



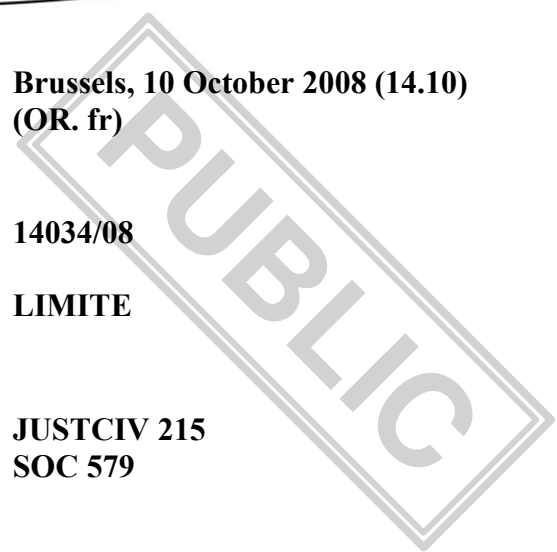
**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: Presidency
to: Permanent Representatives Committee/Council
Subject: Draft Council conclusions on the situation of vulnerable adults and their cross-border legal protection

1. Delegations will find below the draft report to the Council on the situation of vulnerable adults and their cross-border legal protection.
2. The Permanent Representatives Committee/the Council is invited to approve the draft conclusions in annex hereto.

REPORT TO THE COUNCIL

on the situation of vulnerable adults and their cross-border legal protection

I. INTRODUCTION

1. Legislation in all Member States provides for legal protection measures when adults find themselves incapacitated following an accident, an illness or simply through the effects of ageing, whether such incapacity is definitive or temporary, partial or total. However, the systems provided are not identical and the resulting disparity makes it very difficult to follow up the protection when there is a border between the authority responsible for the protection measure and the protected person, or between the protected person and their assets or the income they receive.
2. Growing cross-border mobility, which leads people of working age to leave their country of origin to work in another, or even several other countries, also leads, for many of them, to a return to their country of origin once they have finished their working life. After their departure, how can the continuity of any protection measures taken before their return be ensured? And if such measures are taken once they have returned, how can the authority concerned be enabled to ensure the management of assets such as property acquired and remaining in the host country or countries?
3. Every possible effort must be made to ensure that legal protection measures taken in the Member States in respect of people who are no longer able to deal with their personal needs or the daily management of their affairs continue when those people move within the European judicial area. The help which it has been deemed necessary to provide in one Member State would thus continue, in accordance with a procedure to be determined, regardless of the part of the Community area in which they choose to reside. This would ensure appropriate legal protection throughout the Community area.

II. THE HAGUE CONVENTION ON THE INTERNATIONAL PROTECTION OF ADULTS OF 13 JANUARY 2000

4. The Hague Convention on the International Protection of Adults of 13 January 2000 constitutes a significant advance with regard to improving the situation of vulnerable adults. The Convention, which is very comprehensive, encouraging and protecting respect for individual choice, proposes:
 - rules of jurisdiction, based principally on the habitual place of residence of the person concerned,
 - conflict-of-law rules, the principle being that of the application of *lex fori*, mitigated in certain cases deemed to be exceptional by the possibility of choosing the law with which the case shows the closest link and accompanied by the possibility of an express and controlled choice of law applicable to the existence, the extent and the modification of the powers of representation that an adult may have conferred before he became incapacitated,
 - recognition and enforcement rules, limiting the possibilities of refusal to recognise or authorise the implementation of a foreign decision,
 - rules for cooperation between States.
5. Currently, ten States, nine of them European Union Member States (Germany, Finland, France, Greece, Ireland, Luxembourg, the Netherlands, Poland and the United Kingdom), have signed the Convention. Of those nine Member States, three (Germany, France and the United Kingdom) have ratified it, enabling it to enter into force on 1 January 2009. The practical impact of the Convention will depend of course on the number of contracting States and it is thus essential that a significant number of States ratify it.
6. At several meetings held during the first half of 2008 the Committee on Civil Law Matters (General Questions) examined whether the Community and the Member States ought to accede to a large number of Hague Conventions, including the 2000 Convention on the International Protection of Adults. It was noted that it was for the Member States to decide themselves if they wished to accede to that Convention.

III. EUROPEAN UNION INITIATIVES

7. The European Union is particularly concerned by the issue of vulnerable adults. Economic considerations and the geographical diversity of the territory of the Member States mean that population movements involving, or potentially involving, vulnerable or potentially vulnerable people on its territory are on the increase. The ambitions of the internal market, and in particular its objective of free movement of goods, services and persons throughout the whole European area, call for guarantees that those persons can, as citizens, benefit from all the legal protection that their vulnerable state may require ¹.
8. It is therefore important for the Member States to cooperate closely and to coordinate their positions, as far as necessary, when implementing and following up measures taken in the framework of the Hague Conference on Private International Law.
9. Before deciding to launch specific initiatives at European Union level, it would be better to wait and see how application of the Hague Convention of 2000 works out. As stated above, that Convention will enter into force on 1 January 2009. Once a significant number of Member States are parties to the Convention and as soon as there is enough experience of its application between those States, the results should be evaluated and, if necessary, consideration could be given to supplementing the arrangements provided for in the Convention by appropriate proposals at European Union level.
10. If appropriate, one possibility might then be to establish mechanisms for additional cooperation, similar to those already put in place at Community level in other substantive areas. Such mechanisms would make it possible to organise and facilitate methods for transmitting files, knowledge of situations and the best suited implementation of the legal protection measures applicable.

¹ Legal protection does not include the social protection provided by the Member States.

11. Consideration could also be given, in the light of experience gained, to the idea of possibly further simplifying the recognition, throughout the European Union, of decisions taken in any Member State to organise and subsequently manage protection and of reducing the formalities enabling such decisions to be implemented.
12. Pending possible EU legislative measures in the longer term, and allowing for any international initiatives taken, other forms of initiative could be envisaged in the short term, such as, for example, sharing information on legal protection measures for vulnerable adults in the Member States through the European Judicial Network on civil and commercial matters.

IV. CONCLUSION

13. On the basis of this report the Permanent Representatives Committee/the Council is invited to approve the conclusions set out in annex hereto.

COUNCIL CONCLUSIONS

on the situation of vulnerable adults and their cross-border legal protection

On the basis of the report submitted to it, the Council approves the following conclusions on the situation of vulnerable adults and their cross-border legal protection:

- (a) Member States which have already concluded that it would be in their interests to accede to the Hague Convention of 13 January 2000 on the International Protection of Vulnerable Adults are invited to begin as quickly as possible or actively to continue with procedures for its signature and/or ratification.
- (b) Member States which are still engaged in domestic consultations are invited to conclude those consultations as soon as possible.
- (c) The Commission is invited to follow closely experience with application of the Hague Convention of 13 January 2000 on the International Protection of Adults. The discussions in the Hague Conference and the Council of Europe¹ should also be borne in mind. If necessary, once sufficient experience has been acquired in operation of the Convention, discussions could be begun on the advisability of introducing additional measures at Community level.

¹ See, amongst others, the Recommendation on principles concerning the legal protection of incapable adults (Rec(99)4).