



**Mental
Health
Europe**



Joint proposed amendments on the Regulation on Protection of Adults in Cross-Border Situations

February 2025

This document was prepared jointly by the [European Disability Forum](#), the [European Network on Independent Living](#), [Inclusion Europe](#), [Mental Health Europe](#) and [AGE Platform Europe](#). It is also endorsed by the [European Council of Autistic People](#).

Executive Summary

While we recognise the importance of conflict of laws legislation as a means to provide legal certainty, avoid gaps and promote the uniform application of substantive international law, including in the EU, **we deeply regret that the proposed [Regulation on Protection of Adults in Cross-Border Situations](#) includes provisions which do not align with international human rights law and would lead to violations of the rights older people and persons with disabilities living in the EU.**

The EU and all its Member States ratified the [UN Convention on the Rights of Persons with Disabilities](#) (CRPD). Under the Convention and its [General Comments](#), adults who temporarily or permanently require support in making decisions and for their autonomy, must be provided with support mechanisms, irrespective of their age, disability, and the degree of support needed. The Convention does not allow the deprivation of legal capacity. It requires States to change their laws and policies.

Despite the CRPD being mentioned in the recitals of the proposal, **several binding provisions are not in line with the obligations set by the Convention.**

To ensure that the EU and all the Member States comply with the CRPD – including through its progressive realisation which is taking place through legal reform of

decision-making regimes in several Member States – we proposed amendments addressing the following issues:

1. Ensuring the protection of people’s rights by recognising and focusing on supported decision-making measures and mechanisms

- Amend **article 2 on the scope** to avoid legitimisation of legal incapacitation and take into account the evolution of legislation and policy on legal capacity in EU Member States
- Amend **article 3 on definition** to include the concept of will and preferences of the person
- Amend **article 4’s** References to the HCCH 2000 Protection of Adults Convention to make sure the CRPD is mentioned
- Amend **article 13 on no review as to the substance** to ensure the highest level of protection of the autonomy of adults
- Amend **articles 34, 37 and 45** related to the certificate of representation to focus on support and representation, and ensure that the adults concerned can request the certificate

2. Ensuring cross-border placements measures are only possible when they are based on the choice, autonomy and support of the persons

- Amend **article 21 on placement** which currently violates the fundamental rights of persons with disabilities, so as to only allow placement measures that comply with the rights and autonomy of the persons concerned.

3. Ensuring the privacy of citizens covered by the Regulation

- Delete **articles 45, 46, 47 and 48** on the establishment of protection registers which violate the privacy of citizens and give disproportionate means of control to authorities.

We also propose amendments to the recitals based on the CRPD and how it should be interpreted in relation to the 2000 Convention on the international protection of adults and the Regulation.

We call on the EU institutions and all EU Member States to promote and protect the rights of all, in line with the CRPD, recalling their commitments made in the [Council Conclusions on the Protection of Vulnerable Adults across the European Union](#) adopted in 2021.

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Article 2: Scope

Commission proposal	Proposed amendments
<p>1. 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>2. 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.</p> <p>3. The matters referred to in paragraph (1) may, in particular, include:</p> <p>(a) the determination of the incapacity of an adult and the institution of a protective regime;</p> <p>(b) the placing of the adult under the protection of a judicial or administrative authority;</p> <p>(c) guardianship, curatorship and analogous institutions;</p> <p>(d) the designation and functions of any person or body having charge of the adult's person or property, representing, or assisting the adult;</p> <p>(e) decisions concerning the placement of the adult in an establishment or other place where protection can be provided;</p> <p>(f) the administration, conservation or disposal of the adult's property;</p> <p>(g) the authorisation of a specific intervention for the protection of the person or property of the adult.</p> <p>4. This Regulation does not apply to:</p> <p>(a) maintenance obligations;</p>	<p>1. 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 require support in decision making.</p> <p>2. 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.</p> <p>3. The matters referred to in paragraph (1) and (2) may, in particular, include:</p> <p>(a) the determination of the incapacity of an adult and the institution of a protective regime Any form of supported decision-making regime, including more intensive form of support;</p> <p>(b) the placing of the adult under the protection of a judicial or administrative authority Powers of representation granted by an adult to be exercised when that adult is not in the position to protect his or her interests;</p> <p>(c) guardianship, curatorship and analogous institutions;</p> <p>(d) the designation and functions of any person or body having charge of the adult's person or property, representing, or assisting the adult providing a support in decision making to an adult in regard to property, representation or other forms of assistance;</p>

<p>(b) the formation, annulment and dissolution of marriage or any similar relationship, as well as legal separation;</p> <p>(c) property regimes in respect of marriage or any similar relationship;</p> <p>(d) trusts or succession;</p> <p>(e) social security;</p> <p>(f) public measures of a general nature in matters of health;</p> <p>(g) measures taken in respect of a person as a result of penal offences committed by that person;</p> <p>(h) decisions on the right of asylum and on immigration;</p> <p>(i) measures directed solely to public safety.</p> <p>4. This Regulation does not apply to:</p> <p>(a) maintenance obligations;</p> <p>(b) the formation, annulment and dissolution of marriage or any similar relationship, as well as legal separation;</p> <p>(c) property regimes in respect of marriage or any similar relationship;</p> <p>(d) trusts or succession;</p> <p>(e) social security;</p> <p>(f) public measures of a general nature in matters of health;</p> <p>(g) measures taken in respect of a person as a result of penal offences committed by that person;</p> <p>(h) decisions on the right of asylum and on immigration;</p> <p>(i) measures directed solely to public safety.</p> <p>5. Paragraph (4) does not affect, in respect of the matters referred to therein, the entitlement of a person to act as the representative of the adult.</p>	<p>(e) decisions concerning the placement of the adult in an establishment or other place where protection can be provided the designation and functions of any person or body that is granted the powers of representation;</p> <p>(f) the administration, conservation or disposal of the adult's property;</p> <p>(g) the authorisation of a specific intervention for the protection of the person or property of the adult.</p> <p>4. In the transition from substituted decision-making to supported decision-making regimes, this Regulation may also apply to guardianship, curatorship and analogous institutions.</p> <p>4-5. This Regulation does not apply to:</p> <p>(a) maintenance obligations;</p> <p>(b) the formation, annulment and dissolution of marriage or any similar relationship, as well as legal separation;</p> <p>(c) property regimes in respect of marriage or any similar relationship;</p> <p>(d) trusts or succession;</p> <p>(e) social security;</p> <p>(f) public measures of a general nature in matters of health;</p> <p>(g) measures taken in respect of a person as a result of penal offences committed by that person;</p> <p>(h) decisions on the right of asylum and on immigration;</p> <p>(i) measures directed solely to public safety.</p> <p>5. Paragraph (4)(5) does not affect, in respect of the matters referred to therein, the entitlement of a person to act as the representative of the adult to act as the one providing the adult support in decision</p>
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making or executing powers of representation.

Justification:

The proposed amendments reflect the requirements for the implementation of Article 12 CRPD and [General Comment no. 1. to the CRPD](#).

Paragraph 1

Article 12 CRPD recognises that all persons with disabilities have legal capacity on an equal basis with others. The existence of legal capacity is, therefore, presumed. In order to align the present draft Regulation with these requirements, the notion that adults are not in the position to protect their interests should be erased. Instead, and with the purpose of determining the scope of the draft Regulation, the words “require support in decision making.”

Paragraph 3

It is proposed that this paragraph be amended so that it is applied equally for measures both in conjunction with the paragraph 1 and 2 of this Section. This is because there shall be no difference in applying supported decision making regimes to adults and to minors when this is required, especially taking into account that in different EUMS minors can reach emancipation for certain decisions (usually on medical treatment) or be judicially granted full emancipation before reaching age of maturity (usually connected with marriage and parenthood) and they should also enjoy right to enjoy supported decision-making mechanisms when required.

Sub-paragraph (a) shall be completely replaced with the new text to include any form of supported decision-making regime, including more intensive forms of support. The explanation on what these forms of support entail, the Preamble with new paragraphs 4 and 5 should be read.

Sub-paragraph (b) shall be completely replaced with the new text. As people cannot be placed under guardianship of natural persons, their legal capacity cannot be denied by placing them under the protection of any judicial or administrative body. The new text includes advance directives. Removing “judicial or administrative body” from this provision does not imply that EUMS cannot regulate by national legislation that there are safeguards in implementing advanced directives that can be of judicial or administrative nature.

Sub-paragraph (c) shall be completely erased as incompatible with the Article 12 CRPD.

In the sub-paragraph (d) “having charge of the adult’s person or property, representing or assisting the adult” should be replaced with the new text to ensure that the designation or functions of any person or body should involve only supported decision-making regimes. Supported decision-making should not be mixed with guardianship, custodianship or other analogous institutes, because there is a clear distinction between a person or a body of a “guardian”, “custodian” or “tutor” and the “supporter”, “aide”, “advisor”. The distinction is made by its function and the way how the supported decision-making regime is implemented; that it always must give a precedence to the will and preferences of the person concerned and never be based on the assumption of the best interests or the concept of dangerousness. The

person or a body (e.g. an organisation that provides services of assisting in decision-making) therefore does not exercise its own volition, but the will and preferences of the person concerned in any legal matter.

Sub-paragraph (e) shall be completely replaced with the new text that refers to advance directives.

Sub paragraphs (f) and (g) shall be completely erased as incompatible with the Article 12 CRPD.

Paragraph 4

Being aware that EU Member States are transitioning from substituted to supported decision-making systems and that they may be in different stages until the full implementation of the CRPD it is proposed that this Regulation may also be within that context applied to guardianship, curatorship and analogous institutions.

Paragraph 6

It is proposed that the provision of non-application on certain matters does not exclude the possibility of providing support in decision making on these matters.

Article 3: Definitions

Commission proposal	Proposed amendments
<p>For the purposes of this Regulation, the following definitions apply:</p> <p>(...)</p> <p>(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;</p> <p>(4) ‘Member State of origin’ means the Member State in which the measure was taken or the authentic instrument was formally drawn up;</p> <p>(5) ‘authentic instrument’ means a document in a matter of protection of an adult which has</p>	<p>For the purposes of this Regulation, the following definitions apply:</p> <p>(...)</p> <p>(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 one’s legal capacity.</p> <p>(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;</p> <p>(5) authentic instrument’ means a document in a matter of protection consisting in</p>

<p>been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:</p> <p>(7) ‘authority of origin’ means the authority which has taken the measure or formally drawn up the authentic instrument;</p> <p>(10) ‘system of interconnection’ means a system for the interconnection of protection registers and registers of other powers of representation;</p> <p>(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;</p> <p>(12) ‘protection register’ means a register where measures directed to the protection of an adult or confirmed powers of representation have been registered.</p>	<p>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:</p> <p>(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;</p> <p>(10) ‘system of interconnection means a system for the interconnection of protection registers and registers of other powers of representation;</p> <p>(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.</p> <p>(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 their decision-making support decision or power of representation 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</p>
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	<p><i>explicitly authorised by the decision-maker. This authorisation can be withdrawn at any point in time.</i></p> <p><i>(13) new</i></p> <p><i>Person-centered support involves access to supported decision-making, personal budgets, personal assistance and other forms 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.</i></p>
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Justification:

It is proposed that the notion of “in respect of his or her will and preferences” is added to the provision in order to emphasise the requirements of Article 12 CRPD and General Comment no. 1. to the CRPD. “Will and preferences” or the “best interpretation of the will and preferences” of the person (para. 21 of General Comment no. 1 to the CRPD) are also applicable to cases where the person cannot provide direct free and informed consent (for example in the case of a person in the coma).

On the other hand, Member States should refrain from referring to the “best interest of the person”. The CRPD Committee explains that “The “best interests” principle is not a safeguard which complies with article 12 in relation to adults. The “will and preferences” paradigm must replace the “best interests” paradigm to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others.”

About (10), (11), (12), see justification under article 45.

Article 4: References to *the UN Convention on the Rights of Persons with Disabilities* and the HCCH 2000 Protection of Adults Convention

<p>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.</p>	<p>Where referred to in this Regulation, <i>the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)</i> and the HCCH Convention of 13 January 2000 on the International Protection of Adults ('the HCCH 2000 Protection of</p>
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	Adults Convention'), which is attached to this Regulation, shall apply mutatis mutandis.
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Article 13: No review as to the substance

Commission proposal	Proposed amendments
Under no circumstances may a measure taken by the authorities of a Member State be reviewed as to its substance.	<p>1. Under no circumstances may a measure taken by the authorities of a Member State be reviewed as to its substance.</p> <p><i>New 2. Notwithstanding the rule in paragraph (1) a measure taken by the authorities of a Member State of origin may be replaced with another measure that better protects autonomy of an adult concerned.</i></p>
Justification:	
<p>It is proposed that another paragraph is added to this provision to enable the receiving Member State to amend the existing measure with a more appropriate one that will better protect the autonomy of the adults concerned. This is necessary especially because there will be differences between the Member States on how far they have transitioned from substituted to supported decision-making systems. While in the Member State of origin still the guardianship may be a dominant form of protection, in the receiving Member State there may be more supported decision-making regimes that may better suit the needs of the person concerned. Therefore, the receiving Member State should have an option to replace the existing measure with a more appropriate one.</p>	

Article 21: ***Placement Living and Support Arrangements***

Commission proposal	Proposed amendments
1. 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 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	<p>1. If an authority of a Member State contemplates the <i>living and support arrangements of the adult in another Member State the access to person-centred support shall be evaluated. To that end the adult receiving or the person or persons providing decision-making support shall be consulted. The will and preferences uttered by the adult receiving support shall be implemented.</i> placement of the adult in another Member State in an establishment</p>

<p>for the proposed measure, using the form set out in Annex VI.</p> <p>2. Paragraph (1) shall not apply where the placement is contemplated with a private person.</p> <p>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.</p> <p>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.</p>	<p>or other institution where protection can be provided, it shall first obtain the consent of a Central Authority of that 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.</p> <p>2. Paragraph (1) shall not apply where the placement living and support arrangements are is contemplated with a private person.</p> <p>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.</p> <p>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.</p> <p>5. Any living and support arrangements of adults covered by this Regulation must be based on the obligations of the Member State emanating from the United Nations Convention on the Rights of Persons with Disabilities, in particular with respect to avoiding segregation and limiting freedom of choice. Decisions on living and support must respect the will and preferences of the adult.</p>
<p style="text-align: center;">Justification:</p> <p>In its General Comment no. 5 on the Article 19 CRPD, the CRPD Committee recognised that persons with disabilities have historically been denied their personal and individual choice and control across all areas of their lives, while many of them have been presumed to be unable to live independently in self-chosen communities. Thus, the resources have been invested in institutions instead of in developing possibilities for persons with disabilities to live independently in the community, leading to abandonment, dependence on family, institutionalisation, isolation and segregation. This Committee also noted that the denial of legal capacity, either through formal laws and practices or <i>de facto</i> by substituted decision-making about living arrangements, represents the barrier between full implementation of Article 19 CRPD. Further General Comment no. 5 explains that all people with disabilities have the</p>	

right to independent living in community. Neither the full or partial deprivation of any “degree” of legal capacity nor the level of support required may be invoked to deny or limit the right to independence and independent living in the community to persons with disabilities.

This provision must be revised to ensure that it would apply to living and support arrangement that are respected the rights and autonomy of the persons this regulation aim to protect. Considering the recent [guidance on independent living for persons with disabilities](#) adopted by the European Commission and efforts made by member states to reform their systems, the provision should support efforts of transition from institutions to community living.

Chapter VII: EUROPEAN CERTIFICATE OF **SUPPORT AND REPRESENTATION**

Article 34: Creation of a European Certificate of **Support and Representation**

<p>1.This Regulation creates a European Certificate of Representation ('the Certificate') which shall be issued for use in another Member State and shall produce the effects listed in Article 40.</p>	<p>1.This Regulation creates a European Certificate of Support and Representation ('the Certificate') which shall be issued for use in another Member State and shall produce the effects listed in Article 40.</p>
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Article 35: Purpose of the Certificate

<p>1.The Certificate shall be issued for use by representatives, who, in another Member State, need to invoke their powers to represent adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.</p>	<p>1.The Certificate shall be issued for use by the adults concerned or their representatives, who, in another Member State, need to invoke their powers to support or represent the concerned adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.</p>
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Article 37: Application for a Certificate

<p>1.The Certificate shall be issued upon an application by a representative authorised, by means of a measure taken or powers of representation confirmed in a Member State, to represent the adult (hereinafter referred to as: 'the applicant').</p>	<p>1.The Certificate shall be issued upon an application by the adult concerned or their a representative authorised, by means of a measure taken or powers of representation confirmed in a Member State, to represent the adult (hereinafter referred to as: 'the applicant').</p>
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	New 3. The certificate and the application process must be available in formats accessible for persons with disabilities.
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Article 45: Establishment of protection registers

Commission Proposal	Proposed Amendments
<p>1. 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>2. The information recorded in the registers referred to in paragraph (1) shall include the following ('mandatory information'):</p> <p>(a) an indication that a measure has been taken or, where applicable, that powers of representation have been granted or confirmed;</p> <p>(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;</p> <p>(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;</p> <p>(d) the date of expiration or reviewal of the measures or of the powers of representation, if any;</p>	<p>1. 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>2. The information recorded in the registers referred to in paragraph (1) shall include the following ('mandatory information'):</p> <p>(a) an indication that a measure has been taken or, where applicable, that powers of representation have been granted or confirmed;</p> <p>(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;</p> <p>(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;</p> <p>(d) the date of expiration or reviewal of the measures or of the powers of representation, if any;</p>

<p>(e)the competent authority which has taken, modified or terminated the measure or registered, confirmed, modified or terminated the powers of representation;</p> <p>(f)the adult’s name, place and date of birth and, where applicable, national identification number.</p> <p>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:</p> <p>(a)the authorities of the Member State have:</p> <p>(i)taken, modified or terminated a measure; or</p> <p>(ii)confirmed, modified or terminated powers of representation granted by an adult;</p> <p>(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.</p> <p>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.</p>	<p>(e)the competent authority which has taken, modified or terminated the measure or registered, confirmed, modified or terminated the powers of representation;</p> <p>(f)the adult’s name, place and date of birth and, where applicable, national identification number.</p> <p>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:</p> <p>(a)the authorities of the Member State have:</p> <p>(i)taken, modified or terminated a measure; or</p> <p>(ii)confirmed, modified or terminated powers of representation granted by an adult;</p> <p>(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.</p> <p>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.</p>
<p style="text-align: center;">Justification</p> <p>The Central Registers aim to record the “protection measures” which are sensitive and personal information about citizens. The sharing of this information through the register without the direct free and inform consent of the persons who are under protection measures, and strong safeguards in place, is a breach of privacy and fundamental rights, also guaranteed under the CRPD.</p>	

In addition, during the transition period from substituted to supported decision making regime, there is a risk that the central registers will be used to implement measures that are not compliant with the CRPD.

To protect highly sensitive information such any personal data needs to be recorded decentralised and only be made available on a need-to-know base.

It is also important to note that the Hague Convention does not foresee the establishment of central registers. Article 22 of the Hague Convention allows implementing state parties, to adjust the rules foreseen according to public policy interests.

In addition, according to European Commission estimates the registers would only be relevant in 2,7% of cross-border situations. The registers do not only affect cross-border cases but include all measures of protection issued/confirmed in a Member State. If such registers do not exist yet, the country would have to introduce them. If they do, an expansion would be required to cover all the data.

The registers go beyond what is necessary to achieve the goals of the regulation. The introduction and interconnection of registers is disproportionate. A harmonisation of national law is proposed which might not be in line with the legal basis in Article 81(1) TFEU.

Articles 46, 47 and 48 on: 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.**

Proposed amendments to the recitals

Commission proposal	Proposed amendments
<p>Whereas:</p> <p>(1) The purpose of this Regulation is to lay down rules, in cross-border cases, for the protection of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests. In particular, this Regulation lays down rules on jurisdiction, applicable law, recognition and enforcement of measures, acceptance of authentic instruments and cooperation between Member States' competent authorities and Central Authorities.</p>	<p>Whereas:</p> <p>(1) The purpose of this Regulation is to lay down rules, in cross-border cases, for the protection of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests and require support in decision making. In particular, this Regulation lays down rules on jurisdiction, applicable law, recognition and enforcement of measures, acceptance of authentic instruments and cooperation between Member States' competent authorities and Central Authorities.</p> <p>NEW (2) The Union concluded the United Nations Convention on Rights of Persons with Disabilities (hereinafter referred to as "UNCRPD") on 22 January 2011 to take a regional leadership and support Member States in the implementation of said Convention to the extent of its competencies.</p> <p>NEW (3) Equality before the law is a basic general principle of human rights protection and is indispensable for the exercise of civil, political, economic, social and cultural rights. Every natural person has the right to respect for their inherent dignity, individual autonomy, including the freedom to make their own choices independently of other people; therefore, to fully enjoy their legal capacity. Legal capacity acquires a special significance for persons with disabilities when they have to make fundamental decisions about their health, education and work. In many cases, the denial of legal capacity to persons with disabilities has led to them being deprived of many fundamental rights, including the</p>

right to vote, the right to marry and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty. While all persons with disabilities can be affected by denial of legal capacity and substitute decision-making, persons with cognitive or psychosocial disabilities have been, and still are, disproportionately affected by such regimes and denial of their legal capacity.

NEW (4) Full recognition of right to legal capacity requires reframing the principle of protection. Instead of placing persons into regimes of protection that restrict their legal capacity, protection within the UNCRPD is understood as a principle that is achieved by the provision of a range of support to people who require assistance in decision making about the exercise of their individual rights. Instead of focusing protection to measures that restrict them in exercising legal capacity, the protection is understood as a principle that inherently respects the will and preferences of the person concerned. Therefore, the person concerned instead of being protected by another person or a body, is protected by ensuring that their will and preferences are respected in the decision making, with which they retain full control over their own lives. Supported decision-making may take many forms. For example, persons concerned may choose one or more trusted support persons to assist them in exercising their legal capacity for certain types of decision, or may call for other forms of support, such a peer support, advocacy and self-advocacy support, or assistance with communication. Supported decision-making regimes might include measures relating to universal design and

accessibility by obtaining information in an understandable format or getting professional sign language interpretation. Support can also constitute the development and recognition of diverse, non-conventional methods of communication, especially for those who use non-verbal forms of communication to express their will and preferences. Advance planning mechanisms, when a person concerned may in advance plan how their will and preferences shall be addressed in times of certain decision-making, also contribute to the full respect of legal capacity. Supported decision-making must only be initiated if the person requiring support will and preferences so. Supported decision-making must be terminated if the person requiring support wishes so. Support persons must be selected and dismissed if the person requiring support wishes so.

NEW (5) Sometimes the more intensive forms of support may be necessary, but even when they may technically look like a substitute, for example that another person signs off a necessary legal form, the decision-making must be done on the basis in respect for will and preferences of the person concerned. That may especially apply for persons in coma or other similar conditions where communication with a person cannot be established with any other form of support. In these situations, a person designated to provide support might make inquiries in the concerned person's social circle, family or conduct other activities in order to ascertain what would be the wishes and preferences of that person in a certain legal situation. The decision-making in such situations must not be based on the perceived best interest but on the will and preferences of the person

	<p><i>concerned, similarly to how advance planning mechanisms are implemented.</i></p> <p><i>NEW (6) This Regulation designates the progressive interpretation of the interconnection between the Hague Convention on the Protection of Adults 2000 and UN CRPD. Recognising the open-ended nature of the Article 3 of the Hague Convention on the Protection of Adults 2000 and that the mechanisms of protection are not limited only to the institutes of protection that deny legal capacity, this Regulation aims at modernising implementation of this Convention with progressive human rights standards that are focused on full respect of autonomy of persons concerned. As a source of private international law, this Regulation encourages state parties to embrace supported decision-making regimes and advance planning in their domestic systems.</i></p>
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Justification:

The proposed new recitals align with the proposals made in articles of the regulation to comply with, and promote the CRPD. New (3) focuses on the principle of equality before the law and right to legal capacity as enshrined in article 12 CRPD and its interdependence with other human rights covered by the Convention. New (4) gives more details on how to understand legal capacity moving from substituted to support decision-making regimes, while also introducing the notion of “will and preferences” (over the concept of “best interest of the person” which may apply to minors but shall not apply to adults). New (5) gives guidance on more intensive forms of support in line with the CRPD. Finally new (6) covers the relationship and interpretation between the CRPD and the 2000 Hague Convention on international protection of adults.

Commission proposal	Proposed amendments
(33) According to Article 19 of the UNCRPD, persons with disabilities are to have the opportunity to choose their place of residence and where and with whom they live, on an equal basis as others, and not to be obliged to	(33) According to Article 19 of the UNCRPD, persons with disabilities are to have the opportunity to choose their place of residence and where and with whom they live, on an equal basis as others, and not to be obliged to

<p>live in a particular living arrangement. For the purposes of this Regulation, situations may arise where the authorities of a Member State need to take a measure concerning the place of residence or temporary placement of an adult. Examples of such situations are cases where authorities provide assistance to the adult in making a decision on his or her place of residence or where an adult is not in a position to express his or her views and has not granted powers to make a decision concerning his or her place of residence to a representative, and an admission to a care facility is required. Where such placement is to be implemented in another Member State, a consultation procedure for obtaining consent of the Central Authority of the Member State of implementation should be carried out prior to taking that measure. The request for consent made by the authority of origin should include the reasons for the proposed measure, and the views expressed by the adult concerned where possible, in light of Article 19 of the UNCPRD. The Central Authority of the Member State of implementation should be able to decide promptly whether to grant the consent or to refuse it. The absence of a reply within six weeks should not be understood as consent and without consent the measure should not be implemented. The consultation should not be carried out when the placement is with an individual and does not require the supervision of any public authority of the Member State of implementation.</p>	<p>live in a particular living arrangement. For the purposes of this Regulation, situations may arise where an adult moves to another Member State for formal support and living arrangements the authorities of a Member State need to take a measure concerning the place of residence or temporary placement of an adult. Examples of such situations are cases where authorities provide assistance to the adult in making a decision on his or her place of residence or where an adult is not in a position to express his or her views and has not granted powers to make a decision concerning his or her place of residence to a representative, and an admission to a care facility is required. Where such placement support and living arrangement is to be implemented in another Member State, a consultation procedure for obtaining consent of the Central Authority of the Member State of implementation should be carried out prior to implementing taking that measure. This should only be possible based on the direct consent of the person concerned, or in line with the best interpretation of their will and preferences, if it is not possible to collect their free and informed consent. The request for consent made by the authority of origin should include the reasons for the proposed measure, and the views expressed by the adult concerned where possible, in light of Article 19 of the UNCPRD. The Central Authority of the Member State of implementation should be able to decide promptly whether to grant the consent or to refuse it. The absence of a reply within six weeks should not be understood as consent and without consent the measure should not be implemented. The consultation should not be carried out when the placement is with an individual and does not require the</p>
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	supervision of any public authority of the Member State of implementation.
<p style="text-align: center;">Justification:</p> <p>See the arguments provided in the justification for amendment to Article 21 of the draft Regulation.</p>	