

Cross-border protection of vulnerable adults

- Searching for a European Solution –
- the cross border **formal validity of ex-ante measures**
and the need for Protection Registers –
(on-going study)

Trento – 11 June 2025

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I. Introduction

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
- 31 May 2023

CONVENTION ON THE INTERNATIONAL PROTECTION OF ADULTS (13 January 2000) - HCCH

The applicable Law

- » to the substance
- » the exercise of the powers
- » **formal validity**



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II. The current situation

Formalities of voluntary measures for immovable property sale

Private mandates to become effective upon incapacity of the granter **are recognized in:**

- » **Austria**
- » **Belgium**
- » **Estonia**
- » **Finland**
- » **Latvia**
- » **Malta**
- » **Romania**
- » **Spain**
- » **Sweden**
- » **The Netherlands**
- » **Ireland** (Enduring Power of Attorney)
- » **Hungary** (Lasting Power of Attorney)
- » **Italy** (Agenzia del Entrate and Libro Fondiario since Riforma Cartabia 2022) and **Portugal** as a mere indication for the court.
- » **Bulgaria, Croatia, Poland and Slovak Republic** - Italy and Portugal, in a certain way - only recognise court-determined guardianship measures



a. Formalities for drafting a lasting power of representation

→ Intervention of a Notary

» drawing up an authentic instrument

» verifying identity and capacity of the granter

» explaining its content

» providing legal warnings on the scope of the mandate.

→ **Austria, Belgium, Estonia, Ireland, Hungary, Latvia, Malta, Romania and Spain. (Portugal and Italy, within their own limitations).**

Finland and Sweden - signed by the granter along with two witnesses.

→ **Latvia** – also a medical assessment of the adult's legal capacity

→ **Malta** – also a medical declaration, certifying that the enduring power of attorney is in the adult's best interests, is mandatory.



Acceptance of private mandates from a different jurisdiction

- Formalities are **essential** for legal certainty (mandatory)
Austria, Belgium, Estonia, Latvia, Malta, Spain and Portugal
Sweden - national law is applicable to foreign citizens.
Hungary - certification of the signature by a foreign mission or
apostillation
(arts 20 and 21 of the HCCH Convention and national conflict rules)
- Applicable law is the one **where they have been drafted**
Finland and Ireland
- **HCCH Convention lacks provisions on the applicable law on formal validity**

b. Formalities for evidence of the disability

→ Austria, Belgium, Croatia, Estonia, Hungary, Ireland, Italy, Latvia, Portugal and Romania - **court decision**

→ Finland - a **medical report** ratified and registered at the Digital and Population Data Services Agency

→ Sweden - it is up to the attorney to assess if the disability has occurred and **no formal proof** is required, unless differently stated in the power of attorney,

→ Spain allows a **notarial act together with a medical report** to serve as proof, and adults may specify, in their representation mandate, how and when incapacity is determined.



Cross-border situations

→ Compliance with **national requirements** as essential condition to legal certainty and mandatory to protect the interests of the adult - Austria, Croatia, Estonia, Hungary, Latvia, Malta and Sweden.

→ The assessment of the disability is ruled by the law that governs on the existence and extent of powers of representation - Belgium, Finland, Ireland, Italy (Libro Fondiario), Portugal, and Spain



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c. Authorization to certain type of acts

→ Austria, Belgium, Estonia, Ireland, Hungary, Italy – Libro Fondiario (different levels of authorization based on the level of disability), Latvia, Portugal, Romania and Spain - **court approval** to perform the sale of an immovable property.

→ Spain – not necessary if the adult has **stated differently** in the power of representation;

→ Italy (Libro Fondiario since 2022) - parties can **choose** between the judicial authority or the notary to issue the authorisation.

→ Finland - authorisation **not required unless stipulated** in the mandate and, if so, it is up to the Digital and Population Data Services Agency to give the permission

→ Sweden - **no authorization** is required if the property is sold by a holder of a future power of attorney



c. Cross-border context

→ Finland, Ireland, Italy (Libro Fondiario), Malta, Portugal, Spain and Sweden - **not required**, it is an issue of the capacity of the granter ruled by the national law of the adult, and, therefore, the necessary authorization would be determined by what it is stated therein.

→ Austria, Belgium, Bulgaria, Croatia, Estonia, Hungary, Latvia and Poland an **authorization from the court would be demanded**.

→ Hungary – *“the lack of a **European common guardianship register** is the reason for determining the need of a judicial authorization for the sale, which is also required for procedure at the land register authority”*.



d. Registry of vulnerable adults' representatives

Legal certainty also stands for reliable means to verify representation

- Croatia - Register of Persons only as regards judicial measures;
- Estonia - Population Register;
- Finland - Register on Guardianship Affairs, at Digital and Population Data Services Agency
- Italy (Agenzia del Entrate) - Civil Status Register in the margin of the birth certificate;
- Malta - Public Registry of Malta;
- Portugal - Portuguese Civil Registry in the birth certificate;
- Spain - Civil Registry
- Austria and in Italy (Libro Fondiario) – annotation in the land books
- Slovakia - limited legal capacity is indicated on the identity card.



III. The European Proposal

- Principle of mutual trust
- Simplification and modernisation
- MSs cooperation

a. **Improve the effectiveness and speed of cross-border proceedings**

- authentic instruments have the same presumption of authenticity and enforceability as in the MS of origin
- European Certificate of Representation

b. **Strengthen legal certainty and predictability**

- national registers of measures and powers of representation and their interconnection - **Protection Registers**



a. Improve effectiveness and speed of cross-border proceedings

→ *“The manner of exercise of powers of representation is governed by the **law of the State in which they are exercised**”* – HCCH Convention

Private mandate were made conditional upon compliance with the formal conditions mandatorily required by the law where the powers are exercised

→ Ambitious approach on formal validity of the private mandates:
→ New conflict rule to enhance cross border circulation of powers of representation → **formalities are governed by the law applicable to its substance** (based on a choice, or not), **being however sufficient, as regards formalities, the compliance with the law in force in the place where they have been issued, once registered in the competent national registry.**



b. Strengthen legal certainty and predictability

→ Regular functioning of the representation of vulnerable adults:

(i) if the measure or the powers of representation have been **duly issued**

(ii) the extent of the representative's **substantive powers**;

(iii) if the **disability has occurred** according to the applicable law

(iv) if the representation or the measures have been modified or extinguished, meaning **updated information**

→ **Shaped by principles of legality and public faith and allowing easy access.**



b. Strengthen legal certainty and predictability – Protection Registers

→ **A National Registry, with legal effects** - a decisive contribution to the effectiveness of decision-making of vulnerable adults, also protecting third parties.

→ **A National Registry, in which a legal expert** would be bounded by the law and perform a **legality assessment** (formal and material) to ensure **accuracy** and, therefore, **evidentiary effects**

→ **A National Protection Register** - grant to the measures and the powers of representation the necessary **public faith**.



IV. Closing remarks

→ “The **interconnection** of MS' registers is an essential component of the cooperation mechanism to safeguard the rights of adults in cross-border cases and ensure **legal certainty in the Union**”

→ IMOLA project

→ Effective step ahead:

- ❖ determine as regards **formalities** of powers of representation granted by an adult to become effective upon incapacity, as **applicable law, the law in force in the place where it is issued**, once registered in the competent national registry; and
- ❖ boost the implementation of **national registers with legality control and public faith**, so that anyone dealing with the representatives would rely on the information therein, also providing for its **interconnection**.

Thank you for your attention!