



## Amendments of the European Network on Independent Living (ENIL)

To the 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 COM(2023) 280 final

### 1. Amendments to be deleted by order of priority

#### Amendment 1

#### Article 45

#### Establishment of protection registers

Text proposed by the European Commission	<del>Text proposed by ENIL</del>
Article 45	<del>Article 45</del>
Establishment of protection registers	<del>Establishment of protection registers</del>
<p>By [two years after the date of the start of application] at the latest, Member States shall establish and maintain in their territory one or several registers in which information is recorded concerning protection measures and, where their national law provides for the confirmation of powers of representation by a competent authority, concerning those powers of representation ('protection registers').</p>	<p><del>By [two years after the date of the start of application] at the latest, Member States shall establish and maintain in their territory one or several registers in which information is recorded concerning protection measures and, where their national law provides for the confirmation of powers of representation by a competent authority, concerning those powers of representation ('protection registers').</del></p>
<p>2. The information recorded in the registers referred to in paragraph (1) shall include the following ('mandatory information'):</p>	<p><del>2. The information recorded in the registers referred to in paragraph (1) shall include the following ('mandatory information'):</del></p>

- (a) an indication that a measure has been taken or, where applicable, that powers of representation have been granted or confirmed;
- (b) the date of the first measure as well as the date of the subsequent measures taken, or, where applicable, the date when the powers of representation were granted by an adult or were confirmed by a competent authority;
- (c) where a measure or a decision on the powers of representation are provisionally applicable, the date on which the time limit for challenging the measure or the decision on the powers of representation expires;
- (d) the date of expiration or reviewal of the measures or of the powers of representation, if any;
- (e) the competent authority which has taken, modified or terminated the measure or registered, confirmed, modified or terminated the powers of representation;
- (f) the adult's name, place and date of birth and, where applicable, national identification number.

3. The information referred to in paragraph (1) shall be published in the protection registers as soon as possible after the following conditions are met:

- (a) the authorities of the Member State have:
  - (i) taken, modified or terminated a measure; or
  - (ii) confirmed, modified or terminated powers of representation granted by an adult;
- (b) the time limit for appealing the measure or the decision on the powers of representation has expired, unless the measure or the powers of representation are provisionally applicable.

4. Paragraph (1) shall not preclude Member States from including additional documents or additional information in their protection registers, such as the name of the representative or the nature and extent of the representation.

- ~~(a) an indication that a measure has been taken or, where applicable, that powers of representation have been granted or confirmed;~~
- ~~(b) the date of the first measure as well as the date of the subsequent measures taken, or, where applicable, the date when the powers of representation were granted by an adult or were confirmed by a competent authority;~~
- ~~(c) where a measure or a decision on the powers of representation are provisionally applicable, the date on which the time limit for challenging the measure or the decision on the powers of representation expires;~~
- ~~(d) the date of expiration or reviewal of the measures or of the powers of representation, if any;~~
- ~~(e) the competent authority which has taken, modified or terminated the measure or registered, confirmed, modified or terminated the powers of representation;~~
- ~~(f) the adult's name, place and date of birth and, where applicable, national identification number.~~

~~3. The information referred to in paragraph (1) shall be published in the protection registers as soon as possible after the following conditions are met:~~

- ~~(a) the authorities of the Member State have:~~
  - ~~(i) taken, modified or terminated a measure; or~~
  - ~~(ii) confirmed, modified or terminated powers of representation granted by an adult;~~
- ~~(b) the time limit for appealing the measure or the decision on the powers of representation has expired, unless the measure or the powers of representation are provisionally applicable.~~

~~4. Paragraph (1) shall not preclude Member States from including additional documents or additional information in their protection registers, such as the name of the representative or the nature and extent of the representation.~~

**Amendments 2, 3 and 4**

**Articles 46, 47 and 48**

**Interoperability of registers of other powers of representation**

**Interconnection of registers**

**Condition of access to information via the system of interconnection**

Following the removal of article 45 on the establishment of protection registers, article 46 on the Interoperability of registers of other powers of representation, article 47 on the Interconnection of registers and article 48 on the Condition of access to information via the system of interconnection are to be deleted too.

**Amendment 5**

**Article 21**

**Placement**

Text proposed by the European Commission

Article 21

Placement

If an authority of a Member State contemplates the placement of the adult in another Member State in an establishment or other institution where protection can be provided, it shall first obtain the consent of a Central Authority of that

Text proposed by ENIL

Article 21

Placement

If an authority of a Member State contemplates ~~the placement of the adult in another Member State in an establishment or other institution where protection can be provided~~ **the protection of an adult the access to self-directed support shall be evaluated**, ~~first obtain the consent of a~~

other Member State. To that effect, it shall transmit to the Central Authority of the requested Member State a report on the adult together with the reasons for the proposed measure, using the form set out in Annex VI.

~~2. Paragraph (1) shall not apply where the placement is contemplated with a private person.~~

3. Except where exceptional circumstances make this impossible, the decision granting or refusing consent shall be transmitted to the requesting authority no later than six weeks following the receipt of the request.

4. Paragraphs (1), (2) and (3) shall not preclude Central Authorities or competent authorities from entering or maintaining existing agreements or arrangements with Central Authorities or competent authorities of one or more other Member States simplifying the consultation procedure for obtaining consent in their mutual relations.

~~Central Authority of that other Member State. **To that end the adult or the person or persons providing decision-making support shall be consulted. The wishes uttered shall be implemented.** To that effect, it shall transmit to the Central Authority of the requested Member State a report on the adult together with the reasons for the proposed measure, using the form set out in Annex VI.~~

~~2. Paragraph (1) shall not apply where the placement is contemplated with a private person.~~

3. Except where exceptional circumstances make this impossible, the decision granting or refusing consent shall be transmitted to the requesting authority no later than six weeks following the receipt of the request.

~~4. Paragraphs (1), (2) and (3) shall not preclude Central Authorities or competent authorities from entering or maintaining existing agreements or arrangements with Central Authorities or competent authorities of one or more other Member States simplifying the consultation procedure for obtaining consent in their mutual relations. **Access to personal budgets, personal assistance and other forms of self-directed support as outlined in General Comment No 5 and the Guidelines on Deinstitutionalisation, including in emergencies, are the only forms of support permitted under the UN CRPD.**~~

Explanation: Institutionalisation is a form of discrimination and violence against disabled people. It very likely leads to additional impairments. Also, it is not in line with the UN CRPD and General Comment No 5.

## 2. Amendments to be modified

The amendments are based on a draft law on supported decision-making written by legal scholar Prof. Dr. Kjetil Mujezinovic Larsen.<sup>12</sup> The amendments are intended for the recitals.

## Amendment 6

### Recital 1 (new)

Text proposed by ENIL

1. Persons with disabilities are entitled to the necessary support for decision-making to exercise their legal capacity on an equal basis with others. This regulation is intended to ensure that when in cross-border situations, persons in need of supported decision-making can exercise their right to self-determination in all aspects of life.

No one may be deprived of their legal capacity on the basis of, or as a result of, disability. Any person with disabilities who needs individual adaptation or support in order to exercise their legal capacity may so request and have support persons appointed by free choice. Supported decision-making shall always be voluntary. This means, inter alia, that supported decision-making shall only be offered when this is the decision-maker's wish, that supported decision-making shall be terminated when the decision-maker so wishes, and that the content of the supported decision-making arrangements shall be adapted to the decision-maker's wishes and will. Supported decision-making shall be offered free of charge to the decision-maker. No one shall be refused supported decision-making on the grounds that the need for support is considered to be substantial. Nor shall any person be denied supported decision-making on the grounds of the person's mode of communication or challenges in interpreting the person's communication.

2. For the purposes of this regulation, 'disabilities' means physical, psychosocial, cognitive or sensory impairments that in interaction with various barriers may hinder a person's full and effective participation in society on an equal basis with others.
3. A person shall be offered supported decision-making if the person so requests. If a person does not explicitly express a desire for supported decision-making, supported decision-making shall nevertheless be offered if it must be assumed that this is the decision-maker's wish.
4. An expression of will can be explicit or tacit. It is explicit if made orally, in writing, through any direct means, manually, mechanically, digitally, electronically, through sign language or alternative means of communication, including the use of reasonable adaptation or such support as the person in question requires. It is tacit if, to the best of one's ability, a will can be deduced

<sup>1</sup> <https://enil.eu/wp-content/uploads/2024/12/Draft-new-act-supported-decision-making-EN.pdf>

<sup>2</sup> <https://www.jus.uio.no/ior/english/people/aca/kjetill/>

from an attitude or repeated conduct in the person's life history that shows that such a will exists.

5. The person or persons whom the decision-maker wishes to be appointed, and who agree(s) to be appointed, shall be appointed as support person(s).
6. Supported decision-making shall consist of such forms of assistance as freely chosen by the decision-maker to facilitate the exercise of their rights, including support in communication, in the understanding of legal acts and their consequences, and the expression and interpretation of their will. The support has no powers of representation other than in cases where this is expressly established by decision of the decision-maker.

The aim of supported decision-making shall always be to support the decision-maker in making decisions and dispositions in accordance with their own wishes and will. If the decision-maker cannot express their will unambiguously, decisions shall be made based on the best interpretation of the decision-maker's will in light of all the circumstances surrounding a decision, including the decision-maker's previous decisions and expressions of will, the decision-maker's life situation and needs, and the support persons' knowledge of the decision-maker's preferences, personality, general interests, way of expressing themselves, values, history and what the person understands.

Supported decision-making can be used in all areas of life, limited only by the wishes and will of the decision-maker. Supported decision-making shall not prevent the decision-maker's exercise of other freedoms and rights in any area of life, including, inter alia, the exercise of voting rights, the entering into or dissolution of marriage, partnership or cohabitation, the establishment of a family or the exercise of sexual and reproductive rights, the exercise of parental responsibility, and receiving or opposing medical treatment.

7. If the decision-maker expresses their will unambiguously, a support person may freely support the implementation of the decision-maker's will. If the decision-maker's will must be interpreted, a support person should consult other support persons about what must be assumed to be the decision-maker's will. In such cases, decisions of great importance to the decision-maker may only be made by a majority of the appointed support persons. Written justification shall be given for such a decision. Support persons may never implement a decision or make a disposition that the decision-maker opposes through expression or action.
8. The supported decision-making arrangement shall be terminated immediately if the decision-maker so requests. If the decision-maker does not explicitly express a desire for such termination, the supported decision-making arrangement shall nevertheless be terminated if it must be assumed that this is the decision-maker's wish.
9. The decision-maker is responsible for their own dispositions and decisions, and claims may be made against the person. The provisions of the Contracts Act apply correspondingly to the

decision-maker's dispositions and responsibilities.

10. Administrative decisions on the initiation and termination of supported decision-making arrangements are made by the local authority, which also appoints support persons. Administrative decisions pursuant to the first sentence are individual decisions.

## Amendment 7

### Article 1

#### Subject matter

Text proposed by the European Commission	Amendments proposed by ENIL
<p style="text-align: center;">Article 1</p> <p style="text-align: center;">Subject matter</p>	<p style="text-align: center;">Article 1</p> <p style="text-align: center;">Subject matter</p>
<p>This Regulation lays down rules which:</p> <p>(a) determine the Member State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the adult;</p> <p>(b) determine which law is to be applied by such authorities in exercising their jurisdiction;</p> <p>(c) determine the law applicable to the representation of the adult;</p>	<p>This Regulation lays down rules which:</p> <p>(a) determine the Member State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the adult <b>by enabling the cross-border recognition of supported-decision making, installed to facilitate or support the exercise of legal capacity</b></p> <p>(b) determine which <b>support-decision making</b> law is to be applied by such authorities in exercising their jurisdiction. <b>Ensure all decisions are based on the wishes of the decision-maker,</b></p> <p>(c) determine the <b>supported-decision making</b> law applicable to the representation of the adult. <b>The representation of the adults is</b></p>

<p>(d) provide for the recognition and enforcement of such measures in all Member States;</p> <p>(h) create a European Certificate of Representation</p> <p>(i) establish a system of interconnection of the Member States' protection registers.</p>	<p><i>tasked to assist in the exercise of legal capacity of the adult</i></p> <p>(d) provide for the recognition and enforcement of such measures in all Member States. Recognition and enforcement implies <b>deciding which authorities are tasked to accompany the supported-decision making arrangements and ensure the will of the decision-makers is respected at any given moment.</b></p> <p>(h) create a European Certificate of Representation which is to provide evidence on a <b>supported-decision making arrangement.</b></p> <p><del>(i) establish a system of interconnection of the Member States' protection registers.</del></p>
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Explanation: The concept that a person might not possess the ability to take ones own decisions does not hold. Supported-decision making is always accepted on a voluntary basis. Protection or representation need to be defined according to the UN CRPD standard which relies on supported decision-making. In the EU context supervising and enforcing means Member States should accompany decision-makers and ensure their will is respected.

### Amendment 8

Text proposed by the European Commission	Amendments proposed by ENIL
<p>Article 2 Scope</p> <p>a) This Regulation shall apply in civil matters to the protection in cross-border situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.</p>	<p>Article 2 Scope</p> <p>a) This Regulation shall apply in civil matters to the protection in cross-border situations of adults who, <del>by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.</del> <b>wish to receive supported-decision making.</b></p>



- b) This Regulation shall also apply to measures in respect of an adult who had not reached the age of 18 years at the time the measures were taken.
- c) The matters referred to in paragraph (1) may, in particular, include
  - a. the determination of the incapacity of an adult and the institution of a protective regime
  - b. the placing of the adult under the protection of a judicial or administrative authority;
  - c. guardianship, curatorship and analogous institutions
  - d. the designation and functions of any person or body having charge of the adult's person or property, representing, or assisting the adult
  - e. decisions concerning the placement of the adult in an establishment or other place where protection can be provided;
  - f. the administration, conservation or disposal of the adult's property;

- b) This Regulation shall also apply to measures in respect of an adult who had not reached the age of 18 years at the time the measures **to initialise supported decision-making** were take.
- c) The matters referred to in paragraph (1) may, in particular, include
  - a. ~~the determination of the incapacity of an adult and the institution of a protective regime~~  
**the determination of a supported-decision making arrangement in the exercise of legal capacity on an equal basis with others.**
  - b. the placing of the adult under the protection of a judicial or administrative authority  
**Protection entails accompanying and supporting decision-makers. The authority has to support the full exercise of ones legal capacity and decision-making support.**
  - c. ~~guardianship, curatorship and analogous institutions~~
  - d. ~~the designation and functions of any person or body having charge of the adult's person or property, representing, or assisting the adult~~
  - e. ~~decisions concerning the placement of the adult in an establishment or other place where protection can be provided;~~
  - f. ~~the administration, conservation or disposal of the adult's property;~~

g. the authorisation of a specific intervention for the protection of the person or property of the adult.

~~g. the authorisation of a specific intervention for the protection of the person or property of the adult.~~

Explanation: People in need of decision-support must not be submitted under the rule of authorities or individual persons. This article outlines key features of supported decision-making which need to be complied with.

## Amendment 9

### Article 3 Definitions

Text proposed by the European Commission

#### Article 3 Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'adult' means a person who has reached the age of 18 years;

(2) 'measure' means any measure taken by an authority of a Member State, whatever it may be called, directed to the protection of an adult;

(3) 'powers of representation' means powers granted by an adult, either under an agreement or by a unilateral act, to be exercised when that adult is not in a position to protect his or her interests;

Amendments proposed by ENIL

#### Article 3 Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'adult' means a person who has reached the age of 18 years;

(2) 'measure' means any measure taken by an authority of a Member State, whatever it may be called, directed to the protection of an adult; **protection entails the initialisation or recognition of supported decision-making arrangements. Supported decision-making means voluntarily receiving help in exercising ones legal capacity**

(3) 'powers of representation' ~~powers granted by an adult, either under an agreement or by a unilateral act, to be exercised when that adult is not in a position to protect his or her interests;~~ **are held by one or several support persons who offer or provide support for**

(4) 'Member State of origin' means the Member State in which the measure was taken or the authentic instrument was formally drawn up;

(5) 'authentic instrument' means a document in a matter of protection of an adult which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:

(a) relates to the signature and the content of the

(b) has been established by a public authority or other authority empowered for that purpose by the Member State of origin;

(6) 'authority' means any judicial or administrative authority of a Member State with competence to take measures directed to the protection of an adult's person or property;

(7) 'authority of origin' means the authority which has taken the measure or formally drawn up the authentic instrument;

(8) 'confirmed powers of representation' means powers of representation in respect of which a competent authority has confirmed that the representative vested with these powers can exercise them;

***decision-making to a decision-maker. By decision-maker is meant the person or persons who is offered or who receives support for decision-making on a voluntary basis.***

(4) Member State of origin' means the Member State in which the measure ***to initiate supported decision making was taken*** or the authentic instrument was formally drawn up;

(5) authentic instrument' means a document in a matter of protection consisting in accompanying the ***supported decision-making*** of an adult which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:

(a) relates to the signature and the content of the authentic instrument; and

(b) has been established by a authority or other authority empowered for that purpose by the Member State of origin;

(6) 'authority' means authority of a Member State with competence to take measures directed to the protection of an adult's person or property ***which entails the initialising, recognition or termination of supported decision making if that is the wish of the decision-makers.***

(7)'authority of origin' means the authority which has taken the measure ***to initialise or terminate supported decision-making*** or formally drawn up the authentic instrument;

(8) 'confirmed powers of representation' means powers of representation in respect of which a competent authority has confirmed that ~~the representative vested with these powers can exercise them;~~ ***one or several support persons***

(9) 'competent authority' means a public authority of a Member State with responsibilities in matters of protection of adults;

(10) 'system of interconnection' means a system for the interconnection of protection registers and registers of other powers of representation;

(11) 'decentralised IT system' means a network of IT systems, interoperable access points operating under the individual responsibility and management of each Member State, and the European electronic access point, which enables secure and reliable cross-border exchange of information;

(12) 'protection register' means a register where measures directed to the protection of an adult or confirmed powers of representation have been registered.

*who provide support to a decision-maker.*

(9) 'competent authority' means a public authority of a Member State with responsibilities in matters of protection of adults entailing ***supported-decision making***.

~~(10) 'system of interconnection' means a system for the interconnection of protection registers and registers of other powers of representation;~~

(11) 'decentralised IT system' means a network of IT systems, interoperable access points operating under the individual responsibility and management of each Member State, and the European electronic access point, which enables secure and reliable cross-border exchange of information; ***All information has to be stored with the tasked with accompanying the decision-maker for the duration of the supported-decision making only. No centralised data storage is allowed. Measures must be taken to prevent unauthorised access.***

~~(12) 'protection register' means a register where measures directed to the protection of an adult or confirmed powers of representation have been registered.~~ ***Cooperation and data sharing. If a decision-maker wishes to have his decision-making support transferred to an authority in another Member State, the competent authority in charge may contact the authority in the country of origin to request information, if explicitly authorised by the decision-maker. This authorisation can be withdrawn at any point in time.***

**Amendment 10**

**Article 4**

Text proposed by the European Commission

Article 4

Where referred to in this Regulation the HCCH Convention of 13 January 2000 on the International Protection of Adults ('the HCCH 2000 Protection of Adults Convention'), which attached to this Regulation, shall apply mutatis mutandis.

Text proposed by ENIL

Article 4

Where referred to in this Regulation, ***the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)*** and the HCCH Convention of 13 January 2000 on the International Protection of Adults ('the HCCH 2000 Protection of Adults Convention'), which is attached to this Regulation, shall apply mutatis mutan-dis.

**Amendment 6**

**Article 60 (new)**

**Relation with the United Nations Convention on the Rights of Persons with Disabilities**

Text proposed by ENIL

Certain practices referred to by the HCCH 2000 Protection of Adults Convention have been superseded by the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD).

Articles of this Regulation which are in breach of the UN CRPD are invalid.

Countries shall be obliged to refuse accepting measures in breach of the UN CRPD.

Deprivations of legal capacity, breaches of personal privacy, institutions, guardianship and curatorship are not in line with the UN CRPD.

