



Commission's proposals on the cross-border protection of adults

ELRA General Assembly 2024

A photograph of the European Union flag, which is blue with twelve gold stars arranged in a circle. The flag is being held up by two hands, and it is waving in the wind. The background is a blurred green landscape with trees.

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Context of the initiative on the protection of adults

- Growing number of people in the EU who are not in a position to protect their interests due to an impairment or insufficiency of their personal faculties (e.g. ageing, people with disabilities) = “adults“
- Increased mobility of EU citizens
- Differences in national legal systems for protection of adults and legal capacity
- Problems in cross-border cases
- **HCCH 2000 Protection of Adults Convention**

(16 Contracting Parties, 13 Member States)



Objectives

In cross-border cases,

- **To increase legal certainty and predictability**
- **To increase the effectiveness and speed of cross-border proceedings** (abolition of exequatur, digitalisation of communication etc.)
- **To ensure effective circulation** of measures, powers of representation and authentic instruments



To enhance the protection of the rights of adults, incl. their fundamental rights

Legislative initiative in the area of protection of adults

Two legislative proposals

- to apply in cross-border situations to protection of adults
 - private international law rules, rules on judicial cooperation...
 - no harmonisation of the Member States' substantive laws on adults' protection
- **Proposal for a Council Decision**
 - All EU Member States are to join the **2000 HCCH Protection of Adults Convention**
 - The Convention will apply in relation to other non-EU Contracting parties to the Convention (Monaco, Switzerland, UK/Scotland)
- **Proposal for a Regulation**

Proposal for a Regulation

- Will apply **among EU Member States**, instead of the rules of the Convention
- Takes over some rules of the HCCH Convention (e.g. on jurisdiction, applicable law, cooperation ...)

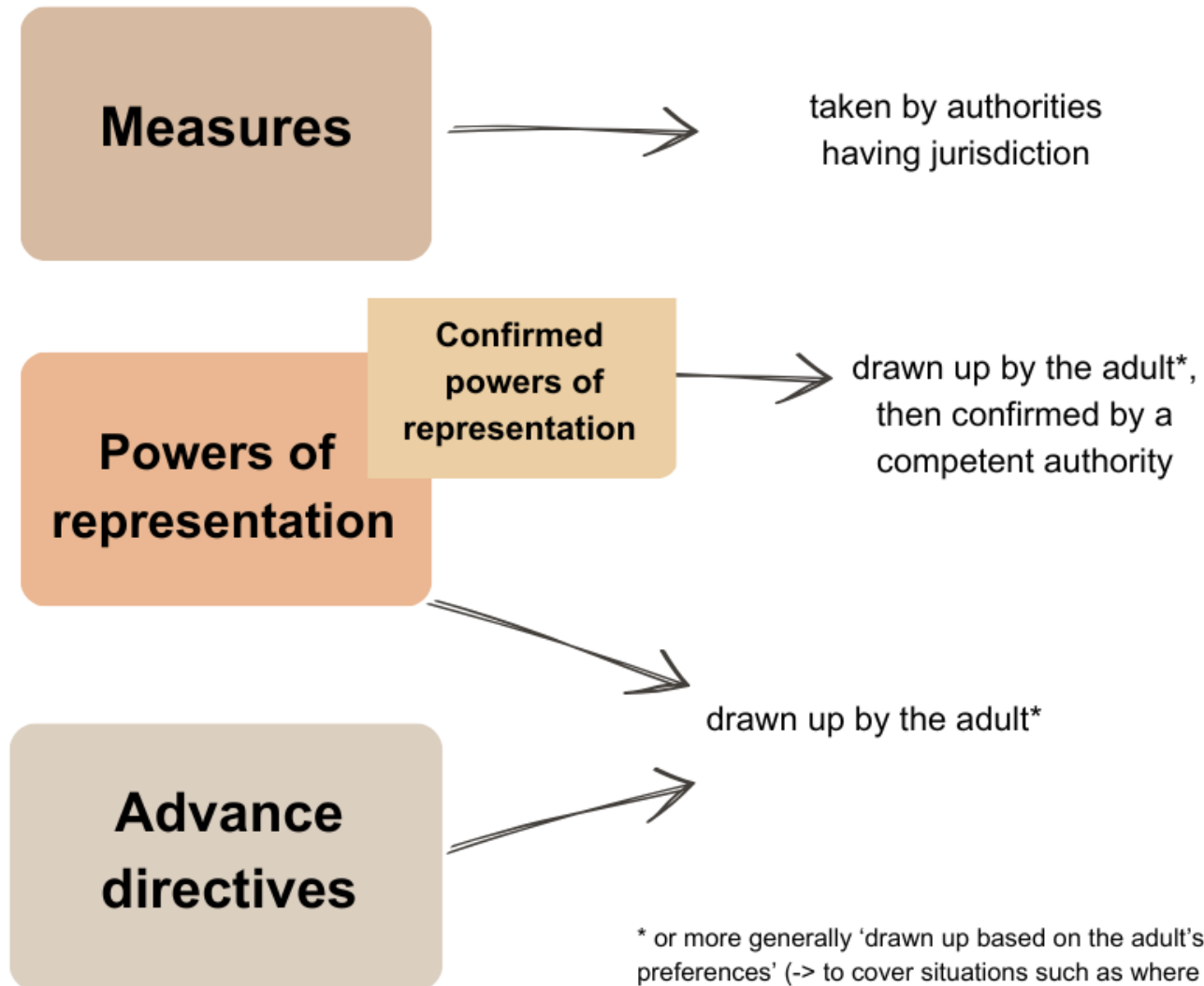
and, where desirable, streamlines and complements them for the EU context (abolition of exequatur, more effective cooperation in the EU, choice of jurisdiction...)

- Introduces new rules, such as on:
 - the European Certificate of Representation
 - Circulation of authentic instruments
 - Interconnection of registers
 - Digitalisation of the cross-border procedures
 - Designation of a representative abroad
 - Legal aid...

Proposal for a Regulation – selected topics for this presentation

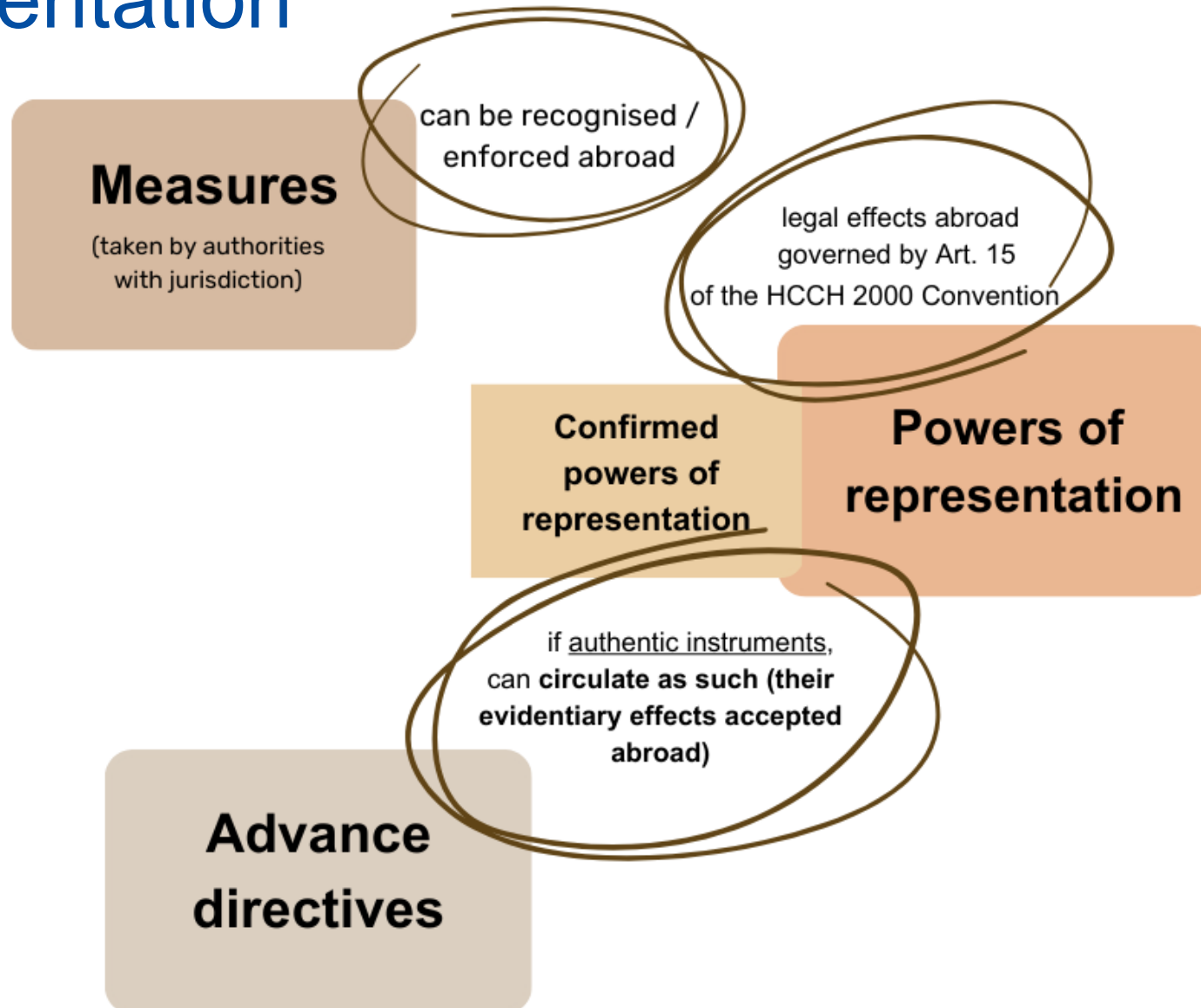
- 1) Rules on cross-border effects of measures and powers of representation
- 2) Circulation of authentic instruments
- 3) European Certificate of Representation
- 4) Interconnection of registers

Effects abroad of measures and powers of representation



* or more generally 'drawn up based on the adult's choices and preferences' (-> to cover situations such as where the document is drawn up for the adult by a notary)

Effects abroad of measures and powers of representation



Authentic instruments

- **Circulation of authentic instruments in the area of the adults' protection as a novelty in the Regulation**
- Powers of representation and advance directives drawn up in an authentic form
- Acceptance - evidentiary effects
 - (unless contrary to the public policy of the Member State)
- **Critical to advance self-determination of adults**

European Certificate of Representation ('ECR')

ANNEX III
EUROPEAN CERTIFICATE OF REPRESENTATION
(Article 38 of the Regulation (EU) 20XX/X)

IMPORTANT

This Certificate is for use by a representative or representatives, who need to invoke their powers to represent an adult who, by reason of an impairment or insufficiency of his or her personal faculties, is not in a position to protect his or her interests.

This Certificate may be used to demonstrate that the person designated in this Certificate as a representative of the adult is authorised to represent the adult.

This Certificate is issued by a competent authority of a Member State where the measure was taken or powers of representation were confirmed ('issuing authority'). The original of this Certificate remains in the possession of that issuing authority and only its certified copies are issued. The Certificate is valid until the date indicated in the appropriate box at the end of this form.

Effects of this Certificate in the Union:

- The person indicated in the Certificate as the adult's representative is presumed to have the powers mentioned in the Certificate with no conditions and/or restrictions being attached to those powers other than those stated in the Certificate.
- Any person who, acting on the basis of the information certified in a valid Certificate, deals with someone indicated in the Certificate as the adult's representative with respect to a certain matter, shall be considered to have dealt with someone with authority to represent the adult in that matters, unless the person knows that the contents of the Certificate are not accurate or valid or is unaware of such inaccuracy or invalidity due to gross negligence.
- The Certificate has these effects in the European Union, with the exception of Denmark [and Ireland].

1. Competent authority that issued the Certificate ('Issuing authority')

1.1 Member State of the issuing authority
 Belgium Bulgaria Czech Republic Germany Estonia Ireland Greece
 Spain France Croatia Italy Cyprus Latvia Lithuania Luxembourg
 Hungary Malta Netherlands Austria Poland Portugal Romania Slovenia
 Slovakia Finland Sweden

1.2 Name and designation of the issuing authority:

1.3 Address of the issuing authority
1.3.1 Street and number/PO box:
1.3.2 Place and postcode:

- Most supported measure throughout the consultations
- For representatives who need to invoke their powers in another Member State
- Based on measures or “confirmed powers of representation”
- Verification by the issuing authority to ensure reliability
- Validity: +/- 1 rok

European Certificate of Representation ('ECR')

- **Why the ECR?**

- Facilitates representatives' dealings with non-judicial parties (e.g. banks and financial institutions)
- Can be used separately without the need for producing a measure or confirmed PoR
- Available in all EU official languages
- Uniform effects throughout the EU
- Strong legal presumption for representatives and third parties



Interconnection of registers

Benefits:

- Access to the information on the existence of protection abroad (e.g. where the adult in question is not in a position to provide that information)
 - ➔ Authorities able to ensure continued protection of the adult and full respect of a measure taken abroad
 - ➔ Powers of representation drawn up by the adult respected abroad
- General increase of legal certainty

Data shared among the national registers is limited

Access not public

Interaction with the work of ELRA



Thank you for your attention

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