

Civil aspects of the cross-border protection of vulnerable adults

Interview questionnaire



May 2022

INTERVIEW QUESTIONNAIRE

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1. INTRODUCTION

1.1 THE CONTEXT

The Hague Convention of 13 January 2000 on the International Protection of Adults¹ regulates the protection of vulnerable adults (VA) in an international context and provides for a definition of the notion of ‘vulnerable adult’. Article 1 of the Hague Convention defines vulnerable adults as “*adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests*”.

According to Eurostat, a significant number of adults face or will face limitations, and a fifth of the EU population is expected to have some form of disability by 2050². Moreover, important demographic changes in the EU have led to a rise in the number of elderly people affected by age-related illnesses. Additionally, the increasing exercise of the right of free movement and residence of persons in the EU has led to greater mobility of EU citizens. Because of these changes, the number of cases in relation to vulnerable adults in cross-border situations is also likely to increase.

Currently, there is no EU legislative measure dealing with the cross-border protection of vulnerable adults. Whilst the Hague Convention is generally considered a well-balanced and efficient international instrument, only 10 EU MS (Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Latvia, and Portugal) have ratified it to date. This, coupled with the diversity of MS’ legal systems, creates difficulties in the protection of vulnerable adults in the EU, particularly in cross-border situations.

In this context, the absence of a clear legal framework throughout the EU to determine the competent court of authority, the applicable law, and to recognise and enforce foreign decisions prevent certain vulnerable adults from enjoying continuous and consistent protection. This gap also restricts the use of certain measures of protection, such as so-called powers of representation (also referred to as private mandate) since their proof and legal effects in cross-border situations are jeopardized in the absence of harmonised rules within the EU.

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

1.2 THE STUDY

In that context, the European Commission is undertaking preparatory work on a possible legislative initiative for the cross-border protection of vulnerable adults. After the legal study carried out in 2021, the Commission has contracted Milieu to carry out an impact assessment study.

The overall aim of the study is to analyse the existing problems in relation to cross-border protection of vulnerable adults in situations when, for example, they move abroad, and their health or property rights may be at risk due to lack of harmonised rules across the countries; as well as to assess the impact of potential solutions (policy options) to address these problems at EU level.

¹ Available at <https://assets.hcch.net/docs/c2b94b6b-c54e-4886-ae9f-c5bbef93b8f3.pdf>.

² See <https://www.consilium.europa.eu/en/press/press-releases/2021/06/07/council-approves-conclusions-on-the-protection-of-vulnerable-adults/>

2. THE INTERVIEW

2.1 PURPOSE OF THE INTERVIEW

The present interview aims at gathering information based on your experience regarding the protection of vulnerable adults in a cross-border context and at gathering your opinion about the impacts of the different legislative options which could be adopted to facilitate this protection.

Some more specific goals of the interviews are:

- Updating and filling gaps in knowledge regarding legal procedures applicable to cross-border cases involving vulnerable adults;
- In the Member States which have ratified the Hague Convention, collecting information regarding day-to-day experiences (workload, costs and other impacts) of the various stakeholders concerning the application of the Convention;
- In the Member States which have not ratified the Hague Convention, collecting information regarding day-to-day experiences (workload, costs and other impacts) of the various stakeholders concerning legal procedures and measures undertaken for the protection of vulnerable adults in cross-border situation.
- Collecting information and opinions regarding the planned policy options and their impacts on various stakeholders.

2.2 PRACTICAL INFORMATION

Interviews are a key source of information for the present study. The interviews are carried out with 1) representative(s) of the competent authorities; 2) representatives of legal practitioners; 3) representatives of NGOs and other stakeholders who may be involved in issues related to cross-border protection of vulnerable adults.

As indicated by email, the interview is planned to last between 45 and 60 minutes; and will be carried out in English preferably by teleconference (Teams). **If you prefer to reply in writing, this is also possible.** Please kindly let us know which is your preferred option.

Should the interview be carried out by teleconference/phone, please note that, unless you expressly refuse, we will record the interview. The record will be **for our use only**, and should be erased at the end of the project.

Privacy statement and confidentiality

When conducting this survey, you might want to share with us some of your personal data such as your name, contact details, position, organisation you work in, as well as your personal views and opinions. Please be reassured that any personal data you provide will be treated in conformity with the 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 and where applicable with the 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 (GDPR).

Any personal data that you provide when answering this survey will only be used for the purpose of conducting the study. For more information on the processing of your personal data, please see the Privacy Statement provided separately.

3. THE QUESTIONNAIRE

The questionnaire is divided into three parts: part one deals with problems and their causes, part two deals with the assessment of the identified policy options, and part three aims at collecting additional data and information.

3.1 PROBLEMS AND THEIR CAUSES

Identifying of the main problems related to the cross-border protection of vulnerable adults

We have identified four main problems related to the cross-border protection of vulnerable adults:

- **Lack of legal certainty.** In cross-border situations, vulnerable adults and their families often face difficulties in identifying the rules of which country would apply to them and whether the rights or measures applied in one Member State would still apply in another one. Varying rules from one Member State to another and problems with the validity of legal documents were mentioned as key challenges in the context of cross-border mobility of vulnerable persons.
- **Protection measures and authentic instruments are not recognised in cross-border situations.** In cross-border situations, citizens often face problems with the recognition of the protective measures (e.g. guardianship or curatorship, determination of incapacity and the institution of a protective regime) or authentic instruments (where measures are adopted in front of a notary and without intervention of public authorities) (e.g. private mandates).
- **Lengthy and costly proceedings.** Due to the lack of harmonised rules, vulnerable adults, their representatives and families may face lengthy and costly proceedings while trying to make cross-border arrangements.
- **Costs and workload for public authorities.** Also courts and administrative authorities may incur high costs and heavy workload due to lack of harmonised approaches to cross-border protection of vulnerable adults.

We are seeking your views on the main problems you are facing or you are familiar with in relation to the protection of vulnerable adults in cross-border situations.

1) To which extent do you consider the following problems impeding the protection of vulnerable adults in cross-border situations?

	very important	rather important	Neutral/ no opinion	rather unimportant	Not at all important
Lack of legal certainty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Protection measures and authentic instruments are not recognised in cross-border situations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lengthy and costly judicial or administrative proceedings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Costs and workload for public authorities (courts and administrative authorities) [To be answered by public authorities only]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2) Depending on your answer, please explain in a concise way why you consider the above selected problems as important or very important?

Age Platform Europe does not provide legal services/aid. However, we are concerned that the ratification and implementation of the Hague Convention would allow the continuation of practices that are prohibited by the United Nations Conventions on the Rights for Persons with Disabilities, including guardianship and involuntary placement and treatment.

3) Have you faced or are you familiar with other important problems than those already identified above? Please explain.

Other types of problems encountered are:

- Language barriers.
- Difficulties in knowing which Member State's court or competent authority has jurisdiction.
- Difficulties in knowing which Member State's law should be applied.
- Information on the legislation or the competent authorities of another Member State is not available, or not available in my language.
- Legal, technological, and physical accessibility barriers.
- Lack of legal aid.
- Independent advocacy services.

Understanding the factors contributing to the most important problems you identified

You have selected one or more problems that you consider as important or very important in the context of the cross-border protection of vulnerable adults. We would like to have your opinion on the main factors contributing to these problems. To facilitate your answer, we have already identified some potential factors.

1. Lack of certainty

[Please answer the questions about the lack on certainty only if you have identified this problem as important or very important]

4) To which extent do you consider the following factors as important in explaining the lack of certainty in the protection vulnerable adults in cross-border situations?

	very important	rather important	neutral/ no opinion	rather unimportant	completely unimportant
Conflicting rules between Member States on applicable law (i.e. defining the rules of which country shall apply)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conflicting rules between Member States on jurisdiction (i.e. defining the court of which country shall be competent in case of procedure before a court)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conflicting rules between Member States on recognition of foreign decisions and of authentic instruments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Unnecessary enforcement proceedings (i.e. necessary procedure to apply in one Member State protective measures adopted in another Member State)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other causes. Please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Non-recognition of protection measures and authentic instruments

[Please answer the questions about non-recognition of protection measures and authentic instruments only if you have identified this problem as important or very important]

- 5) To which extent do you consider the following factors as important in explaining the **non-recognition of protection measures and authentic instruments** in the protection vulnerable adults in cross-border situations?

	very important	rather important	neutral/ no opinion	rather unimportant	completely unimportant
Choice of court made in private mandates not systematically enforced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-recognition of authentic instruments abroad	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Too many grounds for non-recognition of protection measures abroad	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Absence of harmonised rules on cross-border protection of vulnerable adults across Member States	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other causes (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Lengthy and costly proceedings

[Please answer the questions about lengthy and costly proceedings only if you have identified this problem as important or very important]

- 6) To which extent do you consider the following factors as important in explaining **lengthy and costly proceedings** in the protection vulnerable adults in cross-border situations?

	very important	rather important	neutral/ no opinion	rather unimportant	completely unimportant
Impossible or limited cooperation between national authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conflicting rules between Member States on applicable law (i.e. defining the rules of which country shall apply)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Conflicting rules between Member States on jurisdiction (i.e. defining the court of which country shall be competent)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conflicting rules between Member States on recognition of foreign decisions and of authentic instruments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unnecessary enforcement proceedings (i.e. necessary procedure to apply in one Member State protective measures adopted in another Member State)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other causes (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. High costs and workload for public authorities

[Please answer the questions about costs and workload for public authorities (courts and administrative authorities) only if you are a public authority and you have identified this problem as important or very important]

7) To which extent do you consider the following factors as important in explaining **high costs and workload for public authorities** (courts and administrative authorities) in the protection vulnerable adults in cross-border situations?

	very important	rather important	neutral/ no opinion	rather unimportant	completely unimportant
Impossible or limited cooperation between national authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conflicting rules between Member States on jurisdiction (i.e. defining the court of which country shall be competent)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conflicting rules between Member States on recognition of foreign decisions and of authentic instruments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unnecessary enforcement proceedings (i.e. necessary procedure to apply in one Member State protective measures adopted in another Member State)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other causes (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3.2 POSSIBLE OPTIONS FOR OVERCOMING THE PROBLEMS

The European Commission is considering various possible policy options to address the problems related to lack of harmonised approach to cross-protection of vulnerable adults across Member States. The options need to be assessed according to several criteria including their relevance, effectiveness, efficiency, and impact on fundamental rights. Please let us know your opinion with respect to these criteria regarding the options as listed below.

Option 1: Maintain the current situation – Encourage Member States to ratify the Hague Convention

Under this option, the European Commission would not take any additional initiative, but simply keep encouraging Member States to ratify the Hague Convention of 13 January 2000 on the International Protection of Adults. This option corresponds to the current situation where EU institutions and the Permanent Bureau of the Hague Conference promote the ratification.

In that situation:

- ☞ No specific rules would be adopted at EU level.
- ☞ The application of the existing international instrument would remain optional.

Option 2: Oblige all Member States to ratify the Hague Convention

Under this option, the Commission would prepare a proposal for a Council Decision which would make compulsory for all Member States to ratify the Hague Convention.

In that situation:

- ☞ No specific rules would be adopted at EU level.
- ☞ The application of the existing international instrument would become compulsory.

Option 3: Adopt a common framework for cooperation in the EU only (EU Regulation with similar provisions than the Hague Convention + additional measures)

This policy option would imply the adoption of an EU Regulation containing provisions similar to the Hague Convention and additional measures not provided by the Convention (such as abolition of enforcement proceedings, creation of an EU certificate of representation, recognition of authentic instruments, choice of court provision, digitalization of cooperation and enhanced cooperation between courts and administrative authorities across the EU).

In that situation:

- ☞ A new instrument would be adopted at EU level. It would follow the same rules as the international instrument and provide complementary – EU specific – rules.
- ☞ The application of the existing international instrument would remain optional. That means that the mechanisms of cooperation with third countries party to the Convention and the principle of reciprocity would only apply for those Member States which are party to the Convention.

Option 4: Adopt a common framework for cooperation within the EU and with other countries

Option 4.1: Oblige Member States to ratify the Hague Convention and propose an EU Regulation containing a reference to the Convention and additional EU measures

In this policy option, Member States would be obliged to ratify the Hague Convention. In addition, an EU Regulation containing a reference to the Hague Convention and additional measures within the EU (abolition of enforcement proceedings, creation of an EU certificate of representation, recognition of authentic instruments, choice of court provision, digitalization of cooperation and enhanced cooperation between courts and administrative authorities across the EU) would be adopted. The instrument would regulate intra-EU cases, and cases involving third countries would be regulated only by the Convention.

In that situation:

- ☞ A new instrument would be adopted at EU level. It would refer to (but not duplicate) the international instrument and provide complementary – EU specific – rules applicable to relations between Member States.
- ☞ The application of the existing international instrument would become compulsory.

Option 4.2: Oblige Member States to ratify the Hague Convention and propose an EU Regulation covering the whole area (different provisions for third States and EU Member States)

In this policy option, Member States would be obliged to ratify the Hague Convention. In addition, an EU Regulation containing a reference to the Hague Convention and additional measures with different provisions within the EU and for third countries would be adopted. In that scenario, one single instrument at EU level would regulate all rules applicable regarding cross-border protection, between Member States and with third countries (regardless of them being parties to the Convention).

In that situation:

☞ A new instrument would be adopted at EU level. It would **not** refer to or duplicate the international instrument, but instead set up specific EU rules for cross-border cases with third countries and within the EU. This means that a unique regime, set up at EU level, would apply to any third country, regardless of them being a party to the Hague Convention.

☞ The application of the existing international instrument would become compulsory.

Relevance

We are seeking your views on the relevance of the different possible policy options to overcome the problems that you consider as important or very important. In other words, we would like to understand to which extent you consider that each option would help addressing the issues observed.

8) What is the relevance of each of these policy options in overcoming the problems you are facing or you are familiar with?

	Very relevant	Rather relevant	neutral/no opinion	Rather irrelevant	completely irrelevant
<i>Option 1:</i> Encourage Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 2:</i> Oblige all Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 3:</i> Adopt a common framework for cooperation in the EU only (EU Regulation with similar provisions than the Hague Convention + additional measures)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 4.1:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation containing a reference to the Convention and additional EU measures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> X
<i>Option 4.2:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation covering the whole area (different provisions for third States and EU Member States)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> X

9) Do you have any comments to formulate regarding the relevance of the different policy options?

Effectiveness

In considering the above possible options, the European Commission considers several objectives that are meant to be achieved in the medium-term. These objectives are listed below.

Increasing legal certainty

Ensuring that the rules applying to cross-border cases are sufficiently clear to allow citizens to make informed decisions and understand the consequences of such decisions on their situation (e.g. know

which rules will apply in case one moves or places assets in another country).

Facilitating the recognition of protection measures and authentic instruments

Ensuring that protection measures (e.g. guardianship) and authentic instruments (e.g. private mandates without prior confirmation/activation by a judicial or administrative authority) adopted in one Member State will be accepted in another Member State.

Making (judicial and administrative) proceedings faster and less expensive

Ensuring that any procedure necessary to safeguard the protection of vulnerable adults in cross-border situations is not too lengthy (and thus potentially depriving the adult of the necessary protection or of acceding certain rights for an unnecessary amount of time) or too costly (entailing significantly higher costs than procedures applying to a vulnerable adult involving one single Member State).

Reducing costs and workload for public authorities

Limiting the problems related to difficulties of cooperation between national authorities, the application of conflicting rules and unnecessary procedures (e.g. enforcement procedures *-exequatur-*, parallel procedures) and resulting in additional work and costs for court and/or administrative authorities in the Member States.

We are seeking your views on the extent to which each of the considered policy options is expected to achieve these objectives in the medium-term.

10) How effective is each of the possible policy options in increasing legal certainty?

	Very effective	Rather effective	Neutral/no opinion	Rather ineffective	completely ineffective
<i>Option 1:</i> Encourage Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 2:</i> Oblige all Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 3:</i> Adopt a common framework for cooperation in the EU only (EU Regulation with similar provisions than the Hague Convention + additional measures)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 4.1:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation containing a reference to the Convention and additional EU measures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 4.2:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation covering the whole area (different provisions for third States and EU Member States)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

11) How effective is each of these policy options in facilitating the recognition of protection measures and authentic instruments?

	Very effective	Rather effective	Neutral/no opinion	Rather ineffective	completely ineffective
<i>Option 1:</i> Encourage Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 2:</i> Oblige all Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 3:</i> Adopt a common framework for cooperation in the EU only (EU Regulation with similar provisions than the Hague Convention + additional measures)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 4.1:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation containing a reference to the Convention and additional EU measures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 4.2:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation covering the whole area (different provisions for third States and EU Member States)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

12) How effective is each of these policy options in making proceedings faster and less expensive?

	Very effective	Rather effective	Neutral/no opinion	Rather ineffective	completely ineffective
<i>Option 1:</i> Encourage Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 2:</i> Oblige all Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 3:</i> Adopt a common framework for cooperation in the EU only (EU Regulation with similar provisions than the Hague Convention + additional measures)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 4.1:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation containing a reference to the Convention and additional EU measures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 4.2:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation covering the whole area (different provisions for third States and EU Member States)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

13) How effective is each of these policy options in reducing costs and workload for public authorities?

	Very effective	Rather effective	Neutral/no opinion	Rather ineffective	completely ineffective
<i>Option 1:</i> Encourage Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 2:</i> Oblige all Member States to ratify the Hague Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 3:</i> Adopt a common framework for cooperation in the EU only (EU Regulation with similar provisions than the Hague Convention + additional measures)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 4.1:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation containing a reference to the Convention and additional EU measures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Option 4.2:</i> Oblige Member States to ratify the Hague Convention + propose an EU Regulation covering the whole area (different provisions for third States and EU Member States)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

14) Do you have any comments to formulate regarding the effectiveness of the different policy options?

Efficiency

When examining possible policy options, it is necessary to assess their costs and financial benefits of their implementation for different stakeholders to achieve the objective(s) assigned to them. Such assessment is undertaken to ensure that these costs and benefits are proportionate to the objective(s).

The questions below focus on the direct costs and financial benefits associated with each of the possible policy options, including Option 1 (baseline scenario) - Encourage Member States to ratify the Hague Convention. These costs and savings can be grouped in three broad groups, as described below.

Regulatory charges

Regulatory charges often affect stakeholders such as businesses and citizens by imposing the payment of fees, taxes, etc. In the context of the cross-border protection of vulnerable adults, these costs include for instance the costs associated with the filing an application for judicial protection.

Administrative costs

Administrative costs are the costs of complying with information obligations stemming from policy option under consideration. Information obligations can be defined as regulatory obligations to provide information and data to the public sector or third parties. An information obligation does not necessarily mean that information has to be transferred to the public authority or private persons, but may include a duty to have information available for inspection or supply on request. In the context of the cross-border protection of vulnerable adults, these costs include among others the costs of the recognition or enforcement procedure before judicial or administrative authorities or more generally the costs of legal, administrative or financial procedures required when traveling, managing assets or making arrangements abroad.

Enforcement costs

Enforcement costs are associated with activities linked with the implementation of a policy option such as monitoring, complaint handling, and litigation. In the context of the cross-border protection of vulnerable adults, these costs cover among others the costs of proceedings for recognition and enforcement incurred by competent courts or administrative authorities or the costs of handling cooperation requests coming from another Member State.

We are seeking your views on the extent to which each of the potential policy options will increase or decrease costs of the cross-border protection of vulnerable adults within the EU, i.e. will influence the costs that are entailed by the various situations/procedures in cross-border cases [Questions on enforcement costs should only be answered by public authorities].

- 15) Are you aware of specific types of charges, administrative costs, and enforcement costs specific to cross-border situations (e.g. additional procedures, additional expenses to ensure the cross-border protection of vulnerable adults)? If so, can you specify which ones, and who would bear such costs (vulnerable adults, their representatives, practitioners, public authorities)?**
- 16) Can you give the magnitude of such costs (e.g. EUR spent, time spent, frequency per case/file):**
- a. **Charges (e.g. how much would need to be paid for each of the types of charges you indicated per case/file)? Are these costs one-off costs or recurrent per case/file?**
 - b. **Administrative costs (e.g. how much time (in man-days) is needed per case/file)?**
 - c. **Enforcement costs (e.g. how much time (in man-days) is needed per case/file)?**
- 17) Do you consider that any of the possible policy options (excluding Option 1) will reduce such costs? If so, which options/costs?**
- 18) Do you consider that any of the possible policy options (excluding Option 1) will increase costs? If yes, which options/costs?**

Impacts on Fundamental Rights

The **Charter of Fundamental Rights** of the European Union (the Charter) protects the fundamental rights people enjoy in the European Union (EU). The Charter applies to EU institutions, bodies, offices and agencies in all their actions. It also applies to Member States when they are implementing EU law. The Charter applies in conjunction with national and international fundamental rights protection systems, including the European Convention on Human Rights.

The charter contains a preamble and 54 articles, grouped into seven chapters. These chapters are listed below.

Chapter I - Dignity

Human dignity, the right to life, the right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labour.

Chapter II – Freedoms

The right to liberty and security, respect for private and family life, protection of personal data, the right to marry and found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom

of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to property, the right to asylum, protection in the event of removal, expulsion or extradition.

Chapter III – Equality

Equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, integration of persons with disabilities.

Chapter IV – Solidarity

Workers' right to information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, family and professional life, social security and social assistance, healthcare, access to services of general economic interest, environmental protection, consumer protection.

Chapter V – Citizens' rights

The right to vote and stand as a candidate at elections to the European Parliament and at municipal elections, the right to good administration, the right of access to documents, European Ombudsman, the right to petition, freedom of movement and residence, diplomatic and consular protection).

Chapter VI – Justice

The right to an effective remedy and a fair trial, presumption of innocence and the right of defence, principles of legality and proportionality of criminal offences and penalties, the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

Chapter VII – General provisions

Additionally, the UN Convention on the Rights of Persons with Disabilities (CRPD) is the first international, legally binding instrument setting minimum standards for rights of people with disabilities, and the first human rights convention to which the EU has become a party. It tackles fundamental rights such as the *freedom to make one's own choice (Article 3(1) of the UNCRPD)*, the *equal recognition before law (Article 12)*, the *access to justice (Article 13)*, and the *freedom of movement and nationality (Article 18)*.

We are seeking your views on the extent to which each of the above possible policy options is likely to affect some of the fundamental rights covered by the charter or the UN CRPD.

19) Do you consider that any of the possible policy options (excluding Option 1) will have significant impacts (i.e., promotion of fundamental rights) on some of the above rights? If yes, which options/rights?

Protective measures that allow for substituted decision making, guardianship, involuntary placement, or treatment and/or consider adults as inherently vulnerable and in need of protection must be abolished. CRPD standards should be applied to prevent conflict on international law provisions.

Older people may find themselves in a situation of vulnerability in terms of accessing justice, defending their interests, and exercising their human rights. Due to persistent and structural ageism, they are at greater risk of unfair treatment, exploitation, or abuse and exposed to further victimisation, intimidation, and retaliation.

Cross-border settings can lead to additional obstacles, due to linguistic, technological, legal, administrative, physical accessibility and other structural barriers. However, we stress that older people are not inherently vulnerable and in need of protection. We need to focus on the barriers such as the lack of support (legal aid, independent advocacy services, etc.), and environments (physical and/or digital barriers, absence of laws, age limits, lack of information and literacy) that create situations of vulnerability. A key barrier to accessing justice and remedy is the law itself.

At EU level, the lack of legal prohibition of age discrimination beyond the field of employment

entails that in many countries it is impossible to challenge decisions denying older people insurance or a loan.

Additionally, sometimes there are discrepancies in law. For instance, whereas under the UNCRPD institutionalisation is prohibited, international norms merely call for allowing older persons to live at home ‘for as long as possible’. Given this caveat, it is more difficult for older persons to access justice in cases of forced placement, coercion or breaches of autonomy. We call on the EU to:

- Improve information about the law and how to exercise rights, e.g. in case of elder abuse.
- Adopt a **human rights-based approach** in full compliance with the standards of the UNCRPD.
- Help member States to accelerate their efforts in developing systems that are compliant with the UNCRPD, including for instance through supported decision-making mechanisms.

We share concerns that the potential ratification and implementation of the 2000 Hague Convention on the protection of vulnerable adults would allow the continuation of practices that are prohibited by the UNCRPD, including guardianship and involuntary placement and treatment.

- Ensure that all EU legislations and initiatives, including the 2012 EU Directive on Victims’ Rights and the EU Victims’ Rights Strategy 2020-2025, consider the specific issues faced by older people and persons with disabilities who are at a higher risk of becoming victims of crimes including in cross border settings.
- The EU does NOT promote the ratification of the 2000 Hague Convention which in its current form reflects an out-dated and currently non-human rights compliant understanding of “protection” which has been clearly superseded by the CRPD.

3.3 ADDITIONAL INFORMATION AND REQUEST FOR FURTHER PARTICIPATION

20) Do you know or can provide sources of information about the total number of vulnerable adults in the EU/MS, including those in international situations who need legal assistance? Do you know of any (national) registries where such data could be found?

We do not know.

21) Do you have any information or could indicate sources of data about past and long-term trends regarding the above data/information?

We do not know.

22) Would you be interested in participating in a focus group or a discussion online regarding the issues discussed above in further stages of our project?

Yes.

Thank you very much for your participation!