

# Reform of the legal capacity law in Austria

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# The New Adult Protection Law



# Principles

New approach: Nothing about us without us!

New law is centred on

- autonomy
- self-determination and
- decision-making guidance

# History

- ▶ **1811** ABGB (General Civic Law)
- ▶ **1916** Entmündigungsordnung (Loss of Legal Capacity)
- ▶ **1984** Sachwalterrecht (Guardianship Law)
- ▶ **2006** SWRÄG (reformed law)
- ▶ **2008** UNCRPD – Art. 12
- ▶ **2018** Erwachsenenschutzgesetz – Second Adult protection Law in order since **1. Juli 2018**



# Inclusive legislative process

- More than 2 years
- Individuals concerned involved
- Courts, lawyers and notaries, DPOs, senior citizens' representatives, guardians' associations, Ombudsman Board, employer & employees' associations,...
- Professionally trained moderation
- Scientific study

## Key Principles of the new law

- Transparency & wider range of models to choose from: solutions tailored to individual needs: 4 pillars
- Representation: only to the extent necessary and as long as necessary limited term

# Self-determination

Legal capacity will no longer be restricted in general – provided that the individual concerned is able to decide for themselves on a particular matter, they will still be able to act validly on their own behalf. A statutory duty to establish the individual's intentions aims at ensuring that their wishes and comments are taken into account.

From: Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, The New Adult Protection Law, 2018



## Limited power of the courts

- Clearing – process: always necessary and important
- For the first 3 pillars: courts will only be involved on particularly sensitive decisions
  - permanent change of residence,
  - disagreements between person and representative on medical treatments,
  - asset management issues

## **Focus on the individual, not on the impairment - Social Model**

- Person's ability to handle his/her own affairs
- Assessed by the means of a clearing-process
- Responsible: adult protection associations

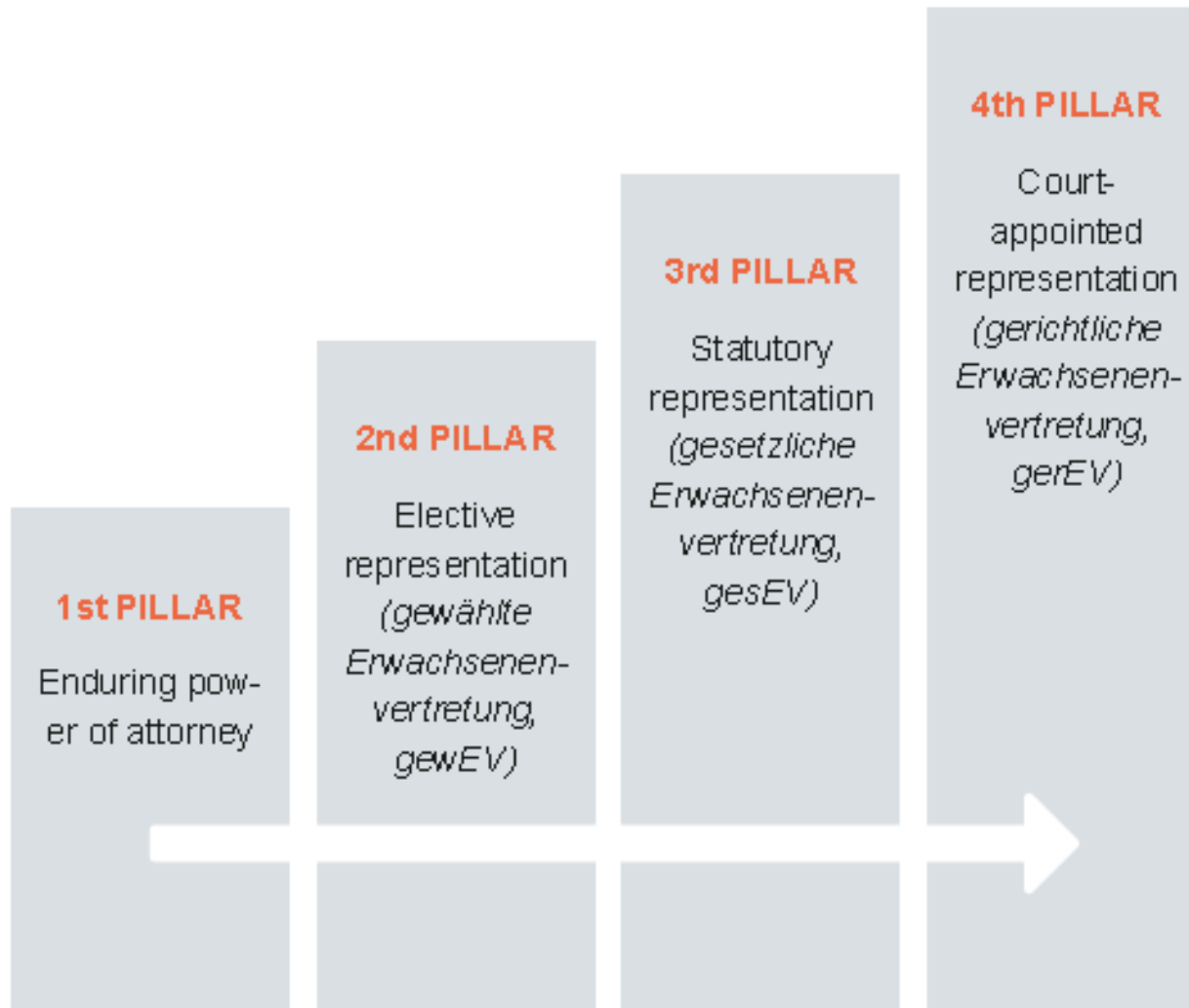
# The New Adult Protection Law

**lebenshilfe**  
Österreich



## 4 pillars:

- Enduring power of attorney
- Elective representation
- Statutory representation
- Court appointed representation



Source: Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, The New Adult Protection Law, 2018

## CURRENT SYSTEM

Enduring power of attorney

## NEW LAW

### 1st PILLAR

#### Enduring power of attorney

- ⊖ can be set up with or without the involvement of an adult protection association
- ⊖ very limited supervision by the courts
- ⊖ indefinite

### 2nd PILLAR

#### Elective representation

#### NEW FORM OF REPRESENTATION

- ⊖ a representative is chosen when needed (friends, family, other person with close links to the individual concerned)
- ⊖ in cases of limited legal capacity
- ⊖ indefinite

### 3rd PILLAR

#### Statutory representation

- ⊖ more powers than the power of representation hitherto exercised by family members
- ⊖ open to a wider group of people, including e.g. siblings, nephews, nieces
- ⊖ right of objection by the individual concerned
- ⊖ limited duration: 3 years

### 4th PILLAR

#### Court-appointed representation

- ⊖ specific scope: does not apply to all of an individual's affairs
- ⊖ limited duration: 3 years
- ⊖ legal capacity is in principle retained

Representation by a close relative

Guardianship

**lebenshilfe**  
Österreich

Source: Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, The New Adult Protection Law, 2018

**CURRENT  
SYSTEM**

Enduring  
power of  
attorney

**NEW LAW**

**1st PILLAR**

**Enduring  
power of  
attorney**

- ⊕ can be set up with or without the involvement of an adult protection association
- ⊕ very limited supervision by the courts
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# Completely new element:

## 2nd PILLAR

### Elective representation

## NEW FORM OF REPRESENTATION

- ⊕ a representative is chosen when needed (friends, family, other person with close links to the individual concerned)
- ⊕ in cases of limited legal capacity
- ⊕ indefinite

Requires entry in „Österreichisches  
Zentrales Vertretungsregister (ÖZVV)“  
- Austrian central representation registry

Representation  
by a close  
relative

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Guardianship

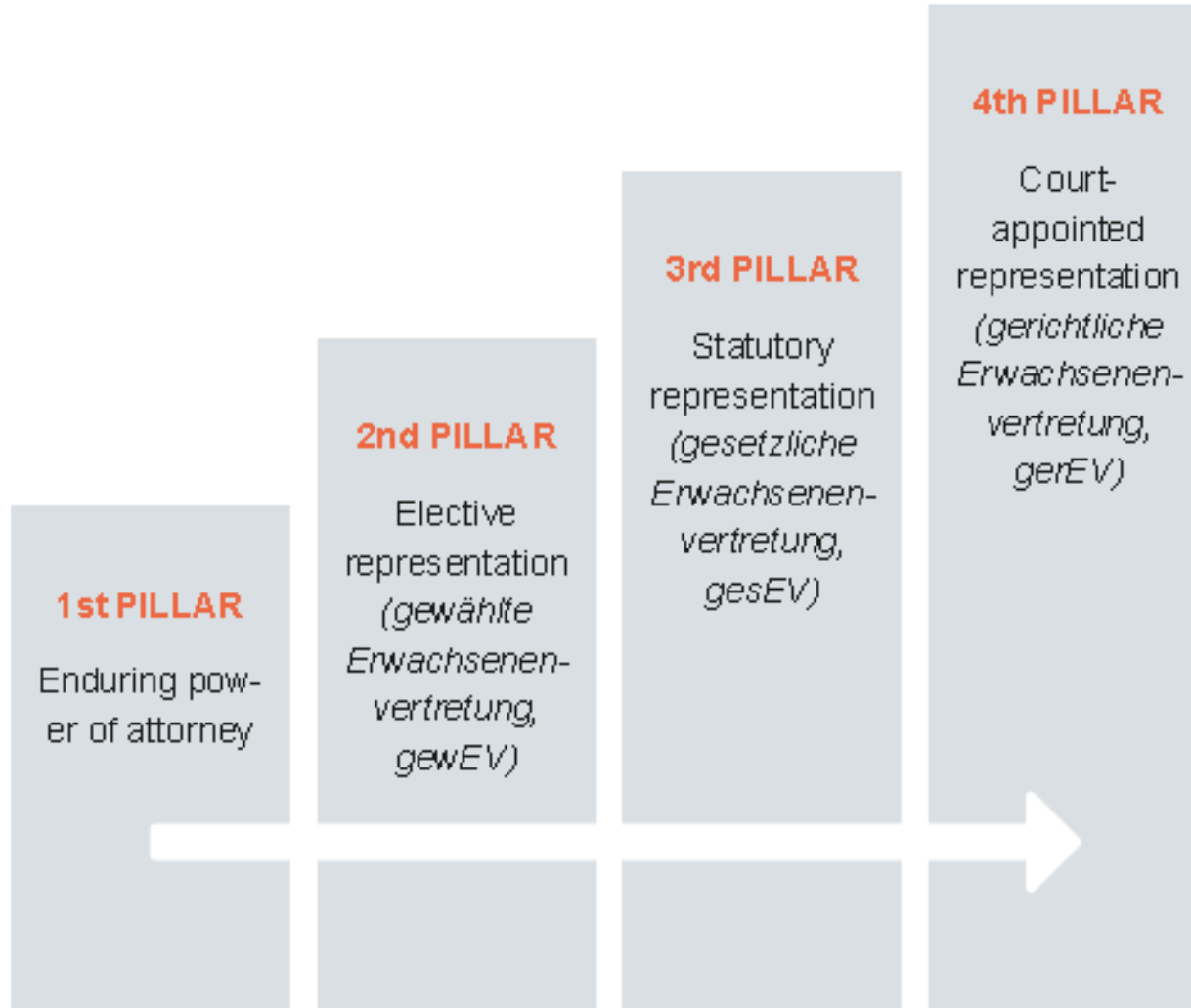
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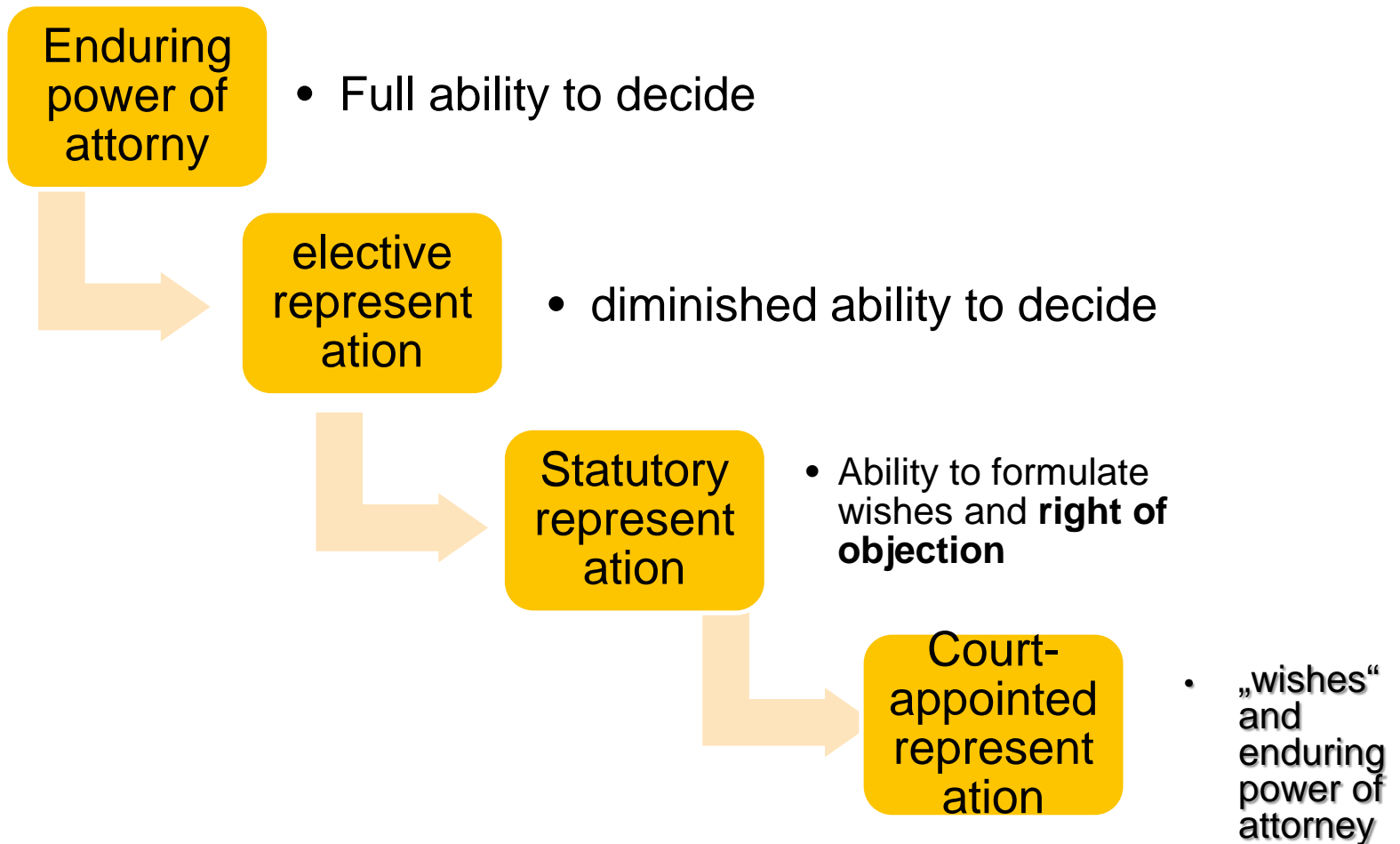




Increase of representation



Loss of autonomy



# Further aspects



Requirement for approval (court)

Strengthen autonomy of adults - only person herself can decide:

- healthcare directive
- enduring power of attorney
- Getting married
- Adopting a child

Legal professionals: max. 15 clients OR in list of specifically qualified lawyers & notaries

Supported banking

Transition period until 1.1. 2023

# Critical points



Public financing (federal system)

- courts
- clearing processes
- circles of support

Role of adult representations' association:

Clearing process + adult representation (advice & representation??)

Not complete supported decision making!

Circles of support not really mentioned (only in medical treatments)

# Great success!

**lebenshilfe**  
Österreich



- Inclusive legislative process: great step towards implementation of art. 12
- Positive and pro-active role of Ministry of Justice
- Full inclusion of self-advocates, senior citizens, family members, DPOs
- Materials in Easy2Read

# Further information:

Information Brochures:

[https://www.justiz.gv.at/web2013/home/justiz/erwachse  
nenschutz/informationenbroschueren~41.de.html](https://www.justiz.gv.at/web2013/home/justiz/erwachse<br/>nenschutz/informationenbroschueren~41.de.html)

Consensus Papers:

[https://www.justiz.gv.at/web2013/home/justiz/erwachse  
nenschutz/konsenspapiere-mit-institutionen~43.de.html](https://www.justiz.gv.at/web2013/home/justiz/erwachse<br/>nenschutz/konsenspapiere-mit-institutionen~43.de.html)

Law:

[https://www.justiz.gv.at/web2013/home/justiz/erwachse  
nenschutz/gesetzestexte~45.de.html](https://www.justiz.gv.at/web2013/home/justiz/erwachse<br/>nenschutz/gesetzestexte~45.de.html)

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