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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Council Conclusions on the Protection of Vulnerable Adults across the European Union
- Approval

1. Following the meetings of the JHA Counsellors on 9 and 23 April 2021, and an informal silence procedure, it appears that the text of the draft Council Conclusions on the Protection of Vulnerable Adults across the European Union as set out in the Annex to this Note is agreeable to all delegations.
2. Given the importance of these conclusions, it seems advisable that these be published in the *Official Journal of the European Union*
3. In view of the above, the Permanent Representatives Committee is invited to recommend to the Council to:
 - approve the text of the draft Council Conclusions on the Protection of Vulnerable Adults across the European Union, as set out in the Annex to this Note;
 - agree to publish these conclusions in the *Official Journal of the European Union*.

DRAFT

COUNCIL CONCLUSIONS

ON THE PROTECTION OF VULNERABLE ADULTS ACROSS THE EUROPEAN UNION

Introduction

On civil law matters

1. The Hague Convention of 13 January 2000 on the International Protection of Adults ('the 2000 Hague Convention') provides for the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests;
2. On 24 October 2008, the Council approved conclusions inviting:
 - a) the Member States which have already concluded that it would be in their interest to accede to the 2000 Hague Convention to begin as quickly as possible or actively continue with procedures for its signature and/or ratification, and
 - b) the Commission to follow closely the experience with the application of the 2000 Hague Convention, bearing in mind relevant discussions in the Hague Conference and in the Council of Europe.

These conclusions also outlined that, if necessary, once sufficient experience has been acquired in the operation of the 2000 Hague Convention, discussions could begin on the advisability of introducing additional measures at EU level;

3. In its Resolution of 18 December 2008, the European Parliament requested that the Commission submit, as soon as sufficient experience of the operation of the 2000 Hague Convention had been acquired, a legislative proposal on strengthening cooperation between Member States and improving the recognition and enforcement of decisions on the protection of adults, incapacity mandates and lasting powers of attorney;
4. In 2009 the Stockholm Programme underlined that the need for additional proposals regarding vulnerable adults should be assessed in the light of the experience acquired in the application of the 2000 Hague Convention by the Member States which are parties thereto, or will become parties thereto in the future, and encouraged the Member States to join the Convention as soon as possible;
5. The European Parliament Resolution of 1 June 2017 encouraged Member States to sign and ratify the 2000 Hague Convention and to promote the self-determination of adults by introducing into their national law legislation on mandates in anticipation of incapacity. It also issued recommendations to the Commission on this topic, noting that the protection of vulnerable adults, including those with disabilities, requires a comprehensive set of specific and targeted actions. This Resolution called for the Commission to adopt a proposal for a Regulation aimed at improving cooperation among Member States and at guaranteeing the automatic recognition and enforcement of decisions on the protection of vulnerable adults, as well as mandates in anticipation of incapacity;
6. The 2000 Hague Convention has so far been ratified by ten Member States and signed by six others;¹

¹ Status table available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=71>.

7. As a human rights instrument with an explicit social development dimension, the United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006 ('the CRPD'), to which both the EU and its Member States are parties, defines the concept of persons with disabilities broadly. The CRPD brought about a paradigm shift in relation to the legal capacity of persons with disabilities by affirming that all persons with disabilities should enjoy legal capacity on an equal basis with others. It requires States Parties to take appropriate measures to support persons with disabilities in the exercise of their legal capacity. Even though the CRPD focuses on persons with disabilities and does not approach disability from a "vulnerability perspective", but rather a human rights based approach, the 2000 Hague Convention should be implemented in full respect of the CRPD. The implementation of these two instruments shares the objective of promoting and protecting the rights of persons with disabilities;

On criminal law matters

8. The Stockholm Programme also placed a strong focus on strengthening the rights of individuals in criminal proceedings and, in point 2.4 thereof, the European Council welcomed the adoption by the Council of the Roadmap for strengthening procedural rights of suspects and accused persons, which also invited the Commission to put forward the foreseen proposals, including special safeguards for suspected or accused persons who are vulnerable (measure E);

9. To date, six measures on procedural rights in criminal proceedings have been adopted pursuant to the roadmap, namely Directives of the European Parliament and the Council 2010/64/EU (on the right to interpretation and translation in criminal proceedings), 2012/13/EU (on the right to information in criminal proceedings) and 2013/48/EU (on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty), as well as Directives (EU) 2016/343 (on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings), 2016/800 (on procedural safeguards for children, i.e. persons under the age of 18, who are suspects or accused persons in criminal proceedings) and 2016/1919 (on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings); in so far as the particular needs of vulnerable suspects or accused persons are addressed in these directives, they must be taken into account in their implementation;
10. The Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings called on Member States to strengthen certain procedural rights of all vulnerable suspects or accused persons who are not able to understand and to participate effectively in criminal proceedings due to age, mental or physical condition or disabilities. This Recommendation therefore concerns vulnerable adults. By its nature, however, it does not provide for legally enforceable rights or obligations, and only one Member State has notified measures necessary to give effect to the Recommendation;
11. Point 2.3.4 of the Stockholm Programme called on the Commission and the Member States to pay particular attention to victims of crime. In line therewith, on 10 June 2011 the Council adopted a Resolution on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings;

12. Directive 2012/29/EU of the European Parliament and of the Council established minimum standards on the rights, support and protection of victims of crime, with the purpose of ensuring that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. It seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial. This Directive does not affect more far-reaching provisions contained in other European Union acts which address in a more targeted manner the specific needs of particular categories of victim, such as victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography;
13. The first EU Strategy on Victims' Rights (2020-2025)² recognises that for the most vulnerable victims, such as victims with disabilities and elderly victims, it is particularly challenging to go through criminal proceedings and to deal with the aftermath of crime;
14. The reports from the Commission to the European Parliament and the Council assessing the implementation of the Victims' Rights Directive³ and of the European Protection Order Directive⁴ show that further progress is needed in order for the full potential of these instruments to be reached;

² COM(2020) 258 final, 24.6.2020

³ Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM (2020) 188 final, 11.5.2020.

⁴ Report from the Commission to the European Parliament and the Council on the implementation of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, COM(2020) 187 final, 11.5.2020.

Considerations of the Council

General considerations

15. The EU Strategy for the Rights of Persons with Disabilities (2021-2030) tackles the diverse challenges faced by persons with disabilities, including older persons with disabilities, and aims to make progress in the implementation of all areas of the CRPD, at both EU and Member States level. The Strategy indicates that the Commission will work with Member States to implement the 2000 Hague Convention in line with the CRPD;
16. The COVID-19 pandemic crisis affects all of society, with a particular impact on those adults who were already vulnerable;
17. Population ageing is a phenomenon that affects our societies, with both the number and proportion of older people growing across Europe;
18. According to the Ageing Report 2021 issued by the European Commission on 20 November 2020, the total population of the EU is projected to decline in the long term, and the age structure will change significantly in the coming decades. The EU population is projected to decline from 447 million people in 2019 to 424 million in 2070 and, during this period, Member States' populations will age dramatically given the dynamics in fertility, life expectancy and migration. The median age is projected to rise by five years over the coming decades;
19. A significant number of adults face limitations: Eurostat expects a fifth of the EU population to have some form of disability by 2050. Many of these adults are or will become vulnerable and, by virtue of the multiple barriers that are still in place for persons with a serious mental and/or physical disability, are not or will not be in a position to protect their own interests without adequate support;

20. This situation impacts the legal capacity of vulnerable adults, who face challenges and difficulties in protecting their rights, defending their interests and accessing justice, both in national and in cross-border situations. In cross-border situations, for instance in the case of citizens residing in a State other than that of their nationality, these existing difficulties may be exacerbated by additional obstacles with respect to language, representation or access to the judicial system and to public services in general;
21. Recalling the 2020 Council Conclusions on “Access to justice – seizing the opportunities of digitalisation” which address the needs of vulnerable adults with regard to digital access to justice, particular attention should be given to further supporting the improvement of their digital skills and of their access to information, in order to protect their rights;
22. Freedom of movement and residence for persons in the EU are cornerstones of EU citizenship, and vulnerability must not be an obstacle to the full exercise of any rights;
23. In the exchange of views during their informal meeting on 29 January 2021, Ministers for Justice stressed the importance of the 2000 Hague Convention as a means to strengthen the protection of vulnerable adults. Ministers highlighted that a first step should be to increase the number of ratifications by Member States. They also discussed the possibility to strengthen the framework within the EU to facilitate the free circulation of decisions on the protection of vulnerable adults. In the area of criminal law, Ministers underlined the need for a better implementation of the existing legal framework with a view to ensuring the full exercise of rights by vulnerable adults and their protection when they are victims of crime;

On civil law matters

24. Today there are no uniform private international law rules applicable in the field of judicial cooperation in civil matters regarding the protection of vulnerable adults in cross-border situations across the EU, and there are disparities between Member States' laws on jurisdiction, applicable law, and the recognition and enforcement of protection measures. The diversity of the rules on these issues might impair the exercise of the right of vulnerable adults to move freely and reside in the Member State of their choice. It might also hinder the possibility for these citizens to obtain adequate protection regarding the administration of their property in a cross-border context;
25. The right to self-determination is a fundamental right, and powers of representation through which an adult has made arrangements in advance for his or her care and/or representation should be respected within the EU;
26. The 2000 Hague Convention provides for the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests. This Convention aims to prevent conflicts between the legal systems of Contracting Parties in respect of jurisdiction, applicable law and the recognition and enforcement of measures for the protection of adults, while also ensuring that a 'power of representation' has legal force in another Contracting Party, and establishing an administrative cooperation mechanism between Parties;
27. Vulnerable adults may face considerable difficulties in a cross-border context within the EU, for example when a decision designating a representative issued in one Member State needs to be recognised in another Member State, or when actions regarding their immovable property or bank accounts located abroad are required, in many cases to ensure their own subsistence;

28. At the ‘High-Level Conference on the protection of vulnerable adults across Europe: the way forward’, held on 30 March 2021, some panellists stressed that, while it is important to build experience and assess the results of implementing the 2000 Hague Convention, the EU should be more ambitious and go further in seeking the approximation of private international law rules to ensure the effective protection of vulnerable adults on the basis of the principle of mutual recognition;

On criminal law matters

29. The increasingly wide exercise of the rights of free movement and residence is also reflected in the inevitably growing number of people involved in criminal proceedings in a Member State other than that of their nationality;
30. Vulnerable adults who are suspects or accused persons in criminal proceedings may experience a number of difficulties that may impair the full exercise of their procedural rights and may undermine the right to a fair trial;
31. The EU and its institutions should respond to the problems and difficulties faced by European citizens in exercising their rights, especially in cross-border situations, and must ensure full and effective access to justice for all European citizens;
32. At the ‘High-Level Conference on the protection of vulnerable adults across Europe: the way forward’, held on 30 March 2021, it was highlighted that procedural safeguards should be in place for persons who are vulnerable, which entails identifying and recognising their specific needs, taking them into account throughout the duration of their involvement in criminal proceedings, and providing support to ensure that suspects and accused persons fully understand the nature of the proceedings and their consequences, and that they participate effectively in such criminal proceedings, as well as protecting persons who are vulnerable as victims.

Conclusions

33. Mindful of the above, the Council considers that further work should be carried out in order to strengthen the protection of vulnerable adults within the EU in both civil and criminal law matters.
34. In this regard, it calls on the Commission and the Member States, within their competences and with respect for the principle of subsidiarity, and emphasising the need to avoid the duplication of rules, to adopt the following measures:

The Council invites the Member States to:

On both civil and criminal law matters

- use, where possible, available funding opportunities from the EU budget, such as the Recovery and Resilience Facility, Justice Programme and CERV Programme, in order to actively develop actions related to the protection and promotion of the rights of vulnerable adults, including in the area of digital literacy and skills;

On civil law matters

- promote greater awareness of the 2000 Hague Convention among courts, practitioners and all stakeholders involved in its implementation, in particular through the sharing of experience and the development of good practices, for those Member States that are already parties to the 2000 Hague Convention;
- advance procedures to ratify the 2000 Hague Convention, with a view to finalising the ratification as swiftly as possible, in particular in view of the upcoming Special Commission on this Convention organised by the Hague Conference on Private International Law, for those Member States that are engaged in such procedures;
- commence and/or advance domestic consultations on a possible accession to the 2000 Hague Convention as swiftly as possible for all other Member States;

- ensure that the national measures on the protection of vulnerable adults are in line with the CRPD.

On criminal law matters

- ensure the correct and full implementation of Directive 2010/64/EU, Directive 2012/13/EU, Directive 2013/48/EU, Directive (EU) 2016/343 and Directive (EU) 2016/1919, and share best practices, with particular regard to vulnerable adults;
- endeavour to take into account the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings;
- ensure the correct and full implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA;
- share their best practices on the implementation of Directive 2012/29/EU, with particular regard to the setting up of integrated and targeted specialist support services in addition to or as part of general victim support services for the most vulnerable victims, such as disability-inclusive and accessible services, as laid down in the EU Strategy on Victims' Rights 2020-2025;
- enhance the use of cross-border victims protection mechanisms within the EU, including the European protection order;⁵
- ensure that vulnerable adults, whether suspects or accused persons or victims, are promptly identified and that their vulnerability is adequately assessed so that they can fully exercise their rights under EU law, in line with the CRPD.

⁵ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order.

The Council invites the Commission to:

On civil law matters

- assess possible actions to encourage further Member States to ratify the 2000 Hague Convention as swiftly as possible;
- conduct a thorough study aimed at carefully reflecting on and assessing how the European Union could further strengthen the protection of vulnerable adults in cross-border situations;
- consider the possible need for a legal framework within the European Union to facilitate the free circulation of judicial and extrajudicial decisions on the protection of vulnerable adults in civil matters, which might also include powers of representation, and advance directives on medical treatment;
- present to the European Parliament, the Council and the European Economic and Social Committee a report on the results of the study, accompanied, if necessary, by legislative proposals;

On criminal law matters

- examine whether there is a need to strengthen, in a comprehensive manner, the procedural safeguards for vulnerable adults who are suspects or accused persons in criminal proceedings, on the basis of a study which will allow reflection on how the European Union should go forward on the protection of vulnerable adults in line with the CRPD;
- carefully reflect on the need to identify uniform and common criteria for identifying vulnerable adults in criminal proceedings, taking into account the fact that vulnerability may be attributable to a wide range of circumstances and not necessarily have a single common cause;

- take the specific needs of vulnerable adults into account when monitoring and ensuring the correct and full implementation of the above-mentioned Directive 2010/64/EU, Directive 2012/13/EU, Directive 2013/48/EU, Directive (EU) 2016/343 and Directive (EU) 2016/1919 in so far as the particular needs of vulnerable suspects or accused persons are addressed in these directives;
- promote the targeted and specialist protection of vulnerable adults through EU funding opportunities and EU awareness campaign on victims’ rights, as emphasised in the EU Strategy on Victims’ Rights (2020-2025); such support and protection should take into account the intersectionality of victimisation;
- take the specific needs of vulnerable adults into account when monitoring and ensuring the correct and full implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; and
- liaise with the Member States to identify horizontal good practices in this regard.