# Annex – Proposed edits to the draft Recommendation and Explanatory Memorandum

## Draft Recommendation on respect for autonomy in mental healthcare

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| **Article** | **Comments & Questions** | **Proposal** |
| Preamble | Remove reference to the principles of Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder since the latter reinforces coercion in mental healthcare settings and is outdated. | **~~Recalling the principles of Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder;~~** |
| Preamble | Remove all mention of the draft Additional Protocol to the Oviedo Convention which has not been adopted by the Council of Europe, seeks to regulate rather than diminish and eliminate involuntary treatment and placement in psychiatry, and creates inconsistency within CoE guidance considering the recent European Committee of Social Rights decision on Complaint No. 188/2019, and the PACE Recommendation 2275 (2204).  This extends to all mentions in the EM. | **~~[Recalling the Additional Protocol on the protection of human rights and dignity of persons with regard to involuntary placement and treatment within mental healthcare services; ]~~** |
| 1 | The objective of the Recommendation should be expanded to introduce mechanisms on how to ensure the decrease and ultimate elimination of coercion in mental healthcare. | This recommendation aims to ensure respect for the autonomy of persons receiving mental healthcare, **~~and to~~** prevent the use of coercion in the provision of such care **and introduce effective mechanisms to that objective.** |
| 12(2) |  | There is a lack of clarity regarding who “persons concerned” refers to in this article. If it is only victims of abuse, then this would practically exclude any research on the incidence of coercion or improvements to care more generally.Information from such complaints **that could contribute to increasing respect for autonomy should be made available and** should be used to improve services **~~the care of the persons concerned~~** in the future. |
| 20 | Why has this article been deleted? While there is some overlap with article 12, that article relates strictly to complaints procedures. Public information, including incidence of coercion, efficacy and impacts of various models of care, etc. can contribute to the prevention of coercion in future care, beyond the scope of monitoring compliance. | **Information that can contribute to promoting respect for autonomy in mental healthcare and that enables changes over time to be assessed in the extent of such respect should be made publicly available, in particular by those responsible for monitoring under Article 18.** |

## Draft Explanatory Memorandum

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| **Article** | **Comments & Questions** | **Proposal** |
| 1(19) | In line with Article 12 of the UN CRPD, all persons have the right to equal recognition before the law and enjoy legal capacity on an equal basis with others. Persons do not lack the capacity to provide informed consent but are rather deprived of their rights directly and indirectly through the lack of provision of supported-decision-making mechanisms. | This should be distinguished from situations in which care **is imposed on a person** **~~takes place to which a person does not object~~**, but to which that person has not given informed consent **~~because they lack capacity to do so.~~** |
| 3(28) | Article 27 of the Oviedo Convention guarantees wider protection in relation to the Convention and other provisions. Therefore, the text should recognise the compatibility of the Convention and the UN CRPD, and the wider protection afforded through the latter. | **Article 27 of the Oviedo Convention guarantees wider protection, where the UN CRPD should be applied.** |
| 4(35) | The paragraph begins with a mention of care but focuses solely on treatment. Care is broader than treatment and the way it is described here is that the provision of psychiatric medical care is the only way to prevent emergencies. | Include reference to mental health and psychosocial support services in addition to psychiatric treatment. |
| 8(52) |  | Advanced directives, when they exist, have primacy over any other decision maker. Therefore, they must be respected, not only “taken into account” in a process of substitute decision-making. Advance care planning supports a person’s autonomy by aiming to ensure that in a future circumstance where the person is not able to communicate their will and preferences directly, **their will and preferences are still respected. ~~they can still contribute to decision-making.~~** |
| 13(77) | The recommendation should use more recovery-oriented language. ‘Cured and controlled’ invokes the medical model both in understanding and responding to a person’s problems, largely through psychiatric intervention. ‘Managed and recovered from’ reflects the values of the recovery model in which patients are empowered to make choices that support their wellbeing through building purpose and community. Similarly, it reflects the reality of psychosocial disabilities which cannot be ‘cured.’ | The term “recovery” is used in different ways. In this Article, it emphasises that just as physical health problems can be **managed and recovered from,** **~~cured or controlled~~**, so can mental health problems. |