

Mutual recognition of protection measures in civil matters

2011/0130(COD) - 18/05/2011 - Legislative proposal

PURPOSE: to ensure the mutual recognition of protection measures in civil matters in order to strengthening victims' rights in the EU.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: the Commission considers that in a common area of freedom, security and justice, victims of (for example, domestic) violence or persons whose physical and/or psychological integrity or liberty is at risk and who benefit from a protection measure taken in one Member State should benefit from the same level of protection in other Member States should they move or travel, without going through expensive and time consuming procedures.

This proposal is part of a legislative package which aims at strengthening the rights of victims in the EU and which also includes the following other elements:

- a [communication](#) on the strengthening of victims' rights in the EU;
- a [directive](#) establishing minimum standards on the rights, support and protection of victims of crime.

The European Union has already acted on the rights of victims in criminal proceedings through Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. Whilst improvements have been achieved on victims' rights, the objectives of the Council Framework decision have not been fully realised.

In September 2009, 12 Member States put forward a [proposal for a Directive](#) of the European Parliament and of the Council on the European Protection Order. During the negotiations, it appeared that the mechanisms used in this instrument, based on Article 82 TFUE dealing with mutual recognition in criminal matters, is not compatible with the ambitious standard of mutual recognition already reached for civil matters, covered by Article 81 TFUE.

In its resolution of [26 November 2009](#) on the elimination of violence against women the European Parliament calls on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures and calls on the Union to guarantee the right to assistance, protection and support for all victims of violence.

The present proposal therefore aims at completing a legal instrument on the mutual recognition of protection measures taken in criminal matters to ensure that all protection measures taken in a Member State benefit from an efficient mechanism to ensure their free circulation throughout the EU.

Such action also replies to the Commission's call to further dismantle the obstacles to citizens' rights, set out in its [Citizenship Report](#) of 27 October 2010.

IMPACT ASSESSMENT: the Commission first hosted an experts' meeting on 25 May 2010 which confirmed that many Member State have put civil law protection measures in place, the mutual recognition of which should follow the common standards used in civil matters, rather than the more heavy procedures which are common standard in criminal matters.

The European Commission also contracted an external Study to assist with the impact assessment in identifying the needs of victims of crime, which measures could be established to meet these needs and to examine the impacts of any possible options. The Commission held a public consultation from 15 July 2010 to 30 September 2010, open to all members of the public as well as to nongovernmental and governmental organisations asking their views on what action the EU should take to improve the situation of victims of crime, including in the field of protection orders.

A further study was contracted to examine options in relation to the specific objective of ensuring that the protection gained through a protection order is not lost when a protected person travels or moves to another Member States.

LEGAL BASIS: Article 81(2)(a), (e) and (f) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: to protect victims of violence, in particular domestic violence, stalking or violence against children, the national laws of the Member States provide for the possibility to adopt temporary and preventative measures with a view to protecting a person when a serious risk exists to consider the persons physical and/or psychological integrity or liberty at risk. Protection measures are issued by a judicial or other authority upon request of the person at risk. Many of them are ordered without the person causing the risk being summoned to appear, in particular in case of urgency ("ex parte" procedures). Protection measures are issued by a judicial or other authority upon request of the person at risk.

Due to the increase of free movement more persons are moving or travelling abroad. Consequently, it is extremely important to ensure that such a temporary protection provided in one Member State is maintained when a person travels or moves to another Member State without having to go through time-consuming procedures.

This proposal is a mutual recognition instrument in civil matters and as such it follows the rationale of existing EU instruments on judicial cooperation in civil and commercial matters, from which it takes broad inspiration.

More specifically, this proposal provides for a speedy and efficient mechanism to ensure that the Member State to which the person at risk moves will recognise the protection measure issued by the first Member State without any intermediate formalities.

As for other mutual recognition instruments in civil matters, this proposal introduces a standardised certificate which contains all information relevant for the recognition and, where applicable, enforcement. Therefore, a certificate will be issued by the competent authority of the first Member State, either ex-officio or on request of the protected person, who will then contact the competent authorities in the second Member State and provide them with the certificate. The competent authorities of the second Member State will notify the person causing the risk about

the geographical extension of the foreign protection measure, the sanctions applicable in case of its violation and, where applicable, ensure its enforcement.

The proposal provides for the abolition of intermediate procedures and no grounds for refusal have been proposed, except for the existence of an irreconcilable decision in the Member State of recognition.

Automatic recognition also applies when the Member State of recognition and/or enforcement does not have protection measures in civil matters.

The abolition of intermediate procedures will be accompanied by fundamental rights safeguards:

- the authority of the first Member State which will be requested to issue the certificate will have to check that the right to a fair trial, in particular the right of defence, of the person causing the risk has been respected. In case such rights have not been guaranteed, the certificate cannot be issued;
- in case of suspension or withdrawal of the protection measure by the first Member State, the competent authority of the second Member State has, at request of the person causing the risk, to suspend or withdraw its recognition and, when applied, enforcement;
- the competent authorities of both Member States have to bring to the notice of the person causing the risk and to the protected person any information related to the issuing, recognition, possible enforcement and sanctions, suspension or withdrawal of the protection measure.

The proposal does not deal with criminal sanctions put in place by Member States in case of violation of a protection measure. This question will continue to be dealt with by the national law of each Member State.

BUDGETARY IMPLICATIONS: the proposal has no implication for the Union budget.