



CNUE Feedback on the Green Paper on Ageing

The Council of the Notariats of the European Union (CNUE) is the official body representing the notarial profession in its dealings with the European institutions (transparency register number: 98885666486-72). As the voice of the profession, the civil law notariat is known in 22 Member States of the European Union.

The Notaries of Europe have long followed with great interest the work carried out by the European institutions on the vulnerable and their protection.

Following the publication of the Green Paper on Ageing and the consultation period that has opened, the Notaries of Europe wish to express their views.

As advisors to families receiving millions of people each year in their offices, notaries are regularly confronted with the increasing longevity of the population and the consequences of old age or the development of diseases such as Alzheimer's leading to the vulnerability of their clients.

In addition, notaries play an essential role in the protection of vulnerable persons as impartial public officers advising the parties and drawing up authentic acts. In particular, when assessing the capacity of the contracting parties and, where appropriate, the adequacy and subsistence of the representation claimed by the parties, in order to avoid abuse.

But the notary's role does not end there, since in a number of States, the national authorities have delegated to their public officers the possibility of issuing incapacity mandates, making it possible to anticipate situations of vulnerability and thus promoting autonomy of will. For example, in France, the law of 5 March 2007, which aims to protect both the property of the vulnerable person and his or her person, created the enduring power of attorney to enable any person to organise in advance the conditions of his or her tailor-made protection and to choose the person who will take responsibility for it, without causing him or her to lose his or her rights and legal capacity. The mandate, when it takes the form of an authentic instrument issued by a notary, allows the representative to be entrusted with extensive powers, since he or she can carry out important property-related acts (e.g. selling a house), as well as control over the management of the representative when the mandate is implemented.

This type of incapacity mandate exists in other countries such as Belgium, Germany and Spain. A more detailed mapping of national legislation can be found on the website created by the CNUE, with European funds, on protection measures for the vulnerable in 22 Member States (www.the-vulnerable.eu).



Finally, notaries are also privileged witnesses of the increasing mobility of populations, in particular of the elderly, for economic or family reasons (retirement abroad, placement in a care institution in another Member State).

The question of the legal consequences of an ageing of the population has thus become international, with the development of situations in which the question of the legal protection of adults concerns at least two Member States. A person may be subject to a protection measure in one State and have sources of income or assets in another State. He or she may move to and live in a State other than the one in which the protection measure was decided.

How can continuity of protection be ensured when the laws of the Member States are disparate? At present, legal uncertainty prevails in this respect, as the Hague Convention of 13 January 2000 is in force in only ten or so Member States. Moreover, not all States have legislation in this area. And where such national legislation exists, it is diverse and varied. As for the approach at European level, it is fragmentary.

In the past, the European Parliament has twice (in 2008 and 2017) stressed the need for the European Union to act in order to strengthen cooperation between Member States and improve the recognition and enforcement of decisions on the protection of adults and incapacity mandates. The CNUE supported and continues to support the objectives of the resolutions and the measures envisaged to achieve the adoption of a European initiative which, while drawing on the Hague Convention and other international instruments, would complement existing international law and:

- facilitate the movement, acceptance and enforcement of judicial or conventional protection measures taken for a vulnerable adult in another Member State,
- strengthen communication and cooperation between the competent authorities of the Member States,
- encourage the creation and interconnection of national registries of protection measures.

We regret that no concrete action has been taken so far as a result of these European Parliament Resolutions and we are pleased to see that the European Commission is now addressing this issue.

The CNUE continues to encourage European cooperation on this subject by training and informing individuals and professionals, developing practical tools. Our ultimate goal must be to enable vulnerable people to move around the European Union like all other citizens, while retaining the benefit of the protection they need.



The CNUE is at the disposal of the European Commission to exchange experiences and proposals on these topics.

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