lawyers, notaries, professional representatives) lack experience in the area of cross-border protection of vulnerable adults and are thus rarely able to meaningfully inform their client regarding what to expect in cross-border procedures. This is particularly problematic when it comes to producing **powers of representation*** abroad or when **managing assets** abroad or planning to move abroad.

The absent or limited cooperation between competent authorities increases the length of proceedings. This occurs at the level of courts and authorities, as well as at central level in non-Contracting States*. This particularly holds true for non-Contracting States, who cannot rely on the help of Central Authorities* to cooperate.

Despite the absence of significant concerns[116] and as identified by the European Parliament's EAVA Study* even Member States party to the Convention* have problems, including poor cooperation and communication between the competent authorities of the Contracting Parties. The Convention* makes communication between authorities mandatory in many cases[117]. This communication is however made difficult by the use of paper channels and the language barrier. An association representing a category of vulnerable adults referred to the lack of modernisation of judicial and administrative proceedings (i.e. not digitalised and lengthy), leading competent authorities to be very slow in taking practical measures in sometimes urgent situations. A judicial representative from a Contracting State mentioned during his interview that, of the 5 to 10 cases with a cross-border element out of the 90 measures he deals with (a proportion that remains constant over time), he never had a case in which guardianship judges or public prosecutors have exchanged with their foreign colleagues on their cases. This occurs despite the obvious need in cross-border cases to exchange information on the state of play of the proceedings but also on the personal and financial situation of the adult.

The lack of communication is another cause of non-recognition of protection measures, as recognition presupposes knowledge of the measure in the first place (the adults are often not in a position to provide this information) and suboptimal communication among competent authorities of different Member States about the existence of protection measures is a recurring issue. This was illustrated by an authority consulted in the context of this impact assessment, which accounted for numerous difficulties in determining the existence of a proceeding concerning a protection measure before the courts of another State, including because there is no centralised archive or register at EU level or even, depending on the State, at national level[118, 119]. 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 a buyer was limited, and that this person should be supported to sign the property sale.

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

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

[114] Drventić, M. (2019). The Protection of Adults in the European Union. *EU and comparative law issues and challenges series (ECLIC)*, *3*, 803–829.

[115] See Conclusions and Recommendations of the 2022 Special Commission* – conclusion No 22 clarifying that recognition of *ex lege* powers of representation* is not governed by the Convention.

[116] Representative from Germany and from the French Ministry of Justice – both the second focus group*.

[117] See Annex 5 and C&R n° 15 and 16 of the 2022 Special Commission*.

[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] On this point, see Annex 4 providing an overview of the registers in the Member States.

2.2.6 2.2.6 Access to foreign law

The current absence of cooperation between authorities and the lack of accessible information on (i) the conflict of law rules applicable in another Member State and (ii) the content of the substantive law* that is eventually found applicable create complications. These complications negatively affect the work of legal practitioners and representatives when advising their clients, as well as of Member States' courts that apply foreign law to a case. This lack of cooperation with determining the content of the foreign law equally **exacerbates all three problems**. This factor was mentioned by multiple stakeholders in the context of the consultations. 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 of CNUE* *The Vulnerable* offers information, but it remains limited in terms of information, content and languages available and does not cover all Member States[120].

The lack of clarity about the applicable law contributes to the length and costs of proceedings in non-Contracting States*, as courts which need to apply a foreign legislation cannot ask a Central Authority to provide information on that law. Obtaining this information in a foreign language takes time and requires more resources (human resources, translations etc.). In addition, a representative of notaries pointed out that most people and even legal practitioners do not know the content of foreign applicable law, as they are not experts on all the national legal systems. The assistance of external experts is thus required, likely resulting in additional costs.

Circulation of mandates adopted in another Member States is a recurring issue pointed out by literature[121] and by stakeholders[122]. As an explanation, a national authority, in their response to the OPC*, pointed out that the exercise of the mandate in a State other than that of the designated law implies for the person from whom recognition or acceptance is sought to have knowledge of that law, which is a significant difficulty[123].

2.2.7 2.2.7 Lack of training on the existing instruments

Finally, one of the main findings of the report from the RESIJ fact-finding mission* is that competent authorities of Contracting States*, including courts, are not sufficiently trained and aware of the Convention*, including on its rules on jurisdiction, recognition and cooperation. This creates many issues in practice. For instance, when an adult moves to another country, courts close their file instead of transmitting it to the court of another State with jurisdiction, and a new procedure has to be started from scratch in the other country[124]. In addition, the report showed that, in this area, there is a general lack of knowledge and subsequent underuse of European instruments of civil cooperation (facilitating service of judicial documents or taking of evidence abroad).

2.3 2.3 How likely is the problem to persist?

There is a reasonable expectation that the number of vulnerable adults will rise, especially because of the ageing population. The projected life expectancy in the EU is supposed to increase in the future by approximately five years by 2050 and expected to 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 2050[125]. While medical advancement can increase average life expectancy, it remains

[120] CNUE*, *The Vulnerable*.
[121] Ibid.
[122] Representative of the European Law Institute and notary from the Netherlands, both consulted in the first focus group*.
[123] 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.*
[124] Ibid.
[125] Report on mobility and inclusion of people with disabilities and the European Disability Strategy 2010–2020.

challenging to fight against health problems due to ageing, especially the Alzheimer's disease. Recent studies predict that by 2050, the number of people in Europe suffering from dementia will double, reaching more than 16 million people[126]. This figure is somewhat lower accounting only for the EU countries; nevertheless, these projections show that the number of vulnerable adults will rise significantly in the future.

Disabilities are also increasing worldwide[127]. The number of people with disabilities does not only grow because of the increase of life expectancy, but also because of non-communicable diseases, such as the chronic health conditions (diabetes, cardiovascular disease, cancer and mental health disorders) and lifestyle influenced disorders (such as alcohol use or drug addiction). There has been a **13% rise in mental health conditions and substance use disorders** in the last decade[128].

Another aspect, which may also increase the number of vulnerable adults in cross-border cases in the future is the **growing mobility of people in the EU.** The Joint Research Centre of the European Commission (JRC) identified migration as one of the 12 megatrends of the future[129]. Even though it is challenging to develop a reliable migration forecast, it is reasonable to expect it continues to grow in the future[130].

It is very challenging to provide a reliable future estimate about the number of vulnerable adults. As regards the estimates based on the **number of protection measures** ordered by courts, this estimate is complicated by the fact that the number of protection measures does not reflect completely the number of people who are actually supported in the exercise of their legal capacity. For instance, the support is often granted through (confirmed) powers of representation*, which in some Member States do not require any judicial procedure and in others require only a simple confirmation by a court or a competent authority. As explained in Section 2.1.3.1 *The number of vulnerable adults in the EU*, powers of representation are not always registered. The current number of people protected/supported by powers of representation* is hence impossible to measure, due to the overall absence of statistics. The increase of powers of representation* are often correlated with a decrease of protection measures ordered by courts, which complicates the picture. As regards the high-end estimates based on **long-standing health-related limitations in usual activities**, it is expected that these limitations will continue to grow, given their current increasing trend, and will reach almost 30 million in 2030 (as compared to 27.4 million in 2020).

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: **low-end estimate (based on the number of protection measures) of 190 000 adults and high-end estimate of slightly more than 1.1 million adults (based on long-standing health limitations)**. Both estimates are higher than those calculated for 2020, confirming the assumption that the number of vulnerable adults requiring cross-border protection will rise in the coming years, at least doubling by 2030 (based on the assumptions used). The estimates were developed based on the methodology and assumptions described in Annex 4.

Furthermore, the problems will most likely substantially increase in the absence of an EU action given the growing vulnerable population in cross-border situations. The problem drivers, problems and their consequences, as consistently identified in the literature and by stakeholders, are very likely to persist in the future in the absence of an EU action.

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[126] See e.g. Dementia in Europe Yearbook 2019 – Estimating the prevalence of dementia in Europe, p.96. Dementia and Alzheimer's disease in Europe – Statistics & Facts. Dementia and Alzheimer's disease in Europe - Statistics & Facts | Statista.
[127] See e.g. the *World Health Organisation factsheet on disability* from 2 December 2022 and the 2011 *World Report on Disability*.
[128] World Health Organisation Factsheet on mental health. Mental health (who.int).
[129] See 'Increasing significance of migration' at the booklet of the Megatrends Hub.
[130] European Commission. *Increasing significance of migration*.

3 3 WHY SHOULD THE EU ACT?

3.1 3.1 Legal basis

The aim of any EU intervention would be to improve the cross-border protection of adults who are unable to protect their interests because of an impairment or insufficiency of their personal faculties. This could be done through harmonisation of the rules on private international law concerning the protection of adults, that is, through the adoption of uniform rules on international jurisdiction and applicable law in cross-border cases and on the mutual recognition and enforcement of protection measures and of rules facilitating cooperation among competent authorities.

Any measures adopted by the EU concerning civil aspects of the cross-border protection of vulnerable adults would not change the substantive and procedural rules of the Member States and would thus respect the Member States' competence in substantive and procedural law. While the competence on substantive and procedural law concerning the protection of adults lies with Member States (including the definition of key concepts, such as 'guardianship', the rules concerning protection measures or concerning the legal effects of powers of representation* granted by an adult in anticipation of their incapacity*), the harmonisation of PIL* rules fall within the scope of the powers vested in the EU by Article 81 TFEU.

Depending on the policy option chosen, several legal bases allow the adoption of measures aimed at improving the cross-border protection of adults. First, an EU legislation on the protection of vulnerable adults could be adopted under Article 81(2) TFEU on measures concerning civil matters with cross-border implications[131]. The EU has a shared competence with Member States to adopt measures in this area through the ordinary legislative procedure.

Second, in addition to its internal competence, the EU also has external competence in the field of cross-border protection of vulnerable adults. The EU could thus adopt measures obliging Member States to ratify, *'in the interest of the Union'* the HCCH 2000 Protection of Adults Convention*. These measures could take the form of a Council decision adopted on the legal basis of Articles 218(5) and (6) and 81(2) TFEU under the consent legislative procedure[132]. The Council decision could set a certain timeframe within which Member States are obliged to ratify the Convention. That external competence exists regardless of the prior adoption of an internal EU legislation on the matter. The Council could thus adopt a decision obliging Member States to ratify the HCCH 2000 Protection of Adults Convention without first adopting an EU legislation on the matter. Where no internal EU legislation is in place, the Union has the competence to authorise Member States to become parties to the Convention. Depending on the determination of the risk of affectation of common rules, this competence may be either shared or exclusive. In both cases, the Commission may propose the adoption of a Council decision based on Article 218(6) TFEU authorising the Member States to become (or remain) parties to the Convention[133].

Third, the Council decision could be adopted together with (or shortly after) the EU internal legislation on the matter. Where EU internal legislation is in place and its rules may be affected by an external action, the EU has exclusive external competence, meaning that only the EU (as opposed to Member States) may act externally. The subsidiarity principle would not apply to the exercise of such exclusive external competence since Member States would no longer have the capacity to act individually.

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[131] For an explanation as to why Article 81(2) TFEU on civil matters with cross-border implications is the only possible legal basis for an internal EU legislation on the protection of adults and Article 81(3) TFEU on family matters with cross-border implications cannot be used as a legal basis, see Annex 6.

[132] Under this procedure, the Council of the EU can adopt legislation based on a proposal by the Commission after obtaining the consent of the European Parliament.

[133] See the judgment in case C-600/14, *Germany v Council (COTIF)*, EU:ECLI:C:2017:935, paras. 49, 62.

3.2 3.2 Subsidiarity: Necessity and added value of EU action

The problems addressed in this report only concern adults living in the EU who are in cross-border situations. The cross-border EU dimension of the problem is thus given by the very nature of the subject matter. The existing problems have consequences with an EU dimension as they negatively affect the exercise of the right of free movement* by the adults. The problems arise due to: (i) the different national PIL* rules on the protection of vulnerable adults, (ii) the lack of recognition* in one Member State of protection measures* and powers of representation* adopted in another Member State, as well as (iii) limited or non-existent cooperation mechanisms concerning the protection of adults between Member States' competent authorities. All these problem drivers also have a cross-border EU dimension. The harmonisation of the rules on these matters would thus help to mitigate or prevent the problems affecting adults in cross-border situations and would better safeguard their rights, including fundamental rights.

Such harmonisation cannot be achieved at the level of individual Member States, through an uncoordinated change in national PIL* rules. Such changes to national PIL rules on cross-border cases would not ensure the necessary uniformity of these rules and could not establish cooperation mechanisms among Member States that would facilitate resolution of problematic cases. The need for uniformity of rules (that would be applied in the same manner by the courts and other competent authorities throughout the EU) is at the basis of all other PIL* legislation of the EU and is generally supported by Member States and stakeholders. That uniformity also cannot be achieved by a directive, Commission recommendation or a guidance. In contrast with the leeway left by a directive to Member States to achieve its binding results and with a non-mandatory nature of a recommendation, the uniformity of the PIL rules on the cross-border protection of adults can only be achieved through an EU regulation or the HCCH 2000 Protection of Adults Convention.[134] The application of a single set of rules is a condition for the reciprocity and mutual trust. Similarly, the modernisation of judicial cooperation (digitalisation of communication between competent authorities via a specific decentralised IT system or the use of identical multilingual standard forms) can only be achieved by a directly applicable regulation[135].

Therefore, the necessary harmonisation and cross-border cooperation can be achieved either through an action at the EU level or through the ratification of the HCCH 2000 Protection of Adults Convention* by those Member States that are not yet a party to the Convention, or a combination of both.

As regards the Convention, the EU institutions, several Member States and the HCCH* have been actively promoting the ratification of the Convention by all Member States for many years[136]. Moreover,

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[134] In matters of international jurisdiction, applicable law and recognition and enforcement even small differences, which could be the result of a directive leaving some leeway in the process of transposition, would undermine the very purpose of the rules. For example, the purpose of uniform applicable law rules is that no matter where a particular matter is considered, it is always the same law that applies to this matter. If a Directive permitted for the flexibility and allowed both Member State A and Member State B to apply their own law respectively, the purpose of uniformity and legal certainty would be defeated.

[135] That is also why all 20 existing EU instruments regulating the issues in the field of private international law and cross-border procedures have been adopted as regulations.

[136] See the European Parliament's resolutions of 2008 on cross-border implications of the legal protection of adults encouraging *those Member States which have not yet signed or ratified [the Convention] to do so* and of 2017 on the protection of vulnerable adults encouraging *those Member States which have not yet signed or ratified it to do so as quickly as possible*. See also the 2021 Council conclusions on the protection of vulnerable adults across the European Union that invite *Member States which have already concluded that it would be in their interest to accede to the 2000 Hague Convention to begin as quickly as possible or actively continue with procedures for its signature and/or ratification.* See also the workshops on the protection of adults organized in the framework of the Portuguese, French and Czech presidencies. See also the December 2018 Joint Conference on the Cross-Border Protection of Vulnerable Adults organized jointly by the Commission and the HCCH that concluded that *States that are not yet Contracting Parties [to the Convention] are invited to assess the possibility and benefits of joining the Convention*. As a part of its promotional activities of the Convention, the Commission also translated the Explanatory Report* accompanying the Convention into EU languages. Finally, see the first recommendation of the 2022 *Special Commission** agreed by all States participating at the 2022 Special Commission (over 30 EU MS and

Member States' representatives seem to agree that the Convention is a relatively functional tool for advancing the rights of adults in an international context, in that its PIL* rules function well[137]. Nevertheless, only 11 of the 27 Member States have ratified the Convention. While Member States also largely agreed that it is important that all EU Member States become parties to the Convention to ensure that the protection of adults continues across the EU, many preferred that an initiative is taken at the EU level instead of by individual Member States. The reasons given for this preference were in particular the limited (even if growing) number of cases and a related limited prominence of the topic on the national legislative agenda, lengthy or cumbersome national decision-making processes needed for the ratification of the Convention, or the preference for closer cooperation within the EU through an EU legislation[138]. In addition, those Member States that are already Contracting States to the Convention likewise strongly support that other Member States join the Convention, so that the Convention receives a wider geographical coverage, that reciprocity within the EU is ensured and that more people benefit from the rules included in the Convention. Also these Member States supported that the EU should act concerning the protection of adults in cross-border situations.

An EU intervention appears necessary to ensure that adults are protected in cross-border situations in the EU. This is in particular given (i) the limited success that the mere promotion of the Convention had among EU Member States to date, (ii) the expectation that it could take many years or decades before all Member States become a Contracting Party to the Convention[139], (iii) the preference of many Member States that action is taken at the EU level, and (iv) some of the regulatory gaps of the Convention stemming from its international nature[140], which could only be filled by an EU regulation and not by a mere ratification of the Convention (digitalisation, increased cooperation, etc.).

The added value of an EU intervention consisting of an EU legislation and the ratification of the Convention* by all Member States, was also confirmed in the Parliament's EAVA Study*[141]. The necessity of the EU to act in this area was also supported by the stakeholders consulted in the context of this impact assessment[142].

Considering the increasing number of vulnerable adults and the growing mobility within the EU (See Section 2.3 *How likely is the problem to persist?*), an EU intervention becomes ever more needed to prevent an increase in the magnitude of the problems currently experienced and reported by competent authorities, practitioners, and vulnerable adults and their representatives across the EU.

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non-EU States) that: *endeavours should continue to be made to encourage ratifications of, and accessions to, the 2000 Convention by States willing and able to undertake the Convention obligations.*

[137] The meeting with the Member States representatives organised by DG JUST on 27 October 2022. *Cf.* also the Conclusions & Recommendations of the 2022 Special Commission*, conclusion No 3 that *'in general, the Convention is operating smoothly and that it is fit for purpose'*.

[138] This could include, among others, closer cooperation based on mutual trust, exchange of information through the e-Justice Portal* and the EJN-civil*, or digitalisation of the procedures. See Boxes 1 and 2 below.

[139] As noted in the Study by an external contractor*: *The optional ratification of the Hague Convention could take another 20 or 30 years before all Member States ratify it*, p. 42.

[140] Some provisions of the Convention are entirely fit for purpose even among EU Member States. Some others stay below the level of what can be done in an EU context to fully address the problems experienced by vulnerable adults in an EU. This is the case for instance of the unnecessary exequatur proceedings (provided for by the Convention but abolished by most EU instruments on the basis of mutual trust between EU Member States), the lack of recognition of foreign protection measures and powers of representation by private actors (addressed by the European Certificate of Representation) or the language barriers (solved by the multilingual standard forms). These limitations cannot be overcome at the international level, since the rules of the Convention as an international instrument cannot be changed and (even if there was an appetite for negotiating a new instrument) the level of mutual trust and coordination among countries that are not a part of the EU would not be sufficient to establish the same level of cooperation globally as is already the norm among EU Member States in various areas.

[141] In addition, the 2013 Study on a European Code on Private International Law: Cost of Non-Europe Report estimated that costs linked with legal uncertainty and thus legal costs arising in cross-border transactions and related emotional costs, amount to EUR 11 million per annum for vulnerable adults.

[142] See in particular the replies to the question 13 of the OPC* or Annex 4.

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

4 4 OBJECTIVES: WHAT IS TO BE ACHIEVED?

The following objectives reflect the problems identified in Section 2 and set out goals which the policy options aim to achieve. All the objectives contribute to the overall Treaty-based objective of ***creating, maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured***[143].

4.1 4.1 General objectives

The general objective of any EU policy intervention in the field of protection of adults in cross-border situations would be **to protect fundamental rights of vulnerable adults** (General objective), in line with Article 6 TFEU, the Charter and the UNCRPD*.

In cross-border situations concerning vulnerable adults, this would entail in particular:

- preventing physical and psychological abuse resulting from the lack of protection[144];
- preventing dispossession or denial of access to the adult's property abroad, as well as those of their families and representatives;
- ensuring access to justice[145];
- ensuring self-determination and autonomy of adults[146];
- facilitating the exercise by adults of the right to free movement[147].

4.2 4.2 Specific objectives

The specific objectives that should be achieved through the implementation of one of the policy options are, in cases involving the protection of adults in cross-border cases, to:

- increase legal certainty for the general public and competent authorities involved (Specific objective 1);
- facilitate the cross-border recognition of protection measures and powers of representation* (Specific objective 2);
- make proceedings faster and less expensive (Specific objective 3).

These specific objectives present strong synergies, and their achievement is at least to some extent interdependent. For instance, the facilitation of cross-border recognition of the protection measures would mean a reduction of conflicting rules on recognition which would positively affect both legal certainty and the length and costs of procedures.

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[143] See Article 3(2) of TEU providing that the EU should create an area of freedom, security and justice and Articles 67 to 89 TFEU titled Area of Freedom, Security and Justice.

[144] Typically, the medical treatment of a vulnerable person cannot await the recognition of a protection measure that has already been taken in another MS. 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 or their rights cannot be exercised.

[145] Vulnerable adults in cross-border situations need to face legal proceedings with reasonable timeframes affordable for them, and guaranteeing them a fair and predictable system and legal certainty.

[146] 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 other persons more than in a national case.

[147] Some adults may currently be deterred from exercising their right to free movement*. A greater legal certainty as to what should be expected in cross-border situations could have a beneficial impact on the freedom of movement of adults, their families and representatives, as they would not be discouraged from moving abroad or would not give up their projects abroad.

The following figure shows **the intervention logic** underpinning a possible EU intervention.

Figure 2: *Intervention Logic* (Source: Study by an external contractor*)

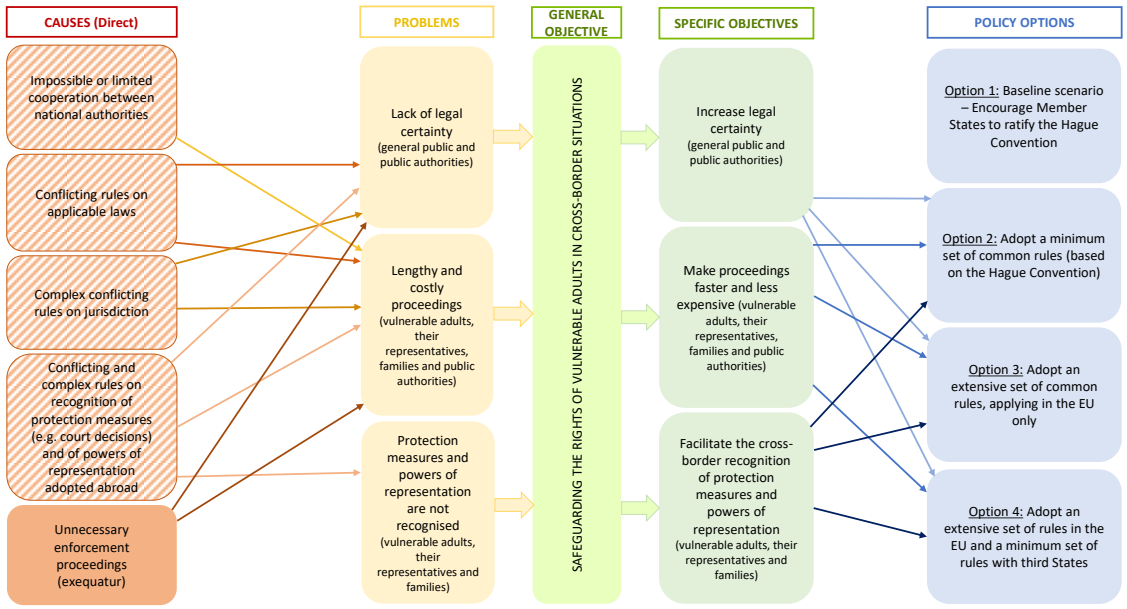
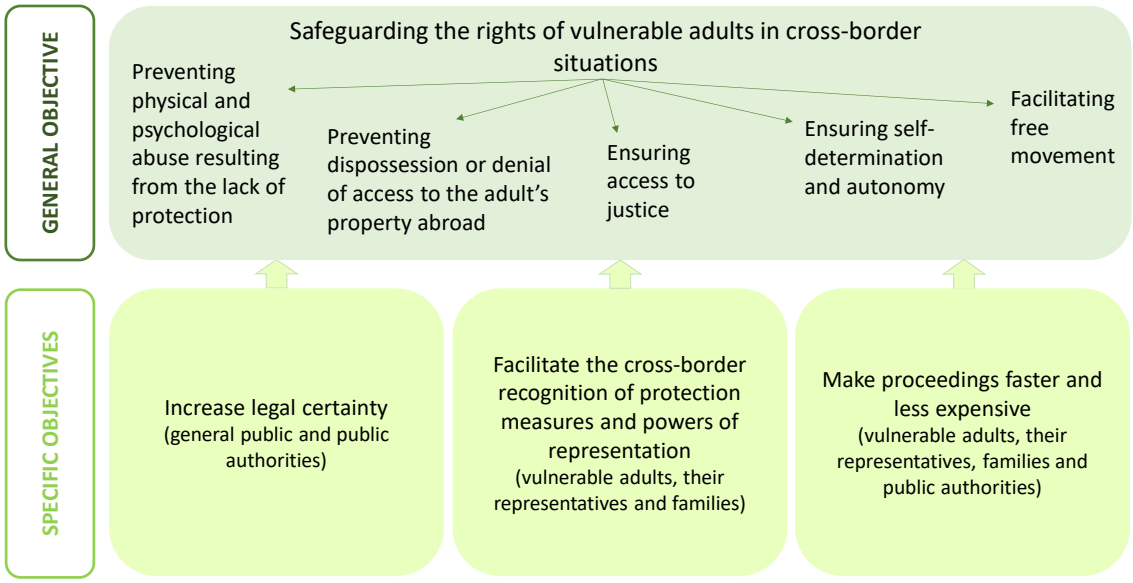


Figure 3: *Objectives tree* (Source: Study by an external contractor*)



5 5 WHAT ARE THE AVAILABLE POLICY OPTIONS?

The following policy options will be considered:

- **Option 1:** Baseline scenario
- **Option 2:** Council decision obliging Member States to join the Convention* within a certain timeframe
- **Option 3:** EU regulation on the protection of adults
- **Option 4:** A combination of Options 2 and 3 (a Council decision and an EU regulation).

5.1 5.1 What is the baseline from which options are assessed?

Under the baseline scenario (Policy option 1), the EU would make no policy change to address the problems described above. The EU institutions and the HCCH* would continue to encourage Member

States to ratify the *HCCH 2000 Protection of Adults Convention** but the EU would not take any additional legislative step, nor oblige Member States to ratify the Convention.

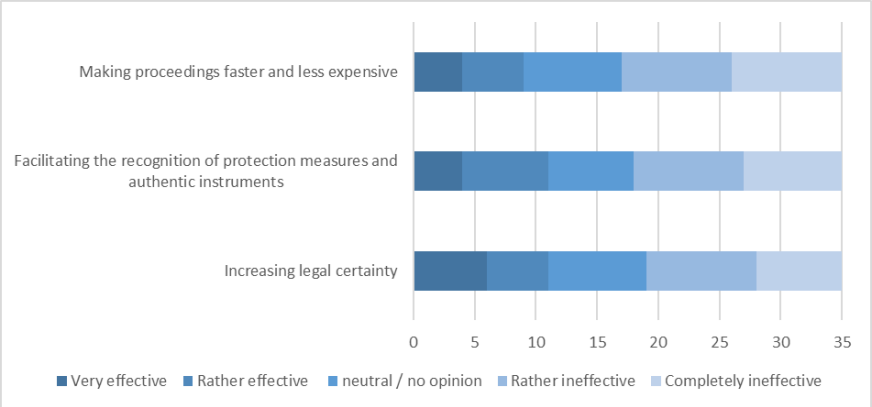
Expected impact of the baseline scenario (Policy Option 1)

As explained, Policy option 1 entails maintaining the current situation, without any EU intervention that would go beyond **mere promotion of the ratification of the Convention***. The ratification of the Convention would remain optional, resulting in different legal regimes throughout the EU, with some Member States being party to the Convention and others not. Based on the experience with the promotion of the Convention over the past 14 years[148], it is reasonable to expect that this effort would result in a limited success and would in any case take many years. Therefore, some Member States will be parties to the Convention and others not. The legal framework would remain fragmented. No EU legislation would be adopted.

In such a scenario, the above-mentioned **problems would remain and likely increase** over time given the trends such as the overall ageing of the population and related prevalence of mental illnesses and disabilities, alongside with the increasing cross-border mobility in the EU and the growing demand for powers of representation* among the general public that may need to circulate among EU Member States in the future. As a result, the consequences of the problems would keep affecting negatively the **rights and psycho-social wellbeing of adults**, their families and their representatives. The *status quo* can also perpetuate obstacles to **accessing justice** that the adults currently face, including *inter alia* obstacles in accessing legal assistance and representation[149]. This all could put in jeopardy the **fundamental rights of adults** in cross-border situations and thus risk negatively affecting the EU and MS' human rights obligations, including under the UNCRPD*[150]. It thus follows that the general objective of *safeguarding rights, including fundamental rights, of vulnerable adults* and the specific **objectives of the initiative would not be achieved** at all or only be achieved to a very limited extent[151]. This is also the view shared by the stakeholders consulted in the context of the preparation of this impact assessment[152], as illustrated in Figure 4: *The effectiveness of the baseline scenario (Policy Option 1) in achieving the policy objectives of the PA initiative** (Source: Study by an external contractor*) below.

[148] Already in 2008, the Council and Parliament called on MS to sign and ratify the Convention.
[149] To that effect, see the reply of *Inclusion Europe* to the Call for Evidence*.
[150] The EU and MS are parties of the UNCRPD*, and therefore have to comply with its provisions, including Art. 12(2) that affirms that 'persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life'. Under Art. 12(3), the EU and its MS 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'.
[151] To a limited extent, expecting that a few Member States would ratify the Convention* under the baseline scenario.
[152] Stakeholder interviews organised by the external contractor*. According to the result of these consultations, approximately 46% of stakeholders perceived PO1 as completely ineffective or rather ineffective at increasing legal certainty. Approximately 48% (17 out of 35) of the stakeholders believed that this option would not be effective at facilitating the recognition of protection measures and powers of representation*. And more than 50% of the interviewees indicated that PO1 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.

Figure 4: *The effectiveness of the baseline scenario (Policy Option 1) in achieving the policy objectives of the PA initiative** (Source: Study by an external contractor*)



The persisting difficulties caused by the fragmentation of PIL* rules concerning the protection of adults in cross-border situations would also continue to cause **delays** in the procedures and generate **procedural costs*** for all the persons and competent authorities involved. These procedural costs*, borne by adults and competent authorities were calculated on the basis of the methodology detailed in Annex 4 using a set of eight scenarios (below) reflecting a variety of situations and the resulting costs[153].

Table 1: *Costs borne by adults in cross-border context: current situation*[154] *- illustrations per various scenarios*

Scenario		Potential costs (differing case by case) related to:	Average aggregate costs: EU-26[155] (thousand EUR)

Illustrative example 1:
 	
Establishing a protection measure abroad
 	
(not very common)
	Mr X is a national of MS A and has moved to MS B. A protection measure is requested in MS A (e.g. by his family).
	
	Mr X or another branch of the family challenge in MS B the decision issued in MS A, contesting jurisdiction of a court that gave the decision or the applicable law.
		- The procedure in MS A to establish the protection measure requires additional costs relating to cross-border situation:
		  - travel for the medical assessment;
		  - travel for the hearing;
		  - translation costs linked to the procedure.
		
		- The procedure in MS B requires:
		  - access to justice costs (incl. lawyer);
		  - (translation and (possibly) apostille of all documents, in particular the decision issued in MS A);
		  - travel costs (e.g. for the family);
		  - (service of the final decision to parties residing in MS A).
		
		- Risk of duplicate proceedings in MS A and MS B over the protection of the same vulnerable adult (Mr X)
			837 701

Illustrative example 2: **Implementing a protection measure abroad**	A protection measure has been adopted by the competent authorities of MS A for Mr. X. Mr X. moves to MS B. The person charged with assisting Mr X must act in	- travel of the representative to MS B; - translation of document(s) attesting the protection measure; - administrative procedures by the representative, entailing exchanges by registered letters (several letters for each	5 126 579

[153] The scenarios were developed by the external contractor* and were based on the consultations with stakeholders. They represent real case scenarios.

[154] It needs to be pointed out that these illustrative examples are a result of a considerable simplification of the existing complex legal situation. **For instance, for the sake of simplicity, the illustrative examples do not differentiate between Contracting States* and non-Contracting States***. In addition, to calculate the aggregate costs for adults, several assumptions were used, as detailed in the Annex 4 on methodology.

[155] As Denmark would not take part in the adoption and application of the PA initiative*, Denmark is not considered for the purposes of this impact assessment.

	Scenario	Potential costs (differing case by case) related to:	Average aggregate costs: EU-26[155] (thousand EUR)
(common)	MS B (e.g. to rent an apartment). A real estate agent and a landlord do not challenge the validity of the foreign decision.	procedure); - (If the measure had not been recognized, additional costs would have been entailed – *see Example 3).*	
Illustrative example 3: **Exequatur*** ***(rare)***	Mr X lives in MS A but has assets in MS B. A protection measure has been adopted by the competent authorities of MS A. The guardian decides to sell the assets in MS B. A notary in MS B asks for the *exequatur** (judicial recognition) of the protection measure taken in MS A.	- application lodged by a lawyer to the authority competent for the recognition in MS B; - sworn translation of proof of protection measure; - apostille or other proof of the authenticity of the judgment from MS A; - decision to be taken by the competent authorities of MS B.	543 200
Illustrative example 4: **Activating Powers of representation abroad** ***(common)***	Powers of representation* concerning Mr X have been granted in accordance with the law of MS A (where Mr X used to live at the time the powers were made) providing for his protection in the event of incapacity. Mr X moves to MS B and his health deteriorates. The powers of representation need to be confirmed.	- procedure for the confirmation of the powers of representation* in MS B, i.e. judicial or administrative proceedings; - If its national law allows it, the competent authority in MS B needs to get information on the law of MS A and translate the relevant provisions. The competent authority must then assess whether the conditions are met for the confirmation of the powers of representation under the law of MS A. - if the national law of MS B does not provide for the confirmation of powers of representation, and they cannot be confirmed in MS B, MS B needs to establish a new protection measure, translating into all the costs of a new procedure: introducing the application, legal representation, medical assessment etc.	946 589
Illustrative example 5: **Contesting guardianship or a guardian's decision abroad** ***(rare)***	Ms X lives in MS B but is under a protection measure taken in MS A. The guardian designated in MS A takes a decision that affects Ms X's assets (e.g. contracts a life insurance with suspicious beneficiaries or decides to sell all assets in MS A). Ms X wants to contest the measure or the decision of the representative in MS B. He is granted legal aid in MS B. The representative seizes the courts of MS A to confirm his/her decision.	- 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. - (If the court of MS A exercises its jurisdiction, travel costs for Ms X to be heard); (If the a decision invalidating the measure is taken in MS B, service of document to the representative in MS A not covered by legal aid); - (Both courts seized will try to obtain information on the foreign case).	1 700 431
Illustrative example 6: **Conflict of jurisdiction** ***(common)***	Mr X is subject to a procedure to establish a protection measure in MS A, and he initiates a procedure in MS B to obtain a less intrusive protection measure – there is a case of conflict of jurisdiction.	- access to justice costs in both MS; - possible translation costs; - (possible travel costs for Mr X to be heard in MS A); - (both courts seized will try to obtain information on the foreign case).	1 895 111
Illustrative example 7: **Relocation of a vulnerable adult without a change of protection measure** ***(quite common)***	Ms X lives in MS A, in an establishment where her protection can be ensured. She enjoys the company of her sister, Ms Y, who also lives in MS A. However, Ms Y finds a job in MS B and seeks to relocate Ms X to a similar establishment in MS B.	- costs required to ensure that both establishments in MS A and B agree on the relocation; - (If any additional measure needs to be taken in MS B (e.g. to open a bank account and transfer money) or if a measure was taken by the competent authorities of MS A, then need for a new protection measure in MS B – *see illustrative example 1)*	26 765
Illustrative example 8: **Relocation of a vulnerable adults**	Mr X lives in MS A. He is cared for by the social services of MS A. It arises that a relative of Mr X, in MS B, is ready to assist Mr X, provided that he moves to	- Costs required to ensure that the competent authorities in MS A and B agree on the relocation and provide for a smooth transition from the protection measures in	322 413

Scenario		Potential costs (differing case by case) related to:	Average aggregate costs: EU-26[155] (thousand EUR)
with a change of protection measure **(*very common)***	MS B. Mr X is willing to do so.	MS A to those in MS 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).	

Based on the above findings, the baseline scenario would not adequately address the current and upcoming need to protect adults in the EU[156] and would not tackle the existing problem drivers linked with the divergent PIL rules. It should thus be **discarded as an option**.

Hypothetically, even in the unlikely scenario that **all Member States join the Convention* swiftly**, **certain problems and their drivers would still be perpetuated since the rules in the Convention do not address all of them.** These problems include for instance the missed opportunity of modernisation and adaptation of the rules in the Convention for the EU context as described in Boxes 1 and 2 below and in Annex 6. For instance, in the absence of EU rules on the cross-border protection of adults, this area will not be digitalised[157]. Under this scenario, the CJEU would not have jurisdiction to provide uniform interpretation of the Convention.

5.2 5.2 Description of the policy options

Several policy options can be envisaged to meet the objectives of an EU intervention set out above. Given the available legal basis dealing with civil matters with cross-border implications (see Section 3) and the existing problem drivers (see Section 2), all policy options (with the exception of the baseline scenario) would provide uniform PIL* rules that would apply in cross-border situations concerning vulnerable adults. They would thus lay down rules governing international jurisdiction, law applicable to vulnerable adults in cross-border situations, and rules on the recognition of protection measures* and powers of representation*. All policy options would in principle apply to all Member States, **except Denmark**[158]. The rules envisaged in the policy options would apply to adults habitually residing in the EU, regardless of their nationality. Policy Options 2 and 4 would also cover adults habitually living in other Contracting States to the Convention.

The main difference between the available policy options lies in their territorial and material scope (i.e. in relation to which countries the rules would apply and how far-reaching these rules would be).

5.2.1 5.2.1 Option 2: Mandatory ratification of the Convention by Member States ('PO2')

This policy option would aim to ensure that all Member States become parties to the Convention* within a certain time. Under this policy option, the Commission would prepare a proposal for a Council decision that, once adopted, would oblige Member States that have not yet done so to ratify, or accede to, the

[156] 50% of the practitioners believe that Option 1 is irrelevant, compared to only 18% of competent authorities and 77% of associations.

[157] This is because the general policies on the digitalisation of judicial cooperation in civil matters (especially the Digitalisation proposal*) only relate to the digitalisation of already existing EU instruments. In addition, without coordinated work on interoperability and interconnection at EU level, any possible national trends of digitalisation of the area of adult's protection will not be effective in relation to cross-border cases and may, in fact, even make the digitalisation progressively more difficult as the IT solutions developed by each Member State may lack common standards.

[158] See the explanation of Denmark's opt-out in fn. 4. In addition, in accordance with the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaties, Ireland would only be covered in an EU intervention if it decides to opt in.

Convention 'in the interest of the Union' within the timeframe agreed in the Council decision. Member States that are already party to the Convention would be authorised to remain parties.

As a result, the rules contained in the Convention would apply both in the EU and vis-à-vis other non-EU Contracting Parties[159] *(wide territorial scope).* No additional rules would be adopted at the EU level, so the new rules applicable in the EU would be limited to those already included in the Convention *(limited material scope).* Option 2 ensures that the Convention becomes applicable between all Member States and, compared to Options 3 and 4, it represents the smallest intervention by the EU in the area.

It should nevertheless be noted that Option 2 does not in principle exclude a later adoption of an EU regulation, after Member States will have learnt from the lessons of a general implementation of the Convention in the EU. However, this *staged approach* was discarded as a specific option under this impact assessment (see related explanations in Section 5.3).

5.2.2 5.2.2 Option 3: An EU Regulation ('PO3')

Under this policy option, the EU would adopt a regulation that would harmonise the PIL* rules concerning the protection of adults. The PIL rules (e.g. rules on jurisdiction and applicable law) included in such a regulation would largely replicate those included in the Convention*; however, they could be improved or adapted to the EU legal landscape whenever desirable *(wide material scope).* In addition, the regulation would simplify the rules applying to recognition and enforcement, on the basis of mutual trust, and would completely modernise cooperation between competent authorities.

***Box 1:** Added value of an EU regulation as compared to the Convention*

A possible EU regulation would be based on the rules of the Convention but also improve and modernise them.

First, an EU regulation would build on a higher level of mutual trust and cooperation among Member States to streamline the existing procedures. For instance, while the recognition of protection measures is automatic under the Convention, the *exequatur procedure**[160] has not been abolished and may still be requested, often unduly, by non-judicial actors to give effect to a protection measure. An EU regulation would provide not only for automatic recognition but could, in addition, also **do away with the exequatur procedure.** Moreover, the EU regulation would provide for the **acceptance of authentic instruments** (including powers of representation*). It would also further **limit the grounds for the refusal of recognition*** as compared to the Convention. The **cooperation** among Member States would also be further facilitated by the tools already available for other EU civil-justice regulations (such as through the EJN-civil* providing assistance in cross-border cases[161]). Several measures of soft law would also be introduced, such as information sharing through the e-Justice Portal*, including on the law of Member States. This area of cooperation would also be integrated in future Commission training strategies for judges and prosecutors, as well as in the EJTN*'s work plan.

Second, the regulation would extend the material scope of the Convention to fill any existing gaps or to address future needs. For instance, the regulation would react to the increasing use of powers of representation* in Member States. It would create a **European certificate of representation** ('ECR') that would be issued on the basis of a protection measure or confirmed powers of representation* and would be used in cross-border context. Unlike the optional model form designed by the HCCH to facilitate the application of the Convention, the ECR should, as a rule, be made available to individuals by the competent authorities of the Member States (both in paper and digitally)

[159] These rules include uniform rules on international jurisdiction and law applicable to the protection of adults in cross-border situations, as well as rules on the recognition and enforcement and on the cooperation among Central Authorities*, as contained in the Convention*. For a detailed explanation of the rules in the Convention, see Annex 5.

[160] Formal court procedure by which a foreign judgment is declared enforceable (i.e. 'validated' for enforcement) in the State where enforcement is sought.

[161] EJN-civil* can for example help to solve practical or legal issues in cross-border cases, provide valuable information on laws of other Member States or prepare practice guides or factsheets for judges, notaries or lawyers.

if the individual applies for it[162]. The ECR would enjoy uniform effects under the regulation in the whole EU, its validity would be presumed. It would exist in all EU official languages, thus reducing the need for translations[163]. **Other standardised forms and clarifications** would also be provided, for instance regarding the steps that need to be taken by a court when transferring its jurisdiction to a court of another Member State. The regulation would also include specific rules on **legal aid for vulnerable adults** in those cross-border situations that are currently not covered by national law or the Legal Aid Directive*. Moreover, the regulation would contain provisions allowing a court to **appoint professional representatives abroad** for a specific act or to follow up on a protection measure.

Third, the rules in the Convention would be **modernised** when adapted for the EU context. For instance, the regulation would introduce the possibility of **digital communication** between individuals and competent authorities and digitalise the communication between competent authorities from different Member States by applying the 'digital by default' principle. In addition, the regulation would **interconnect registers of protection measures and (confirmed) powers of representation** to ensure a cross-border access to information by competent authorities on the existence of protection in another Member State. *For details about the digital solutions, see Box 2.*

It should be noted that **the selection of these measures is already a result of a previous analysis** undertaken with the help of available legal expertise, evidence and consultations with a view **to determine whether specific measures should be a part of the 'package'**. In addition, the majority of the proposed measures reflects the usual measures included in EU instruments in the field of private international law.

For more details concerning the measures that an EU regulation could include as compared to the Convention, see Annex 6.

***Box 2:** Digitalisation in the area of the protection of adults and the interconnection of registers*

An EU regulation would provide for specific provisions on digitalisation of communication concerning those procedures that would be introduced by the new legislation on the protection of adults. This is in line with the mandatory 'digital by default' principle and the EU's policies for the digitalisation of justice.

This would entail setting up a digital infrastructure necessary for **digital communication between individuals and Member States' competent authorities and between the competent authorities of different Member States.** As a result, individuals would have, besides traditional ways, an additional possibility to communicate with competent authorities through electronic means in matters concerning cross-border protection of adults. At the same time, the competent authorities would be obliged to communicate among themselves through electronic means, subject to certain exceptions. Digitalisation of this area would **build on the experience with the digitalisation of the other areas of cross-border judicial cooperation** under the Service of Documents* and the Taking of Evidence* regulations and the digitalisation proposal*. In line with the digital by default principle, the European Certificate of Representation would likewise be digital-ready and could thus be requested and issued electronically.

Finally, an EU regulation would provide for an **interconnection of registers** of protection measures and (confirmed) powers of representation. In a number of situations, competent authorities need to verify the legal capacity of persons. If a person is placed under a protection measure abroad, these authorities currently do not have access to this information. The lack of cross-border access to data on the existing protection of an adult abroad creates practical difficulties and (for instance in criminal proceedings, forced hospitalisation or settlement of an estate) prevents the adults concerned from being fully supported, thus endangering their rights. This could concern primarily the courts responsible for taking protection measures, but also other competent authorities such as notaries, public prosecutors, and authorities in charge of business registers or land registers. During consultations undertaken in the context of this impact assessment, stakeholders considered that the interconnection of registers would be one of the most useful measures that could be introduced by an EU legislation[164].

For details concerning these measures, see Annex 6. For the explanation of related costs, see Annex 4.

In contrast to Option 2, the rules contained in an EU regulation would apply only among EU Member States *(limited territorial scope).* There would be no compulsory ratification of the Convention. The

[162] Under the Convention, it is a discretion of the Contracting Parties to the Convention whether they implement the provision on the possibility of individuals to request a certificate. Some Contracting Parties reported that they do not provide for those certificates.

[163] For more information on the ECR, see Annex 6.

[164] In the OPC*, the interconnection of national registries of protection measures* and (confirmed) powers of representation* has been ranked number 4 in the list of the most appropriate measures to facilitate the cross-border cooperation.

Member States that are already a party to the Convention would thus continue to apply their rules vis-à-vis other non-EU Contracting Parties but would apply the EU regulation vis-à-vis EU Member States[165]. The remaining Member States that are not Contracting Parties to the Convention would have no legal framework with regard to non-EU Member States.

5.2.3 5.2.3 Option 4: Combined option (Ratification of the Convention and the adoption of the EU Regulation) ('PO4')*

Policy Option 4 would consist in adopting both (i) the Council decision obliging Member States to join the Convention* within a certain timeframe and (ii) the EU regulation including the rules mentioned in the Box 1 and 2 above. Through the combination of both internal and external EU action, vulnerable adults living in the EU would enjoy the widest possible protection – both in the EU and other Contracting States to the Convention *(wide territorial scope).* In addition, the rules applicable among Member States would build on the rules contained in the Convention, thus further facilitating their functioning *(wide material scope).*

The combination of external action and an EU internal legislation is not new in European private international law. Prominent examples of this approach are found in the law of international child abduction and the law of maintenance obligations[166]. The combination of universal and regional rules rests on the idea that the EU may want to espouse a set of worldwide standards (the Convention*), 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[167].

5.3 5.3 Discarded policy options

It was explained above (section 3), why a **directive or a recommendation are not a suitable** to achieve the objectives of the initiative given the need for uniform rules that would be consistently applied throughout the EU.

In addition, it could be possible to consider a **staged approach** – first a ratification of the Convention by all Member States, followed later by an EU regulation. In fact, this staged approach is not excluded by Option 2 which suggests only the ratification of the Convention at this stage but does not rule out the possibility of EU Regulation at a later stage. However, this staged approach would have marked negative impacts in terms of adjustment costs incurred twice, opportunity missed to modernise judicial cooperation and to establish interoperable IT systems, as well as multiple changes of rules over time undermining legal certainty[168]. Given the hypothetical nature and the hypothetical content of a postponed Regulation in that scenario, this approach is not specifically analysed in this report.

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[165] Arguably, this would create two different legal regimes – under the Convention and the EU regulation. In practice, legal practitioners would have to distinguish which of the two instruments should be used depending on the habitual residence of the adult in question. Since this habitual residence may change in time, this determination could be rather cumbersome in practice.

[166] 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 abduction. For its part, Regulation (EU) No 4/2009 on maintenance obligations reflects the solutions in the Hague Convention of 2007 on the recovery of child support. It incorporates, by way of a reference in Article 15, the Hague Protocol of 2007 on the law applicable to maintenance obligations.

[167] This is also in full compliance with the rules of the Convention* itself, which provides, in its Art. 49, that Contracting States may conclude agreements which contain different rules in respect of adults habitually resident in those States (para. 2) or rules with general application which do not affect the application of the provisions of the Convention (para. 3).

[168] It was also for these reasons that this approach was considered undesirable in particular by some of those Member States that are currently not Contracting Parties to the Convention. Dividing the process of the introduction of new rules into two stages would mean additional burden and adjustment costs placed on competent authorities and legal practitioners.

It could also be conceivable to propose **a limited EU initiative** with a narrower scope than the Convention. However, this was considered as counterproductive, in view of the existence of an efficient international instrument in the area, to which 11 Member States are already party. None of the stakeholders or the experts consulted have even contemplated an alternative to the ratification of the Convention and/or to a similar EU Regulation. That option would require the use of resources by the EU and Member States, to eventually fall short of the achievements of the HCCH 2000 Protection of Adults Convention.

6 6 WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

6.1 6.1 Achievement of policy objectives by the policy options

It should first be examined whether the policy options are 'fit for purpose', that is, whether they achieve the General Policy Objective of *protecting rights, including fundamental rights, of vulnerable adults* as well as the Specific Objectives 1, 2 and 3[169].

The achievement of the policy objectives by **Option 1** (baseline scenario) would largely depend on the rate at which Member States take up the Convention*. It was described above that the prospects that all Member States become Contracting Parties to the Convention soon are rather unrealistic, thus leading to limited achievement of the policy objectives and to the impacts described above in the Section *Expected impact of the baseline scenario (Policy Option 1)*. Policy option 1 was thus discarded as it does not satisfactorily achieve the objectives.

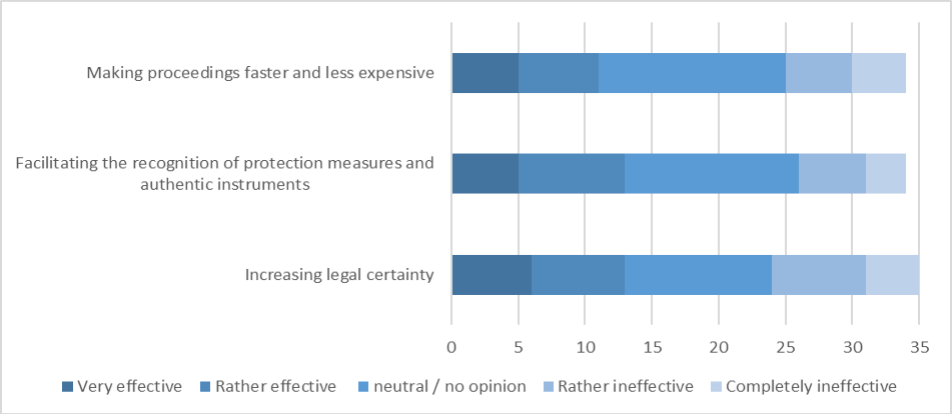
Option 2 would achieve each of the **specific objectives but only to some extent.** The compulsory ratification of the *HCCH 2000 Protection of Adults Convention** would increase legal certainty in cross-border situations within the EU and with non-EU Contracting States. Since the rules on jurisdiction, applicable law and on recognition and enforcement would be common to all Member States, all vulnerable adults, their families and representatives could be aware of the rules applicable to the cross-border situations they might face. Rules requiring Contracting States to establish simple and rapid enforcement procedures would tend to make proceedings faster and less expensive. The ratification of the Convention would lead to easier cooperation between Member States' competent authorities, especially through Central Authorities*. Nevertheless, the opportunity to modernise and complement the rules in the Convention to fully achieve the objectives of the initiative would be missed as no EU rules complementing the Convention would be adopted under this policy option. In addition, the experience of some competent authorities with the Convention shows that even under the Convention, procedures remain expensive and time-consuming and that cooperation between Member States' competent authorities is not used to the full extent possible.

This conclusion was confirmed by the stakeholder consultations conducted in the context of this impact assessment where the largest majority of stakeholders opined that the PO2 would be **only somewhat effective in achieving the policy objectives**[170].

[169] These are: *to increase legal certainty for all persons and competent authorities involved* (Specific objective 1); *to facilitate the cross-border recognition of protection measures and powers of representation* (Specific objective 2); and *to make proceedings faster and less expensive* (Specific objective 3).

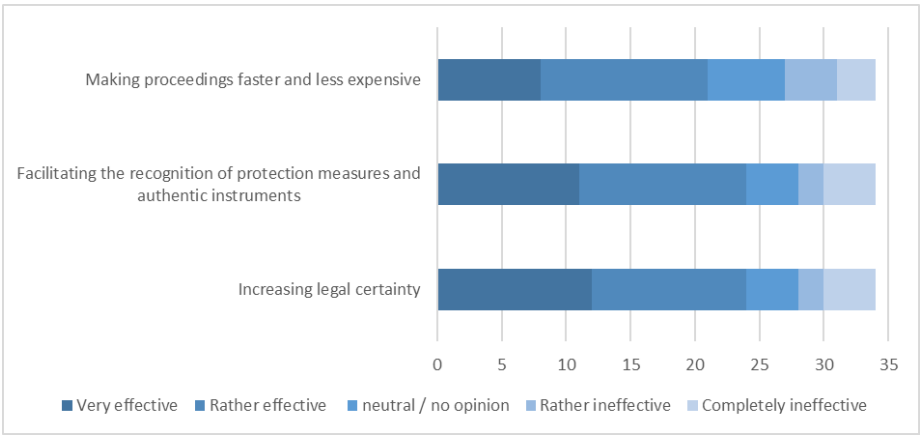
[170] Approximately 35% of interviewees believed that the PO2 would not be effective at increasing legal certainty, while 38% believed it could be at least to some extent effective. Approximately 38% of stakeholders indicated that the PO2 could be effective at facilitating the recognition of protection measures or powers of representation*, while 38% had no opinion and almost 24% of interviewees perceived it as ineffective. Approximately 32.3% of interviewees believed that the PO2 could be effective at making proceedings faster and less expensive.

Figure 5: *The effectiveness of the PO2 in achieving the policy objectives of the PA initiative* as perceived by stakeholders* (Source: Study by an external contractor*)



Option 3 would meet the specific objectives to a greater extent than PO2 since all the basic rules of the Convention* would be included in the regulation and more provisions would be added to further streamline the rules. The additional rules (e.g. rules concerning the limitation of grounds for non-recognition or on the abolition of *exequatur)* would **facilitate the circulation** of protection measures, and powers of representation*. With these additional elements and more extensive legal aid, proceedings would become much **less expensive** for adults and their representatives. They would also be **faster** thanks to the multilingual European Certificates of Representation with presumed validity, rapid and efficient digital communication, and cross-border access to registries of protection measures and (confirmed) powers of representation. However, this option also has **some shortcomings.** 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 Convention* and other non-EU countries. It would also create two substantially different legal regimes – under the Convention and the EU regulation. In practice, in the States applying both the EU regulation and the Convention, legal practitioners would have to distinguish which of the two instruments should be used on the basis of a complex set of criteria: the adult's habitual residence or nationality or the location of his or her property. Since the criteria (in particular habitual residence) may change in time, this determination could be rather cumbersome in practice. This could affect **legal certainty.**

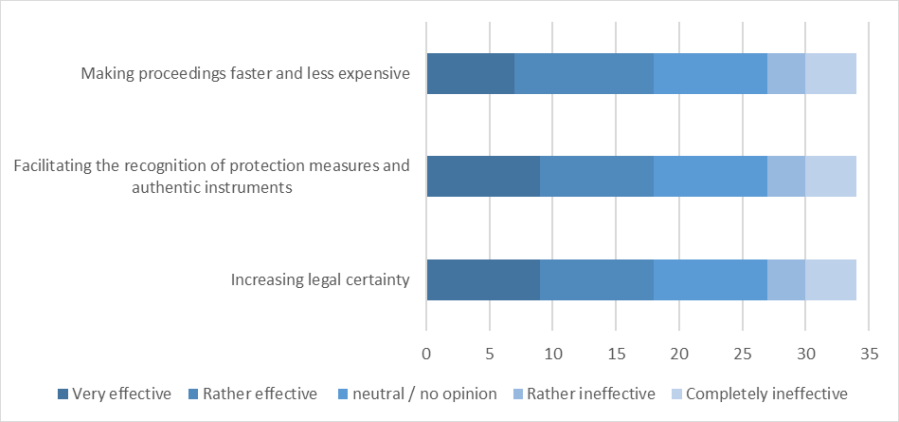
Figure 6: *The effectiveness of the PO3 in achieving the policy objectives of the PA initiative* as perceived by stakeholders* (Source: Study by an external contractor*)



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 this 'package' option however, the regulation would only complement the Convention*. Without going into the details of the legislative technique, this option would make the Convention's provisions on **jurisdiction** and **applicable law** applicable to all cross-border cases (identical rules within and outside the EU), and at the same time establish simplified rules for **recognition** and **cooperation** for EU Member States. In addition

to those effects, EU Member States would be obliged to ratify the HCCH 2000 Protection of Adults Convention*, which would ensure a **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 non-EU Contracting States to the Convention[171].

Figure 7: *The effectiveness of the PO4 in achieving the policy objectives of the PA initiative* as perceived by stakeholders* (Source: Study by an external contractor*)



In conclusion, **<u>policy options 2, 3 and 4 meet the objectives and can thus be analysed</u>.**

The degree of fulfilment of the general and specific objectives differs depending on the options proposed. The more extensively the specific objectives are achieved by each policy option, to the greatest extent are rights protected, including fundamental rights of the persons concerned.

- The first Special objective of **increasing the level of legal certainty** is achieved most satisfactorily under Option 4. Options 1 and 2 enable such an increase because of the common rules under the 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 laid down in the regulation are aligned to those of the 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 non-EU Contracting Parties to the Convention.
- The second Special objective of **facilitating the recognition of protection measures and powers of representation** is best achieved under Options 3 and 4. Options 1 and 2 partially achieve the objective, mainly because the Convention harmonises and simplifies the recognition of protection measures. Options 3 and 4 both fully achieve the objective, as not only all types of measures would be covered but also recognition* of powers of representation. An EU regulation under PO3 and 4 would also simplify and streamline the rules, thus maximising the positive effect on predictability of these options[172]. Option 4 would in addition expand the scope of recognition to non-EU Contracting Parties*.
- The third Special objective of making **proceedings faster and less expensive** is achieved the most optimally under Options 3 and 4. The objective is partially achieved under Option 2, and to a much lesser extent under Option 1: whereas the minimum degree of harmonisation of the rules across the EU and the setup of Central Authorities* in all Member States would most likely speed up procedures and reduce the number of unnecessary proceedings (thus reducing costs), experience shows that some procedures remain expensive, and that cooperation between Contracting States' competent authorities remains difficult. Option 3, and even more Option 4, provide for further streamlining in that regard with additional mechanisms for cooperation.

[171] This would benefit not only adults living in those non-EU Contracting States but also those adults living in the EU who have some relation to the non-EU Contracting States (such as owning immovable property in those States).

[172] A regulation would in addition provide additional tools to increase legal certainty: European Certificate of Representation will for instance diminish the legal uncertainty faced by non-judicial actors such as banks when determining what powers a representative of an adult has. Factsheets on national laws available on the e-Justice Portal would provide reliable and readily accessible information on the national substantive rules applicable to a case.

Based on the above, Options 3 and 4 achieve the objectives to the highest extent, with **Option 4 being the most effective in achieving the intended objectives.**

6.2 6.2 Impacts of the Policy Options 2, 3 and 4

This section assesses the impact of all the policy options that envisage an EU intervention (PO2, PO3 and PO4). Impacts of the baseline scenario (PO1) were described above.

The following main impacts will be assessed: (1) **legal impacts** (impact on rights of vulnerable adults and impact on legal environment); (2) **social impacts** (including the impact on emotional and psychological wellbeing of adults and their families, their economic welfare and equality); (3) **economic impacts** (including both costs implications and macroeconomic impacts) and (4) **impacts on the digitalisation of justice**. Other minor impacts were also assessed (such as impact on non-EU States or impact on SDGs). All the impacts described below are intended ones[173]. No relevant environmental impact or impact on competitiveness are expected. The analysis of impacts also includes a **foresight** component as the baseline against which the policy options are assessed took into account the future demographic changes in the EU (aging of the population and increasing mobility) and the likelihood that other non-EU States join the Convention in the future[174].

While the biggest difference with the current *status quo* would be felt by **adults*** who are the main target group of the policy intervention, other stakeholders would also be positively affected by the policy options. These include for instance: **families and representatives of adults**, **competent authorities of Member States and all legal professionals dealing with vulnerable adults.** In addition, other non-judicial actors (such as medical staff, social workers, banks and insurance companies) would indirectly benefit from the simplification of the legal context and from the tools that would facilitate their work in cross-border cases (such as the ECR* under some POs)[175].

The impacts would be distributed among Member States since all Member States would be able to benefit from the uniform harmonised rules covering the entire EU (or under some options even a wider geographical area). However, adjustment costs under PO2 and 4 may be comparatively higher for those Member States that are not Contracting States to the Convention* yet and would have to put in place processes and appoint authorities to comply with the rules in the Convention. Under PO3 and 4, all Member States would bear some costs; however, adjustment costs borne by Member States that are not Contracting States yet would be higher than for Contracting States[176].

6.2.1 6.2.1 Legal impacts

Legal impacts can be divided into two categories: (i) legal impact on adults and their families; and (ii) impact on the legal environment.

[173] Any possible unintended effects could be mitigated as the legislation would provide for a refusal ground* based on public policy, which may block the recognition of foreign decisions or private acts, in individually justified cases, including for example in cases involving human trafficking, fraud, breach of fundamental rights of the parties involved or denial of justice. In addition, the courts that have jurisdiction may modify or withdraw protection measures or adopt new ones in cases where the situation of an adult changes or in other cases, including where necessary to protect the adult and/or in cases of abuse.

[174] For more information, see the Section on the impact on non-EU States.

[175] Given the diversity of these stakeholders, including whether they are public or private entities, the positive impacts on this group are not specifically elaborated. Other stakeholder groups such as businesses, including **SMEs, are unlikely to be significantly affected by the policy options**. **The impact on such groups is therefore also not included in the analysis.**

[176] This is for instance because the non-Contracting States would have to set up Central Authorities* and have other adjustment costs concerning the introduction of the new PIL* rules.

6.2.1.1 Legal impact on adults, including on their fundamental rights

By harmonising the PIL* rules applicable to the protection of adults in the EU and facilitating cooperation in this field, the POs 2, 3 and 4 would help to solve the existing problems faced by adults* and ensure that **the negative effects on their rights** (as described in Section 2) **do not materialise.** For instance, by facilitating the recognition abroad of powers of representation* drawn up by the adults*, the adults' **right to self-determination and autonomy** would be preserved in cross-border situations. Problems concerning their **access to justice** (including in accessing legal assistance and representation) would also be mitigated through (i) the increased legal certainty and (ii) the streamlined and less burdensome and costly procedures resulting from the adoption of any policy option[177]. Similarly, as the problems experienced by adults in cross-border situations may deter them from exercising their right to free movement (see Section 2), the policy options would have a **positive impact on the right to free movement**. As a result of the policy intervention, **the fundamental rights of adults** would thus be more protected in cross-border situations.

Even though it is not possible to quantify the impact of policy options on rights of adults*, including their fundamental rights, this impact would be one of the most significant benefits of the PA initiative*. While all policy options have positive legal impacts, those policy options with a broader material and territorial scope cover more adults and/or facilitate their cross-border dealings to greater extent and as such have more positive legal impacts than those with a more limited scope. Therefore, in line with this assessment, PO4 (with wide territorial and wide material scope) would have the highest positive legal impacts.

6.2.1.2 Impact on legal environment

As the policy options would provide uniform PIL* rules for the protection of adults in the EU, discussed at the EJN-civil* meetings and possibly interpreted by the CJEU, they would contribute to the **consistency of decisions** and uniform application of the rules among Member States (by avoiding conflicting decisions given by courts in different Member States) and facilitate the mutual recognition of protection measures and of powers of representation*. The new rules would also have to be interpreted in light of the UNCRPD*, thus further contributing to the harmony of decisions and providing a concrete way of implementing the UNCRPD. Besides, they would also simplify the current patchwork of rules and increase **legal predictability** for all parties concerned, including for **competent authorities.** Ultimately, the policy options would 'build bridges' between legal systems and increase **mutual trust among Member States** in matters of the protection of adults.

6.2.2 6.2.2 Social impacts

Protection measures and powers of representation govern the representation/support of adults in various personal and property matters with a view to protecting their interests. Their improved circulation among Member States under POs 2, 3 and 4 could thus ensure that the adults' **protection is not disregarded in cross-border situations.** This would in turn have **positive impact on wellbeing** of these adults and other **positive social and psychological impacts.**

The presence of effective support and protection of vulnerable adults positively impacts their **well-being, equality and psychological and mental health.** Based on literature[178] and stakeholder consultations, the lack of consistency concerning protection measures, the difficulty in identifying them, as well as the lack of access to justice and risk of financial dispossession are factors that can lead to a detrimental impact on the vulnerable person's well-being. It thus follows that an increase in legal certainty and the

[177] At the same time establishing and introducing digital channels under POs 3 and 4 would further improve access to justice.
[178] 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), p. 4–18., Sherwood-Johnson, F., Cross, B., & Daniel, B. (2013). The experience of being protected. *Journal of Adult Protection*, *15*(3), p. 115–126.

cross-border recognition of protection measures concerning adults that would be achieved through the adoption of uniform PIL* rules would have a positive impact on the general well-being of the adults. The swift recognition of protection measures concerning property management would also protect the financial interests of the adult in cross-border situations and thus have **positive effects on their welfare and social inclusion.** As regards the psychological dimension, the policy options would **diminish emotional distress** thanks to the increased legal certainty and the reduction of problems with the recognition of protection measures that they will bring about. The emotional dimension is also particularly relevant as regards families of vulnerable adults given the increased strain, expenses and uncertainty often placed on these family members when dealing with the protection measures abroad.

Given their positive social impacts, the POs 2, 3 and 4 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 to scale up its action in the area.

The above-described social impacts are highly individual, and thus depend on the situation of each adult and differ in each jurisdiction. Therefore, the approach was taken in this report not to quantify the social impacts[179]. However, their importance in individual cases is always appreciable. While all policy options have positive social impacts, those policy options with a broader material and territorial scope cover more adults and/or further facilitate their cross-border dealings and as such have more positive social impacts than those with a more limited scope. Therefore, in line with this assessment, PO4 (with wide territorial and wide material scope) would have the highest positive social impacts.

6.2.3 6.2.3 Economic impacts

The following section assesses economic impacts of the POs 2, 3 and 4 and quantifies them to the extent possible. However, it should be noted that these quantifications are a result of **numerous assumptions** and simplifications that needed to be made in the absence of data and statistics on the scale of the problem and on the costs inherent to these problems. For details, see Annex 1 and Annex 4. The resulting estimates should thus be taken with caution.

6.2.3.1 Impact on costs and administrative burden

As a minimum, POs 2, 3 and 4 would provide uniform PIL* rules concerning the protection of adults. These uniform rules would significantly simplify the current system of diverse (and often contradictory) national PIL* rules on the matter. Due to this simplification and increased consistency and clarity, most affected stakeholder groups, in particular vulnerable adults (including their families and representatives) and competent authorities and practitioners, would experience considerable cost savings as compared to the baseline.

6.2.3.1.1 6.2.3.1.1 Procedural costs borne by vulnerable adults, their families and representatives & by competent authorities

Under POs 2, 3 and 4, **vulnerable adults,** their families and representatives would benefit from savings on costs of various arrangements, including medical assessment, travel, sworn translations of documents, and necessity of hiring legal assistance. **Member States' competent authorities** would also benefit from savings on labour costs related to the shorter duration of judicial or administrative procedures, avoidance of duplicate procedures, better access to cross-border information, better international cooperation and digitalisation (including the new possibilities of accessing the interconnected registers, of digital communication and of the European Certificate of Representation with presumed validity throughout the EU). Competent authorities would likewise benefit from the simplification of the PIL* rules. As an effect of the clearer legal framework and the lower incidence of court litigation, POs 2, 3 and 4 are estimated

[179] In contrast, the Parliament's EAVA study* – *Cost of Non-Europe Report on A European Code on Private International Law.* CONE 3/2013 estimated that the overall **emotional costs** involved in resolving cross-border cases involving vulnerable adults are approximately **EUR 11 million per annum.**

to generate a reduction in the time and effort needed by competent authorities to process cross-border cases concerning the protection of adults.

Table 2: *Overview of costs related to each policy option*

	Option 1 (baseline)	Option 2	Option 3	Option 4
Costs for vulnerable adults, their families and representatives				
Procedural costs*	Costs depending on the nature of the case (as described in the illustrative examples in Table 1), including among others: ▪ Medical assessment costs including travel costs ▪ Sworn translation ▪ Registered letters ▪ Certificates ▪ Legal assistance The costs borne by adults, their families and representatives are higher in MS that are not parties to the Convention*	With all MS ratifying the Convention, the costs in four out of eight illustrative examples (1, 6, 7, and 8) are considerably reduced (depending on the example, these are costs of legal assistance, travel, additional medical expertise, sworn translation, etc.). This results in overall cost savings as compared to the baseline.	Thanks to the Regulation, the costs in all illustrative examples are either reduced or fully eliminated. Depending on the example, these are costs of legal assistance, travel, medical expertise, sworn translation, etc.). This results in overall cost savings as compared to the baseline as well as to PO2.	Cost savings as in Option 3. Additional savings for the cases involving non-EU Contracting States.
Costs for competent authorities				
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 *HCCH 2000 Protection of Adults Convention* *.	With all MS ratifying the Convention*, the costs of handling cross-border cases in four out of eight illustrative examples are reduced with respect to all MS. This results in overall cost savings as compared to the baseline.	Thanks 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 issue certificates for protection measures.	Cost savings as in Option 3. Additional costs savings on labour costs for handling the cases involving non-EU Contracting States.

To quantify these costs savings on 'procedural costs' for adults and competent authorities, the same set of scenarios described above was used (see the details in Table 1). The table below shows the calculation of average cost savings per vulnerable adult in cross-border situation under POs3 and 4.

Table 3: *Total procedural cost savings **per case** averaged across all Member States in Option 3 and 4 (EUR)* - Source: Study by external contractor*

	Illustrative Example 1	**Illustrative Example 2**	**Illustrative Example 3**	**Illustrative Example 4**	**Illustrative Example 5**	**Illustrative Example 6**	**Illustrative Example 7**	**Illustrative Example 8**
Gains (average costs savings)	2 919	**9 187**	1 660	2 424	2 748	340	**40**	786

It follows that for **each case of cross-border protection**, the savings made by an adult, a representative or the family of the adult in PO3 and PO4 range, on average, from **EUR 40 to EUR 9 000**.

6.2.3.1.2 6.2.3.1.2 Costs resulting from a possible EU intervention – borne by Member States

Notably, the various policy options would introduce **no new costs or administrative burden** to be borne by vulnerable adults, their representatives or families.

However, unlike individuals, Member States' competent authorities would have to also bear certain

adjustment costs* generated by the various policy options. Some of these adjustment costs would be one-off and some recurrent.

- For instance, one-off costs for Member States could arise for the **introduction of the new PIL* rules** in matters concerning the protection of adults with cross-border implications. These costs would however be virtually non-existent for those Member States that are already Contracting Parties*. Under POs 2 and 4, this would also include the ratification of the Convention* by Member States that are not Contracting States. In contrast, none of the policy options would oblige Member States to change their national substantive law* in this area[180].
- As is the case with any legislation, one-off and recurrent costs would also arise for the **familiarisation with a new legal framework** and regular training of judges and legal professionals. Depending on the policy option, these would be significantly lower (or none in case of PO2 in Member States that are Contracting States). The full realisation of the benefits from the European Certificate of Representation under POs 3 and 4 may also require some accompanying measures, such as **communication campaigns.**
- Under POs 2, 3 and 4, fifteen Member States would have to **set up Central Authorities*** that will coordinate and facilitate the implementation of the Convention*. These costs were estimated as limited, based on the experience with setting up these authorities in the present Contracting States.
- PO3 and 4 would include provisions that would **extend legal aid to additional categories of formalities** in cross-border situations that currently cannot benefit from the national or EU legal aid arrangements. This would entail additional costs for the provision of such aid. However, quantitative data assessing such costs are very limited. It is challenging to estimate in how many cross-border cases of adults it would actually apply. Nevertheless, it is not expected that the provision of legal aid in some cross-border cases would create a significant economic burden on the public finances of Member States considering the small number of vulnerable adults in cross-border situations estimated, and the limited categories of additional costs covered[181].
- Under POs 3 and 4, Member States would incur **additional IT-related costs** for implementing the provisions concerning the digitalisation of this area[182] (such as the possibilities for issuing electronic European Certificates of Representation, and/or for electronic communication channels). With respect to the latter, and in line with the approach for digitalising other areas of civil justice, the European Commission could provide a common reference implementation software solution. A decentralised IT system is already adopted for the purposes of other instruments[183]. Moreover, the establishment of a European electronic access point has been proposed under the digitalisation proposal* for certain areas of cross-border judicial cooperation in civil matters[184]. This IT infrastructure developed for the purposes of other legal acts could easily be built upon in order to support the digitalisation of a regulation on the protection of adults. In this regard, significant costs savings are expected given the economies of scale. Moreover, Member States' competent authorities could benefit from grants under current and future EU programmes[185].

  Additional IT-related adjustment costs* would also include the regular **maintenance costs for the digital solutions** established through the regulation. The PO3 and 4 could also envisage the **interconnection of national registers** concerning protection measures* and (confirmed) powers of representation*. This would entail making existing registers interoperable for the interconnection, but in some Member States also creating protection registers or digitalising them.

[180] However, in practice, the ratification of the *HCCH 2000 Protection of Adults Convention** often served as an impetus to revise substantive national law and modernise it: a very recent example is given by Malta which signed the Convention on 11 November 2022. The Maltese reform of the law on the protection of adult was carried out together with the preparatory work for the ratification of the Convention.

[181] For more details on a possible provision on legal aid, see Annex 6.

[182] The costs for digitalisation are expected to be rather low and will be offset considering that horizontal digital solutions for cross-border judicial cooperation are already being implemented. For details, see Annex 4.

[183] The system will be applied as of May 2025 for the Service of Documents* and Taking of Evidence* Regulations.

[184] Including in matters of parental responsibility, succession and maintenance matters under the Brussels IIb Regulation*, the Succession Regulation and the Maintenance Regulation respectively.

[185] Such as the Justice programme and the cohesion policy instruments under the current Multiannual Financial Framework.

While the majority of costs listed above are not significant, the IT-related costs for the interconnection of national registers are comparatively higher. They are thus quantified separately from the remainder of the costs to ensure clarity[186] (see Annex 4).

In addition to the adjustment costs*, additional **enforcement costs*** associated with activities such as monitoring of the **application of the legislation** or costs related to **international cooperation** within the framework of the Convention can be expected*. In particular, under POs 2, 3 and 4, sufficient resources would need to be provided to the **Central Authorities* to ensure their effective functioning.** Related costs would however not be significant since in practice the majority of Contracting States to the Convention attributed the function of a Central Authority* to their ministries of justice without further requirements in terms of additional staffing[187]. Relying on the data provided by several Member States, an **average annual cost of EUR 10 562** per Member State for running the Central Authority* was estimated (methodology detailed in Annex 4). Of course, these costs would be outweighed by the above-described cost savings on procedural costs* by competent authorities.

Table 4: *Overview of costs for each policy option*

	Option 1 (baseline)	Option 2	Option 3	Option 4
Costs for competent authorities				
Adjustment costs*	No adjustment costs (no new legal instrument).	Costs related to the ratification of the Convention by remaining MS, incl. labour costs. Cost arising from the need to get familiar with a new legislation, training, communication. One-off cost for set up of Central Authorities in non-Contracting Parties.	Costs related to the introduction of new PIL rules provided in the Regulation. Cost arising from the need to get familiar with a new legislation, training, communication. Costs of additional measures, such as costs of digitalisation, of setting up and maintaining the interconnection of registers, costs of legal aid, etc. One-off cost for set up of Central Authorities in MS that are non-Contracting Parties[188].	Costs related to the ratification of the Convention by remaining MS, incl. labour costs. Cost arising from the need to get familiar with a new legislation, training, communication. Costs of additional measures, such as costs of digitalisation, of setting up and maintaining the interconnection of registers, costs of legal aid, etc. One-off cost for set up of Central Authorities in MS that are non-Contracting Parties.
Enforcement costs*	No enforcement costs[189].	Recurrent costs for running the Central Authorities* for all MS. Enforcement costs associated with activities such as monitoring of the application of the Convention or with international cooperation within the framework of the Convention.	Recurrent costs for running the Central Authorities* in all MS. Enforcement costs associated with activities such as monitoring of the application of the Regulation or with the cooperation within the framework of the EJN-civil*.	Recurrent costs for running the Central Authorities* in all MS. Enforcement costs associated with activities such as monitoring of the application of the Convention and of the Regulation or with the cooperation within the framework of the Convention and EJN-civil*.

[186] The costs for interconnecting Member States' registers were estimated based on the comparable costs of interconnecting national insolvency registers.
[187] Contracting States to the Convention indicated that their Central Authorities* spend on average less than one FTE to ensure the smooth operation of the Convention (the estimates ranging from 0 to 0.5 days). See reply to Q 2.4 in the *Prel.Doc 9 of September 2022 Compilation of responses received to the September 2020 Questionnaire on the 2000 Protection of Adults Convention* that was prepared by HCCH for discussion at the 2022 Special Commission*.
[188] The EU Regulation under PO3 would establish a cooperation mechanism between Member States, similar to the one established by the Convention. This means that the Regulation would also set up a Central Authority in each Member State.
[189] Labour costs related to the enforcement of the Convention* occur only in MS which are already Contracting States to the Convention.

Table 5: *Comparison of costs and benefits per option (thousands EUR)*[190] (Source: Study by an external contractor*)

	Option 2		Option 3		Option 4	
	10 years	15 years	10 years	15 years	10 years	15 years
Cost savings on procedural costs						
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 competent authorities	14 661	14 661	8 119	8 119	8 282	8 282
Relevant adjustment & enforcement costs[191]						
Setting-up of the interconnection of Member States' registers (one-off adjustment cost)	0	0	10 303	10 303	10 303	10 303
Maintenance of the interconnection of Member States' registers (recurrent adjustment cost)	0	0	55 327	82 990	55 327	82 990
Implementation of the Convention (recurrent enforcement cost)	1 584	2 376	1 584	2 376	1 584	2 376
Saldo (benefits – costs)	827 288	826 496	2 489 793	2 461 337	2 540 933	2 512 477

According to the estimates detailed in Annex 4, Option 2 would result in net savings of ca. EUR 827 million in the perspective of 10 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*.

- *Costs resulting from a possible EU intervention – borne by the European Commission*

The digitalisation of the area of the protection of adults under PO3 and PO4 would require investment in IT infrastructure. In line with the approach for digitalising other areas of civil justice, the Commission could provide Member States' competent authorities with a common reference implementation software solution to facilitate the interoperable communication between competent authorities. The existing decentralised IT system would likely require certain adjustments. Likewise, the European electronic access point on the e-Justice Portal* would require modifications to enable digital communication between citizens and competent authorities in the area of the adult's protection. While at this stage it is not feasible to calculate the costs in this regard, they are expected to be comparable to those arising in relation to the digitalisation of other civil-justice instruments[192].

6.2.3.2 Macroeconomic impacts

Given the relatively limited size of the population of vulnerable adults who are in cross-border situations, the different policy options are unlikely to have any substantial **macro-economic impacts** across the Member States.

[190] Negative numbers indicate additional costs.
[191] Some other minor adjustment or enforcement costs can arise, as described in the Table 4 above, which were not quantified.
[192] These IT-related costs were estimated to be around EUR 300 000 per year during the development phase, as a one-off cost, with recurrent maintenance costs at EUR 150 000 per year. In addition, the costs arising for the Commission from the development and maintenance of the solutions interconnecting the Member States' registers were estimated at EUR 2.5 million for the development and an average of EUR 238 000 annually for the maintenance of the system of interconnection. *For details, see Annex 4.*

6.2.4 6.2.4 Digitalisation of justice and data protection impacts

The *HCCH 2000 Protection of Adults Convention** does not include any provisions concerning digital communication or other digital tools. **The PO2** (envisaging the compulsory ratification of the Convention by Member States) **would thus not have any impact on digitalisation** of the area.

In contrast, an EU regulation included under POs **3 and 4 would be coherent with the 'digital by default' principle and the EU policy on digitalisation of justice**[193]. In particular, the regulation would provide for specific provisions on digitalisation of the cross-border procedures involving the protection of adults, as described in Box 2, while building on the precedents in that area[194]. These rules would include the mandatory use of digital communication channels for competent authorities in the area of adult protection, digital multilingual standard forms, and an electronic portal for the general public to have the possibility to make their requests in a digital way, including with regard to the ECR*.

In addition, the regulation would propose **interconnection of national registers** of protection measures* and powers of representation*. This would entail, in several Member States, first setting up such national registers or digitalising the existing ones[195]. Such interconnection would make it easier to obtain information about the legal capacity of adults to act in various cross-border contexts.

The introduction of the new EU digital rules concerning the protection of adults could also have the indirect effect to serve as a **stimulus for the digitalisation** of these processes at the Member States' level also in cases without a cross-border dimension. The digitalisation of the procedures would further result in a higher security of the communication and exchange of data and increased transparency as to the validity of the documents submitted when seeking recognition.

Overall, the digitalisation measures under POs 3 and 4 would positively contribute to the EU's objectives on the digitalisation of justice.

In addition, a regulation under POs 3 and 4 would provide a legal basis for **the processing of personal data** of natural persons, especially those of protected adults. The protection of such data would be ensured in line with the General Data Protection Regulation* and EUDPR*. The Member States' competent authorities and, in some cases[196], the European Commission would act as data controllers responsible for the lawfulness of the processing. The Regulation would observe the principles applicable to the processing of personal data, including data minimisation[197] and purpose limitation. *For details concerning data protection impacts of the Regulation, see Annex 6.*

6.2.5 6.2.5 Impact on non-EU countries

The Policy options 2 and 4 also have a distinctive positive impact on non-EU countries. These policy options envisage that all EU Member States become a party to the *HCCH 2000 Protection of Adults Convention**. First, other non-EU Contracting Parties to the Convention (Switzerland, the United Kingdom (in respect to Scotland only) and Monaco) would thus immediately benefit from this enlarged

[193] See 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, COM/2020/710 final.
[194] See Service of Documents* and Taking of Evidence* regulations and digitalisation proposal*.
[195] Based on the available data from the Study by external contractor*, 6 Member States – BG, CY, EE, EL, PL and RO – do not have such national registers at the moment.
[196] With regard to the digital solutions that the Commission would provide to enable digital communication and the interconnection of registers.
[197] The processing of data under the regulation would likely include also special category of personal data since the information on protection measures often relates to health data. A higher protection and confidentiality would have to be ensured when processing this category of data.

geographical coverage of the rules included in the Convention. As a result, adults living in the EU that have a connection with these States (e.g. owning a property in these States) would benefit from the improved protection of their rights. Adults living in these States who also have a link with the EU would likewise benefit from the uniform rules introduced by the Convention.

The ratification of the Convention by all Member States would also likely encourage other non-EU States to follow suit and join the Convention[198]. In fact, once a certain matter has become an EU policy area, it can also be promoted by the EU vis-à-vis non-EU countries[199].

6.2.6 6.2.6 Impact on Sustainable Development Goals (SDGs)

The impacts of the policy 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 and legal impacts described above. Consequently, Options 3 and 4 would have the strongest positive impact on reaching these SDGs.

7 7 HOW DO THE OPTIONS COMPARE?

The comparison considers POs 2, 3 and 4, while comparing them with the baseline (PO1). The options are mutually exclusive, and their potential combination is therefore not taken into consideration for the purposes of the comparison.

Based on the detailed assessment of the policy options above, the table below provides an overview of the rating of each policy option. In the multi-criteria decision analysis, a score was given to each policy option, theoretically going from '---' (negative impact) to '+++' (positive impact)[200] based on **three criteria:** (i) ***effectiveness*** in achieving the policy objectives, (ii) ***efficiency*** in terms of costs and benefits from the option, (iii) ***coherence*** of the option with existing policy initiatives and legal frameworks, in particular in the area of fundamental rights and UNCRPD*.

The first criterion, ***effectiveness*** was defined as the extent to which the policy options achieve the policy objectives of the PA initiative*. The assessment of effectiveness was thus detailed in *Section 6.1 on the achievement of policy objectives*. To avoid double counting, the extent to which policy options achieve the General objective of protecting fundamental rights of vulnerable adults and legal impacts of the options have been assessed together under the coherence criterion. The second criterion, ***efficiency*** was defined as the extent to which the benefits of the policy option exceed its costs. It includes the indicators such as procedural costs*, adjustment costs*, and other economic impacts. For this criterion the different signs of the scores should be read as benefits and costs. Finally, the last criterion of ***coherence*** assesses to which extent the policy options are aligned with other EU instruments, law and policies. This criterion includes: (i) the legal impact of policy options on fundamental rights of vulnerable adults, including the right to free movement as these are protected under EU law, in particular the Charter, the Treaties and the UNCRPD*; (ii) EU policies aimed at increasing the protection of vulnerable adults and their

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[198] As shown by Figure 10: *Number of Contracting Parties bound by the core HCCH Conventions*. *(*Source: HCCH), the number of Contracting States to each convention remains low at the beginning but begins to increase steeply as soon as a 'critical mass' of States becomes signatories of these conventions. This is logical – if a State can apply a convention with only vis-à-vis a few other contracting parties, the effort needed for the ratification of the convention may perhaps seem less justified given its limited benefit. This however changes if the ratification meant an instant creation of a legal framework with many other contracting parties.

[199] This can be relevant for instance in relation to countries that are or may become candidates for future EU accession.

[200] In this logic, '+/-' represents the baseline. The baseline is a dynamic one, meaning that even though the situation concerning the protection of vulnerable adults would deteriorate in the future (due to the expected demographic changes) without any EU intervention, the baseline does not have negative scores. However, it is for these reasons (that the situation does not improve under the baseline or even further deteriorates) that the baseline was discarded.

fundamental rights, such as the Disability Strategy; (iii) synergies with the EU policy on digitalisation; and (iv) existing EU *acquis* in the area of civil justice.[201]

Table 6: *Comparison of policy options*

	Policy options			
	PO1 (baseline) *discarded*	PO2	PO3	PO4
Effectiveness				
Specific obj. 1 Increased legal certainty	+/-	+	++	+++
Specific obj. 2 Improved cross-border recognition of protection measures and powers of representation	+/-	++	+++	+++
Specific obj. 3 Reduced costs and length of the proceedings	+/-	++	+++	+++
Efficiency				
	+/-	++	+++	+++
Coherence				
Coherence with EU legal and policy framework, including the impact on fundamental rights of adults	+/-	++	++	+++
TOTAL	0	9	13	15

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

Based on the analysis carried out above, **Option 4 seems to be the most satisfactory option.** This is also consistent with the views of most stakeholders. For instance, five out of six participants in one focus group*[202] indicated Option 4 as the preferred option.

In the above matrix, all assessment criteria were given the same importance (weight). Nevertheless, the importance given to each of these criteria can vary. As an alternative, a greater weight could be given to the criterion of coherence, which includes the crucial assessment of the extent to which each of the policy options protects the fundamental rights of the adults. If the criterion of coherence and impact on fundamental rights was given a greater weight, the results of the analysis would nevertheless remain the same, with PO4 as the preferred option.

8 8 PREFERRED OPTION

Based on the above analysis, **Policy Option 4**, whereby the EU would adopt both (i) the Council decision obliging Member States to ratify the Convention* within a specific timeframe and (ii) a Regulation complementing the rules of the Convention*, **is the preferred option.**

In PO4, all problems described in Section 2 (lack of legal certainty, lengthy and costly proceedings, and non-recognition of protection measures* and powers of representation*) would be solved to the extent possible, while avoiding the respective limitations of PO2 and PO3. Since it is practically and legally impossible to make a clear distinction between intra-EU and extra-EU situations, PO4 would maximise the geographical scope of the initiative, and safeguard the fundamental rights of adults* on the long term regardless of whether their trajectory/assets involves non-EU States. Since a part of the rules of the Convention* would apply to the EU as well, merely being supplemented in certain aspects at EU level, this option also ensures that practitioners apply a single, simplified set of rules in EU and non-EU cases. The regulation would provide for the establishment of a European Certificate of Representation (ECR*),

[201] As regards (i) and (ii), the scoring of each policy option is based on legal impacts, especially impact on fundamental rights of adults, described in Section 6.2.1. As regards (iii), the synergies of policy options with the EU policy of digitalisation is detailed in Section 6.2.4. Finally, as regards (iv), all policy options are fully coherent with the existing EU *acquis* in the civil justice area, the scoring of options is thus the same on this aspect.

[202] Focus groups* were organised by the external contractor* as a part of consultations. See details in Annex 9.

substantially simplifying the proof of the powers entrusted to a representative. It would also modernise the cross-border cooperation and allow the use of tools that have proven their effectiveness in other areas, such as the EJN-civil* or the e-Justice Portal*. All limitations in the operation of the Convention* that have been observed would be overcome within the EU. The CJEU would have jurisdiction to interpret both the EU regulation and the Convention, if necessary, thus increasing even more legal certainty for adults.

The preferred Policy Option 4 will not create any new administrative requirements on individuals and will thus add **no additional administrative costs for individuals**. On the contrary, Option 4 will significantly reduce the administrative costs for individuals[203]. The objectives of the **'one in, one out' approach** are thus fully achieved by the initiative. (*For details, see the OIOO* methodology in Annex 3 and at the end of Annex 4*.).

In PO4, the EU action would comply with the principles of **subsidiarity**, as detailed in Section 3. In fact, this option is the only one which can at the same time (i) meet the strong expectations of many Member States already Contracting Party to the Convention and stakeholders not to derogate from the rules of the Convention* (in particular on jurisdiction and applicable law)[204], and (ii) provide adults* with the tool that was unanimously supported/requested by States and stakeholders during the consultations: the electronic multilingual ECR*. The principle of subsidiarity is therefore maximised in PO4. The ratification of the Convention* would in addition meet the general objective expressed by Member States to support a multilateral approach in international cooperation in the field of justice[205].The complementing provisions on cooperation provided for in a Regulation, in particular the possibility to have an EU document asserting their rights would be a game changer for all adults* in cross-border situations.

In terms of **proportionality,** both PO2 and PO1 achieve the objectives of the initiative only to a limited extent. The preferred option (PO4) on the other hand is the most ambitious policy option, and the one that most modifies the current legal framework. However, taking into account the primary objective of protection of fundamental rights of adults, and the positive balance in terms of costs engaged, **the preferred option remains proportionate.** Indeed, the substantive scope of the preferred option would be limited to what is necessary to achieve the policy objectives, in particular to protect the rights, including fundamental rights, of adults in cross-border situations. For instance, given the lack of evidence of practical problems met by adults in cases involving the law applicable to advance directives* or *ex lege** representation, which were mainly mentioned by the academia, the PA initiative* does not foresee additional EU provisions on applicable law in that respect. Another example of proportionality is that it would be optional for adults and their representatives whether they request the uniform European Certificate of Representation that would be introduced by PO4[206]. In addition, the costs for competent authorities anticipated in PO4 (through the interconnection of registers) would be offset by the

[203] The amount **of OIOO cost savings*** (only savings by individuals on administrative costs) is estimated to approximately **EUR 520 million over the period of 10–15 years**. The estimated amount of savings is the same for 10 and 15 years, given the assumption used to calculate the savings, i.e. that every vulnerable adult in a cross-border situation will be affected by at least one of the problem identified in this report during his or her lifetime.

[204] This concern was expressed many times in the contributions to the OPC*, the ELI* report, the European Parliament's report, during the Stakeholders meeting and the Member States meeting, as well as during the consultation of the EJN-civil*. Whenever an international convention and an EU regulation apply to the same matters, any difference in the wording or the substance of the rules on jurisdiction and applicable law may create significant issues in cross-border cases involving EU and non-EU Contracting States*. For more detail about the practical and legal implications, see the 2021 Legal Study*, p. 132, 136, 138. Therefore, to avoid creating discrepancies and adding an extra layer of complexity for practitioners applying the Convention and the regulation, the PIL rules included in the regulation would be, as much as possible, aligned with those in those in the Convention.

[205] See the 2019 Council Conclusions on the future of civil justice cooperation.

[206] This certificate would not for instance invalidate the standardised forms developed by the HCCH. These or other similar forms however do not have the benefits of the ECR*, such as the presumed validity or uniform forms available in all EU languages that reduces the need for translations.

corresponding reduction of procedural costs* for adults. Furthermore, it must be underlined that, in line with the development of e-government (digitalisation of public services) in general[207], and digitalisation of justice in particular, the creation and/or digitalisation of national registers of protection measures and (confirmed) powers of representation will most likely be undertaken by Member States, independently of this initiative[208]. They will hence only be accelerated by the initiative and streamlined to ensure interoperability. In that sense, as far as digitalisation and interconnection of registers is concerned, PO4 would only accelerate an inevitable and expected development.

Under PO4, all adults* would benefit from increased legal certainty and would feel safe travelling or moving abroad. Vulnerable adults would no longer (or to a much lesser extent) need to invest in litigation or to consult a lawyer/notary to have a protection measure recognised in another Member State (and in other non-EU Contracting States to the Convention). Thanks to the ECR*, the adults' representatives would be able to manage the adults' assets abroad more easily, e.g., access their bank account or sell their property abroad when needed. In addition, banks, insurance companies, medical staff, social workers or real estate agents would not face uncertainty as to the legal validity of foreign documents.

Competent authorities (such as notaries) and lawyers could give their clients reliable advice, and access to foreign law when necessary. Similarly, courts and competent authorities would apply a consistent and uniform legal framework throughout the EU, which would decrease their workload by reducing the length of cross-border proceedings and the complexity of judicial cooperation. They would communicate with each other using electronic channels through EU multilingual forms, streamlining their work in cross-border cases and reducing their administrative burden. They would be better trained and would have, in case of a problem, the possibility to ask Central Authorities* and refer a question to the EJN-civil*. Relevant competent authorities in the EU could access the information on the legal capacity of an individual with a connection to a foreign State, and ensure that the appropriate support is provided.

Finally, the HCCH 2000 Protection of Adults Convention* would be implemented in line with the UNCRPD*[209]. Given the expected very positive impacts of the preferred option on the rights of adults in cross-border situations, the preferred option would significantly improve the protection of fundamental rights of vulnerable adults (such as equality before the law, access to justice, self-determination, right to property and to free movement).

9 9 HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

The legal instruments adopted under the preferred policy option (i.e. the combination of the EU Regulation on PA* and the Council decision on adults*) would complement each other, the monitoring of their application can thus be done together.

First, it is the practice of the Hague Conference on Private International Law*, under whose auspices the HCCH 2000 Protection of Adults Convention* was drawn up, to organise regular meetings ('**Special Commissions**') to take stock of the practical operation of conventions, in order to monitor and evaluate

[207] See the Europe's Digital Decade Programme and the 2021 Communication 2030 Digital Compass: the European Way for the Digital Decade that further highlights the need to modernise public services through further digitalisation.

[208] It can thus be assumed that some Member States will invest into the creation of their national digitalised registers even if the EU does not act. This would mean, in turn, that while the EU measure of setting up and interconnecting MS' registers requires a necessary investment on the side of Member States, a part of these costs would be invested by Member States in any case. However, this will not ensure that in cross-border dealings, these national solutions will be interoperable, compatible with each other, or accessible from abroad. Therefore, in the absence of an EU intervention, while national cases may benefit from this digitalisation effort, this will most likely not be the case for cross-border ones.

[209] Already the Commission Strategy on the rights of persons with disabilities (2021-2030) included the commitment that the Commission will work with Member States to implement the HCCH 2000 Protection of Adults Convention in line with the UNCRPD. The PA regulation* that would be proposed as a part of the preferred option would make this application subject to control by the Commission and the CJEU.

their success and help resolve difficulties in their interpretation and application. The HCCH 2000 Protection of Adults Convention would not be an exception. Such a Special Commission was in fact held in November 2022, and was preceded by an initial work of data collection (2022 Special Commission*). If a Council decision on adults* is adopted, the Commission would coordinate and support such work in preparation of future Special Commissions.

In addition to this HCCH assessment mechanism, the EU should put in place its own monitoring and evaluation mechanism for both the Convention and the Regulation. This mechanism would ensure that the legislation continues to address the current problems faced by adults in the most efficient way and that the legislation is applied correctly and in a uniform manner. To meet the objectives of the PA initiative*, it would also be necessary that awareness about the legislation concerning the protection of adults in cross-border situations is increased[210]. This can be done through national and/or EU measures, such as awareness-raising campaigns on the ECR* for the general public, dedicated EJTN* trainings for the judiciary, or EU-funded training programs for all practitioners.

The monitoring of the application of the legislation would be done in a close cooperation with the **Central Authorities*** that would be established under the Council Decision and the Regulation and would be tasked with the assistance in cross-border cases. In addition, the Commission would discuss the application of the legislation and promote exchanges of best practices among Member States in the framework of the **EJN-civil***. As a rule, the application of any EU legislation in the area of civil justice is monitored through regular meetings of EJN-civil*. Thematic meetings of EJN-civil contact points would be essential for assessing how the legislation is applied in practice and collect and discuss statistics as is already done for other regulations. EJN-civil would also help to address any potential legal or practical problems that would arise with the application of the legislation[211], provide the necessary information on the e-Justice Portal*, establish factsheets or practice guides.

Finally, **a full evaluation of the application of the legislation** would be carried out by the Commission. Given the variety and complexity of the various measures envisaged under Option 4, an evaluation of the preferred option would take place, as appropriate, 10 years after the entry into application of the Regulation or 5 years after the entry into application of the last time-phased measure[212]. The evaluation would be done on the basis of input collected from the competent authorities of the Member States (including Central Authorities*), external experts, and relevant stakeholders and literature. The obtention of quantitative data would heavily rely on legal practitioners and national competent authorities (in particular for quantifying the number of powers of representation*). As is the case for other EU legislation in the area of cross-border civil justice, a **legal requirement on Member States to provide specific information** relevant for the evaluation of the operation and application of the legislation would be included in the Regulation[213]. The mandatory use of IT tools, such as reference implementation software and the e-CODEX communication tool by the Central Authorities* and the courts would allow for reliable, secure and swift exchange of harmonised data on the functioning of the Regulation. Similarly, the online issuance of ECRs* would allow for immediate and complete collection of statistical

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[210] This is also in line with the Recommendation No 1 from the RESIJ fact-finding mission*: *'Promote training actions on the protection of adults in national legal schools and develop a European training plan on the use of civil judicial cooperation instruments, communication and awareness-raising actions.'* The fact-finding mission revealed that the awareness about the Convention is limited among legal practitioners (including those from the Contracting States*). This was also confirmed by several EJN-civil contact points in the context of the EJN-civil* discussion on the topic of the protection of adults.

[211] The regular exchanges of knowledge and best practices in the context of EJN-civil* would also enhance mutual trust between MS and could have an approximation effect on national substantive laws*.

[212] A sufficient period of time between the evaluation and the date of application of the measures would also be needed to collect a critical mass of information about the practical application of the legislation.

[213] As to which, see e.g. Art. 101(2) of the 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 (recast).* ST/8214/2019/INIT. OJ L 178, 2.7.2019, p. 1–115.

data. Finally, the evaluation would be based on case law and, if available, on the findings from academic literature on the topic.

The evaluation would also benefit from the results of the monitoring of the implementation of the other related EU initiatives, such as the *Strategy for the rights of persons with disabilities 2021–2030*[214] and the digitalisation proposal* with respect to the digitalisation aspects of the initiative. If the timeframes for the evaluation of these instruments coincide with that of the PA initiative*, joint monitoring and evaluation could be considered to benefit from possible synergies and save costs[215].

Table 44: *Examples of potential evaluation indicators* in Annex 8 provides suggested indicators for the evaluation.

[214] European Commission. (2021). *Union of Equality Strategy for the Rights of Persons with Disabilities 2021–2030*.
[215] Enough information should however be collected to distinguish the specific contribution of the present initiative. A side effect of a joint monitoring and evaluation plan would be to see how different related initiatives are working, reinforcing each other or otherwise.

ANNEX 1: PROCEDURAL INFORMATION

9.1 1. Lead DG, Decide Planning/CWP references

Lead DG: DG JUSTICE AND CONSUMERS ('DG JUST')

Decide Planning: PLAN/2021/10564 – Civil aspects of the cross-border protection of vulnerable adults

The 2022 Commission Work Programme announced the PA initative* in the narrative as follows "We will propose measures to improve the recognition of parenthood between Member States and to strengthen judicial cooperation on the protection of vulnerable adults in cross-border situations".

9.2 2. Organisation and timing

A Commission inter-services steering group (ISG) was established in November 2021 for preparing the PA initiative*. It was chaired by Directorate-General Justice and Consumers (DG JUST). The following DGs participated at the inter-service group: Legal Service (SJ), Secretariat-General (SG) and DG Employment, Social Affairs and Inclusion (DG EMPL).

The ISG met three times in the period from November 2021 to December 2022. The inter-service group approved the Call for Evidence* for an impact assessment in November 2021 and the Impact Assessment report on 9 December 2022.

9.3 3. Consultation of the RSB

Before the finalisation of the Impact Assessment report, DG JUST received advice from the members of the Regulatory Scrutiny Board ('RSB') at an upstream meeting organised on 19 September 2022.

The Impact Assessment report was then examined by the RSB and received a positive opinion on 20 January 2023. In its opinion, the Board also provided suggestions as to possible improvements of the report. The table below shows how this report takes into account the main comments of the RSB.

Figure 8: *Opinion of the Regulatory Scrutiny Board*

(1) The report should explain why other options were not considered in depth – such as a Directive, a 'staged' approach, Commission guidance – but were discarded from the outset.	A new section 5.3 on discarded policy options was added, explaining why a directive, a recommendation or a stages approach would not be suitable policy options for this policy initiative. Further related explanations were also added to Section 3.2 and fn. 138. In the choice of the appropriate legal instrument for the PA initiative*, the specificities of the area of private international law have to be taken into account. It is generally recognised that this area requires rules that are fully uniform and directly applicable. In matters of international jurisdiction, applicable law and recognition and enforcement even small differences, which could be the result of a directive leaving some leeway in the process of transposition, would undermine the very purpose of the rules[216]. Similarly, the modernisation of judicial cooperation (digitalisation of communication between authorities via a specific decentralised IT system or the use of identical multilingual standard forms) can only be achieved by a Regulation. The application of a single set of rules is a condition for the reciprocity and mutual trust. The Commission (and then the EU legislator) needs to choose the most appropriate legal instrument for the intended

[216] For example, the purpose of applicable law rules is that no matter where a particular matter is considered, it is always the same law that applies to this matter. If a Directive permitted for the flexibility and allowed both Member State A and Member State B to apply their own law respectively, the purpose of uniformity and legal certainty would be defeated.

	rules and in this case, only a regulation is legally conceivable. That is also why all 20 existing EU instruments regulating these issues in the field of private international law and cross -border procedures have been adopted as Regulations. Similarly, a recommendation as a non-binding measure and essentially a mere invitation to Member States was considered as non-relevant in view of the lack of success of the promotion work carried out by the EU institutions over the last 13 years and, in particular, given the need for uniform rules when it comes to private international law. 'Staged approach' could be conceivable and could have taken two different forms: - Under the first option, the EU would oblige its Member States to ratify the Convention and then to adopt an EU Regulation. This staged approach is however not excluded by Option 2 which suggests only the ratification of the Convention at this stage but does not rule out the possibility of EU Regulation at a later stage. This staged approach would however have negative impact in terms of adjustment costs incurred twice, opportunity missed to modernise judicial cooperation and to establish interoperable IT systems, as well as multiple changes of rules over time undermining legal certainty. Given the hypothetical nature and the hypothetical content of a postponed regulation in that scenario, this approach was not analysed in the impact assessment report. - The second option of a limited EU initiative (with a smaller scope than the Convention, or in the form of a pilot for example), would be in fact counterproductive, in view of the existence of an efficient international instrument in the area, to which 11 Member States are already party. None of the stakeholders or the experts consulted have even contemplated an alternative to the ratification of the Convention and/or to a similar EU Regulation. That option would require the use of EU and Member States' resources, to eventually fall short of the achievements of the Convention.
It should explain why the actions and measures proposed in the legislative proposal are presented as a single package without real alternatives.	The measures that are a part of PA regulation* under POs 3 and 4 are already a result of a previous analysis undertaken with the help of available legal expertise, evidence and consultations with a view to determine whether specific measures should be a part of the 'package'. In line with this analysis, some measures (such as rules for law applicable to advance directives* or to *ex lege* representation*) were not included in that 'package', given the lack of evidence of practical problems experienced by adults in relation to these matters. In addition, the majority of the proposed measures reflects the usual measures included in EU instruments in the field of private international law. If an EU Regulation would not provide for such measures, it would be seen as a step backwards as compared to other areas of civil justice, and therefore a negative sign for the protection of vulnerable adults, their representatives, families and public authorities involved in cross-border cases. This was further clarified in Annex 6 that describes possible EU measures in more details. That annex also includes assessment of each measure separately, in particular as to its estimated costs.
(2) For the criterion of effectiveness, the scoring of the options for legal certainty should be better explained, also in relation to the preceding analysis of legal impacts. For the criterion of coherence, the report should be explicit on the relevant legal and policy areas on which the options are scored, both within the EU and internationally.	The criteria of effectiveness and coherence were better explained in Section 7.
(1) Given the challenges experienced in the implementation of the Hague Convention on International Protection of Vulnerable Adults, in the EU	Possible reasons for a low uptake of the Convention were further elaborated in Section 1 (international legal context). As already explained and as confirmed by all stakeholder consultations and the 2022 Special Commission*, the HCCH 2000 Protection of Adults Convention is

context, the option to make the Convention mandatory should be better justified. There should be a clearer explanation of the key differences between options 3 and 4. The articulation between the proposed legislation and the Hague Convention should be set out clearly. (3) The report should explain more thoroughly the reasons for the low uptake of the Convention among EU Member States and internationally. It should assess to what extent this low uptake is linked to the limited effectiveness of the Convention and/or the scale of the problem. The report should detail the effects of the Convention in contracting states compared to non-signatories and distinguish the scale of the problems in those states where the Convention is in force. This analysis should be coherent with the need for EU action as well as with the proposed option to make the Convention mandatory.	an international instrument that is fit for its purpose. The Convention provides 'core' private international that enshrine a useful minimum legal framework that mitigates the problems faced by vulnerable adults in cross-border situations. However, the Convention, drafted to reach international consensus, does not include all rules where harmonisation would be useful in the EU of the 21st century. This is given by the fact that cooperation between EU Member States can be much closer than between EU Member States and any non-EU country that can become a party to the Convention. In comparison to an international instrument that should provide for rules that can be applied among countries with very different legal systems, a possible EU instrument can provide for a much closer cooperation among EU Member States, based on the principle of mutual trust that applies in the EU justice area and also thanks to the experience with introducing streamlined rules in other EU justice areas. Some measures, such as digitalisation of the cross-border procedures, interconnection of registers, uniform ECR* available in all languages, etc., can only be introduced by an EU regulation. This was explained throughout the report, e.g. in fn.144 or in Section 5. Currently, problems described in this impact assessment remain relevant also in Member States that are Contracting Parties to the Convention. This is partially because the Convention only applies vis-à-vis other 10 Member States that are Contracting Parties to the Convention and not vis-à-vis the remainder of the EU. Therefore, the problems described in Section 2 can be observed in relation to all Member States. Some problems may be mitigated or completely solved if all Member States joined the Convention. A new annex 7 illustrates which problems would disappear if all MS joined the Convention and which problems would remain and could be solved only by an EU regulation. A further explanation of the difference between policy options 3 and 4 was included in Section 5 and 6. This difference mainly concerns the territorial scope – option 3 (regulation) includes rules applicable only among MS; in contrast, under option 4, the Convention would apply in relations between MS and non-EU countries (that are Contracting States of the Convention), while more streamlined rules (in a regulation) would apply among MS.
(4) The social and legal impacts should be better distinguished for each option and be consistent with the scoring in the options' comparison. The report should explain how the digitalisation of justice, irrespective of the current initiative, differentiates the options.	Legal and social impacts of each option were better distinguished in Section 6.2 of this report. Given the nature of these impacts that is not quantifiable, these impacts were not quantified. The assessment of these impacts for each policy option follows the logic that the positive social and legal impacts are the greater, the wider the scope of the policy option is. The policy option that covers and protects more adults (*wider territorial scope*) and protects them to a greater extent (*wider material scope*) also has more positive legal and social impacts. As regards digitalisation of justice, it is a general crosscutting policy pursued both by Member States and the EU. However, EU measures concern aspects of digitalisation that are not addressed and cannot be addressed at the national level. In particular, national law cannot ensure the interoperability of digital systems implemented by Member States individually. National measures cannot therefore ensure that the communication between competent authorities in different Member States takes places digitally or that registers established in different Member States are interconnected. - As regards Member States, some already have (partially) digitalised their justice systems, and their registers on protection measures, as detailed in Section 1 of the report. It may be that some Member States will further digitalise their justice system and develop electronic registers of protection measures in the coming years or partially digitalise the existing ones without any EU intervention (under the baseline scenario). However, these initiatives only cover national cases, and do not ensure that (new) registers or IT systems will be compatible with those of other Member States. Those national systems will record different (types of) information and may be accessible only to national public authorities. Digitalisation of cross-border cases requires the interconnection of national IT systems and their interoperability. In the context of the current trend towards the digitalisation of national systems, this requirement of interoperability will be progressively more difficult to reach given the increasing differences

	between the different national digital solutions and the absence of common standards. Without coordinated work on interoperability and interconnection at EU level, the national trends of digitalisation will not tackle the cross-border problems described in the report. - As regards the EU, the field of the cross-border protection of vulnerable adults will not be digitalised under the baseline (without the adoption of an EU regulation on the protection of vulnerable adults). The horizontal initiative on the digitalisation of judicial cooperation in the EU, and the proposals adopted by the Commission only cover existing EU legislation. Because of the absence of an EU instrument in the area of protection of adults, this area of law is not included in the text of the proposals. Therefore, under the baseline, no digitalisation of the cross-border cooperation will be pursued at the EU level in the area of the protection of adults. This was further clarified in Section 1 and in fn. 164 and 219. In contrast, options 3 and 4 that include measures digitalising the area of the protection of adults would be in line with the policy of digitalising justice (and more generally, with the 'digital by default' principle). This was further highlighted in Section 6.2.4. *Digitalisation of justice and data protection impacts* (as well as in Annex 4).
The significance of the international dimension of the Convention should be better presented, also in relation to the potential influence of the EU to increase the Convention adoption internationally.	It was described in Section 6.2.5 (Impact on non-EU countries) that the ratification of the Convention by all Member States under POs 2 would have an effect on non-EU countries. - Non-EU countries that are already Contracting Parties to the Convention would benefit directly since the Convention would provide a uniform legal framework in their relations to all EU Member States. - In addition, it is illustrated in Annex 5 that such ratification would encourage other non-EU counties to join the Convention. Additional language was added to Section 6.2.5 and to Annex 5 to clarify this.
(5) The report should better explain the optional nature of the certificate of representation in the legislative proposal, considering the shortcomings of the existing optional certificate under the Convention.	Additional explanations were included in the report to further clarify the difference (e.g. in fn.169 or Annex 6) The Certificate provided for in Article 38 of the Convention is optional or not mandatory in the sense that its availability is left to the discretion of the States: the Contracting Parties may decide not to implement this provision and thus not to provide the certificate to their citizens. As a result, and as established by the replies to the HCCH Questionnaire in preparation of the 2022 Special Commission*, in several Contracting States, the certificate is not available to the vulnerable adults or their representatives. In addition, there is no common template for such a certificate (contrary to mandatory forms contained in other conventions, such as the HCCH 1965 Service of documents Convention). The recommended form developed by the HCCH is in the explanatory report but is not (or not easily) available on the HCCH website as a stand-alone form. In contrast, the European Certificate of Representation (ECR*) provided for in an EU Regulation would have to be available to all EU citizens, and the corresponding standard form would be in an annex of the EU Regulation and therefore have a legislative value. The form would be available online in all EU languages. It would be 'optional' in the sense that it would not be mandatory for a competent authority to issue an ECR for each measure taken, or powers of representation granted, in a cross-border case. However, if an applicant (a representative of an adult) requires such a certificate, it would be compulsory for the competent authorities of Member States to issue it.
(6) The cost saving estimates within the One In: One Out approach should be better explained including the methodological approach and the assumptions.	More detailed explanations were included in Annex 3 and in particular at the end of Annex 4 where the methodology for the calculation of OIOO is explained.
(7) The indicators for future monitoring and evaluation should be more specific and linked to	This recommendation was implemented in Annex 8: Monitoring – Potential Evaluation Indicators. In particular, the success criteria were further elaborated.

SMART objectives. The success criteria should be further elaborated and the timing of the evaluation should be made specific.	

9.4 4. Evidence, sources and quality

In the preparation of this impact assessment, DG JUST collected evidence from remarkably high number of sources, using different methods and targeting various stakeholder groups.

First, DG JUST collected evidence and expertise through several years of continuous efforts at promoting the Convention*.

Second, evidence used in this impact assessment was gathered based on a **Commission's consultation strategy**, which included: (i) **feedback to the call for evidence***; (ii) **open public consultation***; (iii) a **workshop with stakeholders**; (iv) **meeting with Member States' representatives**; (v) an exchange on the topic of vulnerable adults at the meeting of the contact points of the **European Judicial Network for civil and commercial matters (EJN-civil*)**; and (vi) a **fact-finding mission by the European Network of Judicial Inspection Services** to courts and other competent authorities to seven selected Member States[217] ('RESIJ fact-finding mission*'). *The results of these consultation activities are presented in Annex 2 of this report*.

Third, in the preparation of the PA initiative*, DG JUST commissioned two studies conducted by external contractors in a close cooperation with academia and professionals working in the field.

- First, **2021 Legal Study*** examined the national laws and practices of Member States and evaluated the current main legal difficulties and practical challenges concerning the cooperation in the field of the protection of vulnerable adults. In the context of the 2021 Legal Study*, the contractor carried out semi-structured interviews and questionnaire-based surveys, which included, among others, a call for quantitative data on the current state of play and recent evolution in the number and type of protection measures taken in the EU.
- Second, **Study supporting the impact assessment*** focused on collecting information to be used for the preparation of this impact assessment report. It included further evidence about the existing problems and the assessment of the impacts of each policy option. The external contractor* employed the following stakeholder consultation tools specifically designed for the purposes of the Study: (i) 36 semi-structured interviews; (ii) case studies; and (iii) two focus groups* held in particular to validate the emerging findings. For details concerning these consultations, see Annex 9 summarising the consultations by the external contractor.

Fourth, DG JUST also gained further insight into the subject of this report with the help of **available resources**, such as existing literature, reports and studies[218].

Fifth, DG JUST also participated at numerous workshops, meetings and events concerning the topic of vulnerable adults, taken both from the practical and policy perspective. This included, for instance:

- The November **2022 Special Commission* where the practical operation of the HCCH 2000 Protection of Adults Convention*** was discussed by the representatives of the Contracting States*, non-Contracting States, as well as legal practitioners and international non-governmental organisations.

[217] BE, BG, ES, FR, IT, PT, and RO.
[218] These included, for instance, the European Parliamentary Research Service. & Ch. SALM. (2016). *European Added Value Assessment accompanying the European Parliament's Legislative Initiative Report (Rapporteur: Joëlle Bergeron)*; or the ELI* (2020). *Report of the European Law Institute. The Protection of Adults in International Situations*.

In the preparation of the 2022 Special Commission, the Permanent Bureau of the HCCH collected views and information from 23 States (both Contracting and non-Contracting States of the Convention) with a view to assess the practical operation of the Convention and gain information about the national legal frameworks in place. In addition, the Permanent Bureau (assisted by a Working Group of experts) prepared a draft practical handbook on the operation of the Convention and over 30 documents that informed the discussion at the 2022 Special Commission[219].

- **Workshops** devoted to the topic of vulnerable adults were also held under the Portuguese, French and Czech presidencies of the Council of the EU.
- **Workshop** of the European Law Registry Association ('ELRA') in November 2022 where the protection of adults was discussed from the perspective of professionals dealing with real property and capital markets.

Robustness of the analysis

In general, the report was based on solid theoretical understanding gained in particular through desk research, the materials prepared by the HCCH, and through the collaboration with external contractors. The report also draws on thorough feedback received through numerous stakeholder consultations. All EU jurisdictions, except of Denmark, were represented in the consultations and in some of the consultations, other non-EU Contracting States were represented as well.

In contrast, the **main difficulty in the preparation of the report was the limited availability of data** on the subject matter, especially disaggregated data about the current state of play and costs.

- As indicated in Annex 4 that details the methodology for estimates and calculations used in this report, quantitative data to provide an accurate picture of the current situation, and more specifically to assess **the number of vulnerable adults in cross-border situations** are very scarce. There are many reasons for this. Firstly, the definition of vulnerable adults differs across Member States and not all the Member States collect these statistics in a systematic manner, some do not collect them at all. Moreover, the fact that powers of representation* are often private acts with no or limited interference of a State, at least until they are confirmed, and that court proceedings concerning the protection of adults are typically non-contentious proceedings* (on which generally less data is collected than on contentious proceedings) further complicated the collection of data. Representative data are also not available through other sources. These limitations as to the availability of accurate data were not surprising as they were also reported in other reports in the field[220]. Secondly, as further developed in Annex 4, several methodological challenges arise when estimating the number of vulnerable adults potentially affected by cross-border problems with legal uncertainty.

In this situation, both high-end and lower-end estimates of the population of vulnerable adults were calculated and combined with the Eurostat demographic data to quantify the number of vulnerable adults in cross-border situations living in the EU who potentially experience problems in cross-border context. The resulting estimates were validated through several consultations of stakeholders.

- The number of vulnerable adults who experience problems in cross-border situations in the EU that relate to the subject matter of the PA initiative* had to be estimated in the absence of any reliable data on the matter. It was thus assumed that is highly probable that all vulnerable adults in cross-border situations will experience at least once over their lifetime one of the problems described in Section 2 (especially the problem of the lack of legal certainty) and will have to bear costs as illustrated in one of the illustrative examples in Table 1.
- The number of vulnerable adults in cross-border situations living in the EU in 2030 was calculated based on the high-end and low-end estimates of vulnerable adults in cross-border situations currently living in the EU

[219] Available at: HCCH | First meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention.

[220] For instance, the European Parliamentary Research Service. & Ch. SALM. (2016). *European Added Value Assessment accompanying the European Parliament's Legislative Initiative Report (Rapporteur: Joëlle Bergeron)* notes on p. 119 (Annex II): *As literature and case law dealing specifically with the international protection of adults remain limited, it proved necessary to conduct a field survey in order to gather the information required for this study*.

and the **demographic projections** developed by Eurostat and the Joint Research Centre of the European Commission.

- In the absence of specific data on the **actual costs borne by adults and their representatives as well as by competent authorities** in relation to the proceedings concerning the protection of adults, the procedural costs* pertaining to the baseline scenario and the policy options 2 to 4 were assessed using the methodology detailed in Annex 4. In particular, to provide sufficient level of detail, the costs were assessed separately for eight different scenarios developed in collaboration with stakeholders. In addition, a distinction was made in the calculation between Member States which are Contracting Parties to the HCCH 2000 Protection of Adults Convention* and which are not. The costs are presented in ranges reflecting the fact that the number of vulnerable adults in cross-border situations was calculated using low-end and high-end estimates.

To mitigate the limitations arising from the scarcity of granular data concerning the current status quo, multiple sources of evidence and various tools were used. Estimates were made based on the extrapolation of the available data and refined taking into account the insights gained through consultations and from other sources. Any estimates used in this report were extensively consulted in the context of the Commission's consultation strategy (for instance in the Member States and stakeholder meetings), as well as through consultations conducted by the external contractor*. The results of the *Study supporting the impact assessment** were also validated through the focus groups* organised by the external contractor*.

The resulting estimates provided a solid basis for this report, even though (as explained above), the numbers of vulnerable adults in cross-border situations in the EU who experience problems are somewhat underestimated. In addition, given the numerous assumptions, the costs quantifications have to be considered with caution.

Finally, the **data limitations did not have an impact on the selection of the preferred option** as the preferred policy option was chosen based on multi-criteria analysis, rather than on quantitative criteria only. This is also confirmed by the sensitivity analysis conducted by the external contractor in the Study supporting the impact assessment[221].

[221] Study by an external contractor*, *Sensitivity analysis*, p. 83.

ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT)

The Commission conducted a consultation strategy to gather information from key stakeholders and Member State authorities on the prevalence of the current problems regarding the cross-border protection of adults, and their views on the possible EU-level solutions to address these problems.

9.5 1. Consultation strategy

The Commission used multiple channels to target a wide range of stakeholders and a variety of tools to interpret the results. Input was received from key stakeholders representing EU citizens, competent authorities, academics, research institutions, legal professionals, NGOs and other relevant interest groups. Thanks to this wide range of consultations, it was possible to reach all relevant groups of stakeholders.

The aim of the consultation activities was to ensure that interested parties have the opportunity to provide feedback on the legislative initiative and its various policy options. Aside from gathering stakeholders' opinions on the legislative initiative, the consultation activities attempted to collect data on the prevalence of the current problems experienced by adults in need of protection in cross-border situations and to analyse the potential benefits of the initiative.

9.6 2. Consultation activities and tools

The Commission's consultation strategy included **six main consultation activities**, each of them having a different running period, recipient and/or object. The consultation activities included (i) a call for evidence; (ii) an open public consultation; (iii) a fact-finding mission by European Network of Justice Inspection Services (RESIJ); (iv) a meeting with stakeholders with a particular interest in the protection of adults; (v) a meeting with national experts from the Member States and (vi) the consultation of the European Judicial Network in civil and commercial matters (EJN-civil). Additional consultations were organised by an external contractor in the context of a study supporting the preparation of the impact assessment.

9.7 3. Main stakeholder feedback per consultation activity

9.7.1 3.1. Call for evidence

The call for evidence on the civil aspects of the cross-border protection of vulnerable adults was open from 21 December 2021 to 29 March 2022[222]. It aimed at gathering evidence on the problems and their consequences, while giving all interested parties the chance to share their points of view. 8 answers were received, including 2 from non-governmental organisations, 1 from a research institution, 4 from EU citizens and 1 from a business association.

The **non-governmental organisations** raised concerns about the promotion of the ratification of the *HCCH 2000 Protection of Adults Convention* and the compliance of that Convention with the UNCRPD. 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 out that the choice of jurisdiction and the *ex lege* powers of representation* should be integrated into an EU initiative. The participating **EU citizens** regarded an EU initiative as 'sensible and necessary', described existing problems and one of them stressed the need to introduce a mandatory hearing of the persons concerned. The answer from **the business association** pointed out that problems frequently arise regarding access to information, recognition of decisions, management of bank accounts and lack of cooperation between the competent

[222] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12965-Civil-judicial-cooperation-EU-wide-protection-for-vulnerable-adults_en

authorities of different Member States. It supported the Commission's initiative stressing the importance of common rules on jurisdiction, applicable law, recognition of decisions and cooperation between authorities. A European certificate of representation was considered particularly beneficial.

9.7.2 3.2. Open public consultation

The open public consultation was conducted in parallel to the call for evidence[223]. The 20 questions of the questionnaire included some concerning the challenges encountered by vulnerable adults under the current *status quo*, the need for an EU action, the scope and content of a possible EU initiative but also other questions on the rights of vulnerable adults or trends in protection measures and cross-border cases.

In total, 42 contributions were submitted including feedback from competent 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%).

Regarding the **development** over the past five years, respondents signalled an increase in numbers concerning protection measures (51%), powers of representation (61%) and international cases (61%). A great majority of the respondents knew about situations where vulnerable adults faced problems with protection of their rights in another Member State as well as where competent authorities or lawyers have faced specific problems in a cross-border constellation. Most respondents selected 'autonomy and right to make one's own choice' (39%), 'access to justice' (39%) and 'legal capacity' (34%) as those rights that are currently most likely to be breached.

The vast majority of participants shared the opinion that vulnerable adults would be better protected in cross-border cases if the ***HCCH 2000 Protection of Adults Convention*** was in force in all EU Member States. Accordingly, they agreed that the EU should oblige Member States to ratify the Convention and adopt specific EU legislation to facilitate cross-border protection of vulnerable adults. Furthermore, a significant majority was in favour of the promotion of the Convention by the EU, as well as awareness raising regarding the problems faced by vulnerable adults in cross-border cases. Almost everyone shared the opinion that the EU should promote cooperation on the matter between competent authorities of Member States.

Regarding the possible **policy options** for an EU instrument, 63% expressed the opinion that the EU instrument should regulate all issues that might arise, as compared to 12% who thought that the EU instrument should only complement the *HCCH 2000 Protection of Adults Convention* by strengthening cooperation. More than half of the participants would like to see *exequatur* abolished; and almost half found that the grounds for non-recognition should be more limited. Among the most appropriate measures to accommodate the needs of vulnerable adults or their representatives in cross-border cases, the respondents most often favoured (i) the provision of information online on the national laws and on the competent authorities, (ii) multilingual certificates or extracts accompanying courts' decisions and (iii) multilingual certificates of representation.

Regarding **concrete measures**, half of the respondents were in favour of a binding choice-of-court provision. It also became clear that participants cared most about a better information management (national law, competent authorities, accepted languages, means of communication, possibility for urgent requests). Furthermore, an interconnection of registers and multilingual standard forms were considered important. Most participants shared the expectation that an EU initiative would improve any of these aspects.

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[223] 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

9.7.3 3.3. Fact-finding mission by European Network of Justice Inspection Services (RESIJ)

RESIJ conducted a fact-finding mission to gather further evidence from the field by visiting courts and competent authorities in Belgium, Bulgaria, Spain, France, Italy, Portugal and Romania. The report from the fact-finding mission was published in May 2022[224].

The report concluded that there is a **need** for a European legal framework for the protection of adults. The difficulties in cross-border cases arise from a lack of awareness and knowledge of the existing instruments and mechanisms among practitioners. The main obstacles in cross-border protection of adults identified by all groups of practitioners are the cost of proceedings, the translation of documents as well as the absence of explanatory forms and legal aid. The report also revealed situations where a violation of fundamental rights may currently occur.

The mission found out that the **number** of cross-border cases is small, but constantly increasing. However, the report also revealed difficulties in gathering reliable numbers and statistics on measures to protect adults in cross-border cases due to missing instruments on the national level to record and trace the cases concerned.

Regarding the **legal situation**, the main legal instrument is the *HCCH 2000 Protection of Adults Convention* ratified by only 11 Member States. On the national level, the substantive laws in Member States differ remarkably. These differences cause problems in cross-border cases due to a lack of a recognition mechanism.

The report **recommended** better information and training for practitioners and a legislative initiative to address the current challenges. The latter should include the digitalisation of judicial cooperation, creating of a European Certificate of Representation, the interconnection of Member States' registers of protection measures and powers of representation, facilitating the recognition and enforcement of judicial or extrajudicial protection measures.

9.7.4 3.4. Meeting with key stakeholders

As part of the Commission's consultation strategy, an informal online meeting with stakeholders was organised on 29 September 2022. It gathered 15 participants from different organisations, which share an interest in issues related to the cross-border protection of adults, including associations of practitioners, academia, international organisations and organisations representing the interests of adults. The meeting discussed the *HCCH 2000 Protection of Adults Convention* and possible complementing EU measures.

Regarding the **relationship** between a potential EU instrument and the *HCCH 2000 Protection of Adults Convention*, participants highlighted that it was crucial that the EU instrument remains a simple one and that it neither duplicates the Convention nor detracts from the rules established in it. Moreover, it was considered important that the implementation of the Convention would not be expensive or time-consuming.

The meeting also offered the opportunity for an exchange of views with the Hague Conference on Private International Law (**HCCH**), which is the international organisation responsible for the promotion and the oversight of the operation of the *HCCH 2000 Protection of Adults Convention*.

Organisations representing the interests of the adults supported the Commission's effort to ensure legal certainty in cross-border cases and to guide Member States in implementing the UNCRPD.

[224] Publication of the new report of the European Network of Justice Inspection Services to assess European civil judicial cooperation for the protection of adults.

It was mentioned that a rise of problematic situations in cross-border constellations is to be expected due to encouraging and enabling people with disability to act for themselves based on the UNCPRD. Furthermore, it was highlighted that the substantive law in different states varies remarkably.

Regarding concrete proposals for a future EU instrument, stakeholders mostly showed their support. The proposal of a binding choice of jurisdiction provision was supported by the notaries, but seen critically by the HCCH. There was also support for a clear inclusion of rules concerning advance directives. Finally, the proposal of a European Certificate of Representation was unanimously considered as extremely helpful.

9.7.5 3.5. Meeting with Member States governmental experts

On 27 October 2022, the Commission organised an online meeting with experts from Member States to provide information about the initiative on the protection of adults and to exchange initial views thereon. 53 participants from 24 Member States attended the meeting. 16 Member States took the floor during the meeting.

After a presentation of the background of the planned initiative and the problems experienced by adults who are in a cross-border situation, the Commission structured the discussion along the following blocks: (i) *the possible ratification of the HCCH 2000 Protection of Adults Convention* and (ii) *possible complementing EU measures*.

Regarding the possible **ratification of the Convention**, the experts of those Member States which are party to the instrument mainly provided a positive feedback and strongly encouraged other Member States to ratify. Those Member States observed that the number of cross-border cases is constantly increasing. Furthermore, it was mentioned that the Convention had some insufficiencies regarding *ex lege* representation* and the allocation of costs.

Two Member States, which have not ratified the *HCCH 2000 Protection of Adults Convention*, named as the main reason for the non-ratification that they do not encounter problems in cross-border cases in practice and, thus, have not seen the need for the ratification yet. Apart from that, individual reasons were given like a change of national government or general internal discussions.

During the second block, the proposed options for complementing measures on the EU level were discussed. With regard to the proposed **policy options**, the experts' opinions varied. Several Member States insisted that a possible EU instrument should not replace, but only complement the Convention.

While several Member States expressed a strong opposition against a **binding choice-of-court provision,** other experts showed their support. Member States supported a **European Certificate of Representation**. It was considered advantageous particularly in relation to private parties like banks.

Furthermore, Member States showed a general interest in an **interconnection of national registers** of protection measures and (confirmed) powers of representation. Concerns were raised regarding data protection aspects, as well as the costs for the creation of registers in those Member States which do not operate one yet and the interconnection of registers. It also became obvious that the existence of registers, their scope and their accessibility are regulated differently in every Member State. There was no objection to a digitalisation of the cross-border cooperation and to the establishment of a European electronic access point for individuals apart from the question of the costs.

Reactions to possible provisions on the access to legal aid and provisions on the designation of representatives abroad differed.

9.7.6 3.6. Meeting of EJN-civil

Finally, the European Judicial Network in civil and commercial matters (EJN-civil) was consulted on the topic of cross-border protection of adults during the meeting held on 7 and 8 November 2022. The EJN-civil contact points were consulted on (i) their experience with cross-border cases in that area, (ii) the future role of the EJN-civil as provided for in a possible EU instrument, (iii) the most user-friendly format of a future Regulation for legal practitioners, and finally (iv) the need to include legal aid provisions.

Some EJN-civil contact points reported a few requests for assistance in the field of cross-border adults' protection. All of them supported a crucial role to be played by the EJN-civil if an EU Regulation were to be adopted. Some contact points have argued for an informal role of the EJN-civil, with the Central Authorities doing the 'heaving lifting', others for an explicit role for the EJN-civil in the instrument as is done in other areas (see Articles 77 and 84 of the Brussels IIb Regulation* and Articles 50 and 70 of the Maintenance Regulation[225]).

9.8 4. Conclusions

The Commission thoroughly analysed the outcome of the stakeholder feedback on the protection of adults in a cross-border context. Regarding the quantitative analysis, it became clear that comprehensive data is not available. However, the consultation activities clearly showed that the number of cases of vulnerable adults is constantly rising. In addition, the consultations revealed a limited awareness among the practitioners about the legal framework for the protection of adults and judicial cooperation in this field. Furthermore, stakeholders agreed that adults under protection measures face problems in international context due to the shattered legal framework on the level of Private International Law and of national substantive law. Despite the insufficient data on the topic, the consultations showed an urgent need to act. This is based on the overall strong support expressed by stakeholders to take action and improve the situation for adults in cross-border situations.

Regarding the concrete EU approach to tackle the topic, a strong support and an overall positive feedback on the HCCH 2000 Protection of Adults Convention could be identified in all consultation activities. Furthermore, the consultations showed a practical need and support by most stakeholders for additional measures at EU level. According to the consultation activities, an EU instrument should aim to facilitate acceptance and recognition of judicial, administrative and out-of-court protection measures within the EU, to establish a swift and smooth cooperation between Member States' competent authorities (including by digital means) and to improve the provision of information.

[225] EUR-Lex - 02009R0004-20181231 - EN - EUR-Lex (europa.eu).

ANNEX 3: WHO IS AFFECTED AND HOW?

10 1 PRACTICAL IMPLICATIONS OF THE INITIATIVE

10.1 1.1 The adults* and their families and representatives

The problems of legal uncertainty, long and costly proceedings, and non-recognition of protection measures or powers of representation firstly affect the fundamental rights of hundreds of thousands of **adults** who need legal support for some or all the decisions regarding their person and their assets/income and are in a cross-border situation. In addition, it also affects the millions of adults in the EU who have planned in advance how their personal and financial interests will be taken care of in case of incapacity*, and may already have a connection to a State other than their State of residence, or will have it in the future. These adults are those that are residing in other Member State than that of their nationality or those who are citizens of the EU residing in non-EU States, those who own assets abroad. The preferred policy option would **significantly mitigate their problems** by establishing one set of rules applying to those cases, both in the EU and in other non-EU Contracting Parties, thus greatly increasing predictability of the legal framework. The initiative would modernise and simplify cross-border judicial and administrative proceedings, and consequently reduce the costs and administrative hassle (court and lawyers' fees, translation, correspondence and formalities like legalisation). Finally, the initiative would ensure that the support to the vulnerable adults is continued (recognised) across the borders (through the automatic recognition of decisions and confirmed powers of representation* and the enhanced cooperation between competent authorities). This would contribute to better physical and mental well-being of adults and help protect their rights, including fundamental rights and property rights.

The **families of the adults**, and the **private or public professional representatives**, would also be directly and positively affected by the initiative. Measures introduced by the initiative, such as the possibility to apply for an ECR* to demonstrate the powers to represent an adult abroad or the provision of electronic tools would be a game changer in cross-border cases.

10.2 1.2 The competent authorities

Besides adults*, their families and representatives, also **competent authorities (courts, administrative authorities, notaries)** dealing with the cross-border cases concerning the protection of adults are currently affected by the legal uncertainty of the complex legal framework in this area. Therefore, also competent authorities would benefit from the harmonised rules introduced by the initiative. This will have a practical impact on the time and costs spent by these authorities on each case **(labour costs)**, as well as on the general **legal environment** where predictability and mutual trust would be enhanced. The issues relating to the lack of legal certainty would be partly solved for courts, legal practitioners and competent authorities (e.g. notaries) who would have a reliable and swift access to foreign law when applicable. The incidence of court proceedings would be reduced thanks to the assistance provided by the Central Authorities*, and the possibility for courts to directly exchange with foreign courts on specific cases and to clear up practical or legal issues quickly.

The increase of legal certainty, the automatic recognition and the simplified procedures would also be beneficial to all types of competent authorities and professionals dealing with the protection of adults: **social workers, private lawyers, medical staff, notaries, criminal courts and prosecutors, civil, commercial and land registrars.** They would have the possibility to be informed about the protection and its nature, in another Member State through the interconnected registers. This would allow them to provide the appropriate support to the adult. They would also have the opportunity to signal cases of danger, abuse or of abduction to the Central Authorities*.

The introduction of a **digital channel of communication** between competent authorities would provide for major efficiency and cost reduction gains, would foster cross-border cooperation, and could significantly reduce the length and costs of procedures. The digital channel would be used to transmit various documents, requests, forms, messages and data between competent authorities of different Member States. Similarly, the **interconnection of national registers** concerning protection measures and (confirmed) powers of representation would allow competent authorities seamless access to that information.

Finally, the economic relations between the adults* and their representatives with **banks, other financial institutions, insurance companies, real estate agents, and many other economic actors** will be considerably simplified through the ECR*, which will provide reliable evidence of the powers entrusted in a representative even in other Member States.

In a short horizon, the initiative would however also require certain **investment of resources on the part of legal practitioners to get familiar with the new legal framework** (training, information campaigns), as usual with any new legislation. Some Member States would have to ratify the Convention and set up Central Authorities*. However, these adjustments are not expected to represent a significant burden on Member States. It should be also noted that Member States that are already contracting States* are already familiar with the Convention.

Competent authorities will bear **two different types of costs. Minor costs related to some of the measures introduced by the legislation, such as for legal aid, or for issuance of ECRs*. These costs would however be offset by the cost reductions resulting from the streamlined procedures. The interconnection of registers, digitalisation of communication and procedures would require a moderate investment from Member States, compensated by savings linked to the modernisation of the procedures and by efficiency gains through the streamlined cross-border proceedings.**

11 2 SUMMARY OF COSTS AND BENEFITS

Table 7: *Overview of benefits (total for all provisions) – Preferred Option*

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Increased legal certainty	Not quantifiable	Beneficiaries: adults*, their families and their representatives, competent authorities of the Member States, private actors (financial institutions and other economic actors).
Increased protection of the fundamental rights of vulnerable adults, including autonomy, access to justice, right to free movement, right to property, and equal treatment	Not quantifiable	
Cost savings on procedural costs* of proceedings (recognition, transfer of jurisdiction)	Total cost reduction for vulnerable adults and their representatives amount to estimated EUR 2.6 billion, as compared to the baseline	Beneficiaries: adults*, their families and their representatives.
Quicker procedures through the harmonised set of PIL rules*	Not quantifiable	Beneficiaries: adults*, their families and their representatives, and competent authorities of the Member States.

Facilitated cross-border access to reliable information	Not quantifiable	Beneficiaries: competent authorities. They would easily access to the content of the substantive and procedural rules of other Member States through different sources (Central Authorities*, e-Justice Portal*, EJN-civil*). They would also have access to the information on the existence of a protection abroad (through the interconnection of registers)
Swift and secure cooperation between authorities.	Not quantifiable	Beneficiaries: adults*, their families and their representatives, competent authorities of the Member States.
Indirect benefits		
Promotion of equality and non-discrimination in the EU	Not quantifiable	People with disabilities or temporary mental-health problems suffer from various forms of discrimination and obstacles in cross-border dealings. The initiative would indirectly reduce inequalities between them and the rest of the population.
Increased wellbeing of vulnerable adults	Not quantifiable	Beneficiaries: vulnerable adults and their families. The current legal uncertainty and administrative burden may cause emotional distress and have a negative effect on the (psychological) wellbeing of vulnerable adults. The Regulation stands to tackle the existing problems, thereby improving their wellbeing.
Positive impact on the right to free movement	Not quantifiable	Beneficiaries: vulnerable adults and their family/representatives. The initiative would guarantee that all adults, regardless of their incapacity, age or health issues can be supported when they cross borders. This would reassure them and remove legal administrative barriers that may otherwise discourage them from moving or travelling abroad.
Administrative cost savings related to the 'one in, one out' approach*		
Reduced administrative costs for vulnerable adults, their families and representatives	Total cost savings for vulnerable adults in a cross-border cases related to the 'one in, one out' approach amount to approximately 1.3 billion over the period of 10 years. under the PO4 as compared to the baseline. These cost savings concern all vulnerable adults in a cross-border case and are one-off and aggregate, not annual.	

- **Application of the 'one in, one out' (OIOO) approach**

In line with the Better Regulation Toolbox, it needs to be considered whether the preferred policy option would have significant cost implications for businesses and citizens and if so, how these costs would be offset (the "one in, one out" or "OIOO" approach).

One of the specific objectives of the PA initiative* is to **make proceedings** (concerning the cross-border protection of adults) faster and **less expensive**. The preferred option would do that and, in addition, would

introduce no new compliance requirements that would affect individuals or businesses in the EU[226]. Thus, as the preferred option would not introduce any new burden on individuals (or on businesses for the fact) and would reduce the existing one, the preferred option would be **a "one out" initiative**. The methodology to quantify the specific *OIOO costs savings** is detailed at the end of Annex 4. That explanation also sets out the assumptions and estimates made to quantify the OIOO costs reductions for the population of vulnerable adults in the EU over the period of 10-15 years.

Table 8: *Overview of costs – Preferred Option*

		Vulnerable adults		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**
Action (a)	Direct adjustment costs			Average cost of EUR 304 000 per Member State for setting up a national interoperable register (those MS that do not have a register yet). Minor adjustment costs borne by MS for: - the adjustment to new rules in the legislation (e.g. to the issuance of ECR*) - training of staff as regards the new rules - information campaigns addressed to the public and legal practitioners	Yearly average maintenance cost of EUR 204 000 for maintaining the national registers. Minor adjustment costs borne by MS related to training for staff about the Regulation and the Convention and related new developments and digitalisation of the procedures
	Direct administrative costs				
	Direct regulatory fees and charges				
	Direct enforcement costs				Negligible costs (related to monitoring of the operation of the Regulation and the Convention and to judicial cooperation)
Total	Direct adjustment costs				
	Indirect adjustment costs				
	Administrative costs (for offsetting)				

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[226] No administrative costs or adjustment costs for individuals or businesses. For instance, the PA regulation* would not introduce any fees for the provision of ECRs*. In addition, the ECR would only be optional in that it would only be issued at a request and would not replace similar national documents.

12 3 RELEVANT SUSTAINABLE DEVELOPMENT GOALS

Table 9: *Overview of relevant Sustainable Development Goals – Preferred Option*

Relevant SDG	Expected progress towards the Goal
SDG no. 1 – No poverty	Ensure access of vulnerable adults to their property, income and assets abroad. Eliminate the risk that vulnerable adults are victim of dispossession or financial loss because of the cross-border nature of their situation.
SDG no. 3 – Good health and well-being	Increase the well-being (health) and the autonomy of people with mental disorders, disabilities and the elderly in a situation of vulnerability, when they are in a cross-border situations.
SDG no. 10 – Reduce inequality between and within countries	Eliminate the legal and financial discrimination against persons with disabilities in cross-border cases and vulnerable migrants.
SDG no. 16 – Peace, justice and strong institutions	Promotion of an inclusive society where people with disabilities can exercise their right to free movement in the EU and benefit the appropriate support across borders. Improved access to justice for the elderly, persons with disabilities or mental disorders.

ANNEX 4: ANALYTICAL METHODS AND METHODOLOGY

Methodology used in the impact assessment

The methodology below reflects closely the methodology developed by the external contractor in its study supporting this impact assessment[227] in a close cooperation and supervision by DG JUST.

13 1 ESTIMATE OF THE NUMBER OF VULNERABLE ADULTS IN CROSS-BORDER SITUATIONS

The definition of the problem required quantifying the number of people that are concerned by the problem. This includes in particular adults, as well as their representatives and family members, competent authorities etc. While these stakeholders are all impacted, the scale of the problem is best represented by the population affected the most – the (vulnerable) adults.

13.1 1.1 Various methodological concepts for the term 'adult'

The problem affects different groups of adults*, i.e. persons aged 18 years old or more, who either (i) are vulnerable and in the need of legal protection[228], or (ii) consider, in the anticipation of their possible future incapacity, to draw up *powers of representation**[229].

In a broader sense, **the latter group could encompass anyone**, **even people without any current impediment or vulnerability who wish to prepare for possible future impairment or insufficiency in their personal faculties.** The current situation could thus affect the whole adult EU population. However, it can be reasonably assumed that most people do not plan for their vulnerability in the absence of any medical or other indication that they will be in the need of legal protection. Thus the latter group likely includes those individuals that already expect their vulnerability in the future, even though they may not be in the need of legal representation just yet.

The definition of 'adult' in this impact assessment reflects both concepts as the problems considered in this impact assessment may affect both of these groups (See the term 'adult'* in the Glossary). The term vulnerable adult* then refers to the persons that are presently *not in a position to protect their interests, due to an impairment or insufficiency of their personal faculties*[230].

13.1.1 1.1.1 The number of vulnerable adults

There are no comprehensive statistics at the EU level concerning the number of vulnerable adults or adults that drew up powers of representation*. Given these limitations, three main methods could be used to estimate the population of adults affected by the problem in the EU:

1) **Actual population of vulnerable adults under judicial and administrative protection measures** issued by competent authorities. This method would entail using available statistics on vulnerable adults under judicial protection measures in Member States where such statistics are compiled by Member States and calculating the share of the population of vulnerable adults in

[227] *Study by an external contractor**, in particular its *Annex III – Complementary analysis on costs and efficiency*.

[228] For reasons, such as: i) cognitive disability; ii) physical disability preventing the adult to express his/her opinion; iii) temporary physical illness preventing the adult to express his/her opinion; and iv) temporary mental illness requiring the adult to be placed under a protection measure (crisis phase in a psychiatric illness, such as schizophrenia or paranoia).

[229] A document (unilateral act or agreement) which enables the adult to plan, in advance, how they want to be supported in the exercise of their legal capacity and autonomy when such adult is not in a position to protect their interests. The powers of representation often involve the conferral of particular powers on one or several natural persons, or an institution, charged with representing and/or assisting the adult concerned regarding his or her personal or financial interests.

[230] The report uses the definition provided by the HCCH 2000 Protection of Adults Convention*.

the total adult population in these countries. These shares could finally be used to estimate the population of vulnerable adults in other countries based on the total adult population.

2) **Actual population of adults who drew up powers of representation***.

This method is complicated by the fact that: (i) not all Member States envisage such powers of representation* in their national law; (ii) these powers and their regulation differ significantly among those Member States that use them; and finally (iii) statistics on the number of those powers are not systematically available.

Since these powers are private unilateral acts or agreements that, depending on national law, may even be established without any formal requirement (e.g. in writing on a simple sheet of paper) and may not need to be registered or activated with an intervention by a competent authority, any estimations of the number of these powers would not be reliable.

The existing statistics gathered by Member States on the number of powers of representation* are 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 powers of representation only when they are activated). Additionally, the number of powers of representation currently differs strongly across Member States using them. In Germany, the register of mandates has been used 5 million times since 2005, what indicates a high number of powers of representation in Germany[231], while in the Czech Republic, where only powers of representation registered at notary offices are reported, it only amounts to 66[232]. In Belgium, the reported number of powers of representation in 2020 is around 211 000[233]. France reports data only on powers of representation that are activated (5 937 powers were activated between 2009 and 2017). As indicated in the 2021 Legal Study*, national law provides for the possibility to set up powers of representation for adults only in 16 Member States[234].

For these reasons, especially the lack of systematic and comparable data, this method was not used in this report.

3) **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 projection in the EU, another method could focus on the estimation of the potential population of vulnerable adults that could benefit from protection measures. Most of the situations that can trigger the need for 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, European-wide surveys exist that target individuals asking questions on self-perceived health, including long standing health issues[235]. These statistics can be used to estimate the potential population of vulnerable adults based on the actual adult population reporting long-standing

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[231] The registration of powers of representation is not mandatory in Germany. The use of the register is not limited to registration but includes also modifications and deletions.

[232] Data gathered from representatives of German and Czech authorities during the focus group*, 14 September 2022.

[233] 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/

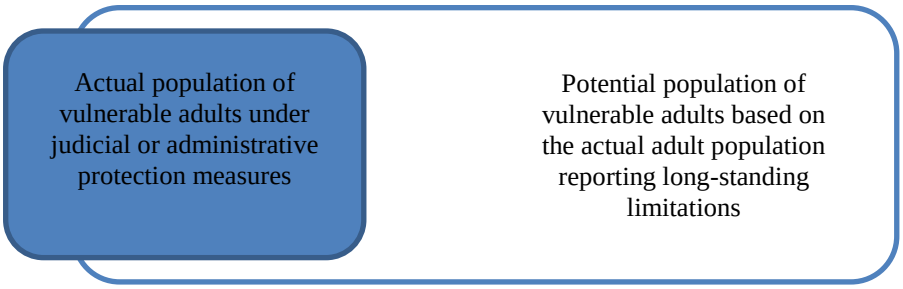
[234] See more details in European Commission, Directorate-General for Justice Consumers, Adriaenssens, L., Borrett, C., Fialon, S., Franzina, P., Sumner, I., & Rass-Masson, N. (2021). *Study on the cross-border legal protection of vulnerable adults in the EU: final report*.

[235] Eurostat. (2022). *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

health limitations.

It was decided, in the absence of data related to the second method, not to quantify the number of people that drew up powers of representation*. **The following methodology will thus focus on the quantification of those individuals that are vulnerable,** even though it may result in lower estimates as compared to the scenario where all adults* were considered in the calculation.

Figure 9: *Methods to estimate the population of vulnerable adults in the EU*



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

First, to get a (low-end) estimate of a **current number of vulnerable adults based on judicial protection,** the proportion of adult EU population (population over 18 years old, including both EU citizens and non-EU citizens) based on the Eurostat demographic data for 2020 was used. Subsequently, based on desk research, statistics on the number of protection measures in a number of European countries collecting these data (France, Belgium, Finland, Germany, Switzerland) were collected.

Table 10: *Sources used for the calculations of protection measures*

Protection measures BE	https://www.fednot.be/communique-de-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/communique-de-presse/les-mandats-de-protection-extrajudiciaire-belges-sont-desormais-aussi-reconnus-dans-dautres-pays-europeens Ministère de la justice/SG/SEM/SDSE : Exploitation statistique du Répertoire Général Civil
Protection measures DE	The second focus group*
Protection measures IT	The second focus group*

From these statistics, a simple average percentage of vulnerable adults in these countries was calculated. This percentage was used to estimate the number of vulnerable adults in the remaining EU Member States, **without counting Denmark** ('EU-26')[236]. Finally, these percentages were applied to the adult populations in these Member States to estimate the total number of vulnerable adults in the EU.

Second, to get a (high-end) estimate, the Eurostat data concerning adults with self-perceived

[236] As Denmark would not take part in the adoption and application of the PA initiative* (see fn. 4), Denmark is not considered for the purposes of this impact assessment. Therefore, wherever relevant, the population of Denmark of 5.8 mil. (i.e. 1.3% of the EU population) was detracted from the overall EU population figures.

long-standing limitations in usual activities due to health problems[237] were combined with the Eurostat demographic data for EU-26. The percentage of adults experiencing difficulties was multiplied for each Member State by the number of adults living in that country. Finally, a sum of these estimates was calculated to get an EU aggregate.

Result

These calculations resulted in two sets of estimates for the number of vulnerable adults in the EU-26: the low-end calculation of **5.1 million of vulnerable adults (1.4% of the EU population) based on the judicial protection measures**; and the high-end calculation of **27.4 million (7.5% of EU population) based on health complications.**

13.1.2 1.1.2 The number of vulnerable adults in the EU in cross-border situations

The overall number of vulnerable adults in the EU had to be adjusted to account for the fact that **not all vulnerable adults are in cross-border situations.** As explained in the Glossary, 'cross-border situations' are situations and/or judicial or administrative proceedings which are connected to two or more States. In the context of this report, such a situation arises, for instance, in the following situations:

- where a protection measure taken by the competent authority of one State has effect in another State (where the adult owns assets for instance);
- where powers of representation* established in one State have effect or are to be confirmed* in another State;
- where measures aimed at the protection of an adult who lives in one state, or has the nationality of one state, are sought in another State;
- where an adult who benefits from protection measures taken in one state plans to move to another State, or where placement in an establishment or residential facility in another State is contemplated.

Given the nature of the envisaged EU initiative that would harmonise certain rules concerning cross-border protection of adults, this impact assessment concerns only adults in cross-border situations[238].

However, the availability of statistics concerning vulnerable adults in cross-border situations is even lower than the one on overall population of vulnerable adults. There are no statistics available at EU level on the number of cross-border cases involving vulnerable adults.

- The Members States courts' IT systems do not generally record the cross-border element. The data collected are hence scattered and do not reflect the number of cross-border cases (79 cases of recognition proceedings in one Member State over a period of 5 years, a hundred cases with a cross-border element in one court of another Member State over a period of 3 years). The RESIJ fact-finding mission* also revealed that most complex situations involving foreign aspects were settled without judicial intervention (thus with no record of those cases).
- Central Authorities* established under the HCCH 2000 Protection of Adults Convention* record statistics on the number of cross-border cases where they have been seized. However, Central Authorities established under the Convention deal only with some cases (only those requiring cooperation between Contracting

[237] Eurostat. (2022). *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

[238] In addition, it should be noted that even those vulnerable adults that currently are not in cross-border situations, may get into one relatively easily, e.g. when travelling abroad. If all cases were calculated, the numbers of affected vulnerable adults would be higher.

States). Cases connected with other non-Contracting States seldom involve Central Authorities and accordingly remain unrecorded by the latter.

Therefore, the numbers below concern only a minority of cases, since: (i) most cross-border cases concern States that are not party to the Convention; (ii) even if both States concerned are Contracting States to the Convention*, the case may not require an intervention of Central Authorities; (iii) even if both States concerned are Contracting States to the Convention, there is a low awareness among legal professionals about Central Authorities and their role or even about the Convention itself. 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 practitioners[239].

The number of dossiers recorded by Central Authorities in States providing some figures remains relatively low – Latvia reported only two cross-border cases handled by the Central Authority since the ratification of the Convention in 2018[240]. Some other Member States 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 2021[241]. However, as explained earlier, this data does not reflect the actual number of vulnerable adults involved in cross-border situations in the Contracting States.

Therefore, in an absence of more accurate data, the calculation of the cross-border cases had to be based on the Eurostat migration data in a following manner: Firstly, the percentage of EU adults living in another Member States was calculated using Eurostat migration statistics, resulting in 2.7%[242]. Subsequently, this percentage was applied to the overall number of vulnerable adults in the EU, reaching two sets of estimates of a number of vulnerable adults living in a different Member State than that of their nationality.

Result

Finally, applying the methodology described above, **the range of vulnerable adults living abroad can be estimated at ca. 144 649 (judicial protection) – 780 169 (health complications)** in the EU-26.

Those vulnerable adults may potentially experience problems in cross-border context that are at the core of this impact assessment.

Nevertheless, given the limitations of the methodology chosen, many cases were not included in the estimations because of the limited data availability.

- **Notably, this number only refers to those vulnerable adults living abroad and does not account for other cross-border situations,** as detailed above (like when an adult owns real property or assets abroad). Vulnerable adults requiring cross-border protection may also be people who do not live abroad but own an asset in another country or those who become vulnerable while they did a short travel abroad (for a period shorter than 12 months).
- In addition, while only some adults will experience the problem of non-recognition of measures and powers of representation abroad, most will be exposed to the problem of legal uncertainty.

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[239] For instance, French authorities reported that from the 2600 cases they are considering, approximately half involves 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

[240] 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

[241] Interview with a representative of public authority in France, 2.6.2022.

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

In all 16 Member States that provide for powers of representation* in their legislation, **virtually all adults living in those Member States are covered by the PA initiative*,** since everyone has the possibility to establish powers of representation* (including advance directives* for future medical treatments) and would expect that they are respected not only in their Member State but also everywhere in the EU. Unlike other areas of law that cover only certain categories of persons or activities (children/parents in family law or companies in insolvency law), the issue considered by this impact assessment concerns the general public. The **number of adults having granted powers of representation cannot be estimated** (and is partly not reflected in the figures above), but it is in millions. Furthermore, **all of those who are in cross-border situations are currently affected by the legal uncertainty,** even if the powers have not been activated yet[243].

- In addition, most competent authorities who by law need to assess the legal capacity of individuals, like notaries or land or civil registrars, are confronted with the lack of legal certainty each time they have a case involving a foreigner[244]. This legal uncertainty stems from the fact that they do not have access to the registries of the State of which this person is a national or where the person lived before. Finally, given the long time span of the cases, the problems of lengthy and costly proceedings and non-recognition of court decisions are likely to affect an adult protected by a measure or powers of representation. They will necessarily arise when the adult owns property or financial assets abroad, moves abroad, inherits from a relative abroad have a medical emergency abroad.

13.1.3 1.1.3 The number of vulnerable adults in non-EU Contracting States

There are three non-EU Contracting Parties to the Convention – Switzerland, the United Kingdom (in respect to Scotland only) 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 ***2700 (judicial protection) – 14 400 (long-standing health limitations) of cross-border vulnerable adults in non-EU Contracting States.***

The data for the population statics concerning the United Kingdom (Scotland) and Monaco were gathered from the following sources:

Population of Scotland	Scotland Facts (indexmundi.com)
Monaco's demographic profile	https://www.indexmundi.com/monaco/demographics_profile.html

In its replies to the questionnaire on the functioning of the HCCH 2000 Protection of Adults Convention, Switzerland indicated that there is a significant demand on application of the rules of the Convention, in particular with respect to France, Germany, Italy and Spain. Unfortunately, no statistics are gathered reflecting the numbers of such cases[245].

Additionally, there is an expectation that the number of Contracting Parties to the Convention will continue to grow. Observing the data on the growth of Contracting Parties to the HCCH conventions[246], it takes on average 27 years to reach 50 Contracting Parties. The HCCH 2000 Protection of Adults Convention* came into force in 2000. Should it follow a similar pattern to other conventions, it can be expected that new Contracting Parties will join the Convention in the coming years. This will in turn

[243] They may in their lifetime cross borders (for recreational, professional or personal purposes) and have emergencies abroad requiring that the powers of representation and the advance directives* are immediately invoked.
[244] The first focus group*.
[245] 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.
[246] For the average growth of contracting parties to the HCCH conventions, see Annex 5.

increase the population of cross-border vulnerable adults that could benefit from the rules of the Convention.

The following summary tables show the above-described results concerning the number of (vulnerable) adults per country currently and in 2030 – both based on (1) the number of protection measures and on (2) self-perceived health difficulties. The explanation of the methodology behind the 2030 estimates will be elaborated below.

Table 11: *Estimates of the current number of vulnerable adults involved in cross-border situations – analysis based on protection measures*[247]

Country	Number of adults	Number of cross-border adults	Share of adult migrants	Vulnerable 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**

[247] Data based on data collection are marked in black; extrapolated data are highlighted in bold (blue colour).

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 Contracting States				**2759884**		
Aggregate for non-Contracting States				**2334888**		
TOTAL EU-26	365.796.853	9545803	0.02609591	**5094772.286**	**1.52%**	**144649**
EU-26 + Switzerland					**1.50%**	

Table 12: *Estimates of the number of vulnerable adults involved in cross-border situations in 2030 – analysis based on protection measures*[248]

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 in 2030	Vulnerable adults in cross-border situation 2030
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**

[248] Data based on data collection are marked in black; extrapolated data are highlighted in bold (blue colour).

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 13: *Estimates of current number of vulnerable adults involved in cross-border situations – analysis based on self-perceived health difficulties*[249]

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**

[249] Data based on data collection are marked in black; extrapolated data are highlighted in bold (blue colour).

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 Contracting States	9%	16167669	**580487**
Aggregate for non-Contracting States	5.90%	11232067	**199682**
Total EU-26 aggregate		**27399736**	**780169**

Table 14: *Estimates of a number of vulnerable adults involved in cross-border situations in 2030 – analysis based on self-perceived health difficulties*[250]

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 in 2030	Population aged 18–65 in 2030	Vulnerable adults 2030 (health difficulties)	Vulnerable adults in cross-border situations in 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**

[250] Data based on data collection are marked in black; extrapolated data are highlighted in bold (blue colour).

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 15: *Estimated number of vulnerable adults in non-EU Contracting States*[251]

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	Vulnerable adults involved in cross border situation – protection measure	Vulnerable 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**

13.2 1.2 Future projections (estimated evolution of the population of vulnerable adults in the EU)

There is a reasonable expectation that the number of vulnerable adults in cross-border situations will increase due to the future demographic developments, such as ageing population and increasing mobility in the EU.

- **Ageing population and related vulnerability**

The projected life expectancy in the EU is supposed to increase by approximately five years by 2050 and shall reach 90.82 by 2100. The number of dependent people will double by 2050, affecting mainly Germany and Italy, but also Member States in Central and Eastern Europe. Additionally, the proportion of people older than 65 with some form of disability is projected to increase by 77% by 2050[252].

[251] Data based on data collection are marked in black; extrapolated data are highlighted in bold (blue colour).
[252] 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

Older population is, in general, more prone to vulnerability. According to the World Health Organization (2022)[253], 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 the institutional setting and points to the fact that older populations are more vulnerable and less likely to protect their interest either due to deteriorating physical condition, cognitive impairment, worsening mental health and other factors related to ageing[254].

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)[255] 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 Member States; nevertheless, **these projections show that the number of vulnerable adults will significantly increase, and a unified framework of protection measures will be necessary to protect their interests.**

- **Increased mobility**

Another aspect, which may also increase the number of people impacted by the problems in the future is growing mobility of people in the EU. The Join 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 that mobility continues to grow in the future[256].

Methodological approach

Following the methodology for the calculation of the current number of vulnerable adults, two sets of projections about the number of vulnerable adults in 2030 were developed – the first set of projections was based on the number of protection measures and the second one on the self-perceived long-standing limitations. These projections are based on the population projections data from Eurostat for 2030[257]. Two groups were made: 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 older population is expected to rise, thus increasing the number of vulnerable adults.

Firstly, in order to calculate the projection based on protection measures, the data about the number of protection measures from France were used, because France is the only country aggregating the data by age. These percentages were extrapolated to the population projection in 2030 across all Member States, still distinguishing two different age groups. Then the summation of the two age groups was made to reach an overall number of vulnerable adults in the EU-26 population in 2030.

Secondly, in order to calculate a projection based on self-perceived health difficulties, the Eurostat data concerning adults with self-perceived long-standing limitations in usual activities due to health problems were taken for year 2021 and divided into 18–64 and over 64 age groups[258]. The percentages for 2021 were applied 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

[253] WHO. (2022). Abuse of older people. https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people
[254] Ibid.
[255] 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
[256] European Commission. *Increasing significance of migration*. https://knowledge4policy.ec.europa.eu/increasing-significance-migration_en
[257] 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
[258] 2020 was used in case the data were not available for 2021.

2021 and 2030). Then the summation was made of 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 protection measures equal to slightly more than 5 million vulnerable adults across the EU-26; and the second estimate based on the long-standing health limitations corresponding to almost 30 million adults at risk of vulnerability in 2030.

This estimate based on judicial protection is slightly lower than the one reported under the current situation. This is because only the French estimates about the number of protection measures were applied (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 about the protection measures by age, and with the projected demographic changes (population aging and shrinking), it is very challenging to provide a reliable future estimate about 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).

Methodological approach

To calculate the potential number of vulnerable adults **in cross-border situation in 2030**, pre-pandemic intra-EU migration statistics were used. This choice is based on the literature suggesting that the migration will come back to pre-pandemic levels in the future[259]. Therefore, an average percentage of EU citizens residing in a different Member States than their country of citizenship throughout 2017–2019 (3.8%) was used. This percentage was subsequently applied to the projected number of vulnerable adults in 2030.

Results

The combination of pre-pandemics 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 (based on the number of 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 is going to become more severe and the number of vulnerable adults requiring cross-border protection will rise in the coming years.

Table 16: *Overview of the estimated numbers of vulnerable adults in the EU-26 and in non EU Contracting States*

	Estimate based on protection measures	Estimate based on health statistics	Estimate based on protection measures – cross- border cases	Estimate based on health statistics – cross-border cases
Vulnerable adults in the EU-26 – 2020	5.1 million	27.4 million	144 649	780 169
Vulnerable adults in the EU-26 – 2030	5.02 million	29.6 million	190 761	1.1 million
Vulnerable adults – non-EU Contracting States – 2020	159 375	848 324	2706	14 406

[259] 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

14 2 COSTS/COST SAVINGS UNDER ALL POLICY OPTIONS

This section presents the methodology for the assessment of the costs/cost savings under the *status quo* and all policy options. It focuses primarily on costs borne by vulnerable adults in cross-border situations (and their representatives and families) and also on costs borne by competent authorities of Member States, including judicial authorities (courts).

Several categories of costs are considered, following the Better Regulation Toolbox.

Table 17: *The typology of costs related to the cross-border protection of adults per policy option*

	Nature of the costs	Borne by
Procedural costs by adults	Direct costs related to administrative and court procedures borne in cross-border situations by adults, their families and representatives under baseline and all policy options. They encompass charges and fees in relation to various judicial procedures and administrative arrangements. These include for instance the costs of arranging recognition of powers of representation*, various certificates, exequatur*, sworn translation of documents, sending registered letters, etc. Vulnerable adults or their families often hire lawyers who make all or some of these arrangements for them, which implies costs of legal assistance. In some cases, these costs may include also costs of medical assessment and travel abroad.	adults, their families and representatives
Procedural costs by competent authorities	Direct costs related to administrative and court procedures concerning the protection of adults in cross-border situations borne by competent authorities, including judicial authorities (courts) under baseline and all policy options. They relate to handling administrative and judicial procedures involving vulnerable adults in need to arrange cross-border cases and correspond primarily to the working time needed to implement these procedures, as well as translation in the language of the requested State*.	competent authorities only
Adjustment costs	Direct compliance costs related to a possible EU intervention. They include costs related to the implementation of new policy instruments and related procedures. These costs would imply especially working time spent on familiarization with the new rules, training, and awareness-raising about the initiative. Under some policy options, they would also include costs for digital solutions (software and hardware) related to the digitalisation of the procedures and communication. This would also entail costs for setting up and interconnecting registers concerning protection measures and (confirmed) powers of representation and maintaining these digital solutions. They would also include costs for setting up Central Authorities*.	competent authorities only
Enforcement costs	Direct costs borne by competent authorities and related to a possible EU intervention. They are associated with activities linked to the implementation of a possible EU initiative. They may include costs for monitoring and possible inspections or litigation. They may also include costs for running the Central Authorities.	competent authorities only

Monetary results are expressed in current prices.

14.1 2.1 Costs of the baseline and general methodology for the calculation of costs

For the assessment of costs per policy option, several illustrative scenarios were developed on the basis of the information and data compiled from literature and stakeholder consultations. These scenarios were used to estimate the costs per case under all policy options.

The costs in brackets do not occur in all cases and were therefore not taken into consideration when calculating the costs of each scenario. They are listed for information purposes and to show the conservative nature of the assessment of the aggregate costs.

Table 18: *Description of typical illustrative examples and related costs*

	Scenario	Potential costs (differing case by case) related to:

Illustrative example 1:
 	
Establishing a protection measure abroad
 	
(not very common)
	Mr X is a national of MS A and has moved to MS B. A protection measure is requested in MS A (e.g. by his family).
	
	Mr X or another branch of the family challenge in MS B the decision issued in MS A, contesting jurisdiction of a court that gave the decision or the applicable law.
		- The procedure in MS A to establish the protection measure requires additional costs relating to cross-border situation:
		  - travel for the medical assessment;
		  - travel for the hearing;
		  - translation costs linked to the procedure.
		
		- The procedure in MS B requires:
		  - access to justice costs (incl. lawyer);
		  - (translation and (possibly) apostille of all documents, in particular the decision issued in MS A);
		  - travel costs (e.g. for the family);
		  - (service of the final decision to parties residing in MS A).
		
		- Risk of duplicate proceedings in MS A and MS B over the protection of the same vulnerable adult (Mr X)

Illustrative example 2: **Implementing a protection measure abroad** ***(common)***	A protection measure has been adopted by the competent authorities of MS A for Mr X. Mr X. moves to MS B. The person charged with assisting Mr X must act in MS B (e.g. to rent an apartment). A real estate agent and a landlord do not challenge the validity of the foreign decision.	- travel of the representative to MS B; - translation of document(s) attesting the protection measure; - administrative procedures by the representative, entailing exchanges by registered letters (several letters for each procedure); (If the measure had not been recognized, additional costs would have been entailed – *see Example 3).*
Illustrative example 3: **Exequatur*** ***(rare)***	Mr X lives in MS A but has assets in MS B. A protection measure has been adopted by the competent authorities of MS A. The guardian decides to sell the assets in MS B. To transfer the funds of the sale from MS B to MS A, the bank in MS B asks for the *exequatur** (judicial recognition) of the protection measure taken in MS A.	- application lodged by a lawyer to the authority or court competent for the recognition in MS B; - sworn translation of proof of protection measure; - apostille or other proof of authenticity of the judgment from MS A; - decision to be taken by the competent authorities of MS B.
Illustrative example 4: **Confirming powers of representation* abroad** ***(common)***	Powers of representation* concerning Mr X have been granted in accordance with the law of MS A (where Mr X used to live at the time the powers were made) providing for his protection in the event of incapacity. Mr X moves to MS B and his health deteriorates. The powers of representation* need to be confirmed.	- procedure for the confirmation of the powers of representation* in MS B, i.e. judicial or administrative proceedings; - If its national law allows it, the competent authority in MS B needs to get information on the law of MS A and translate the relevant provisions. The competent authority must then assess whether the conditions are met for the confirmation of the powers of representation under the law of MS A. - if the national law of MS B does not provide for the confirmation of powers of representation, and they cannot be confirmed in MS B, MS B needs to establish a new protection measure, translating into all the costs of a new procedure: introducing the application, legal representation, medical assessment etc.

	Scenario	Potential costs (differing case by case) related to:
Illustrative example 5: **Contesting a protection measure or a representative's decision abroad** ***(rare)***	Ms X lives in MS B, but is under a protection measure taken in MS A. The representative designated in MS A takes a decision that affects Ms X's assets (e.g. contracts a life insurance with suspicious beneficiaries or decides to sell all assets in MS A). Ms X wants to contest the measure or the decision of the representative in MS B. She is granted legal aid in MS B. The representative seizes the courts of MS A to confirm his/her decision.	- 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. - (If the court of MS A exercises its jurisdiction, travel costs for Ms X to be heard); (If the a decision invalidating the measure is taken in MS B, service of document to the representative in MS A not covered by legal aid); - (Both courts seized will try to obtain information on the foreign case).
Illustrative example 6: Conflict of jurisdiction ***(common)***	Mr X is subject to a procedure to establish a protection measure in MS A, and he initiates a procedure in MS B to obtain a less intrusive protection measure – there is a case of conflict of jurisdiction.	- access to justice costs in both MS; - possible translation costs; - (possible travel costs for Mr X to be heard in MS A); - (both courts seized will try to obtain information on the foreign case).
Illustrative example 7: Relocation of a vulnerable adult without change of protection measure ***(quite common)***	Ms X lives in MS A, in an establishment where her protection can be ensured. She enjoys the company of her sister, Ms Y, who also lives in MS A. However, Ms Y finds a job in MS B and seeks to relocate Ms X to a similar establishment in MS B.	- costs required to ensure that both establishments in MS A and B agree on the relocation; - (If any additional measure needs to be taken in MS B (e.g. to open a bank account and transfer money) or if a measure was taken by the competent authorities of MS A, then need for a new protection measure in MS B – *see illustrative example 1)*
Illustrative example 8: Relocation of a vulnerable adults with change of protection measure **(*very common)***	Mr X lives in MS A. He is cared for by the social services of MS A. It arises that a relative of Mr X, in MS B, is ready to assist Mr X, provided that he moves to MS B. Mr X is willing to do so.	- Costs required to ensure that the competent authorities in MS A and B agree on the relocation, and provide for a smooth transition from the protection measures in MS A to those in MS 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).

These scenarios were discussed in the context of the consultations undertaken by the external contractor, including their validation through a focus group* with stakeholders conducted in September 2022. This focus group likewise discussed the results of the cost analysis below and assumptions on which it was developed. These assumptions are presented below for each illustrative example, together with the information on the prevalence of the particular example (as reported by consulted stakeholders).

Table 19: *Assumptions regarding the costs incurred by adults and competent authorities*

Illustrative example	Procedural costs by vulnerable adults	Procedural costs by competent authorities
Illustrative example 1 ***Not very common***	Medical assessment costs	2–3 h per case
	Travel costs: 5 travels	
	Translation costs: ca. 10 p.	
	Legal assistance: 20–50 h	
Illustrative example 2 ***Common***	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)	1 h per case
	Translation costs: 8–50 p.	
	Registered letters: 2–5 letters	
Illustrative example 3 ***Rare***	Legal assistance: 10–14 h.	2–4 h per case
	Translation: 10–20 p.	

Illustrative example	Procedural costs by vulnerable adults	Procedural costs by competent authorities
Illustrative example 4 ***Very common***	Legal assistance: 6–10 h 1 travel for the establishment of a new protection measure Translation costs: 4 p.	2–3 h per case
Illustrative example 5 ***Rare***	Legal assistance: 6–20 h	2–4 h per case
	Additional expertise	
Illustrative example 6 ***Quite common***	Translation: 10 p. Legal assistance: 40–100 h	
Illustrative example 7 ***Very common***	No costs	2–4 h per case
Illustrative example 8 ***Very common***	No costs	2–4 h per case Cost of establishment of a new protection measure

Each category of costs was considered as to its volume:

Table 20: ***Cost estimates per category***

Cost category	Cost (cost ranges) in EUR	Sources and comments
Medical assessment	183–600	The range was calculated on the basis of data from several MS (e.g. EUR 183 in FR, EUR 200–1000 in LV) and validated by stakeholder consultations
Travel	600	EUR 600 per travel; the costs may differ per case and distance, not country-specific; validated by stakeholder consultations
Translation costs	Varying per MS[260]	Costs of sworn translation per country based on data gathered via internet search
Legal assistance costs	150 per hour of work of a representative	Based on literature[261], 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	Validated during stakeholder consultations
Labour costs for competent authorities	Varying per MS[262]	Eurostat labour cost data per country for the category 'Administrative and support service activities'[263]
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[264]

[260] For the breakdown of the translation costs per Member State, see Table 34 in the Study by external contractor*.
[261] European Parliament. *Cost of Non-Europe Report, European Code on Private International Law, CoNE 3/2013*.
[262] For the breakdown of the labour costs in public authorities per Member State, see Table 35 in the Study by external contractor* and Eurostat, Labour cost levels by NACE Rev. 2 activity [LC_LCI_LEV__custom_3330366].
[263] Eurostat. (2022). *Labour cost levels by NACE Rev. 2 activity*. https://ec.europa.eu/eurostat/databrowser/view/LC_LCI_LEV__custom_3330366/default/table?lang=en
[264] 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

Based on the above entries, the **costs of the baseline** (Policy option 1) were calculated. Baseline only includes Procedural costs* for adults (and their representatives and families) and for competent authorities and does not include any Adjustment costs* or Enforcement costs*. The table below summarises the cost estimations per illustrative example with an additional breakdown between the Procedural costs in Member States that are Contracting States and those that are not.

Table 21: *Average Procedural costs for vulnerable adults and competent authorities per case in Option 1 (baseline)*

Illustrative example	Party to the HCCH 2000 Convention	Category of stakeholders bearing the costs	Low estimate (EUR)	High estimate (EUR)
Example 1	Contracting (Member) State	Vulnerable adults	360	360
		Public administration	21	31
		Total	381	392
	Other MS	Vulnerable adults	4080	5397
		Public administration	30	46
		Total	4110	5442
Example 2	Contracting (Member) States	Vulnerable adults	7966	10877
		Public administration	17	17
		Total	7983	10894
	Other MS	Vulnerable adults	7622	10559
		Public administration	15	15
		Total	7638	10574
Example 3	Contracting (Member) States	Vulnerable adults	1180	1562
		Public administration	21	42
		Total	1201	1604
	Other MS	Vulnerable adults	1550	2070
		Public administration	25	50
		Total	1576	2121
Example 4	Contracting (Member) States	Vulnerable adults	1874	2626
		Public administration	35	52
		Total	1909	2678
	Other MS	Vulnerable adults	2084	2879
		Public administration	30	46
		Total	2115	2924
Example 5	Contracting (Member) States	Vulnerable adults	1400	4000
		Public administration	35	69
		Total	1435	4069
	Other MS	Vulnerable adults	1400	4000
		Public administration	30	61
		Total	1430	4061
Example 6	Contracting (Member) States	Vulnerable adults	360	360
		Public administration	42	62
		Total	402	423
	Other MS	Vulnerable adults	6297	15297
		Public administration	61	91
		Total	6358	15388
Example 7	Contracting (Member) States	Vulnerable adults	0	0
		Public administration	21	42
		Total	21	42
	Other MS	Vulnerable adults	0	0
		Public administration	30	61
		Total	30	61
Example 8	Contracting (Member) States	Vulnerable adults	0	0
		Public administration	570	591
		Total	570	591
	Other MS	Vulnerable adults	0	0
		Public administration	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 ca. EUR 6 000 and 15 000 per case. Illustrative example 2 also implies very high costs for vulnerable adults being in the range of ca. EUR 8 000 – 11 000. In the Member States

being parties to the HCCH 2000 Protection of Adults Convention, due to certain measures adopted under the Convention, there are no costs under the options 1, 6, 7, and 8. The relative burden of costs lies primarily on vulnerable adults, with the exception of the example 8, where competent authorities bear the cost of the establishment of a new protection measure.

Finally, an aggregate of these costs was calculated.

Table 22: *Aggregate of the procedural costs borne by vulnerable adults, per illustrative example under the baseline scenario (thousands EUR)*

	Low[265]	High	Average
Example 1 ***(not very common)***	238 091	1 437 312	837 701
Example 2 ***(common)***	1 244 104	9 009 053	5 126 579
Example 3 ***(rare)***	145 747	940 653	543 200
Example 4 ***(common)***	205 006	1 688 172	946 589
Example 5 ***(rare)***	209 045	3 191 817	1 700 431
Example 6 ***(common)***	339 372	3 450 850	1 895 111
Example 7 ***(quite common)***	4 613	48 917	26 765
Example 8 ***(very common)***	98 741	546 086	322 413

The highest total costs have been estimated in the example 2, and the lowest costs – in the 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 in cross-border situations is likely to experience in their lifetime at least one cross-border case similar to the illustrative examples described above, 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.

- ***Costs related to the HCCH 2000 Protection of Adults Convention under PO1***

As explained in the impact assessment, 11 Member States are already Contracting States to the Convention. These Member States would thus continue to have, even under the baseline scenario, regular costs related to the application of the Convention. These costs include in particular annual costs for the maintenance of the Central Authorities*.

Member States provided information on the number of full-time-employment (FTE) positions working in their Central Authorities in the 2020 questionnaire circulated by the HCCH[266]. It can be seen that the workload reported by the five Member States which provided data is very low and amounts to less than one full-time position per year (i.e. the person(s) tasked with the role of Central Authority under the HCCH 2000 Protection of Adults Convention are charged in parallel with other tasks).

Based on this data and labour costs per hour for administrative employees as reported by Eurostat[267], the annual cost burden on Member States for running the Central Authorities was calculated. The estimated number of hours worked annually in the EU was obtained by multiplying 52 weeks by the average number of working week's hours in the EU, which in May 2022 was reported by Eurostat as 36.4 hours[268].

[265] For the low estimate, 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 were calculated (taking the average for all the stakeholders affected).
[266] Estimated on the basis of the information obtained from the Responses to the Permanent Bureau of the Hague Conference on Private International Law. (2022). See reply to Q 2.4 in the *Prel.Doc 9 of September 2022 Compilation of responses received to the September 2020 Questionnaire on the 2000 Protection of Adults Convention* that was prepared by HCCH for discussion at the 2022 Special Commission*.
[267] Eurostat. (2022). *Labour cost levels by NACE Rev. 2 activity*.
[268] Eurostat. (2022). *Hours of work – annual statistics*.

Table 23: *Estimate of annual costs for running a Central Authority under the HCCH 2000 Protection of Adults Convention (in selected MS)*

Member State	Number of FTEs working on matters related to the HCCH 2000 Protection of Adults Convention per year	Labour costs for administrative and support service activities, EUR/h	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**

These annual costs related to the HCCH 2000 Protection of Adults Convention 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 Contracting States of the Convention which did not report data.

This resulted in the following estimates:

Table 24: *Estimate of annual costs for running a Central Authority under the HCCH 2000 Protection of Adults per MS (PO1)*

	Annual aggregate costs in EUR
Contracting States	116 184
Non-Contracting States	0
Total	116 184

14.2 2.2 Costs of policy options

The costs pertaining to the policy options 2–4 are assessed in comparison with the baseline scenario.

Under all policy options, adults, their families and representatives, as well as competent authorities would experience **costs savings on Procedural costs***. The extent of these cost savings would depend on the policy options. Depending on the policy option and scenario involved, vulnerable adults, their families and representatives benefit from savings on costs of various arrangements including medical assessment, travel, sworn translations of documents, and necessity of hiring legal assistance.

Competent authorities also benefit from savings on procedural costs (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, **competent authorities incur adjustment costs* and enforcement costs* that are generated by the implementation of the EU intervention.** These are in particular costs related to international cooperation within the framework of the Convention (costs for setting up and running Central Authorities*) and for additional complementing measures under the EU regulation (costs of digitalisation of the procedures and communication and for setting up and interconnecting digitalised registers under the Options 3 and 4).

Notably, vulnerable adults, their families and representatives would incur no new costs as a result of any policy option.

14.2.1 2.2.1 Costs under the policy option 2

This policy option would aim to ensure that all Member States become a party to the Convention within a certain timeframe. The uniform rules provided for in the Convention would facilitate the cross-border protection of adults, thus resulting in considerable costs reductions.

- ***Procedural costs under PO2***

Procedural costs for vulnerable adults, their families and representatives and for competent authorities were estimated following stakeholders' consultations and consultations with senior experts. As a result, it was assumed that due to the adoption of the HCCH 2000 Protection of Adults Convention, costs in some of the illustrative examples would be reduced: this would occur in the examples 1, 6, 7, and 8.

The resulting estimates are presented in the table 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.

Table 25: *Average procedural costs* for adults and competent authorities per case and savings per case in Option 2 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	Contracting States	Vulnerable adults	360	360	0	0
		Public administration	7	10	14	21
		Total	367	371	14	21
	Other MS	Vulnerable adults	297	297	3783	5100
		Public administration	6	9	24	37
		Total	303	306	3807	5137
Example 2	Contracting States	Vulnerable adults	7966	10877	0	0
		Public administration	17	17	0	0
		Total	7983	10894	0	0
	Other MS	Vulnerable adults	7622	10559	0	0
		Public administration	15	15	0	0
		Total	7638	10574	0	0
Example 3	Contracting States	Vulnerable adults	1180	1562	0	0
		Public administration	21	42	0	0
		Total	1201	1604	0	0
	Other MS	Vulnerable adults	1550	2070	0	0
		Public administration	25	50	0	0
		Total	1576	2121	0	0
Example 4	Contracting States	Vulnerable adults	1874	2626	0	0
		Public administration	35	52	0	0
		Total	1909	2678	0	0
	Other MS	Vulnerable adults	2084	2879	0	0
		Public administration	30	46	0	0
		Total	2115	2924	0	0
Example 5	Contracting States	Vulnerable adults	1400	4000	0	0
		Public administration	35	69	0	0
		Total	1435	4069	0	0
	Other MS	Vulnerable adults	1400	4000	0	0
		Public administration	30	61	0	0
		Total	1430	4061	0	0
Example 6	Contracting States	Vulnerable adults	360	360	0	0
		Public administration	14	21	28	42
		Total	374	381	28	42
	Other MS	Vulnerable adults	297	297	6000	15000
		Public administration	12	18	49	73
		Total	309	315	6049	15073
Example 7	Contracting States	Vulnerable adults	0	0	0	0
		Public administration	7	14	14	28
		Total	7	14	14	28
	Other MS	Vulnerable adults	0	0	0	0
		Public administration	6	12	24	49
		Total	6	12	24	49

			Procedural costs* in Option 2 per case (EUR)		Gain (cost savings)/Loss (cost increase) in EUR	
Example 8	Contracting States	Vulnerable adults	0	0	0	0
		Public administration	190	197	380	394
		Total	190	197	380	394
	Other MS	Vulnerable adults	0	0	0	0
		Public administration	189	195	733	757
		Total	189	195	733	757

Not only those Member States that are not Contracting Parties to the Convention would have cost savings under PO2 but also those Member States that are already Contracting Parties. This is due to the fact that under PO2 the uniform rules of the Convention would apply not only vis-à-vis current 13 Contracting Parties but also vis-a-vis other Member States that currently are not Contracting Parties.

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 HCCH 2000 Protection of Adults Convention*, which eliminate the costs for vulnerable adults and competent authorities in the Member States that are currently non-Contracting States. In the examples 1 and 6, the reduction in costs occurs for vulnerable adults, while in the examples 7 and 8, the reduction applies to competent authorities. In all the examples, the highest gains arise in the Member States which are currently non-Contracting States. The scale of cost reduction is particularly high in the example 6, where the savings amount to ca. EUR 6 000 – 15 000 per case. Also in the example 1, the reduction is substantial and lies in the range of ca. EUR 3 800 – 5 100 per case.

For the calculation of the aggregate procedural costs under PO2, a similar approach was taken as for the calculation of these aggregate costs under PO1 (above).

Table 26 *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 27: *Comparison of aggregate cost-savings on Procedural costs under PO1 and PO2 (thousands EUR)*

Option 2 vs Option 1			
	Low	High	Average
Highest cost example Total	268 229	3 047 262	1 657 746
Highest cost example for adults	261 617	2 995 228	1 628 423
Highest cost example for competent authorities	6 612	52 033	29 323

Lowest cost example Total	0	0	0
Lowest cost example for adults	0	0	0
Lowest cost example for competent authorities	0	0	0

- ***Adjustment and enforcement costs under PO2***

There would be limited **Adjustment costs*** related to the PO2, i.e. related to the ratification of the Convention. They would affect only competent authorities of new Contracting States (and not adults or the existing Contracting States).

For those (15) Member States that are not yet Contracting Parties to the Convention, the **ratification would require preparatory work** and effort, including (sometimes time-consuming) ratification/legislative procedure. Once adopted, the new rules need to be applied by competent authorities and legal professionals. This would require providing dedicated **training, awareness-raising activities and other information and support.** Besides these one-off adjustment costs, minor recurrent costs for regular training of competent authorities' staff concerning the Convention could also be expected as a result of this policy option.

In addition, under this PO, the new Contracting Parties would have to **set up Central Authorities*** that will coordinate and facilitate the implementation of the Convention. Related costs will however not be significant since in practice the majority of Contracting States attributed the function of a Central Authority to their ministries of justice without further requirements in terms of additional staffing[269].

In addition to the adjustment costs, additional **Enforcement costs*** associated with activities such as monitoring of the **application of the legislation** or costs related to **international cooperation** within the framework of the Convention. In particular, sufficient resources will need to be provided to the **Central Authorities to ensure their effective functioning.** These costs for the efficient running of the Central Authorities would also continue to be borne by other Member States, those that are already Contracting States under the baseline.

The annual **enforcement costs** of the Central Authority under PO2 have been estimated on the basis of the methodology explained above in the section on *Costs related to the HCCH 2000 Protection of Adults Convention under PO1*. In this option, the costs would apply to all Member States in EU-26. The aggregate estimates are provided in the Table below.

Table 28: *Estimate of annual costs for running a Central Authority under the HCCH 2000 Protection of Adults per MS (PO2 as compared to PO1)*

	Annual aggregate implementation costs in EUR in Option 2	Additional costs as compared to Option 1
Contracting States	116 184	0
Non-Contracting States	158 433	158 433
Total	274 617	158 433

[269] Contracting States to the Convention indicated that their Central Authorities spend on average less than one FTE to ensure the smooth operation of the Convention (the estimates ranging from 0 to 0.5 days). See reply to Q 2.4 in the *Prel.Doc 9 of September 2022 Compilation of responses received to the September 2020 Questionnaire on the 2000 Protection of Adults Convention* that was prepared by HCCH for discussion at the 2022 Special Commission*.

14.2.2 2.2.2 Costs under the policy option 3

Under this policy option, the EU would adopt a regulation that would harmonise the PIL* rules concerning the protection of adults. These PIL rules (e.g. rules on jurisdiction and applicable law) included in such a regulation would largely replicate those included in the Convention; however, they could be improved or adapted to the EU legal landscape whenever desirable.

The uniform rules provided for in the Regulation would facilitate the cross-border protection of adults even to a greater extent than PO2, thus resulting in considerable costs reductions.

- ***Procedural costs under PO3***

Procedural costs for vulnerable adults, their families and representatives and for competent authorities were estimated in the same way for policy options 1 and 2, on the basis of the illustrative examples (see the above description). Under PO3, several elements of costs as described in the illustrative examples are either reduced or eliminated.

The resulting estimates are presented in the table 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.

Table 29: *Average procedural costs for adults and competent authorities per case and savings per case in Option 3 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	Contracting States	Vulnerable adults	0	0	360	360
		Public administration	0	0	21	31
		Total	0	0	381	392
	Other MS	Vulnerable adults	0	0	4080	5397
		Public administration	0	0	30	46
		Total	0	0	4110	5442
Example 2	Contracting States	Vulnerable adults	10	45	7956	10832
		Public administration	35	35	-17	-17
		Total	45	80	7939	10815
	Other MS	Vulnerable adults	10	45	7612	10514
		Public administration	30	30	-15	-15
		Total	40	75	7597	10498
Example 3	Contracting States	Vulnerable adults	0	0	1180	1562
		Public administration	0	0	21	42
		Total	0	0	1201	1604
	Other MS	Vulnerable adults	0	0	1550	2070
		Public administration	0	0	25	50
		Total	0	0	1576	2121
Example 4	Contracting States	Vulnerable adults	0	0	1874	2626
		Public administration	0	0	35	52
		Total	0	0	1909	2678
	Other MS	Vulnerable adults	0	0	2084	2879
		Public administration	0	0	30	46
		Total	0	0	2115	2924
Example 5	Contracting States	Vulnerable adults	800	1100	600	2900
		Public administration	35	35	0	35
		Total	835	1135	600	2935
	Other MS	Vulnerable adults	800	1100	600	2900
		Public administration	30	30	0	30

			Average costs per case in Option 3 (EUR)		Gain (cost savings)/Loss (cost increase, negative numbers)	
		Total	830	1130	600	2930
Example 6	Contracting States	Vulnerable adults	0	0	360	360
		Public administration	0	0	42	62
		Total	0	0	402	423
	Other MS	Vulnerable adults	0	0	6297	15297
		Public administration	0	0	61	91
		Total	0	0	6358	15388
Example 7	Contracting States	Vulnerable adults	0	0	0	0
		Public administration	0	0	21	42
		Total	0	0	21	42
	Other MS	Vulnerable adults	0	0	0	0
		Public administration	0	0	30	61
		Total	0	0	30	61
Example 8	Contracting States	Vulnerable adults	0	0	0	0
		Public administration	0	0	570	591
		Total	0	0	570	591
	Other MS	Vulnerable adults	0	0	0	0
		Public administration	0	0	922	953
		Total	0	0	922	953

Gains in Option 3 as compared to the baseline arise in all illustrative examples, and are due to the adoption of a set of EU measures, which in this option go beyond the measures envisaged under the HCCH 2000 Protection of Adults Convention. These savings are very substantial and range between ca. EUR 6 000 and EUR 15 000 per case in the example 6 and ca. EUR 7 500 and 10 500 per case in the example 2. The highest reductions in costs occur for vulnerable adults. Additional costs for a small scale (EUR 15-17 per case) arise for competent authorities in the example 2, due to the increased time needed for competent authorities to handle the cases.

For the calculation of the aggregate Procedural costs under PO3, a similar approach was taken as for the calculation of these aggregate costs under PO1 (above).

Table 30: *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

Table 31: *Comparison of aggregate cost-savings on procedural costs under PO1 and PO3 (thousands EUR)*

Option 3 vs Option 1			
	Low	High	Average
Highest cost example Total	1 236 121	8 938 375	5 087 248
Highest cost example for adults	1 239 389	8 956 161	5 097 775
Highest cost example for competent authorities	-3 268	-17 785	-10 527
Lowest cost example Total	-3 370	48 917	22 774
Lowest cost example for adults	0	0	0
Lowest cost example for competent authorities	4 613	48 917	26 765

- ***Adjustment and enforcement costs under PO3***

There would be Adjustment and Enforcement costs related to PO3; however, these costs would affect only competent authorities of Member States in EU-26.

Adjustment costs under PO3

Similarly to PO2, Member States would bear adjustment costs related to the **introduction of the new rules** in matters concerning the protection of adults with cross-border implications. Unlike with PO2, all Member States would have to get familiar with the new legal framework, not only the Member States that are non-Contracting States. This is because the Regulation under PO3 would introduce additional rules, building on those in the Convention. The one-off and recurrent costs would thus arise for the **familiarization with a new legal framework and regular training** of judges and legal professionals.

In addition, the full realisation of the benefits from the European Certificate of Representation* under PO3 may also require some accompanying measures, such as **communication campaigns**.

Similarly to PO2, Member States would have to **set up Central Authorities*** that would coordinate and facilitate the application of the rules contained in the Regulation*. Contracting States to the Convention have already established Central Authorities under the Convention and these could readily be used. The costs were thus estimated as limited and would only be borne by those 15 Member States that are non-Contracting States.

In addition to these costs, the Regulation under PO3 would also provide additional rules building on those in the Convention and facilitating them. Most of these rules would be linked to no additional costs. However, costs would arise from the introduction of rules on: (1) legal aid; (2) digitalisation; and (3) interconnection of registers.

- *(1) Legal aid*

PO3 would include provisions that would **extend legal aid to additional categories of formalities** in cross-border situations that currently cannot benefit from the national or European legal aid arrangements. This would entail additional costs for the provision of such aid. However, quantitative data assessing such costs are very limited, and it is challenging to estimate in how many cases of cross-border adults the new legal aid provisions would actually apply. This is why comparable impact assessment

(such as the one carried out for the Brussels IIb Regulation*[270]) do not include such assessment of the costs on the provision of legal aid. Nevertheless, it is not expected that the provision of legal aid in some cross-border cases would create a significant economic burden on the public finances of Member States considering the limited number of vulnerable adults in cross-border situations estimated, and the limited categories of additional costs covered.

- *(2) European Certificate of Representation*

The introduction of the European Certificate of Representation (ECR) under PO3 would further significantly reduce the procedural costs for adults.

As the ECR would provide uniform evidentiary effects in all Member States concerning the powers of representation* in other Member States, its introduction would streamline the circulation of powers of representation in the EU. Since it could be issued digitally and would be available in all EU official languages, it would further reduce the need for translations or additional documentation for proving the validity of the certificate. The procedural efficiency generated by this measure would further simplify the procedures, so that legal support would only rarely be needed.

The magnitude of such benefits would depend on the share of adults and their representatives who would request the ECP, which would remain a voluntary instrument. It is not possible to establish at this stage what this share would be. It should however be noted that during the consultations in the context of this impact assessment, the ECR was considered among the stakeholders, public and Member States as one of the most beneficial tools to be introduced by an EU Regulation.

The **adjustment costs related to the introduction of the ECR would be minor**. As is the case for other EU civil-law legislation, the forms related to the PA Regulation*, such as the ECR form, would be available at the e-Justice Portal*. For the Member States that do not already issue a similar national certificate, this measure may entail adjustments to the national rules, maybe including legislative changes. The introduction of the ECR under the PO3 may require training for the competent authorities, such as information campaigns at the national level and EU level. These are however expected to be low. Overall, all these costs would be compensated by the reductions of the procedural costs generated by this measure.

- *(3) Digitalisation*

Additional adjustment costs can be expected for **digitalisation**. In line with the 'digital by default' principle and the EU policy on digitalisation of justice[271], the Regulation would provide for specific provisions on digitalisation of the cross-border procedures involving the protection of adults, as described in Box 2, while building on the precedents in that area. These rules would include the mandatory use of digital channels for exchanges between competent authorities, digital multilingual standard forms, and an electronic portal for the general public to make their requests, including a request for a ECR*. As a result, individuals would be able (but not obliged) to swiftly and securely communicate through electronic means with authorities competent in matters of cross-border protection of adults.

[270] SWD (2016) 207 final/4 accompanying the proposal for the Brussels IIb Regulation*.
[271] See 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, COM/2020/710 final.

The proposal for a regulation on the digitalisation of judicial cooperation ('Digitalisation proposal*')[272] aims to effectively digitalise procedures in various areas of cross-border judicial cooperation in civil and family matters[273]. The proposal already envisages the establishment of a decentralised IT system and of a European electronic access point on the e-Justice Portal*. This IT infrastructure developed for other legal acts in civil matters could be readily expanded to include also the provisions of the PA Regulation*. In particular, the existing reference implementation software[274] developed by the Commission for the use by Member States and used for other legal acts could be adapted for the purposes of the PA Regulation*. Since it is reasonably expected that most authorities already connected to the decentralised IT system would also be responsible for matters related to the cross-border protection of adults, significant synergies are expected. For instance, it can be assumed that courts of Member States and the ministries of justice (often acting as Central Authorities* under the HCCH 2000 Protection of Adults Convention) would already be connected to the IT system as a result of the digitalisation of other civil-justice legal instruments. The decentralised IT system is already established for the purposes of cross-border service of documents and taking of evidence, and will be applied in practice by all EU courts and competent authorities* as of 2025. Whether any other new competent authorities would have to be additionally connected to a decentralised IT system for the purposes of the PA initiative* would depend on Member States. Alternatively, a separate 'network' based on the same decentralised IT system could be set up for the purposes of a PA Regulation*. Notwithstanding, certain costs would be incurred in the context of defining the exact business processes, workflows, and technical specification required for the communication envisaged under a PA Regulation*, both with regard to the decentralised IT system and the European electronic access point on the e-Justice Portal*.

The costs for these possible IT developments were however assessed as one-off and moderate[275], in particular given the cost savings arising from possible economies of scale as elaborate above. In any case, these costs would be a fraction of the overall costs for setting up the whole decentralised IT system under the digitalisation proposal[276]. In addition, further minor costs would be needed for **the regular maintenance of the digital solutions** after they are developed and implemented. These would represent r*ecurrent adjustment costs*.

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[272] See the Commission's proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, COM (2021) 759.

[273] Including in matters of parental responsibility under the Brussels IIb Regulation* or in succession and maintenance matters under the Succession and Maintenance Regulations respectively.

[274] An user interface software developed by the European Commission to be used by each Member State for communication with the public as regards the matters related to the PA regulation*. Reference implementation system could be used by each Member State as an alternative to the national back-end systems that may already exist in some Member States.

[275] See Commission Staff Working Document Impact Assessment Report accompanying the *Digitalisation proposal**. SWD/2021/392 final.

[276] As assessed in the Impact assessment accompanying the digitalisation proposal, SWD(2021) 392 final, Annex 7 and Table 13, p. 151. If it was not for the uncertainties related to the extent to which solutions existing under the digitalisation proposal could be used for the PA Regulation*, the methodology of that impact assessment could be used to produce an estimate of the costs for digitalising the procedures under the PA regulation*. The impact assessment made for the digitalisation proposal (which however concerns the digitalisation of 23 EU legal instruments) include the following conclusions and estimates: *The costs for the Member States will be rather limited: a total of EUR 8 100 000 per year i.e. EUR 300 000 per year per Member State. In the first two years, the cost of installation will be EUR 100 000 per year per Member State. This includes equipment costs and the human resources needed to configure it. The remaining EUR 200 000 are needed to provide support to an increasing number of users. As of the third year, there are no hardware and installation costs, only costs related to user support and maintenance of the system. This is estimated at EUR 300 000 per year. The e-CODEX system is an open-source solution that could be used free of charge. While Member States are expected to bear these costs from their national budgets, they can nonetheless apply for EU financial support under the relevant financing programmes, such as the Justice programme and the cohesion policy instruments. It should also be highlighted that some Member States already operate a pilot version of e-CODEX, which they may reuse and build upon for the newly defined purposes.*

The **costs for these digitalisation measures would be shared between Member States and the European Commission**. In line with the approach for digitalizing other areas of civil justice, the European Commission would provide both grants for Member States to set up the IT system for communication within the decentralised IT system and to provide them with a free of charge reference implementation software for the purposes of authority-to-authority communication.

- *(3) Interconnection of national registers*

The PO3 also envisages the **interconnection of national registers** concerning protection measures and (confirmed) powers of representation*. This would entail measures ensuring their interoperability, but may also involve their establishment (in those Member States where such registers do not yet exist[277]) or their digitalisation (where such registers exist but not in an electronic form). As explained in the impact assessment, such interconnection would facilitate obtaining the information about the legal capacity of adults in various cross-border contexts.

The **costs for the interconnection of national registers** 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)[278].

While the actual costs for setting-up a digitalised interconnected register in the area of vulnerable adults 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. Therefore, the data obtained from the survey of Member States' judicial authorities on the costs of setting up and maintenance of the insolvency register have been used to provide a rough proxy of the costs concerning a similar register for the protection measures for vulnerable adults.

First, in case of insolvency, some Member States had to **set up an electronic register** since they did not operate one before. This would be the case also for the area of vulnerable adults, since several Member States do not have registers at the moment, or these registers are not yet digital[279]. According to the survey, the costs of setting up an electronic register that could be interconnected with registers of other Member States for the insolvency regulation ranged between EUR 122 050 and 618 634. An average of set-up costs equal to EUR 303 954 and an average of annual maintenance cost amounting to EUR 203 641 was thus used to extrapolate calculations for the Member States which did not provide data[280].

Second, even those Member States that had digital insolvency registers had to adapt those registers to some extent to ensure their interconnection with other national registers. According to the interviews and based on experience with other areas, the costs 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 EU in the period 2021–2022. Since this work was reported to be close to its finalisation, it was assumed that the total amount for these two years represents the total

[277] Based on the available data, six Member States do not have such national registers at the moment: BG (however, Bulgarian law provides for the establishment of a registry), CY, EE, EL, PL and RO.
[278] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), L 141/19.
[279] All but six Member States had set up registries for protection measures. Fifteen Member States have a digitalised registry (IT, MT and SI have only partly digitalised their registries).
[280] It can also be noted that the impact assessment of the insolvency regulation provided an estimate of the costs of establishing a digital insolvency register in the range of EUR 0.5 – 1 million per MS, which was thus is a slight overestimate of the actual costs for some of the MS. See: COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Revision of Regulation (EC) No 1346/2000 on insolvency proceedings (2012).

costs of setting up such a system at EU level.

These estimates on the costs of interconnection of insolvency registers are used also to estimate the costs of the measures related to interconnection of registers related to vulnerable adults. The table below provides the summary of the aggregate costs. Setting-up of the interconnected register would imply the **aggregate costs of ca. EUR 8 million falling on Member States' administration and EUR 2.5 million falling on EU administration,** with a total around EUR 10 million.

Table 32: *Aggregate costs for establishment of a digital interconnected register (one-time 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

The estimates per Member State (based on the assumptions described above) are presented in the Table 33 below.

Table 33: *Costs of interconnection of registries under the Insolvency Regulation*

Member State	Set-up costs[281]	Adaptations and/or connection of an already existing electronic insolvency register[282]	Annual maintenance costs
Belgium	/	Connection costs: EUR 30.000	EUR 2.5 million[283] Plus a EUR 1.5 million development budget for functional or legal evolutions
Croatia	EUR 166 000	/	
Czech Republic	EUR 400 000	/	EUR 34 100[284]
Estonia	/	EUR 65 000	
France		EUR 410.000[285] EUR 40.000[286]	Recurring TMA (application management + monitoring): EUR 96 000[287]. Recurring outsourcing (shared infrastructure, virtual servers, production engineers): EUR 55 000[288]. Recurring TMA (application management + monitoring): EUR 6 500 / year. Recurring Outsourcing (infrastructure based on a shared infrastructure, virtual servers, production engineers): EUR 9 000 / year.
Germany	/	(CONFIDENTIAL)	(CONFIDENTIAL)
Hungary	/	EUR 214 858 (VAT not included)	EUR 188 000 (VAT not included)
Ireland	/	EUR 85 000	Not available

[281] If the Member State did not already have a system in place.
[282] If the Member State already had a system in place.
[283] 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.
[284] 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.
[285] In the framework of the BRIS project, which entails the interconnection of business registers within the EU, pursuant to Directive 2012/17/EU. The scope of the project is therefore much broader than insolvency registers.
[286] 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).
[287] Under the BRIS project.
[288] Under the BRIS project.

Italy	/	EUR 63 084 (VAT not included)[289]	Not available
Lithuania	/	EUR 200 000	EUR 23 000
Malta	EUR 66 050[290]	EUR 56,000.00[291]	EUR 19 348/year[292] EUR 80 000 for the year 2023/2024 for the further development of the Register under the requirements of Article 29 of the Insolvency Directive 2019/1023.
Slovenia	EUR 618.634 [293]	EUR 300 000–500 000	Publication of data from the register, user education: EUR 100 000 Average upgrade costs – external contractors approx. EUR 50 000 annually
Sweden	/	EUR 1.135.546	/

The annual costs of **maintenance of this interconnection of registers** were also calculated based on the estimates related to the insolvency register and according to the same survey as for set-up costs. The annual **maintenance costs for EU-26 range from** EUR 19 248 to EUR 2.5 million[294]. Since the highest estimate (for Belgium, amounting to EUR 203 641) seems to be an outlier, with all other estimates as reported by the remaining Member States being much lower, the Belgian estimates were excluded from the calculation of the average. The average was used to extrapolate the costs to the Member States which did not provide data on this issue.

In addition, the costs of maintenance of the insolvency register at the EU level (borne by the European Commission) 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.

Table 34: *Aggregate maintenance costs of a digital interconnected register for insolvency (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

Table 35: *Costs of setting up a digital register per Member State [EUR]*

Country	set-up costs	annual maintenance costs
Austria	303954	203641
Belgium	303954	203641
Cyprus	303954	203641
Czech Republic	550000	203641

[289] Including i) interconnection services between the 'Back End' of the 'PRP' and the 'Domibus connector'; ii) Services for the management of the 'Requests' received from the 'IRI' portal and generation of the related 'Responses' iii) 'Consultation logging' module; iv) study and training; and v) software distribution support.
[290] 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.
[291] This cost entails the connection of electronic register to the decentralized system developed by the Commission under Article 25 (excluding subsequent maintenance costs).
[292] 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).
[293] Connection with the decentralized system amounts to EUR 15 000–50 000.
[294] It can also 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.

Estonia	303954	203641
Finland	303954	203641
France	303954	166500
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		
Contracting Parties	3589536	2674272
Non-Contracting Parties	4313258	2620403
Total	7902794	5294675

Enforcement costs under PO3

In addition to the adjustment costs, additional **Enforcement costs*** associated with activities such as monitoring of the **application of the legislation** or costs related to **international cooperation** within the framework of the Regulation (including the cooperation via EJN-civil*). In particular, sufficient resources would need to be provided to the **Central Authorities* to ensure their effective functioning**. These costs for the efficient running of the Central Authorities would also continue to be borne in all EU-26 Member States.

The same annual **enforcement costs** of the Central Authority were estimated for PO3 as for PO2 above (See Table 28: ***Estimate of annual costs for running a Central Authority under the HCCH 2000 Protection of Adults per MS (PO2 as compared to PO1)***).

14.2.3 2.2.3 Costs under the policy option 4

Policy Option 4 would consist in adopting both: (i) the Council decision obliging Member States to ratify the Convention* within a certain timeframe and (ii) the EU regulation. Through the combination of both internal and external EU action, vulnerable adults living in the EU would enjoy the widest possible protection – both in the EU and other Contracting States* to the Convention (*wide territorial scope*). In

addition, the rules applicable among the Member States would build on the rules contained in the Convention, further facilitating their functioning (*wide material scope*). These rules would facilitate the cross-border protection of adults even to a greater extent than PO2 or PO3, thus resulting in the highest costs reductions.

This option would thus have the combined effects, both in terms of benefits and in terms of costs, as POs 2 and 3 together. The explanations related to the costs of POs 2 and 3 thus applies, where relevant, equally to PO4.

Under PO4, the savings on *procedural costs* for vulnerable adults, their families and representatives would be the same as in Option 3. Also, the procedural costs savings for the competent authorities would be the same as in Option 3. The *adjustment and enforcement costs* borne by competent authorities (only) would likewise be comparable to Option 3.

As compared to PO3, benefits of this option would arise in particular from savings on costs of handling cross-border cases involving non-EU Contracting Parties. Currently, the number of such cases is not high because only three non-EU countries are Contracting States to the Convention (namely: Switzerland, the United Kingdom (in respect to Scotland) and Monaco). The number of vulnerable adults in these three countries was estimated above in the range 2 700 – 14 400 (see Annex 4, section 1.4), which constitutes ca. 2% of the number of vulnerable adults estimated for the whole EU. Nevertheless, it is expected that in the future, the number non-EU Contracting States would likely increase, which would 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.

Table 36: *Comparison of aggregate cost-savings on procedural costs under PO1 and PO4 (thousands EUR)*

Option 4 vs Option 1			
	Low	High	Average
Highest cost example Total	1 260 843	9 117 143	5 188 993
Highest cost example for adults	1 264 177	9 135 284	5 199 730
Highest cost example for competent authorities	-3 334	-18 141	-10 737
Lowest cost example Total	4 706	49 895	27 300
Lowest cost example for adults	0	0	0
Lowest cost example for competent authorities	4 706	49 895	27 300

Table 37: *Additional costs and cost savings of Option 4 as compared to the baseline, 10 years and 15 years scenario (thousands EUR)*

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 competent authorities (benefits)	8 282	8 282
One-off adjustment cost: setting-up digitalised registers	10 303	10 303
Recurrent adjustment costs: implementation of the 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 competent authorities to calibrate the average cost savings across the illustrative examples which provide the highest and lowest savings

because while the procedural costs savings for vulnerable adults appear to be the highest in the illustrative example 2 and the lowest in the illustrative example 7, for competent authorities the situation is different. The highest procedural costs savings appear in the example 8 (in this example, the baseline costs were estimated at 2-4 hours of labour and they are eliminated in Option 3 and 4). These cost savings thus set the upper end of the range of savings, while the lower end is calculated in the illustrative example 2, which in fact implies an increase of the procedural costs borne by adults, i.e. negative savings. Aggregate procedural cost savings in the illustrative example 8 averaged across low and high estimate for Option 4 amount to EUR 328.9 million while in the illustrative example 2, additional costs were estimated at EUR 10.7 million. The resulting average savings amount thus to ca. EUR 159 million (as presented in the above table).

It can be seen that while competent authorities would incur some additional costs (with the highest costs attributed to the maintenance of the interconnected digitalised registers), these costs will 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.

14.3 2.3 Summary of costs under all policy options

- **Procedural costs borne by adults, their families and representatives and by competent authorities**

Table 38: *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 adults arise only in the Member States which are not Contracting States to the Convention* (except for translation costs, which are calculated for adults in all MS). Procedural costs for competent authorities are 40% lower for MS being Contracting States to the Convention than for other MS.	With all MS becoming Contracting States to the Convention, procedural costs for adults in the MS previously not Contracting States to the Convention are eliminated (except for translation costs). Procedural costs for competent authorities in MS which were not Contracting States to the Convention are reduced by 40%. Procedural costs for competent authorities in the MS Contracting States to the Convention costs are reduced by further 40% (compared to the baseline, i.e. they are 80% lower than for non-Contracting States in the baseline).	With the PA Regulation*, procedural costs for adults in both MS which are and are not Contracting States to the Convention are largely eliminated (translation costs are reduced by 90%). The costs for competent authorities in the MS which are and are not Contracting States to the Convention are eliminated.	Cost savings as in Option 3, additional savings for the cases involving non-EU Contracting States*.
Illustrative example 2: **Implementing a protection measure abroad**	Procedural costs arise in all MS.	The same as in the baseline scenario (no costs savings as compared to the baseline).	With the PA Regulation*, procedural costs for adults are reduced (no travel and sworn translation needed, number of registered letters reduced by half). Procedural costs for competent authorities increase slightly or remain the same. Overall, cost savings.	Cost savings as in Option 3, additional savings for the cases involving non-EU Contracting States*.

Illustrative example 3: **Exequatur***	Procedural costs are calculated only for the MS which are likely to require *exequatur**, 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 PA Regulation*, procedural costs are eliminated, which results in cost savings.	Cost savings as in Option 3, additional savings for the cases involving non-EU Contracting States*.
Illustrative example 4: **Confirming a private mandate abroad**	Procedural costs are calculated only for the MS where confirmation of private mandates requires significant proceedings (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).	With the PA Regulation* and the ECR*, procedural costs are eliminated, which results in cost savings.	Cost savings as in Option 3, additional savings for the cases involving non-EU Contracting States*.
Illustrative example 5: **Contesting a protection measure or a representative'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).	With the PA Regulation*, procedural costs for adults 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 non-EU Contracting States*.
Illustrative example 6: **Conflict of jurisdiction**	Procedural costs for adults arise only for MS not being Contracting States to the Convention (except for translation costs). Procedural costs for competent authorities are 40% lower for the MS which are already Contracting States to the Convention.	With all MS being Contracting States to the Convention, procedural costs for adults are eliminated (except for translation costs). The procedural costs for competent authorities in the MS which were not Contracting States to the Convention are reduced by 80%, which results in cost savings. Costs for the Member States already Contracting States to the Convention are reduced by further 40%.	With the PA Regulation*, procedural costs for adults are eliminated (except for translation costs, which are reduced by 90%) and the procedural costs for competent authorities for all MS are eliminated.	Cost savings as in Option 3, additional savings for the cases involving non-EU Contracting States*.
Illustrative example 7: **Relocation of a vulnerable adults without change of protection measure**	Procedural costs for competent authorities are by 40% lower for the MS being already Contracting States to the Convention.	With all MS being Contracting States to the Convention, procedural costs for competent authorities in MS which are not Contracting States to the Convention are reduced by 80%. Costs for MS already Contracting States to the Convention are reduced by further 40%.	With the PA Regulation*, procedural costs (for competent authorities) in all MS are eliminated.	Cost savings as in Option 3, additional savings for the cases involving non-EU Contracting States*.

Illustrative example 8: **Relocation of a vulnerable adults with change of protection measure**	Procedural costs for competent authorities are by 40% lower for the Member States being Contracting States*; no procedural costs for adults.	With all MS being Contracting States to the HC, procedural costs for competent authorities in MS which were not Contracting States to the HC are reduced by 80%, which results in cost savings; costs for Member States which were already Contracting States are reduced by further 40%.	With the PA Regulation*, procedural costs (for competent authorities) in all MS are eliminated.	Cost savings as in Option 3, additional savings for the cases involving non-EU Contracting States*.

Table 39: *Comparison of aggregate cost-savings on Procedural costs under POs 1, 2, 3 and 4 (thousands EUR)*

	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 for adults	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 for competent authorities	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 for adults	0	0	0	0	0	0	0	0	0
Lowest cost example for competent authorities	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 vulnerable adults range between 0 (in the Examples 2-5) and EUR 1.7 billion (in the Example 6) for Option 2, between EUR 22.7 million (in the Example 7) and EUR 5.1 billion (in the Example 2) for Option 3, and between EUR 27.3 million (in the Example 7) and 5.2 billion (in the Example 2) in 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.

- **Costs related to the ratification of the HCCH 2000 Protection of Adults Convention**

Table 40: *Annual adjustment and enforcement costs related to the HCCH 2000 Protection of Adults Convention by MS*

Country	Annual enforcement costs		
	Option 1	Option 2&4	Option 3
Austria	4978	4978	4978
Belgium	1 0562	1 0562	1 0562
Cyprus	210	210	210
Czech Republic	1 0562	1 0562	1 0562
Estonia	1 0562	1 0562	1 0562
Finland	1 0562	1 0562	1 0562
France	1 0562	1 0562	1 0562
Germany	1 0562	1 0562	1 0562
Latvia	9275	9275	9275
Portugal	1 0562	1 0562	1 0562
Greece	1 0562	1 0562	1 0562
Ireland	0	1 0562	0

Country	Annual enforcement costs		
	Option 1	Option 2&4	Option 3
Spain	0	1 0562	0
Croatia	0	1 0562	0
Italy	0	1 0562	0
Lithuania	0	1 0562	0
Luxembourg	0	1 0562	0
Hungary	0	1 0562	0
Malta	0	1 0562	0
Netherlands	0	1 0562	0
Bulgaria	0	1 0562	0
Poland	0	1 0562	0
Romania	0	1 0562	0
Slovenia	0	1 0562	0
Slovakia	0	1 0562	0
Sweden	0	1 0562	0
Contracting States	116 184	116 184	116 184
Non-Contracting States	0	158 433	0

Comparison of costs and benefits of policy options

The above range of cost savings on procedural costs* (i.e. benefits) can be compared with the adjustment* and enforcement costs* related to other elements of each of the options (i.e. in particular the costs of setting up and maintenance of the system of interconnection, and the costs of running the Central Authorities*). For comparison of the annual costs that occur for competent authorities, a 10–15 year perspective was adopted[295]. Furthermore, an average of the estimates regarding the savings on procedural costs across the examples was used for the calculations (these numbers stay the same for 10 and 15-years perspective but they are different depending on the Policy Option). 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 for running the Central Authorities* are multiplied by 10 and 15, depending on the time perspective scenario.

Table 41: *Comparison of costs and benefits per option (thousands EUR)* – **negative numbers indicate additional costs**

	Option 2		Option 3		Option 4	
	10 years	15 years	10 years	15 years	10 years	15 years
Cost savings on procedural costs						
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 competent authorities	14 661	14 661	8 119	8 119	8 282	8 282
Relevant adjustment & enforcement costs[296]						

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

[296] Some other minor adjustment or enforcement costs can arise, as described in the Table 4 above, which were not quantified.

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

According to the above estimates:

- Option 2 would result in net savings of ca. EUR 827 million in the perspective of 10 years and EUR 826 million in the 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.

14.4 2.4 Costs reduction estimates under the 'One in, one out' approach – PO4

In line with the Better Regulation Toolbox[297], it needs to be considered whether the preferred policy option would have significant cost implications for businesses and individuals (the 'one in, one out' or 'OIOO' approach). The costs considered under OIOO are 'adjustment costs'[298] and 'administrative costs'[299].

OIOO does not concern cost implications borne by Member States and public authorities[300], only those borne by businesses and individuals. Businesses would not be affected by the PA initiative*.

With regard to individuals, the PA initiative* would not introduce any new compliance requirements that would affect adults, their representatives or families in the EU, thus resulting in no adjustment costs. The PA initiative* would also not create any other additional costs for adults, their representatives or families. On the contrary, the initiative would mitigate the costs currently borne by them (see the estimation of Procedural costs by vulnerable adults in the section above). Not all these costs reductions qualify as costs savings under the OIOO approach.

The cost savings on Procedural costs by vulnerable adults under the preferred option were estimated by taking into account only the costs savings on administrative costs, such as:

- No need for an apostille or legalization of foreign decisions/protection measures;
- No need for translations of decisions if there is a multilingual standard form for the certificate/attestation that will accompany a decision;
- No need for preparation and sending of registered letters
- Reduction of the translation costs thanks to the use of multilingual standard forms and thanks to the digitalisation of communication between Central Authorities*;

[297] Tool #59, Better Regulation Toolbox (November 2021).
[298] **Adjustment costs** refer costs relating to adjusting to the substantive legal requirements of proposals. For a detailed definition, see Better Regulation Toolbox (November 2021).
[299] **Administrative costs** are costs that result from administrative activities performed to comply with administrative obligations included in legal rules. They concern costs for providing information, such as notification of activities, submission of reports, information labelling and certification of products or processes. For a detailed definition, see Better Regulation Toolbox (November 2021).
[300] See Tool #59, Better Regulation Toolbox (November 2021), fn. 850.

- No need to additional evidence (expert opinions or additional medical examination and related certificates) where foreign protection measures or powers of representation are recognised abroad.

In particular, administrative fees, court fees and costs of legal representation are not considered as OIOO costs savings*. In this regard, please note that the above calculation in Annex 4 of costs pertaining to various policy options do not distinguish the sub-category of administrative costs from the broader category of Procedural costs borne by the vulnerable adults - this distinction is made only for the preferred option 4 to make the calculation of the one-in one-out (OIOO) cost reduction possible.

To quantify the costs savings relevant for OIOO under the policy option 4, the same methodology as described above for the quantification of the Procedural costs under the policy option 4 was used while disregarding cost savings that are not on administrative costs. The same assumptions and methodology were used for that calculation as for the calculation of the Procedural costs above, including the estimates of the number of vulnerable adults in cross-border situations and of the costs calculation based on 8 illustrative scenarios. An assumption was also made that each of those adults will experience one of those scenarios over the reference period of 10-15 years.

The overall *OIOO costs savings** were calculated as the difference between OIOO costs under the baseline scenario and those under the policy option 4.

The overall cost savings under the policy option 4 (EUR 2 599 865 000) were calculated as the average of the cost savings under scenario 2 (the highest cost scenario) and scenario 7 (the lowest cost scenario). Should the OIOO cost savings be calculated only on the basis of these two scenarios, the results could be somewhat skewed given the fact that all costs under the scenario 2 can be considered as 'administrative costs' (and thus OIOO costs savings) and that no administrative costs exist under the scenario 7. In this situation, an assumption was made that about 20% of the overall costs that adults have to bear in cross-border situations across all various scenarios can be considered as administrative ones.

Therefore, the resulting average OIOO cost savings under the Option 4 would be equal to approximately EUR 519 973 000, which can be rounded to approximately **EUR 520 mil. over the period of 10 -15 years**.

ANNEX 5: THE HCCH 2000 PROTECTION OF ADULTS CONVENTION

14.5 1. Outline of the Convention

In international situations involving its Contracting States, the Convention provides rules solving conflicts between different legal systems on the p**rotection of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests** (Article 1). An adult is a person who has reached the age of 18 years.

The Convention provides rules on international jurisdiction, applicable law to protection measures* and to powers of representation*, recognition and enforcement of protection measures, and cooperation between Central Authorities*.

14.5.1 1.1. Scope of the Convention

The scope of the Convention (i.e. what matter is considered as the cross-border protection of adults) is clarified by a non-exhaustive list of examples of protection measures, including the designations and functions of a representative, the administration of the adult's property, the placement of an adult, and the institution of a protective regime for the adult (Art. 3 of the Convention). In cross-border cases, those measures fall within the scope of the Convention.

The Convention applies not only to protection measures (i.e. measures concerned with the protection of vulnerable adults taken by competent authorities) but also to all types of powers of representation* and advance directives* (granted by the adult himself in powers of representation).

The **rules of the Convention on jurisdiction, recognition, enforcement and administrative co-operation only apply to cases involving other Contracting States***. In cases involving non-Contracting States*, national PIL* rules of each State apply. However, most Contracting States* have aligned their national PIL* rules with the rules provided for in the Convention. For example, in all 11 Contracting EU Member States, the connecting factor for jurisdiction is, in accordance with the Convention, the habitual residence of the adult[301].

In contrast with the other PIL* rules in the Convention, the rules on **applicable law in the Convention apply universally,** meaning that the objective connecting factors in the Convention can designate as applicable law the law of a Contracting or as well as non-Contracting State.

14.5.2 1.2. Jurisdiction

The Convention provides **a general jurisdictional ground based on the adult's habitual residence.** This means that the authorities of the Member States where the adult has his/her habitual residence will have jurisdiction to take, modify or terminate a protection measure. The Convention also provides for a **subsidiary jurisdictional ground** based on the **nationality** of the adult. However, the authorities of the State of the adult's nationality may only exercise jurisdiction under strict conditions (including the obligation of informing the authorities of the State of the adult's habitual residence).

Finally, jurisdiction may also be exercised by the authorities of the State where the adult owns property, in particular with a view to take measures concerning that property and in all cases of urgency.

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[301] Article 5, Hague Convention of 13 January 2000 on the International Protection of Adults. See also the Explanatory Report* to the Convention: 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.

In all cases of urgency, the authorities of the State where the adult is present may also take necessary measures (regarding the assets, the property or the person of the adult). These measures will be limited in time.

In all those situations where subsidiary grounds of jurisdiction (i.e. jurisdiction in States other than the State of habitual residence of an adult) **are applied, the authorities of the State of the habitual residence shall be informed.**

14.5.3 1.3. Applicable law

On applicable law, the main rule of the Convention is that **authorities apply their own law** when granting or modifying **a protection measure.**

However, the **law governing powers of representation* is the law of the State where the adult was habitually resident at the time the powers were granted.** Alternatively, the adult may designate a different law (connected to his/her nationality, former habitual residence or location of property). In this way, **the Convention ensures that the powers of representation* are given effect in all other Contracting States,** even if an analogous institution is absent in that State's substantive law.

14.5.4 1.4. Recognition of measures

Measures of protection taken in one Contracting State are to be **recognised in all other Contracting States by operation of law.** Despite the mutual recognition of measures without the need for any procedure, it is possible for interested parties to apply for a decision either that there are or that there are not grounds for refusal of recognition*. This may be useful in two opposite situations: to secure the recognition of a measure in a complex/disputed case, or on the contrary, to challenge the recognition of a decision. An **exhaustive list of the grounds for refusal of recognition** is provided in the Convention, for instance if the court had no jurisdiction or if the adult was not given the opportunity to be heard.

If enforcement of a measure is necessary, the **protection measures should be enforced by a simple and rapid procedure** that Contracting States* are supposed to put in place (if not already provided for in their domestic law).

14.5.5 1.5. Non-mandatory certificate

The provision of a **certificate** indicating the capacity in which a person is entitled to act and the powers conferred to him or her by a protection measure or by confirmed powers of representation*, **is a crucial element of the Convention** (Art. 38). However, the certificate 'may' be issued by the authorities of a Contracting Party, and it is therefore not mandatory for Contracting States to the Convention to issue such certificates. There is no indication on the website of the HCCH for the general public as to which Contracting State provides such a certificate. The absence of certificates in certain Contracting States was also one of the concerns raised in the replies to the HCCH questionnaires in preparation of the 2022 Special Commission*[302].

Under the Convention, not all powers of representation can be accompanied by a certificate, only the powers that have been confirmed. The notion of and the procedure to obtain **'confirmed' powers of representation** is left to the national law of each Contracting State. The Convention does not provide a definition of, or prescribe a procedure for, confirming the powers of representation*****. While recognising that the confirmation was left to the domestic legislation of each Contracting State, the Permanent Bureau

[302] See for instance the reply of Germany to question 9.1 of the questionnaire.

(secretariat) of the HCCH clarified that a confirmed power of representation should at least be in force and in conformity with the applicable law[303]. This was confirmed by the Conclusions and Recommendations of the 2022 Special Commission*, which noted that *'it is for each Contracting Party to entrust the task of confirmation to a judicial or administrative authority, a public body or an appropriate professional, and stressed that, in any case, safeguards should be in place to avoid conflicts of interest'.*

*14.5.6 1.6. Central Authorities**

Finally, Contracting Parties must designate a **Central Authority***. Most often, those Authorities are government authorities, such as Ministries of Justice. **They are established to provide a point of contact between Contracting States.** They provide and facilitate services in relation to the Convention, in particular by **providing mutual assistance and facilitating effective communication.** They allow for example:

- a swift exchange of practical or legal information between two courts transferring jurisdiction;
- the facilitation of agreed solutions;
- access to information on the substantive or procedural law of Contracting States;
- the location of missing adults.

14.6 2. Contracting States to the Convention: how, how many, what is the foreseeable future?

Most HCCH Conventions are only open to the signature and ratification or accession[304] of States. However, in connection with the EU becoming a member of the HCCH*, the four most recent legislative instruments[305] adopted under the auspices of the HCCH have included a clause allowing for a Regional Economic Integrated Organisation ('REIO') to become a party to the instrument in question on behalf of its Member States.

So far, when the EU considered acceding to an 'old' Convention which did not include a REIO clause, it has authorised its Member States to ratify the said Convention in the interests of the EU[306].

An alternative solution for the EU to join an 'old' HCCH convention would be to amend that Convention and to add a REIO clause in it. To date, this type of modification of a Convention has never been done – for several reasons. First, Contracting Parties* are usually reluctant to re-open a Convention. When a strong need for reviewing a Convention has been observed, Member States of the HCCH preferred that a new instrument is negotiated. Otherwise, the interpretation and adaptation of 'old' conventions to new trends is allowed by the preparation of tools such as Practice Guides or by the Conclusions and Recommendations of Special Commissions. Second, the *a posteriori* addition of a REIO clause to an

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[303] See Prel. Doc. N° 11 of October 2022 *Confirmation of powers of representation for the purposes of the certificate issued under Article 38.*

[304] In respect to all HCCH Conventions, the States which were present during the final negotiation (*diplomatic session)* of a Convention are allowed to ratify this Convention. The States not represented during the final negotiation may accede to the Convention. The difference between ratification and accession is that there may be specific mechanisms for the acceptance of new accessions by the Contracting Parties which have already ratified the Convention conditioning the entry into force of the instrument. For the sake of clarity, in this report, only the generic term of 'ratification' is used.

[305] The Convention of 30 June 2005 on Choice of Court Agreements, the Convention of 23 November 2007 on the International Recovery of Child Support and other forms of Family Maintenance, the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations and the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

[306] See for instance the 2008 Council Decision authorising certain Member States to ratify the 1996 Hague Convention on the protection of children or the 2016 Council Decision authorising certain Member States to ratify the 1965 Hague Convention on service of documents.

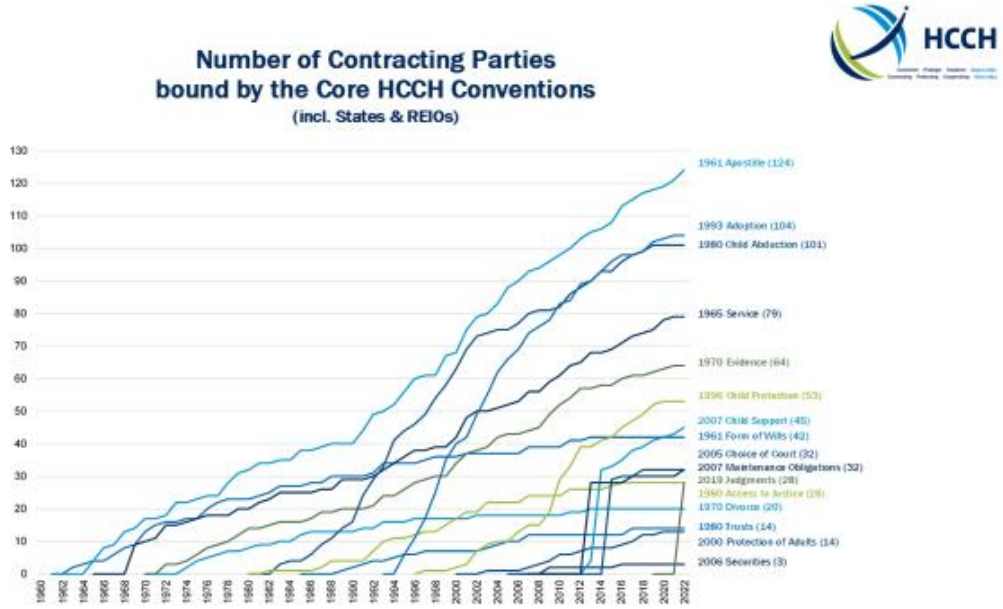
instrument already in force is a complex procedure, which could last an estimated 5 to 8 years in total, and would depend on the ratification of the modified instrument by all Contracting States to that Convention.

Therefore, adding a REIO clause to the HCCH 2000 Protection of Adults Convention would entail preparing and negotiating the amendment to the Convention (taking at least several years), followed by a necessary ratification of the modified Convention by all 14 Contracting States to the Convention (including also non-EU Member States: Monaco, Switzerland, and the United Kingdom (in respect to Scotland)). Only after this lengthy process is completed, the EU could start any process to become a Contracting Party to the Convention.

The HCCH 2000 Protection of Adults Convention entered into force in 2009. **The number of ratifications (14) in the last 13 years is rather limited quantitatively and geographically (only States of the European continent).** However, experience shows that, with a proper promotion from the HCCH and its regional representations on other continents, the number of Contracting Parties* grows slowly and steadily. For those HCCH conventions which have more than 50 Contracting States, reaching the milestone of 50 Contracting Parties took on average **27 years**.

It can thus be expected that the ratification of the Convention by other non-EU countries will increase, especially if all EU Member States become a Contracting Party to the Convention[307].

Figure 10: *Number of Contracting Parties bound by the core HCCH Conventions*. *(*Source: HCCH)



14.7 3. Concrete benefits of the Convention

As underlined by the Conclusions and Recommendations of the 2022 Special Commission* ('C&R'), the Convention is considered to work well and to be fit for purpose. As indicated in the introduction of the C&R, the slow pace of ratification can be explained by many factors but there has not been any indication that the instrument poses major problems. States applying the instrument recognise that it

[307] This is logical – if a State can apply a convention with only vis-à-vis a few other contracting parties, the effort needed for the ratification of the convention may perhaps seem less justified given its limited benefit. This however changes if the ratification means an instant creation of a legal framework with many other contracting parties.

provides effective solutions in cross-border cases. In particular, the Central Authorities* bring direct solutions to the cross-border cases brought to their attention by competent authorities.

It was highlighted by the 2021 Study[308] commissioned by the UN Special Rapporteur on the Rights of Persons with disabilities that the Convention is a flexible tool that can be easily adapted to legislative and technological developments in the Contracting States, thanks in particular to the promotion and assistance work carried out by the secretariat of the HCCH, as well as to the discussions in Special Commissions. This will allow for a progressive evolution to reflect the work of Contracting States to adjust their legal system to the UNCRPD*.

The recent work carried out in the preparation of the 2022 Special Commission* will in the near future provide practitioners with useful tools for a proper application, and should facilitate cross-border communication to a certain extent (e.g. through the creation of country profiles providing information on the national rules and procedures, publication of a practice guide, publication of certain recommended forms etc.).

14.8 4. Challenges experienced in the operation of the Convention

The Convention is an instrument designed for global application and is thus limited by the need to conform to the many legal systems in the world, as well as to the desire of some States to have a close control over foreign protection measures that circulate under the Convention. The Convention thus keeps in place stricter safeguards than those that are common in the EU in other areas of civil justice. (For instance, under the most recent EU instruments, judgments given by a court in the EU are enforced in all EU Member States as if they were domestic judgments. This is possible in the EU in particular given the principle of mutual trust in the EU.)

In contrast, to allow some flexibility and remain attractive globally, the HCCH 2000 Protection of Adults Convention does not impose too far-reaching requirements on the Contracting Parties*. For instance, the certificate proving the existence of a measure or confirmed powers of representation* is not mandatory, and Contracting Parties are not obliged to make it accessible to the general public.

The HCCH is a small organisation with limited human and financial resources and cannot organise Special Commissions to discuss the operation of the Convention on a regular basis. The 2022 Special Commission* was the first meeting in 13 years since the Convention entered into application. In the absence of an international court having jurisdiction on the interpretation of the Convention, the Special Commissions are the only opportunity for Contracting States* to agree on a specific interpretation, either to clarify a legal concept (such as the 'habitual residence') or to agree on the scope of an article (e.g. whether or not Article 15 applies to advance directives*).

In addition, the organisation's website contains some information and will be developed in the future to provide additional content. However, information is only available in English and French. At the moment, the non-mandatory forms cannot be completed online.

Finally, the organisation cannot support projects that promote the digitalisation of communication, or the training of legal practitioners.

[308] Study interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the 2007 UN Convention on the rights of Persons with Disabilities.

14.9 5. Possibility to adopt a regional agreement (an EU Regulation) complementing the Convention

The possibility for a group of Contracting States* to conclude a separate agreement concerning the area governed by the Convention is expressly provided for in Article 49 of the Convention. However, under Article 49(2) of the Convention, it should only apply to adults **who have their habitual residence** in the closed circle of Contracting States to the agreement in question. This provision thus allows the EU to adopt a Regulation on the cross-border protection of adults, on the condition that it applies only to adults habitually residents in the EU.

The Explanatory Report of the Convention* goes as far as indicating that Article 49(3) of the Convention does not reiterate the limitation of the habitual residence criteria and *'leaves open the possibility of separate agreements concerning adults not necessarily having their habitual residence in a State Party, on condition however, that these agreements do not affect the application of the Hague Convention'*[309]. According to this interpretation, when concluding a separate agreement, Contracting Parties* should **either** make it applicable only to the situations of adults habitually resident in their territory, **or** ensure that the separate agreement does not affect the application of the Convention.

As a result, **if Option 4** (a combined option consisting of the mandatory ratification of the Convention and of an EU regulation) **was chosen, the regulation would take priority over the Convention in relation among EU Member States. In contrast, the relations between Member States and non-EU Contracting Parties would be governed by the Convention.**

[309] Paragraph 162 of the Explanatory Report to the Convention*.

ANNEX 6: EU REGULATION

This Annex presents in a greater detail the legal basis of an EU Regulation, and in particular why the protection of adults is not considered to fall under family law. It also elaborates on the measures that could be adopted in an EU regulation that is envisaged under the Policy Options 3 and 4. It includes the description of the measure, as well as its benefits and estimated costs.

15 1 LEGAL BASIS OF AN EU REGULATION

15.1 1.1 The autonomous EU concept of 'family law'

Common rules on applicable law, jurisdiction, recognition and enforcement of judgments for the protection of adults are a matter of judicial cooperation that falls within the scope of Article 81(2) TFEU, as they do not fall within the field of family law. Therefore, Article 81(3) TFEU according to which 'the Council shall act unanimously after consulting the European Parliament', is not applicable to the protection of adults.

The term 'family law' in the sense of Article 81(3) TFEU must be interpreted autonomously regardless of the definition provided for in the national legislations of the Member States.

So far, the EU legislator has construed the notion rather strictly and has limited it to the rules governing family relationships, such as matrimonial matters, parental responsibilities, or maintenance obligations. Regulation (EU) No 650/2012 on matters of succession[310], for example, was not considered as family law matters and was adopted based on Article 81(2). 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.

Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters[311] provides an additional illustration. 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 hence clear that the **objective** of an instrument is the criteria to be used to establish whether or not it falls within the category of family law instruments, regardless of the ancillary matters that the instrument deals with or its effect on family law matters.

15.2 1.2 Protection of adults and family law

It is not uncommon that vulnerable adults benefit from protection provided by family members. In some Member States, the legal protection of vulnerable adults is attributed *ex lege** to the spouse or to the family members. However, the adult's family, if indeed the adult has a family, is merely one of the contexts in which protection can be ensured. The involvement of family members is not a necessary element. Instead, the crucial concern, when it comes to the protection of adults, is the support provided

[310] 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.
[311] 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.

and the realisation of the concerned adult's right to dignity, self-determination, non-discrimination and social inclusion, regardless of the family relations of the adult in question.

In addition, it must be noted that the *HCCH 2000 Protection of Adults Convention* does not contain any reference to the family relationships (such as 'parent', 'children' or 'spouse'), contrary to the EU Regulations covering family law matters.

Finally, the connection of the protection of adults with family relationships are even less direct than they were in the case of succession, which was held to fall outside the scope of family law matters.

16 2 EU MEASURES COMPLEMENTING THE CONVENTION

An EU Regulation on the protection of adults would complement the Convention* in that it would take over its rules but would also improve and modernise them. This chapter only described measures that would be added to (or would adapt) the general PIL* rules included in the Convention, as described in Annex 5.

The additional measures that would be implemented in the EU through the Regulation would be heavily inspired by those measures existing in the EU *acquis* in other areas of civil justice that have proven to be efficient and helpful for parties and competent authorities. As mentioned in the introduction of this report, more than 20 EU regulations have been adopted in the field of judicial cooperation on civil and commercial matters. These instruments have greatly advanced the cooperation in cross-border cases, based on the principle of mutual trust in areas like contractual disputes, insolvency proceedings, or child support recovery.

The possible EU regulation would contribute to solve the problems faced by adults* and their representatives, and in some instances, would be the only way to provide an effective solution as compared to the HCCH 2000 Protection of Adults Convention (see the ECR*).

The table below shows the selection of measures to be proposed either under PO3 or PO4. This selection is already a result of a previous analysis undertaken with the help of available legal expertise, evidence and consultations with a view to determine whether specific measures should be a part of the 'package'. Notably, many of these measures are a 'must have' should an EU regulation be adopted (e.g. the abolishing of exequatur). Should the regulation not adopt them, it would be a step backwards as compared to other areas of judicial cooperation in civil matters, and therefore a negative sign for the protection of adults. This is a fortiori the case for measures establishing digital communication, given the 'digital by default' principle and the fact that all other areas of judicial cooperation in civil matters will be digitalised under the Digitalisation Proposal*. The measure consisting of the interconnection of national registers is also largely modelled on the interconnection of insolvency registers established by Regulation (EU) 2015/848 on Insolvency.

Table 42: *Possible EU measures under POs 3 and 4 – description and benefits*

Possible EU measure	Description and benefits	Estimated cost
European Certificate of Representation (ECR). Upon request of a representative, the competent authorities in the Member State where a protection measure was taken* or powers of representation were confirmed will issue this certificate. The certificate would establish the existence of a measure or confirmed powers of representation, including the specific powers granted to one or several representatives.	**The ECR would solve many problems linked to the non-recognition** of protection measures* or powers of representation*, by competent authorities and especially by non-judicial actors (banks, financial institutions, insurance companies, real estate agents, medical staff). The ECR would directly save the expenses of unnecessary enforcement proceedings. The ECR* would have evidentiary effect on its own, with no need to present the actual measure or powers of representation. The ECR would be issued in one common form, available online on the e-Justice Portal* and/or possibly	**Very minor or no costs for the general public** **Minor costs for competent authorities**

Possible EU measure	Description and benefits	Estimated cost
Unlike the certificate under Article 38 of the HCCH 2000 Protection of Adults Convention, Member States would have the obligation to issue the ECR upon request by the representative and the issued ECR would have clear legal effects[312]. The certificate would be accepted automatically, without any procedure, and have *evidentiary* effects in other Member States.	implemented directly by Member States in their own IT systems. The parties would be able to request the issuance of an electronic ECR directly on the e-Justice Portal*. It would be available in all EU official languages and thus reduce the need for translations. Before issuing the ECR, the competent authorities would be able to consult the interconnected registers to verify that there are no conflicting protection measures or powers of representation that could have an effect on the validity of the 'source' measure or confirmed powers of representation invoked as a basis for the issuance of the ECR. This would further increase legal certainty. The ECR would be an **efficient solution to increase legal certainty, reduce the costs and length of proceedings and avoid non-recognition of protection measures or powers of representation.** A promotion campaign could help raise awareness about this tool among non-judicial actors.	
If a **choice of jurisdiction*** is included in the powers of representation* established by the adult, a specific provision could allow a court to exercise its jurisdiction based on this choice. The choice of jurisdiction* would be subject to certain criteria defined in the Regulation, and the chosen court, if exercising its jurisdiction, should inform the authorities of the Member State of the habitual residence of the adult.	Under the *HCCH 2000 Protection of Adults Convention**, the authority with jurisdiction to take a protection measure is the court of the State where the adult has their habitual residence. This is based on the principle of proximity between the court and the party, which ensures a high level of protection. However, some adults who are not located in their country of origin may wish that the courts of the State of their nationality, or of their former habitual residence, have jurisdiction over their case, and apply their own law. Under Article 8 of the Convention*, for the court chosen by the adult in writing to exercise its jurisdiction, the parties have to go through **a two-stage and lengthy procedure** requiring that the courts of the habitual residence of the adult accepts to transfer jurisdiction to the chosen court. A choice of jurisdiction would therefore simplify some proceedings. The additional provision would in addition allow a chosen court to apply its law. Such a provision on choice of jurisdiction would ensure **legal certainty** and promote the **right to autonomy** of all adults.	**No cost**
Limitation of the grounds for non-recognition. An EU Regulation would provide for the automatic recognition of protection measures, in the same way as the Convention* does. However, if a party decides to challenge the recognition of a protection measure, the grounds for refusing to give effect to that measure should be limited as much as	In general, such a limitation of the refusal grounds would simplify the legal framework, and in particular would limit the number of cases where a decision is not recognised. Therefore, such a measure would ensure **legal certainty and avoid non-recognition and complex proceedings.** Each EU court has to initially assess its international jurisdiction before ruling on a cross-border case. Once this assessment is made, the courts of other Member States will trust the assessment initially made (principle of	**No cost**

[312] In contrast, the Convention leaves it to the discretion of Member States whether they decide to implement the provision in Article 38 on the certificate and thus to provide the certificate to the public. As a result, and as established by the replies to the HCCH Questionnaire in preparation of the 2022 Special Commission*, in several Contracting Parties to the Convention, the certificate is not available to the vulnerable adults or their representatives.

Possible EU measure	Description and benefits	Estimated cost
possible. Therefore, the ground for refusal* based on the lack of jurisdiction of the State of origin* which is found in the Convention, should not be retained in an EU Regulation.	mutual trust) and will not impose an additional review on the parties when recognising the measure. In that regard, the ground for refusing recognition provided in Article 22(2)(a) of the Convention should be deleted.	
Abolition of exequatur*. A protection measure taken in one Member State is enforced in all other Member States under the same conditions as a measure taken in the state addressed, without an specific procedure (such as the declaration of enforceability).	This measure would **increase legal certainty and avoid unnecessary proceedings.** In cases involving the protection of adults, courts do not 'order' actions to be taken (such as payments) but only 'authorise' them, upon request of the adult or the representative. Hence, cases where forced execution is required are rare (practitioners have mentioned the possibility to seek enforcement in forced sale of a property, forced hospitalisation or interruption of a medical assistance). However, even if rarely needed, enforcement remains cumbersome as it requires a declaration of enforceability (exequatur) both in all Member States' laws as well as under the Convention (which provides for a 'rapid and simple enforcement procedure' but does not abolish exequatur as such). The abolition of exequatur in an EU regulation, which a precondition for enforcement, will remove the need for any additional procedure before enforcement, once again on the basis of the principle of mutual trust. In addition, since it has been observed that many non-judicial actors wrongly request an exequatur* as a condition to recognise a protection measure, the abolition of exequatur* will have the indirect effect of preventing such unjustified requests.	**No cost**
Recognition of confirmed powers of representation* (authentic instruments).	A specific provision would allow the automatic recognition of confirmed powers of representation (those which can be qualified as authentic instruments) and other documents drawn up in an authentic form. This will facilitate the recognition of their evidentiary effects within the EU. Such a provision would confirm the stronger evidentiary value of the powers of representation confirmed by a competent authority, and would **increase legal certainty and speed up proceedings.**	**No cost**
Digitalisation (1) **Mandatory electronic communications between competent authorities.**	In accordance with Article 3 of the digitalisation proposal*, competent authorities would have the obligation to use the decentralised IT system to exchange requests, documents and messages. As a result, courts, notaries and Central Authorities, when communicating in a cross-border case, would in most cases use fast and secure communication means. This would largely **mitigate the problem of the duration and costs of proceedings.**	**No cost for individuals** **Reasonable costs for MS (investments in the infrastructure and adjustment of systems of competent authorities already made under previous digitalisation initiatives)**
Digitalisation (2) **European Electronic Access Point for the general public** (to apply for a protection measure abroad or the recognition of a measure / request an ECR or an attestation accompanying a decision or an authentic instrument).	This provision, in line with articles 4 and 5 of the Digitalisation proposal, would significantly **speed up the proceedings,** by the use of electronic channels and would overcome most language barriers and reduce the costs through the use of multilingual forms (in all EU languages).	**No cost for individuals Reasonable costs for MS (investments on the adjustment systems of competent authorities already**

Possible EU measure	Description and benefits	Estimated cost
		made under previous digitalisation initiatives)
Digitalisation (3) Acceptance of **electronic documents** and **qualified electronic signatures**.	This provision, in line with Articles 9 and 10 of the Digitalisation proposal, would ensure that documents issued in an electronic form are not rejected or denied legal effect by the Member States' competent authorities, and would **speed up the proceedings and alleviate the workload of authorities.**	**No costs**
Digitalisation (4) **Interconnection of national registers**. The Regulation would provide for the establishment of one or several registers per Member State containing a common set of data in relation to protection measures and confirmed powers of representation. The Commission would have to establish a decentralised IT system for the interconnection of such national registers. For an example of a previous similar initiative, see Articles 24 and 25 of the Insolvency Regulation[313].	The interconnection would ensure that the information currently accessible in most Member States to their national competent authorities is also accessible cross-border to the competent authorities of the other Member States. The swift access to the information on a protection measure or confirmed powers of representation would ensure that the appropriate support is provided to vulnerable adults in international situations, would reduce the amount of the verifications carried out by the competent authorities and thus **diminishing the duration and costs of proceeding**. Importantly, it would significantly **increase the legal certainty.** The access rights to the register would be strictly controlled, in order to guarantee the protection of personal data.	**No costs for individuals** **Estimated total of costs of setting up a register or adapting an existing one for all Member States: 7 902 794.** **Estimated total cost for interconnecting the registers: 10.000 000.**
Provision of **legal aid** in cross-border cases that are not covered by the Legal Aid Directive : for recognition proceedings, confirmation of powers of representation, service of documents abroad and other access to justice costs incurred in a Member State other than the one where the adult resides. In cases where legal aid has been granted in one Member States, legal aid would be automatically granted in other Member States to cover certain types of costs incurred in their territory. See for instance Articles 72 and 79 of the Brussels IIb Regulation*	Such provision would **expedite the resolution of certain procedures,** and **eliminate certain costs** for adults with limited income.	**No costs for individuals.** **Minimal costs for Member States competent authorities since the number of those cases would be limited to specific situations, and the rules for granting of legal aid are already in place.**
Direct communication between courts/ See for instance Article 86 of the Brussels IIb Regulation* and Article 57 of Insolvency Regulation	The Regulation would provide for the legal basis for a direct communication between the courts involved in a cross-border case. Courts are reluctant to take the initiative of establishing cross-border communication when their national procedure does not provide for it. This would be particularly useful in border areas or for courts speaking the same language. Communication can also take place through the channel of Central Authorities*, EJN-civil* or another informal network. See C&R n°56 of the 2022 Special Commission and C&R n°14 of December 2018 EC-HCCH Joint Conference on the Cross-Border Protection of Vulnerable Adults.	**No cost**

[313] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).

Possible EU measure	Description and benefits	Estimated cost
	Direct communications would **greatly accelerate cross-border proceedings** in complex or sensitive cases.	
Publication of **practical information** on the operation of the Regulation on the e-Justice Portal* (European Judicial Atlas in civil matters)	Among other, general information on the Regulation will be provided for each Member State, including : - Contact details of the Central Authority, - Authorities, procedure and costs for issuing the ECR - Authorities, procedure and costs for issuing the attestations (forms accompanying the decision) - Practical information on legal aid - Search engine providing the contact details of all competent authorities The above publication would **foster legal certainty and speed up proceedings.**	**No cost**
Designation by the courts of a professional **representative abroad** / cooperation	The Regulation would provide a legal basis for courts to appoint a public representative abroad, and would govern the division of costs in between the two Member States concerned. This would save adults* and their representatives the expense of frequent travel and legal advice abroad, or initiating proceedings abroad, where the complexity of the financial or personal situation of the adult requires regular support to be provided abroad. **This would therefore reduce the costs for individuals and competent authorities as well as the complexity of procedures.**	**No cost (only their division)**
Standardised **forms** for the communication between Central Authorities* and competent authorities	A number of standardised forms would allow Central Authorities and courts to exchange requests, acknowledge receipt or ask additional information in real time and without the language barrier (and possible translation costs), electronically. **This would significantly speed up proceedings and reduce costs.**	**No cost**
the European Judicial Network in civil and commercial matters (**EJN-civil***)	The EJN-civil would be responsible for organising regular meetings to discuss the practical operation of the Regulation, and if necessary set up working groups to prepare additional tools or guidance (non-mandatory forms or practice guides), based on the needs expressed by practitioners. EJN-civil would also prepare factsheets containing all information on national laws of Member States. Such activities of the **EJN-civil would contribute to addressing all the problems in the long term.** The EJN-civil would also be involved in monitoring the application of the Regulation with a view to its evaluation.	**Limited costs borne by the Commission (the organisation of one EJN-civil meeting with 120 participants amounts to approximately EUR 150 000, all costs included).**

17 3 DATA PROTECTION IMPACTS OF A POSSIBLE REGULATION UNDER PO3 OR PO4

The EU regulation under POs 3 and 4 would provide a legal basis for **processing personal data** of natural persons, especially those **of protected adults** and their representatives. The protection of such data to be processed would be ensured in line with the **General Data Protection Regulation*** ('GDPR')[314] and, where applicable, the EUDPR*[315].

The processing of personal data under the Regulation would only relate to situations falling within the scope of the Regulation – *i.e.* to civil matter cases concerning the protection in cross-border situations of vulnerable adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests. This insufficiency or impairment may be, among others, of physical or psychosocial nature, or in connection with an age-related disease, such as Alzheimer's disease, or resulting from a health condition, such as coma. Therefore, the fact that an adult is protected or is in need of protection under the regulation could (directly or indirectly) reveal information concerning health of the individual. In general, information about health[316] is considered as a **special category of personal data**[317]. Therefore, a higher level of protection and confidentiality would need to be ensured when processing this category of data as compared to other personal data.

As noted in the Section 2.1.3.1 *The number of vulnerable adults in the EU* and as quantified in Annex 4, the number of such adults in cross-border situations who could benefit from the rules in the Regulation is estimated between ca. 144 649 and 780 169. In some of those cases and depending on the circumstances of the case at hand, the processing of personal information under the Regulation would be necessary.

In addition to personal data concerning adults, also data concerning other natural persons, in particular representatives of the adults, may need to be processed under the Regulation. These personal data would not be sensitive.

General functioning of the Regulation and digital communication

Personal data would be processed under the Regulation in particular for the **purposes of streamlining the cross-border procedures and cooperation among Member States in matters falling within the scope of the Regulation and thus enhancing the protection, in international situations, of adults**. This includes processing for the following purposes: (i) for determining jurisdiction, (ii) for determining the law applicable to protection measures or to powers of representation, (iii) for facilitating the cross-border proceedings related to recognition and/or enforcement of protection measures and acceptance of authentic instruments, (v) for facilitating the cooperation among competent authorities and Central Authorities* of Member States and (vi) for the issuance of forms, attestations and the European Certificate of Representation provided for in the Regulation. For these purposes, personal data processed would be those contained in the documents handled, for the above purposes, by Member States'

[314] Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

[315] Regulation (EU) 2018/1725 lays down rules relating to the protection of natural persons with regard to the processing of personal data by the Union institutions and bodies.

[316] 'Data concerning health' means, pursuant to Article 4(15) GDPR, personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status. According to recital 35 of GDPR, personal data concerning health should include all data pertaining to the health status of a data subject which reveal information relating to the past, current or future physical or mental health status of the data subject.

[317] See, by analogy, the judgment of the Court of Justice of 1 August 2022, *OT a.o.*, C-184/20, ECLI:EU:C:2022:601, paragraphs 120-128, on processing of personal data that are liable indirectly to reveal sensitive information concerning a natural person by means of an intellectual operation involving comparison and deduction.

competent authorities* and Central Authorities*[318]. Those Member States' authorities would be responsible for the compliance of the processing with the applicable data protection legislation, in particular GDPR.

In addition, in line with the 'digital by default' principle and the EU policy on digitalisation of justice, The PA Regulation*would provide for a modern means of access to justice making it possible for natural and legal persons and Member State competent authorities* and Central Authorities* to communicate electronically. The Regulation would thus provide for **digital communication means** to be used: (1) among individuals and Member States' competent authorities and (2) among the competent authorities of various Member States. The digital solutions ('decentralised IT system') enabling this communication would follow those to be developed for other areas of judicial cooperation in civil matters on the basis of the Digitalisation proposal*.

- First, natural and legal persons would be able (but not obliged to) to use the European electronic access point established on the European E-Justice Portal* to communicate with Member States' competent authorities in connection with specific proceedings and applications under the PA* Regulation[319]. The European electronic access point would already be established by the Commission under the Digitalisation proposal (once that proposal is adopted by co-legislators and implemented). The PA Regulation* would thus ensure that the communication for proceedings and applications in the area of the adults' protection is added there. The European electronic access point would enable natural and legal persons to communicate with Member States' authorities competent under the PA Regulation on various matters with relation to the procedures envisaged by the Regulation. In the European electronic access point, the users would have access to the history of their applications, this information would thus be stored in the portal. The Commission would be responsible for the creation, development and maintenance of the European Electronic Access Point.

- Second, as regards the digital communication among national competent authorities, Member States' competent authorities and Central Authorities* would be in principle obliged under the Regulation to communicate for the procedures under the PA Regulation* via digital means through a secure and reliable decentralised IT system. The Commission would be responsible for the creation, development and maintenance of a reference implementation software which Member States may choose to apply in the context of the decentralised IT system. Member States may likewise use their existing national IT systems.

With respect to personal data processed through the above decentralised IT system to enable the digital communication, the PA Regulation* would provide legal basis for the processing of personal data. While Member States' competent authorities would remain controllers concerning the general processing of the data, the Commission will be a controller with respect to personal data transmitted electronically through the decentralised IT system, responsible to implement technical measures required to ensure the security of that data and confidentiality and integrity of the transmissions.

The details concerning data protection aspects of the decentralised IT system would follow technical solutions adopted for the Digitalisation proposal, once adopted and implemented. Further details could be included in the implementing acts adopted under this Regulation that would implement the decentralised IT system for the purposes of this Regulation.

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[318] That personal data concern in particular the information needed to take a protection measure concerning adults in the scope of this Regulation and to ensure their continued protection in cross-border situations.

[319] They would be able to apply electronically for instance for the European Certificate of Representation or start the proceedings for recognition or non-recognition of a protection measure.

The interconnection of national registers ('system of interconnection')

Besides the general functioning of the Regulation and the digital communication tools, the Regulation would also provide for data processing **for the purposes of establishing the system** for the interconnection of protection registers and other registers of powers of representation and **ensuring the maintenance and proper functioning of that system of interconnection**. This additional processing is justified by the need that Member States' competent authorities and Central Authorities with legitimate interest have access to the information whether a particular adult is protected or has expressed wishes or preferences regarding his or her protection in another Member State, with a view to ensuring continued protection of that adult in cross-border situations and to increasing legal certainty and predictability.

Interconnecting national registers would entail that those Member States that do not have registers of protection measures or of confirmed powers of representation (while they provide for a confirmation of those powers in their national law) would have to establish them and include there minimum mandatory information concerning protection measures and, where applicable, confirmed powers of representation. As detailed above in Annex 4, a number of Member States have registers of measures and/or powers of representation ('national protection registers'). Those Member States would have to ensure that their registers include the minimum mandatory information defined in the Regulation. The national protection registers (as well as other registers of powers of representation that Member States have) would then be interconnected at the EU level to enable a cross-border access to that information.

The data processed through the system of interconnection should be limited to what is necessary for accessing the relevant information about the protection measures and powers of representation concerning a particular adult. Data processed through the system would thus be limited to a few 'mandatory' categories. Member States would however be able to give access through the system of interconnection to additional data (such as on registered powers of representation, or on the name of a representative and the extent of the representation, or historical data concerning protection measures and powers of representation recorded in the past).[320]

The access to the system of interconnection would not be public. Only those competent authorities that are designated by Member States, and have access to their national registers, would have access to the system of interconnection provided that they have legitimate interest in accessing the information (for instance since they are seized by a case concerning a particular adult and they should establish whether the adult is not under a protection measure in another Member State).

The personal data would be primarily stored by Member States in their national registers. Member States would be responsible for technical management, maintenance and security of their registers and, as far as their national law provides, for the correctness and reliability of the data included therein. In addition, since the Commission would be responsible for developing and maintaining the system of interconnection, it may need to process data for those purposes or even temporarily store the data accessed through the system of interconnection.

The data protection aspects of the system of interconnection closely related to the detailed technical and IT solutions adopted. The technical and IT solutions would be further detailed in the context of the implementation by means of implementing acts.

Conclusions

[320] To enable the interconnection of the additional categories of data from the technical perspective, these categories would have to be specified at the time of the adoption of implementing acts.

The Regulation would provide **legal basis** for processing personal data **for the above purposes**. Where data is processed by Member States' competent authorities under this Regulation (the majority of cases), **Member States would be responsible to ensure that the processing is in line with applicable data protection legislation, in particular GDPR** (from the position of **controllers**[321]). The legal basis of the processing of personal data should be Article 6(1) and (3) of the GDPR.

Technical details concerning the processing of data for the purposes of these digital solutions will be implemented by means of implementing acts. For the purposes of the technical management, development, maintenance, security and support of the digital solutions to be provided by the Commission under the Regulation (decentralised IT system and the system of interconnection of registers), the **Commission should be regarded as a controller**[322]. The legal basis for that data processing is Article 5(1) and (2) of the EUDPR.

The processing of **special categories of personal data** (personal data concerning health) would meet the requirements of Article 9(2) of the GDPR as data would be processed by competent authorities in their judicial capacity in conformity with point (f), or the processing will be, in conformity with point (g), necessary for reasons of substantial public interest, which aims to enhance the protection of fundamental rights and freedoms and other rights of adults in cross-border situations, to improve the effectiveness and speed of judicial and administrative proceedings concerning the protection of adults and to strengthen legal certainty and predictability in cross-border dealings. Similarly, the processing of special categories of personal data by the Commission would meet the requirements of Article 10(2) of the EUDPR as the processing of data would be necessary for the establishment, exercise or defence of legal claims in conformity with point (f), or the processing would be necessary for reasons of substantial public interest on the basis of this Regulation, in conformity with point (g).

Personal data should be processed under the Regulation only where necessary for and proportionate to the purposes of processing listed above[323]. Any limitation of the right to protection of personal data should respect the essence of the right and should genuinely meet objective of general interest or the need to protect the rights and freedoms of others. **Safeguards** concerning data protection would be put in place, whether by Member States for their processing or by the Commission for the digital solutions. The latter would include in particular the limitation of the data processed (for instance, the obligation under the Regulation to interconnect national registers would only concern minimum mandatory information), storage limitation (the data would not be stored, on long-term basis, in the system of interconnection) or access limitation (the data in the system of interconnection would be only available to national competent authorities that would be determined by Member States and would have legitimate interest in the data). In addition, further safeguards could be determined in the implementing acts when setting out the technical solutions.

[321] Within the meaning of Article 4(7) GDPR.
[322] Within the meaning of Article 3(8) EUDPR.
[323] Without prejudice to possible further processing for archiving purposes in the public interest.

ANNEX 7: PROBLEM DIFFERENTIATION BETWEEN CONTRACTING PARTIES TO THE CONVENTION AND NON-CONTRACTING PARTIES

This Annex provides further analysis of the problem, building on the analysis in Section 2 of this Report. It identifies **which problems would be fully or partially solved should all Member States become Contracting Parties to the HCCH 2000 Protection of Adults Convention and which would not or not completely**.

Not all Member States of the EU are currently parties to the HCCH 2000 Protection of Adults Convention which creates differences in problems experiences by adults in the EU, depending on which Member States' law is involved in their case. The situation is of course simpler between Member States that have ratified the Convention than in cases in which one or more Member State to which a case relates is not party to the Convention. However, to varying extents, the **problems described in the report may currently occur even in Member States that are party to the HCCH 2000 Protection of Adults Convention**.

This is (1) because the Convention only applies vis-à-vis other Contracting Parties (and therefore only covers those cases that arise with other Member States that are Contracting States to the Convention and not the rest) and (2) because the Convention would solve some but not all problems experienced by the adults.

First, it must be noted that many problems described in Section 2 appear both in Member States that are Contracting Parties to the Convention and those that are not. The Convention, by providing uniform PIL* rules to be applicable in cross-border cases concerning the protection of adults, can **only solve problems in Contracting Parties in relation to other Contracting Parties.** The problems thus remain when cross-border cases involve one of the 15 EU Member States that have not ratified the Convention. Currently, among the total of 220 possible bilateral relationships that the 11 EU Member States that are Contracting States to the Convention can have with the other EU Member States, only 55 are covered by the Convention (25% of the cases), while 165 (75%) are not covered. The prevalence of the problems and their consequences in EU Member States that are Contracting States to the Convention is therefore only reduced to some extent by the operation of the Convention. Therefore, considering the absence of data and the complexity of the legal picture, it is difficult to isolate the positive effects of the Convention from the evidence on the existence of the problems or to claim that problems do not exist in the Member States that are Contracting States to the Convention.

Second, the **HCCH 2000 Protection of Adults Convention provides** private international law rules aimed at protecting adults in cross-border situations. These **'core' rules** are considered by the legal experts as fit-for-purpose as they provide a useful minimum framework that mitigates the problems faced by vulnerable adults in cross-border situations. It is thus true that e.g. the problems raised by the lack of harmonised rules on jurisdiction and applicable law and lack of automatic recognition of protection measures would be almost fully solved in the EU if all Member States become a party to the Convention.[324].

In contrast to these 'core' private international law rules, the Convention does not (or not sufficiently) regulate other areas linked to the cross-border protection of adults, such as the possibility of digital communication and close cooperation among national competent authorities, the recognition of powers of representation abroad and/or how the competent authorities in other States obtain the information that someone's capacity is limited. These are some of the issues that remain problematic even between

[324] This is also the reason why in all policy options, including in an EU regulation, the rules established by the Convention on jurisdiction and applicable law and automatic recognition of protection measures are kept as they appear in the Convention, only with a minor adjustment. A large number of stakeholders have advocated for a legislative solution that would keep those provisions, when applied to EU cases. In contrast, an EU Regulation that would change the functioning of these 'core' rules included the Convention would unduly complicate this legal area by creating two different set of applicable rules.

Member States that are Contracting Parties to the Convention and where therefore an EU regulation could be of added value.

Indeed, while the Convention is an efficient tool at the international level, it has been drafted to reach international consensus and thus cannot include all rules where harmonisation would be useful in the EU of the 21st century to further the protection of adults in cross-border situations (also given the fact that cooperation between EU Member States can be much closer than between EU Member States and non-EU countries). The Convention has been negotiated for a worldwide application, meaning to be operated by States with very different legal systems in general and on the protection of adults in particular. The context is obviously different in the EU where the European Area of Justice is now a reality, thanks to the existing EU *acquis* and the various tools developed by the EU. The shortcomings in the Convention thus do not consist in any inappropriateness of the rules of that Convention but in the fact that the Convention stops short of a higher degree of cooperation that can be achieved in the specific EU context.

The colour code used in the table below shows which drivers are partly eliminated by the application of the HCCH 2000 Protection of Adults Convention, and which drivers are only eliminated by an EU Regulation. The table thus helps to identify and assess where certain issues or gaps in the Convention remain and where an EU regulation could fill the gaps:

- Problems solved if all Member States joined the HCCH 2000 Protection of Adults Convention - in yellow
- Problems that would not be solved by the Convention but could be solved by an EU regulation - in blue

Table 43: Problems that would and would not be solved if all Member States become a Contracting Party to the Convention

Problem drivers	**Solution(s) provided by the Convention and/or the Regulation**	**Expected outcome**
Conflicting and complex rules on applicable laws	**Uniform set of rules**	Provide legal certainty on the law applicable to a case, and reduce length and costs of proceedings
	the European Judicial Network in civil and commercial matters as a forum for discussions, exchange of experiences, preparation of practice guide and assistance in individual cases	Improved awareness and implementation of the rules on applicable law for courts and other competent authorities (e.g. notaries)
	Interpretation of the instrument by the Court of Justice of the European Union	Improved legal certainty for competent authorities and citizens
Conflicting rules on jurisdiction	**Uniform set of rules**	Provide legal certainty on the court having jurisdiction, and reduce length and costs of proceedings
	the **European Judicial Network in civil and commercial matters** (EJN-civil*) as a forum for discussions, exchange of experiences, preparation of practice guide and assistance in individual cases	Improved awareness of courts and other competent authorities (e.g. notaries) on the rules on jurisdiction
	Interpretation of the instrument by the Court of Justice of the European Union	Improved legal certainty for competent authorities and citizens
	Choice of jurisdiction*: the Regulation would provide a clear jurisdiction ground to EU courts chosen in advance by an adult.	Improved legal certainty for adults who have granted powers of representation, as well as for their families and representative. Improved protection of the right to autonomy. Improved legal certainty for courts and other competent authorities. Rapid procedures : This would avoid as much as possible the cumbersome consultation procedure provided for in Article 8 of the HCCH 2000 Protection of Adults Convention
Conflicting or complex rules on	Automatic recognition of protection measures (and uniform set of rules)	Provide legal certainty on the circulation of a measure in the EU

recognition of foreign protection measures and powers of representation established abroad		Eliminate lengthy and costly recognition procedures.
	Simplified list of grounds for refusing to recognize a foreign protection measure	Reduce the risk of challenges of the recognition of a measure and increase predictability
	European Certificate of Representation (ECR), containing a predefined set of information, with uniform effects in the EU.	The ECR, issued on the basis of a protection measure or confirmed powers of representation* will provide evidence of those measures or powers and make it easier for them to circulate in the EU. It will eliminate the risk that private actors do not recognize protection measures or confirmed powers of representation. It will significantly increase legal certainty for citizens. The information on ECRs and the authorities competent to issue them would be available on the e-Justice Portal. In most cases, the ECR will avoid the need for a certified translation, and accelerate procedures.
	the European Judicial Network in civil and commercial matters as a forum for discussions, exchange of experiences, preparation of practice guide and assistance in individual cases	Improved awareness and better implementation of the rules on recognition of measures and authentic instruments among courts and other competent authorities (e.g. notaries)
	Interpretation of the instrument by the **Court of Justice of the European Union**	Improved legal certainty for competent authorities and citizens
Unnecessary or complex recognition/ enforcement proceedings	One set of **uniform rules**	Increased legal certainty, through uniform exequatur proceedings. The Convention obliges its Contracting States to provide for an accelerated procedure of enforcement. Even if enforcement of a protection measure is not necessary in most cases, where it is needed, these rules in the Convention speed up those proceedings.
	Abolition of exequatur*. **European Certificate of Representation**, which will contain a predefined set of information with uniform effects in the EU. The information of the ECR and the competent authorities would be available on the e-Justice Portal*.	It will not be possible for private actors to require exequatur* for a foreign measure before accepting it. The ECR, issued on the basis of a protection measure or confirmed powers of representation* will provide evidence of those measures or powers and make it easier for them to circulate in the EU. It will eliminate the risk that private actors do not recognize protection measures or confirmed powers of representation. It will significantly increase legal certainty for citizens. The information on ECRs and the authorities competent to issue them would be available on the e-Justice Portal. In most cases, the ECR will avoid the need for a certified translation, and accelerate procedures.
	Information provided on the e-Justice Portal* to all individuals and economic actors.	Increased awareness from private actors such as banks and private institutions about the evidentiary effects of the ECR.

Absent or limited cooperation between national competent authorities	Setting up **Central Authorities*** (that provide information of foreign law, cooperation, promotion of cooperation among competent authorities, facilitation of cross-border communication, location of an adult, mediation, provision of information relevant for the protection).	Improved cooperation of competent authorities on cross-border cases, improved access to information and to the content of foreign law. Assistance in individual cases.
	European Certificate of representation, containing a predefined set of information, with uniform effects in the EU.	The ECR, issued on the basis of a protection measure or confirmed powers of representation* will provide evidence of those measures or powers and make it easier for them to circulate in the EU. It will eliminate the risk that private actors do not recognize protection measures or confirmed powers of representation.
	Multilingual standard forms will be established for communication between Central Authorities* and competent authorities	This will speed up proceedings and allow the exchange of information without the need for a translation.
	Interconnection of national registers of protection measures and (confirmed) powers of representation will allow competent authorities with legitimate interest, such as courts, notaries, civil or land registrars to access foreign registers and verify the legal capacity of a person.	Increased legal certainty Improved protection of the right to self-determination for adults in cross-border cases (the competent authority will be informed of the existence of powers of representation registered in another country and the choices made by the adult in advance will be respected)
	Digitalisation of communication	Will facilitate, streamline and speed up communication between competent authorities, and often remove the requirement of a translation
	Training activities of courts, prosecutors and court staff by the European Judicial Training Network*	Increased awareness of the EU and international instruments in the field of adult's protection, ensuring their correct application, and facilitating the handling of cross-border cases.
	Access to foreign law will be facilitated by the publication of factsheets on national laws on the e-Justice Portal*, providing reliable information in all EU languages. This will supplement the work of Central Authorities* in that area.	Improved legal certainty Faster proceedings.
	The European Judicial Network in civil and commercial matters as a forum for discussions, exchange of experiences, preparation of practice guide and assistance in individual cases	Improved awareness and better implementation of the rules applying to cross-border cases

Third, since any EU legislation cannot apply to non-EU States, an EU regulation would not be a tool to address the problems experienced by adults with respect to non-EU States. Therefore, in cross-border cases involving a Member State and a non-EU State, the Convention with its core private international law rules either already is or would be an efficient tool to address these problems. The ratification of the Convention by all remaining Member States (possibly combined with some promotion of the Convention among non-EU countries) is thus the only way to improve the situation of those vulnerable adults in the EU that have links to non-EU countries. This is extremely important in this area since a single adult may have personal links (including owning a property) to various EU and non-EU countries.

ANNEX 8: MONITORING – POTENTIAL EVALUATION INDICATORS

Table 44: *Examples of potential evaluation indicators*

Assessment criterion	Examples of potential indicators
To protect fundamental rights of vulnerable adults *To increase legal certainty for all persons and competent authorities involved* *To facilitate the cross-border recognition of protection measures and powers of representation* *To make proceedings faster and less expensive* *To increase cooperation among competent authorities of Member States concerning the protection of adults*	• Signature and ratification of the HCCH 2000 Protection of Adults Convention* within the timeframe agreed in the Council decision. • Implementation of the rules set out in the Regulation and in the Convention o Designation of Central Authorities* in all Member States, attribution of powers to the Central Authorities and provision of sufficient resources for their functioning; o Adoption of national measures to ensure implementation of the rules set out in the Convention and Regulation (e.g. legal aid, digitalisation of procedures, set up of national registers of protection measures* and/or of (confirmed) powers of representation*, interconnection of these registries etc.); o Adjustment and enforcement costs* for competent authorities of Member States[325]; o EJTN statistics on the trainings provided and the number of participants; o Number and amount of EU grants allocated for the digitalisation of national systems and for the training of legal practitioners on that matter. • Application and enforcement of the rules set out in the Regulation and in the Convention* o Case law concerning the legislation, possible preliminary ruling requests to the CJEU; o The perception of the legislation by civil society, NGOs and competent authorities of Member States[326]; o Information concerning any undesired effects of the legislation, including possible misuse of certificates or other; o The views of the legislation in academic literature and in reports by individuals, organisations and international organisations; o Improved cooperation among competent authorities of Member States, in particular of Central Authorities*, concerning the protection of adults. • Other indicators used for the evaluation of the legislation o The number of adults living in the EU in cross-border situations who are unable to protect their interests because of an impairment or insufficiency of their personal faculties; o The number of powers of representation* granted by such adults living in the EU in cross-border situations; the number of such powers of representation* that are registered and/or confirmed; o Number of proceedings relating to cross-border issues involving vulnerable adults and their outcome[327]; o Costs and administrative burden borne by adults and their representatives before and after the legislation became applicable[328]; o Costs and burden borne by competent authorities before and after the legislation became applicable; their level of satisfaction with the legislation[329].

[325] The perception by these stakeholders could be assessed for instance through targeted interviews, questionnaires or through publically available publications.
[326] Ibid.
[327] For instance, whether they ended with the recognition of the protection measures or of the powers of representation* in question.
[328] Ideally, this data should be disaggregated comparing the length and costs of the procedure in comparable cases.
[329] This data could be collected from Member States and their competent authorities through targeted interviews or questionnaires.

	○ The number of European Certificates of Representation* issued and related fees[330] or, more generally, the number of forms generated on the e-Justice portal* that will reflect not only the number of ECRs issued but also the number of other attestations issued for recognition purposes. ○ In addition, any possible changes to the national substantive and procedural law concerning protection of adults, especially where adopted in relation or as a reaction to implementation of the legislation should be monitored. ○ Information published by Member States on the e-Justice Portal* (on the European judicial atlas as well as the factsheets on national law) ○ Statistics from national registers and from the interconnection software on the number of cross-border consultations.

To ensure that the data collection provided for in the PA Regulation* complies with the SMART objectives, the **EJN-civil Good Practice on Data Collection** should be followed by the Commission when preparing the draft Regulation and by the co-legislators when amending the text.

An **indicator of success of the PA initiative*** would be the fact that the initiative meets its objectives, in that it (i) better protects the rights of adults, including fundamental rights; (ii) increases legal certainty for all persons and competent authorities; (iii) facilitates the cross-border recognition of protection measures and powers of representation*; and (iv) makes proceedings faster and less expensive. 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 legislation:

- In particular, the fact that all Member States have **ratified (or acceded to) the Convention** and set up their Central Authorities* within the time specified in the Council Decision would be a measure of success. This timeframe could be 2 years after the entry into application of the Council decision, unless otherwise agreed by the Council.
- An acceleration in the pace of **ratifications of the Convention by non-EU countries**, with five non-EU countries joining the Convention within five years of the initiative's implementation would indicate increased international interest in the Convention aided by the ratification of the Convention by all Member States.
- In addition, as regards the PA regulation*, the annual **number of European Certificates of Representation** (ECR) issued every year (which can be easily measured if they are issued on the e-Justice Portal, and should also be measured if issued from a national IT system), could also be an additional means to measure the success of the regulation in quantitative terms.
- If the total number of ECRs issued and **registers consulted** amount to more than 100 000 over a period of ten years (knowing that the lower estimate of the number of vulnerable adults in cross-border cases amounts to 145 000), this could be another indicator of success of the regulation.
- The annual **number of incoming cross-border forms** (to avoid double counting outgoing and incoming requests) sent by Central Authorities* and competent authorities through the e-CODEX communication tool in the area of the protection of adults will offer a reliable indicator of the facilitated and accelerated cooperation between competent authorities.
- The aggregated total number of outgoing **EJN-civil*** requests as reported in the annual national reports of EJN contact points, as well as the number of EJN-civil meetings dedicated to the topics over the evaluation period would be relevant indicator of success, in particular in terms of awareness-raising among practitioners.
- Finally, the number of participants attending trainings offered by the **EJTN*** on the cross-border protection of adults, within the evaluation period, as well as the number of EU funded projects during the same period, would also demonstrate the success of the initiative in terms of increased awareness of the legislation among competent authorities.

[330] If possible, the factors determining whether adults and their representatives apply for the European Certificate of Representation or use national certificates could be studied.

The success and benefits of the PA initiative* should be particularly measurable in respect of those Member States that would only become Contracting Parties to the Convention because of the initiative. These Member States could serve as a reference point.

As the PA initiative* would not apply to **Denmark** (see fn. 4), Denmark could be used, wherever appropriate, as a 'control group' to assess the effects of the legislation. This would allow factoring in any external influences on the future situation of adults in the EU that are not a result of the legislation.

ANNEX 9: CONSULTATIONS BY THE EXTERNAL CONTRACTOR

This annex provides an overview of the stakeholder consultation activities conducted by the external contractor* Milieu *Consulting SRL* in preparation of their Study supporting the impact assessment* and gives information on (i) the consultation activities targeting different types of stakeholders; (ii) the outcome and results of consultation activities per stakeholder's category and (iii) how stakeholder input was taken into account.

This Annex only includes **consultation activities conducted by the external contractor** that were not part of the Commission consultation strategy. For the consultations undertaken as a part of the Commission consultation strategy, see Annex 2. This Annex reproduces Annex V of the Study supporting the impact assessment*, with necessary adjustments for to avoid repetitions with Annex 2.

18 1 CONSULTATION ACTIVITIES

Consultation of several types of stakeholders comprised several interconnected activities:

- 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.

18.1 1.1 Stakeholder groups

The following table provides an overview of the types of consultation activities undertaken to gather feedback from different stakeholder groups.

Table45: *Consultation activities per stakeholder group – external contractor* (Source: Study by an external contractor*)

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 HCCH Protection of Adults 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 HCCH Protection of Adults 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 HCCH Protection of Adults Convention and its implementation Acceptance/opinion of different policy options	Public Consultation and Call for Evidence Semi-structured Interviews Case studies Focus groups

	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 HCCH Protection of Adults 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

18.2 1.2 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 Commission's 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.

19 2 RESULTS OF THE CONSULTATION ACTIVITIES

19.1 3.1 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[331], seven of which are Contracting States to the HCCH 2000 Protection of Adults Convention[332].

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

[331] BE, CZ, DE, FI, FR, IT, LV, MT, NL and PT.
[332] BE, CZ, DE, FI, FR, LV and PT.

problems (lack of legal certainty, the lack of recognition of protection measures and powers of representation, the length and costs of proceedings and the costs and workload for competent 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 and the UNCRPD). The answers on the costs (regulatory charges, adjustment and enforcement costs) in the current situation and the impact of different policy options on these costs helped the project team 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.

19.2 3.2 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.

19.3 3.3 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 States[333] 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 competent 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 competent 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.

[333] AT, BE, CZ, FR, DE, LT, LU, NL, MT, and SI.

ANNEX 10: NATIONAL PROVISIONS ON JURISDICTION, APPLICABLE LAW AND RECOGNITION

This Annex presents information about the Member States' provisions on jurisdiction and applicable law in cross-border matters concerning the protection of adults and on the recognition of decisions in these matters, as elaborated by an external contractor in the 2021 Legal Study*.

Table 46: *Jurisdiction and applicable law in the Member States that are not party to the Convention*[334]

MS	Jurisdiction	Applicable law
BG	Jurisdiction for the limitation or deprivation of legal capacity is based on **nationality.** Jurisdiction for the establishment and termination of guardianship or trusteeship is based on **habitual residence.**	▪ 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.	▪ Lex fori seems to apply.
ES	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.** 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.**	The applicable law for the protection of adult persons is the **law of habitual residence.**
HR	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.** Jurisdiction for the adoption of provisional or protective measures is based on the **location of the person or property in Croatia.**	▪ 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.**	▪ 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.**
IE	Jurisdiction for the determination of incapacity and for the application of protection measure may be based on **nationality or habitual residence.**	▪ Protection measures are regulated by the **law of habitual residence.** ▪ Enduring powers of attorney are regulated by **law of nationality, *lex rei sitae* or law of habitual residence.**
IT	Jurisdiction is based on **nationality or habitual residence.** Italy is the competent jurisdiction for provisional and urgent protection measures of vulnerable adults with regard to property if the property is located in Italy and	The conditions for adopting protection measures and the relationship between the caregiver and the protected person are governed by the **law of nationality** of the person to whom these protection measures relate. Under the rule on *renvoi*, cases exist where the law governing the protection of a foreigner is eventually Italian law.

[334] Data presented in the 2021 Legal Study*, before the ratification of the Convention by Greece.

MS	Jurisdiction	Applicable law
	where it is necessary to supplement or modify a foreign decision which is recognised in Italy.	
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 protection measures relate.
MT	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). 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.	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 HCCH 2000 Protection of Adults Convention, i.e. ***lex fori.***
PL	Jurisdiction may be based on **nationality or habitual residence.** 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. 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. 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 residing in Poland.	▪ The establishment of guardianship, curatorship or other protection 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 protection measures is subject to the law of **habitual residence.** ▪ The termination of a protection measure is governed by the **national law** of the adult.
RO	Jurisdiction for guardianship and curatorship may be based on **nationality** or **domicile** (or habitual residence if no domicile). For placement under judicial interdiction, only Romanian courts are competent irrespective of the citizenship, if the person has their **domicile** in Romania.	▪ The state and capacity of natural persons are governed by the **law of nationality.** ▪ Protection 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	Jurisdiction in proceedings of guardianship and trusteeship may be based on **nationality or domicile.** Swedish courts have jurisdiction in proceedings of protection measures for **Swedish citizens residing abroad.**	In cases concerning conservatorship and administratorship of vulnerable adults, ***lex fori*** applies.
SI	Regarding guardianship measures, Slovenian authorities have exclusive competence for **Slovene citizens.**	▪ 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 protection measures is	▪ Legal capacity of a person shall be governed by the **law of nationality.** ▪ The applicable law for the conditions for establishment or termination

MS	Jurisdiction	Applicable law
	based on **habitual residence.**	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.

Table 47: *Rules applicable to parallel proceedings in the Member States*

National court disregards the foreign proceedings and decide the matter as to its substance	National court stays the proceedings
AT, CY, IE, LV, SK	BE, BG, CZ, DK, EE, ES, FI, FR, HR, HU, IT, LT, LU, MT, NL, PL, PT, RO, SE, SI[335]

Table 48: *Recognition in Contracting States of protection measures taken in Non-contracting States*[336]

MS	*Is the recognition of protection measures taken in a Non-Contracting State automatic? (yes/no)*
AT	No
BE	No
CY	No
CZ	Yes
DE	Yes
EE	Yes
EL	No
FI	Yes
FR	Yes
LV	No
PT	No

Table 49: *Recognition in Non-Contracting States*[337]

Non-contracting States with automatic recognition of protection measures	Non-contracting States without automatic recognition of protection measures
DK, IT, PL, SI	BG, ES, HR, HU, MT, NL, LT, RO, SE, SK

[335] The information is not available for DE and EL.
[336] Data presented in the 2021 Legal Study*, before the ratification of the Convention by Greece.
[337] Data presented in the 2021 Legal Study*, before the ratification of the Convention by Greece.