COMMITTEE ON BIOETHICS (DH-BIO)

Working document concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment

This working document is made public for consultation under the responsibility of the Committee on Bioethics (DH-BIO). The purpose of this consultation is to elicit comments which will be taken into consideration in the finalisation of the Additional Protocol to the Convention on Human Rights and Biomedicine, concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment.

The DH-BIO would be interested in receiving comments on any of the parts of the draft Protocol, accompanied, if possible, by drafting proposals.

Comments should be as precise and concise as possible. They should refer to specific provisions in the document, indicating the line to which the comment makes reference.

Comments should be submitted in English or French, by 15 November 2015 via email to the following address: dgI.consultation@coe.int.
Preamble

The member States of the Council of Europe and the other signatories to this Additional Protocol to the Convention for the Protection of the Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (hereinafter referred to as “the Convention on Human Rights and Biomedicine”, ETS No. 164),

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which this aim is pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and in particular Article 5.1 thereof;

Taking into account the work carried out at international level on the protection of dignity and rights of persons with mental disorders, in particular the United Nations Convention on the Rights of Persons with Disabilities of 30 March 2007;

Considering that the aim of the Convention on Human Rights and Biomedicine, as defined in Article 1, is to protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine;

Recognising the potential vulnerability of persons with mental disorder;

Considering that placement and treatment of persons with mental disorder form an integral part of the health services offered to the population and recalling the importance of taking appropriate measures, taking into account health needs and available resources, with a view to providing equitable access to mental health services of appropriate quality;

Recalling that any intervention in the health field must be carried out in accordance with relevant professional obligations and standards;

Emphasising the need to support people to exercise their autonomy;

Stressing the importance of the principle of free and informed consent to interventions in the health field;

Recalling that the existence of a mental disorder in itself shall in no case justify an involuntary measure;

Recognising that restrictions on the rights set out in the Convention on Human Rights and Biomedicine are permissible only if prescribed by law and are necessary in a democratic society in the interests of public safety, crime prevention, protection of public health or the protection of the rights and freedoms of others;

Taking into account national and international professional standards in the field of involuntary placement and involuntary treatment of persons with mental disorders and the previous work of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe in this field;

Recognising that the use of involuntary placement and involuntary treatment has the potential to endanger human dignity and fundamental rights and freedoms;
Stressing the importance of appropriate monitoring of the use of such measures;

Resolving to take such measures as are necessary to safeguard human dignity and ensure respect for the fundamental rights and freedoms of persons with mental disorder by clarifying the standards of protection applicable to the use of involuntary placement and of involuntary treatment,

Have agreed as follows:

**Chapter I – Object and scope**

**Article 1 – Object**

1. Parties to this Protocol shall protect the dignity and identity of all persons with mental disorder and guarantee, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to involuntary placement and involuntary treatment.

2. The provisions of this Protocol do not limit or otherwise affect the possibility for a member state to grant persons with mental disorder a wider measure of protection than is stipulated in this Protocol.

**Article 2 – Scope and definitions**

**Scope**

1. The provisions of this Protocol apply to involuntary placement and involuntary treatment of persons with mental disorder.

2. The provisions of this Protocol do not apply to minors.

3. This Protocol does not apply to placement and treatment ordered in the context of a criminal law procedure.

**Definitions**

4. For the purpose of this Protocol, the term:

   - “mental disorder” is defined in accordance with internationally accepted medical standards;
   - “involuntary” refers to a placement or treatment measure applied to a person with mental disorder who objects to the measure;
   - “treatment” means an intervention (physical or psychological) on a person with mental disorder that has a therapeutic purpose in relation to that mental disorder;
   - “placement” refers to placing a person in a specific environment for a particular purpose or purposes;
   - “therapeutic purpose” includes management or cure of the disorder and rehabilitation;
   - “representative” means a person provided for by law to represent the interests of, and take decisions on behalf of, a person who does not have, according to law, the capacity to consent;
   - “person of trust” refers to a person chosen and expressly designated as such by the person with mental disorder to assist and support him/her and who has accepted that role;
“court” refers to a judicial body;

“competent body” means an authority, or a person or body provided for by law that can take
a decision on an involuntary measure;

“responsible authority” refers to the authority responsible for the facility in which the patient is
placed, or the authority with administrative responsibility for the doctors supervising the patient’s
medical care.

Chapter II – General provisions

Article 3 – Legality

Measures for involuntary placement and involuntary treatment shall only be applied in conformity
with the provisions set out in domestic law, and in accordance with the safeguards established in
this Protocol.

Article 4 – Necessity and proportionality

Measures for involuntary placement and involuntary treatment shall only be used in accordance
with the principles of necessity and proportionality. Persons subject to involuntary placement
and/or involuntary treatment shall be cared for in the least restrictive environment available and
with the least restrictive or intrusive treatment available, taking into account their health needs and
the need to protect other persons from harm.

Article 5 – Alternative measures

Parties to this Protocol shall promote the development and use of alternatives to involuntary
placement and involuntary treatment.

Article 6 – Person of trust

Persons who are or may be subject to involuntary placement or involuntary treatment shall have
the right to choose a person of trust.

Article 7 – Legal assistance

A person who is or may be subject to an involuntary measure shall have the right to a lawyer and,
according to the conditions provided for by law, to free legal aid.

Article 8 – Professional standards

Persons subject to involuntary placement and/or involuntary treatment shall receive care delivered
in accordance with professional obligations and standards by staff having the requisite competence
and experience.

Article 9 – Appropriate environment

Parties to this Protocol shall take measures to ensure that any involuntary placement and
involuntary treatment takes place in an appropriate environment.
Chapter III – Criteria for involuntary placement and for involuntary treatment

Article 10 – Criteria for involuntary placement

Involuntary placement of a person with a mental disorder may only be used if the following criteria are met:

i. a) the person’s mental health condition represents a significant risk of serious harm to his or her health and his or her ability to decide on placement is severely impaired or

b) the person’s mental health condition represents a significant risk of serious harm to others;

ii. the placement has a therapeutic purpose; and

iii. no less restrictive means of addressing the risk are available.

Article 11 – Criteria for involuntary treatment

Involuntary treatment of a person with a mental disorder may only be used if the following criteria are met:

i. a) the person’s mental health condition represents a significant risk of serious harm to his or her health and his or her ability to decide on treatment is severely impaired or

b) the person’s mental health condition represents a significant risk of serious harm to others;

and

ii. no less intrusive means of addressing this risk are available.

Chapter IV – Procedures concerning involuntary placement and involuntary treatment

Article 12 – Standard procedures for taking decisions on involuntary placement and on involuntary treatment

1. Involuntary placement and involuntary treatment shall only take place on the basis of examination by at least one doctor having the requisite competence and experience, in accordance with applicable professional obligations and standards.

2. The decision to subject a person to involuntary placement or to involuntary treatment shall, subject to paragraph 3, be taken by a court or another competent body. The court or other competent body shall:

i. act on the basis of the medical examination referred to in paragraph 1;

ii. ensure that the criteria set out in Articles 10 and/or 11, as appropriate to the measure(s) concerned, are met;

iii. take into account the opinion of the person concerned and, where appropriate, any relevant previously expressed wishes made by that person;

iv. act in accordance with procedures provided by law based on the principle that the person concerned shall be heard in person; and

v. consult the representative of the person, if any, and, according to law, his or her person of trust, if any.
3. The law may provide that when a person is subject to involuntary placement the decision to subject that person to involuntary treatment may be taken by a doctor having the requisite competence and experience, after examination of the person concerned, and in accordance with the requirements set out in paragraph 2 ii, iii, iv and v.

4. Decisions to subject a person to involuntary placement and/or to involuntary treatment shall be documented and state the maximum period beyond which, according to law, this decision(s) shall be reviewed.

Article 13 – Procedures for taking decisions in emergency situations

1. When there is insufficient time to follow the procedures set out in Article 12 because of the imminent risk of serious harm, either to the health of the individual concerned, or to others, the decision to subject a person to involuntary placement and/or to involuntary treatment may be taken by a competent body, under the following conditions:
   i. involuntary placement and/or involuntary treatment shall only take place for a short period of time on the basis of a medical examination appropriate to the measure concerned;
   ii. the criteria set out in Articles 10 and/or 11, as appropriate to the measure(s) concerned, are met;
   iii. paragraph 2 iii, iv and v of Article 12 shall be complied with as far as possible;
   iv. decisions to subject a person to involuntary placement or to involuntary treatment shall be documented.

2. The law shall specify the maximum period for which the emergency measure may be applied.

3. If the measure is to be continued beyond the emergency situation, or the maximum period referred to in paragraph 2, the decisions on the relevant measure shall be taken in accordance with Article 12 promptly.

Article 14 – Extension of involuntary placement and/or involuntary treatment

The provisions of Article 12 shall also apply to procedures for taking decisions on the extension of an involuntary placement or an involuntary treatment.

Article 15 – Termination of involuntary placement and/or involuntary treatment

1. Involuntary placement or involuntary treatment shall be terminated if any of the criteria set out in Articles 10 or 11 respectively are no longer met.

2. The doctor in charge of the person’s care shall be responsible for assessing whether any of the relevant criteria set out in Article 10 in the case of a placement and Article 11 in the case of a treatment is no longer met.

3. The doctor in charge of the person’s care or other health personnel designated by law, and the responsible authority, shall be able to take action on the basis of the assessment referred to in paragraph 2, in order to terminate that measure, unless according to law, a court or another competent body shall be involved in the termination procedure.
Article 16 – Appeals and reviews concerning the lawfulness of involuntary placement and/or involuntary treatment

1. Member states shall ensure that persons subject to involuntary placement and/or involuntary treatment can effectively exercise the right:

i. to appeal to a court against the decision to subject them to the measure, and

ii. to request a review by a court that the measure or its continuing application conforms to the legal requirements.

An appeal may also be made and a review requested by the person’s representative, where appropriate, and, according to law, by the person’s person of trust, if any.

2. The responsible authority shall ensure that the measure’s continuing conformity with the legal requirements is reviewed at reasonable and regular intervals.

3. Member states shall ensure that a person subject to involuntary placement or involuntary treatment can effectively exercise the right to be heard in person or where necessary through his or her representative and, according to law, to have his or her person of trust heard at such reviews or appeals.

4. The person concerned, his or her representative and lawyer, and, according to law, his or her person of trust shall have access to all the materials before the court subject to the protection of the confidentiality and safety of others according to law. In exceptional cases, restrictions may be placed by law on the exercise of this right by the person concerned in his or her interests.

5. The court shall deliver its decision promptly.

6. A procedure to appeal the court’s decision shall be provided to the persons referred to in paragraph 1.

7. If the court identifies any violations of the relevant national legislation it shall report these in the framework of the monitoring referred to in Article 20.

Chapter V – Information and communication

Article 17 – Right to information

Appropriate information about their rights in respect to the involuntary measure(s) and of the remedies open to them shall be promptly given to persons subject to involuntary placement and/or treatment, and their lawyers and representatives, if any. They shall be informed regularly and appropriately of the reasons for the decision and the criteria for its potential extension or termination. The law may provide that the person of trust also receives this information.

Article 18 – Right to communication of persons subject to involuntary placement

1. Persons subject to involuntary placement have the right to communicate with their lawyers, representatives, or any official body charged with the protection of the rights of persons subject to involuntary measures, without restriction.

2. Their right to communicate with their person of trust and other persons and bodies, and to receive visits, shall not be unreasonably restricted.
Chapter VI – Record-keeping and monitoring

Article 19 – Record-keeping

Comprehensive medical and administrative records shall be maintained for all persons subject to involuntary treatment and/or involuntary placement. The conditions governing access to and the period of storage of that information shall be specified by law.

Article 20 – Monitoring

1. Member states shall ensure that compliance with the provisions of this Protocol is subject to appropriate independent monitoring.

2. Facilities designed for the involuntary placement of persons with mental disorder shall be registered with an appropriate authority.