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Committee on Civil Liberties, Justice and Home Affairs
Committee on Women's Rights and Gender Equality

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*****I**
REPORT

on the draft directive of the European Parliament and of the Council on the
European Protection Order
(00002/2010 – C7-0006/2010 – 2010/0802(COD))

Committee on Civil Liberties, Justice and Home Affairs
Committee on Women's Rights and Gender Equality

Rapporteurs: Teresa Jiménez-Becerril Barrio, Carmen Romero López

(Rule 51 – Joint committee meetings)

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United in diversity

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Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft directive of the European Parliament and of the Council on the European Protection Order

(00002/2010 – C7-0006/2010 – 2010/0802(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the initiative emanating from a group of Member States (00002/2010),
 - having regard to Article 76(b) and point (d) of the second subparagraph of Article 82(1) and Article 289(4) of the Treaty on the Functioning of the European Union, pursuant to which the Council submitted the draft act to Parliament (C7-0006/2010),
 - having regard to Article 294(3) and (15) of the Treaty on the Functioning of the EU,
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to the reasoned opinion submitted, in the framework of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, by a national parliament asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the contributions submitted by national parliaments on the draft legislative act,
 - having regard to Rules 37, 44 and 55 of its Rules of Procedure,
 - having regard to the joint deliberations of the Committee on Civil Liberties, Justice and Home Affairs and of the Committee on Women's Rights and Gender Equality pursuant to Rule 51 of the Rules of Procedure
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and of the Committee on Women's Rights and Gender Equality (A7-0354/2010),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

POSITION OF THE EUROPEAN PARLIAMENT*

AT FIRST READING

[DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the European Protection Order

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(a) **and** (d) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Hungary, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) Article 82(1) of the Treaty on the Functioning of the European Union (TFEU) provides that judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions.
- (3) According to the Stockholm programme, adopted by the European Council at its meeting on 10 and 11 December 2009, mutual recognition could extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative. ***It also calls on the Commission and the Member States to examine how to improve legislation and practical support measures for the protection of victims.*** The programme also points out that victims of crime can be offered special protection measures which should be effective within the Union. ***This Directive will form part of a coherent and comprehensive set of measures on victims' rights.***
- (4) The resolution of the European Parliament of ***26 November 2009 on the elimination of violence against women 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 and support for all victims of violence. The resolution of the European Parliament of 10 February 2010 on equality between women and men in the European Union – 2009 endorses***

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

the proposal to introduce the European protection order for victims.

- (5) In a common area of justice without internal borders, it is necessary to ensure that the protection provided to a **natural** person in one Member State is maintained and continued in any other Member State to which the person moves or has moved. It should also be ensured that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union (TEU) and Article 21 of the TFEU, does not result in a loss of their **protection**.
- (6) In order to attain these objectives, this Directive should set out rules whereby the protection stemming from **certain** protection **measures** adopted according to the law of one Member State ("the issuing State") can be extended to another Member State **in** which the protected person **decides to reside or stay** ("the executing State") .
- (6a) ***This Directive considers the different legal traditions of the Member States as well as the fact that effective protection can be provided by means of protection orders taken by an authority other than a criminal court. This Directive does not establish obligations to modify national systems for adopting protection measures.***
- (6b) ***This Directive applies to protection measures which aim at protecting a person against a criminal act of another person which may, in any way, endanger his life, physical, psychological and sexual integrity, e.g. by preventing any form of harassment, as well as his dignity or personal liberty, e.g. by preventing abductions, stalking and other forms of indirect coercion, and aiming at avoiding new acts of crime or at reducing the consequences of previous acts of crime. These personal rights of the protected person correspond to fundamental values recognised and upheld in all Member States. It is important to underline that this Directive applies to protection measures which aim at protecting all victims and not only the victims of gender violence, taking into account the specificities of each type of crime concerned.***
- (6c) ***This Directive applies to protection measures, independently from the nature – criminal, civil or administrative – of the judicial or equivalent authority that adopts the decision concerned, be it in the context of criminal proceedings or in the context of any other proceedings with regard to an act which has been or could have been the object of proceedings by a court having jurisdiction in particular in criminal matters.***
- (6d) ***This Directive is intended to apply to protection measures issued in favour of victims, or possible victims, of crimes; it should not apply to measures issued with a view to witness protection.***
- (6e) ***If a protection measure, as defined in this Directive, is issued for the protection of a relative of the main protected person, an EPO may also be requested by and issued with regard to this relative, subject to the conditions laid out in this Directive.***
- (6f) ***Any request for the issuing of an EPO should be treated with adequate celerity taking into consideration the specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.***

(6g) *Where information is to be provided under this Directive to the person causing danger or the protected person, this information should also be provided to the guardian or the representative of the person concerned if they exist. Due attention should also be paid to the need for the protected person, the person causing danger or their representative in the proceedings, to receive information, as provided for by this Directive, in a language they understand.*

(6h) *In the procedures for the issuing and recognition of a European Protection order, competent authorities should give appropriate consideration to the needs of victims, including particularly vulnerable persons, e.g. minors or persons with disabilities. Due attention should also be paid to the need for the protected person or the person causing danger to receive information, as provided for by this Directive, in a language they understand.*

I

(6i) *For the application of this Directive, a protection measure may have been imposed following a judgment, as defined by Article 2 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions¹, or following a decision on supervision measures as defined in Article 4 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention².*

(6j) *In conformity with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with Article 47, paragraph 2, of the Charter on Fundamental Rights of the European Union, the person causing danger should be provided, either in the procedure leading to the adoption of a protection measure or before issuing a European protection order, with the possibility to be heard and to challenge the protection measure.*

(7) *In order to prevent a crime or new crime being committed against the victim in the executing State, that State should be given a legal basis for recognising the decision previously adopted in the issuing State in favour of the victim, while also avoiding the need for the victim to start new proceedings or to produce the evidence in the executing State again as if the issuing State had not adopted the decision. **The recognition of the European protection order by the executing State implies inter alia that the competent authority of that State, subject to the limitations set out in this Directive, accepts the existence and validity of the protection measure adopted in the issuing State, acknowledges the factual situation described in the European protection order, and agrees that protection should be provided and should be continued to be provided in accordance with its national law.***

(8) *This Directive contains a closed number of obligations or prohibitions which, when*

¹ OJ L 337, 16.12.2008, p. 102.

² OJ L 294, 11.11.2009, p. 20.

imposed in the issuing State and contained in the European protection order, should be recognised and enforced in the executing State, subject to the limitations set out in this Directive. Other types of protection measures may exist at national level, such as, if provided by national law, the obligation for the person causing danger to remain in a specified place. Such measures may be imposed in the issuing State in the framework of the procedure leading to the adoption of one of the protection measures which, according to this Directive, may be the basis for a European Protection Order.

- (8a) *Since in the Member States different kind of authorities (civil, criminal or administrative) are competent to issue and enforce protection measures, it seems appropriate to provide a high degree of flexibility in the cooperation mechanism between the Member States under this Directive. Therefore, the competent authority in the executing State does not in all cases have to take the same protection measure as adopted in the issuing State, but it has a degree of discretion to adopt any measure which it finds adequate and appropriate under its national law in a similar case in order to provide continued protection to the protected person in the light of the protection measure adopted in the issuing State and as described in the European protection order.*
- (8b) *The obligations or prohibitions to which this Directive applies include, among others, measures aimed at limiting personal or remote contacts between the protected person and the person causing danger, e.g. by imposing certain modalities of such contacts or imposing restrictions on the contents of communications.*
- (8c) *The competent authority of the executing State should inform the person causing danger, the competent authority of the issuing State and the protected person of any measure taken on the basis of the European protection order. In the notification of the person causing danger due regard should be taken to the interest of the protected person of not having his/her address or other contact details disclosed. Such details should be excluded from the notification, provided that the address or other contact detail is not comprised in the obligation or prohibition imposed as an enforcement measure on the person causing danger.*
- (8d) *When the competent authority in the issuing State has withdrawn the European protection order, the competent authority in the executing State should end the measures which it has adopted in order to enforce the European protection order, it being understood that the competent authority in the executing State may - autonomously, according to its national law - adopt any protection measure under its national law in order to protect the person concerned.*
- (9) Given that this Directive deals with situations in which the protected person moves to another Member State, executing its provisions does not imply any transfer to the executing State of powers relating to principal, suspended, alternative, conditional or secondary penalties, or relating to security measures imposed on the person causing danger, if the latter continues to reside in the State that issued the protection measure.
- (10) *Where appropriate, it should be possible to use electronic means with a view to putting into practice the measures adopted in application of this Directive, in accordance with national laws and procedures.*

- (10a) *In the framework of cooperation among the authorities involved in ensuring the safeguard of the protected person, the competent authority of the executing State should communicate to the competent authority of the issuing State any breach of the measures adopted in the executing State with a view to executing the European protection order. This communication should enable the competent authority of the issuing State to promptly decide on any appropriate reaction with respect to the protection measure imposed in its State on the person causing danger. Such reaction may comprise, where appropriate, the imposition of a custodial measure in substitution of the non-custodial measure originally adopted, e.g. as alternative to preventive detention or as a consequence of conditional suspension of a penalty. It is understood that such decision, since it does not consist in the imposition ex novo of a criminal sanction in relation to a new criminal offence, does not interfere with the possibility that the executing State may, where applicable, impose criminal or non-criminal sanctions in case of breach of the measures adopted in order to execute the European protection order.*
- (10b) *Considering the different legal traditions of the Member States, where no protection measure would be available in the executing State in a case similar to the factual situation described in the European protection order, the competent authority of the executing State should report any breach of the protection measure described in the European protection order of which it is aware to the competent authority of the issuing State.*
- (10c) *In order to achieve the smooth application of this Directive in each particular case, the competent authorities of the issuing and the executing States should exercise their competencies in conformity with the provisions of this Directive, taking into account the principle of ne bis in idem.*
- (10d) *The protected person should not be required to sustain costs for the recognition of the European protection order which are disproportionate with respect to a similar national case. When implementing this Directive, Member States should ensure that, after recognition of the European protection order, the protected person should not be required to initiate further national proceedings to obtain from the executing authority, as a direct consequence of the recognition of the European protection order, the decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person.*
- (10e) *Bearing in mind the principle of mutual recognition on which this Directive is based, Member States should promote to the widest extent possible the direct contact between the competent authorities in the application of this instrument.*
- (10f) *Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States should consider requesting those responsible for the training of judges, prosecutors, police and judicial staff involved in the procedures aiming at issuing or recognizing a European protection order to provide appropriate training with respect to the objectives of this Directive.*
- (10g) *In order to facilitate the evaluation of the application of this Directive, Member States should communicate to the European Commission relevant data related to the*

application of national procedures on the European protection order, at least on the number of European protection orders requested, issued and/or recognized. In this respect, other types of data, such as for example the types of crimes concerned, would also be useful.

- (11) Since the objective of this Directive, namely to protect persons who are in danger, cannot be sufficiently achieved by the Member States acting unilaterally, given the cross-border nature of the situations involved, and could instead, due to the scale and potential effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to in Article 5(3) of the TEU. In accordance with the principle of proportionality, as set out in Article 5(4) of the TEU, this Directive does not go beyond what is necessary to achieve that objective.
- (11a) *This Directive should contribute to the protection of persons who are in danger, thereby complementing but not affecting the instruments already in place in this field, such as Council Framework Decision 2008/947/JHA and Council Framework Decision 2009/829/JHA.*
- (11b) *When a decision relating to a protection measure falls within the scope of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters¹, Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility², or the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children³, the recognition and enforcement of such decision should be carried out in accordance with the provisions of that legal instrument.*
- (11c) *Member States and the Commission should include information about the European protection order, where it is appropriate, in existing education and awareness-raising campaigns on the protection of victims of crime.*
- (11d) *Personal data processed when implementing this Framework Decision should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters⁴ and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.*
- (11e) *This Directive should respect the fundamental rights, as guaranteed by the Charter on Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in conformity with Article 6 of the TEU;*

¹ OJ L 12, 16.1.2001, p. 1.

² OJ L 338, 23.12.2003, p. 1

³ OJ L 12, 16.1.2001, p. 1.

⁴ OJ L 350, 30.12.2008, p. 60.

- (11f) *When implementing this Directive, Member States are encouraged to take into account the rights and principles enshrined in the Convention on the elimination of all forms of discrimination against women (CEDAW),*

HAVE ADOPTED THIS DIRECTIVE:

*Article -1
Objective*

This Directive sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has been issued with a view to protecting a person against a criminal act of another person which may endanger his life, physical or psychological integrity and dignity, personal liberty or sexual integrity, to issue a European protection order enabling a competent authority in another Member State to continue the protection of the person concerned in the territory of this Member State, following the commission in the issuing State of an act which has been or could have been the object of proceedings by a court having jurisdiction in particular in criminal matters.

Article 1
Definitions

For the purposes of this Directive the following definitions shall apply:

- 1) "European protection order" means a **■** decision, *taken* by a *judicial or equivalent authority of a Member State in relation with a protection measure, on the basis of which a judicial or equivalent authority of another Member State takes any* appropriate **■** *measure or measures* under its own national law with a view to *continue* the safeguard of the *protected* person.
- 2) "Protection measure" means a decision adopted *in the issuing State in accordance with its national law and procedures by which one or more of the obligations or prohibitions, referred to in Article 4b, are imposed on a person causing danger to the benefit of a protected person with a view to protecting the latter against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity.*
- 3) "Protected person" means the *natural person who is* the object of the protection stemming from a protection measure adopted by the issuing State.
- 4) "Person causing danger" means the *natural* person on whom one or more of the obligations or prohibitions, referred to in *Article 4b*, have been imposed.
- 5) "Issuing State" means the Member State in which a protection measure has been

adopted, constituting the basis for issuing a European protection order.

- 6) "Executing State" means the Member State to which a European protection order has been forwarded with a view to its recognition.
- 7) "State of supervision" means the Member State to which a judgment, as defined in Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as defined in Article 4 of Framework Decision 2009/829/JHA, has been transferred.



Article 4

Designation of competent authorities

1. Each Member State shall inform the *Commission* which judicial *or equivalent* authority or authorities are competent under its national law to issue a European protection order and to recognise such an order, in accordance with this Directive, when that Member State is the issuing State or the executing State.



3. The *Commission* shall make the information received available to all Member States. *Member States shall inform* the Commission *on any change related to the information referred to in paragraph 1.*

Article 4a

Recourse to a central authority

1. *Each Member State may designate a central authority or, where its legal system so provides, more than one central authority to assist its competent authorities.*

2. *A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of any European protection order, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the central authority(ies) of the Member State concerned.*

3. *Member States wishing to make use of the possibilities referred to in this Article shall communicate to the Commission information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.*

Article 4b

Condition of existence of a protection measure under national law

A European protection order may only be issued when a protection measure has been previously ordered in the issuing State, imposing on the person causing danger one or more of the following obligations or prohibitions:

- (a) a prohibition from entering certain localities, places or defined areas where the protected person resides or that he visits;***
- (b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or***
- (c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.***

Article 5

Issue of a European protection order

1. A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods time for which the protected person envisages to stay in the executing State and the seriousness of the need for protection.

1a. A judicial or equivalent authority of the issuing State may issue a European protection order only at the request of the protected person and after verifying that the protection measure meets all the requirements set out in Article 4.

2. The protected person may submit a request for issuing a European protection order either to the competent authority of the issuing State or to the competent authority of the executing State. If such a request is submitted in the executing State, its competent authority shall transfer this request as soon as possible to the competent authority of the issuing State.

2a. Before issuing an European protection order the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if he has not had these rights in the procedure leading to the adoption of the protection measure.

3. When a competent authority adopts a protection measure containing one or more of the obligations referred to in Article 4b, it shall inform the protected person in any appropriate way in accordance with procedures under its national law about the possibility of requesting a European protection order in case he decides to leave for another Member State, as well as of the basic conditions for such request. The authority shall advise the protected person to submit the application before leaving the territory of the issuing State.

3a. If the protected person has a guardian or representative, that person may introduce the request referred to in paragraph 2 and 3, on behalf of the protected person.

3b. When the request to issue a European protection order is rejected, the issuing authority shall inform the protected person about legal remedies available, where applicable, under its national law against its decision.

Article 6

Form and content of the European protection order

The European protection order shall be *issued* in accordance with the form set out in Annex I to this Directive. It shall in particular contain the following information:

- (a) the identity and nationality of the protected person, as well as the identity and nationality of the person's **guardian or** representative if the protected person is a minor or is legally incapacitated;
- (b) **the date from which the protected person intends to reside or stay in the executing State, and the period or periods of stay, if known;**
- (c) the name, address, telephone and fax numbers, and e-mail address of the competent authority of the issuing State;
- (d) the identification (*e.g. through a number and date*) of the **legal act containing the** protection measure on the basis of which the European protection order is adopted;
- (e) a summary of the facts and circumstances which have led to the imposition of the protection measure in the issuing State;
- (f) the obligations or prohibitions imposed in the protection measure underlying the European protection order on the person causing danger, their length and the **indication of the penalty or sanction, if any, in case of the breach of the respective obligation or prohibition;**
- (fa) **the use of a technical device, if any, that has been provided to the protected person or to the person causing danger as a means to enforce the protection measure;**
- (g) the identity and nationality of the person causing **danger, as well as his contact details;**
- (ga) **where such information is known by the issuing authority without requiring further inquiry, the fact whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State.**
- (h) where appropriate, other circumstances that could have an influence on the assessment of the danger that confronts the protected person;
- (i) the express indication, where applicable, that a judgement, as defined by Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as

defined by Article 4 of Council Framework Decision 2009/829/JHA, has already been transferred to *the State of supervision* and the identification of the competent authority of *that State* for the enforcement of such a judgment or decision.

Article 7

Transmission procedure

1. Where the competent authority of the issuing State transmits the European protection order to the competent authority of the executing State, it shall do so by any means which leaves a written record so as to allow the competent authority of the executing Member State to establish its authenticity. ***All official communication shall also be made directly between the said competent authorities.***
2. If the competent authority of either the executing or the issuing State is not known to the competent authority of the other State, the latter authority shall make all the relevant enquiries, including via the contact points of the European Judicial Network ***referred to in Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network***¹, the National Member of Eurojust or the National System for the coordination of Eurojust of its State, in order to obtain the required information.
3. When an authority of the executing State which receives a European protection order has no competence to recognise it, that authority shall, ex officio, forward the European protection order to the competent authority ***and shall without delay inform the competent authority of the issuing State accordingly by any means which leaves a written record.***

Article 8

Measures in the executing State

1. ***Upon receipt of a European protection order transmitted in accordance with Article 7, the competent authority of the executing State shall without undue delay recognise that order and take a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person, unless it decides to invoke one of the grounds for non-recognition referred to in Article 9.***
 - 1a. ***The measure adopted by the competent authority of the executing State in accordance with paragraph 1, as well as any other measure taken on the basis of a subsequent decision referred to in Article 9a, shall correspond, to the highest degree possible, to the protection measure ordered in the issuing State.***
2. The competent authority of the executing State shall inform the ***person causing danger***, the competent authority of the issuing State and the protected person ***of any measures taken in application of paragraph 1, as well as of the possible legal consequence of a breach of such measure, as provided under national law and in accordance with Article 9a (2). The address***

¹ ***OJ L 348, 24.12.2008, p. 130.***

or other contact details of the protected person shall not be disclosed to the person causing danger unless necessary in view of the enforcement of the measure adopted in application of paragraph 1.

2a. If the competent authority in the executing State considers that the information transmitted with the European protection order according to Article 6 is incomplete, it shall without delay inform the issuing authority by any means which leaves a written record, assigning a reasonable term for the issuing authority to provide the missing information.

Article 9

Grounds for non-recognition of a European protection order

1.

2. The competent authority of the executing State may refuse to recognise a European protection order in the following circumstances :

- (a) the European protection order is not complete or has not been completed within the time-limit set by the competent authority of the executing State;
- (b) the requirements set out in *Article 4* have not been met.
- (c) the protection *measure relates to an act that does not constitute a criminal offence under the law of the executing State.*
- (ca) *the protection* derives from the execution of a penalty or measure that is covered by amnesty according to the law of the executing State and relates to an act *or behaviour* which falls within its competence according to that law;
- (d) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt **■** measures *on the basis of a European protection order*;
- (f) *criminal prosecution against the person causing danger for the act or behaviour in relation to which the protection measure has been adopted is statute-barred under the law of the executing State, when the act or behaviour falls within its competence under its national law*;
- (g) *recognition of the European protection order would contravene the ne bis in idem principle*;
- (h) *under the law of the executing State, the person causing danger cannot, because of his age, be held criminally responsible for the act or behaviour in relation to which the protection measure has been adopted.*
- (i) *the protection measure relates to a criminal offence which under the law of the executing State is regarded as having been committed wholly or for a major or essential part within its territory.*

3. *Where the competent authority of the executing State refuses to recognize a European protection order in application of one of the above grounds, it shall :*

- (a) inform the issuing State and the protected person without undue delay of this refusal and of its motivation ;*
- (b) where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure according to its national law ;*
- c) where applicable, inform the protected person about legal remedies available under its national law against its decision.*

Article 9a

Governing law and competence in the executing State

1. *The executing State has competence to adopt and to enforce measures in that State following the recognition of a European protection order. The law of the executing State applies to the adoption and enforcement of the decision foreseen in Article 8 paragraph 1, including rules on legal remedies against decisions adopted in the executing State relating to the European protection order.*

2. *In case of a breach of one or more of the measures taken by the executing State following the recognition of a European protection order, the competent authority of the executing State has, in application of paragraph 1, the competences to:*

- a) impose criminal sanctions and take any other measure as consequence of the breach of such measure, if this amounts to a criminal offence under the law of the executing State;*
- b) take any non-criminal decisions related to the breach;*
- c) take any urgent and provisional measure in order to put an end to the breach, pending, where appropriate, a subsequent decision by the issuing State.*

3. *If there is no available measure at national level in a similar case to be taken in the executing State, the competent authority of the executing State shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware.*

Article 9b

Notification in case of breach

The competent authority of the executing State shall notify the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order. Notice shall be given using the standard form set out in Annex II.

Article 10
Competence in the issuing State

1. The competent authority of the issuing State shall have *exclusive competence to take decisions relating to*:

- (a) the renewal, review, *modification, revocation* and withdrawal of the protection measure *and, consequently, of the European protection order*;
- (b) *the imposition of a custodial measure as a consequence of revoking the protection measure, provided that the protection measure has been applied on the basis of a judgement, as defined by Article 2 of Council Framework Decision 2008/947/JHA, or on the basis of a decision on supervision measures, as defined in Article 4 of Council Framework Decision 2009/829/JHA;*

■

2. The law of the issuing State shall apply to decisions taken pursuant to paragraph 1.

3. Where a judgment, as defined in Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as defined in Article 4 of Council Framework Decision 2009/829/JHA, has already been transferred, *or is transferred after the issuing of the European protection order*, to another Member State, subsequent decisions shall be taken in accordance with the relevant provisions of those Framework Decisions.

3a. The competent authority of the issuing Member State shall inform without delay the competent authority of the executing Member State of any decision taken in accordance with paragraph 1.

3b. If the competent authority in the issuing State has revoked or withdrawn the European protection order in accordance with paragraph 1(a), the competent authority in the executing State shall end the measures adopted in accordance with Article 8(1) as soon as it has been duly notified by the competent authority of the issuing State.

3c. If the competent authority in the issuing State has modified the European protection order in accordance with paragraph 1(a), the competent authority in the executing State shall, as appropriate

- (a) *change the measures taken on the basis of the European protection order, acting in accordance with Article 8; or*
- (b) *refuse to enforce the modified obligation or prohibition when it does not fall within the types of obligations or prohibitions referred to in Article 4b or if the information transmitted with the European protection order according to Article 6 is incomplete and has not been completed within the time-limit set by the competent authority of the executing State according to Article 8(3).*

Article 11

Grounds for *discontinuation of measures taken on the basis* of a European protection order

1. The competent authority of the executing State may *discontinue the measures taken in execution of a European protection order*:
 - (a) *where there is clear indication that the protected person does not reside or stay in the territory of the executing State, or has definitively left that territory;*
 - (b) *when, according to its national law, the maximum term of duration of the measures adopted in execution of the European protection order has expired;*
 - (c) *in the case referred to in Article 10(6)(b).*
 - (d) *where a judgment, as defined in Article 2 of Council Framework Decision 20008/947/JHA, or a decision on supervision measures, as defined in Article 4 of Council Framework Decision 2009/828/JHA, is transferred to the executing State after the recognition of the European protection order.*
- 1a. The competent authority of the executing State shall immediately inform the competent authority of the issuing State and where possible, the protected person of such decision.*
- 1b. Before discontinuing measures in accordance with paragraph 1(b) the competent authority of the executing State may invite the competent authority of the issuing State to provide information as to whether the protection provided for by the European protection order is still needed in the circumstances of the particular case at hand. The competent authority of the issuing State shall, without delay, reply to such an invitation.*

Article 11a

Priority in recognition of a European protection order

The European protection order shall be recognized with the same priority which would be applicable in a similar national case, taking into consideration the specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.



Article 15

Consultations between competent authorities

Where appropriate, the competent authorities of the issuing State and of the executing State may consult each other in order to facilitate the smooth and efficient application of this Directive.

Article 16
Languages

1. The European protection order shall be translated *by the competent authority of the issuing State* into the official language or one of the official languages of the executing State.
2. *The form referred to in Article 9b shall be translated by the competent authority of the executing State into the official language or one of the official languages of the issuing State.*
3. Any Member State may, either when this Directive is adopted or at a later date, state in a declaration deposited with the **Commission** that it will accept a translation in one or more other official languages of the institutions of the Union.

Article 17
Costs

Costs resulting from the application of this Directive shall be borne by the executing State, *in accordance with its national law*, except for costs arising exclusively within the territory of the issuing State.

Article 18
Relation to other agreements and arrangements

1. Member States may continue to apply bilateral or multilateral agreements or arrangements which are in force upon the entry into force of this Directive, insofar as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate further the procedures for taking protection measures.
2. Member States may conclude bilateral or multilateral agreements or arrangements after the entry into force of this Directive, insofar as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate the procedures for taking protection measures.
3. By ...*, Member States shall notify the **Commission** of the existing agreements and arrangements referred to in paragraph 1 which they wish to continue applying. Member States shall also notify the **Commission** of any new agreements and arrangements as referred to in paragraph 2, within three months of signing such an agreement.

Article 18a
Relationship with other instruments

* OJ: please insert date 3 months after the entry into force of this Directive

1. *This Directive shall not affect the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters¹, nor of Council Regulation (EC) No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children, repealing Regulation (EC) No 1347/2000², nor of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, nor of the 1980 Hague Convention on the Civil Aspects of International Child Abduction.*

2. *This Directive shall not affect the application of Council Framework Decision 2008/947/JHA and Council Framework Decision 2009/829/JHA.*

Article 19 Implementation

1. Member States shall *bring into force the laws, regulations and administrative provisions* to comply with **■** this Directive by ...*. *They shall forthwith inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.*

2. Member States shall *communicate* to the Commission the text of the *main* provisions of national law *which they adopt in the field covered by* this Directive.

Article 19a Data collection

Member States shall, in order to facilitate the evaluation of the application of this Directive, communicate to the European Commission relevant data related to the application of national procedures on the European protection order, at least on the number of European protection orders requested, issued and/or recognised.

Article 20 Review

By*, the Commission shall *submit* a report *to the European Parliament and to* the Council *on* the application of this Directive. The report shall be accompanied, if necessary, by legislative

¹ *OJ L 12, 16.1.2001, p. 1.*

² *OJ L 338, 23.12.2003, p. 1.*

* OJ: please insert date **3 years** after the entry into force of this Directive.

* OJ: please insert date **4 years** after the entry into force of this Directive.

proposals.

Article 21
Entry into force

This Directive shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.

Done at █ ,

For the European Parliament

For the Council

The President

The President

ANNEX I

EUROPEAN PROTECTION ORDER

referred to in Article 6 of

**DIRECTIVE 2010/.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
OF... ON THE EUROPEAN PROTECTION ORDER***

The information contained in this form is to be treated with appropriate confidentiality

Issuing State :
Executing State:
(a) Information regarding the protected person: Surname: Forename(s): Maiden <i>or previous</i> name, where applicable: Sex: Nationality: Identity number or social security number (if any): Date of birth: Place of birth: Addresses/residences: – in the issuing State: – in the executing State: – elsewhere: Language(s) understood (if known):

* OJ: please insert the number and date of this Directive.

If information is available without further enquiry, has the protected person been granted free legal aid in the issuing State?

- Yes.
- No.
- Unknown.***

Where the protected person is a minor or is legally incapacitated, information regarding the natural person's ***guardian or*** representative :

Surname:

Forename(s):

Maiden ***or previous*** name, where applicable:

Sex:

Nationality:

Office address:

(aa) ***The protected person has decided to reside or already resides in the executing Member State, or has decided to stay or already stays in the executing Member State.***

Date from which the protected person intends to reside or stay in the executing State (if known):

Period(s) of stay (if known):

(b) Have any ***technical devices*** been provided to the protected person ***or to the person causing danger to enforce*** the protection measure :

- Yes; please give a short summary of the instruments used:
- No.

(c) Competent authority which issued the European protection order:

Official name:

Full address:

Tel. no.: (country code) (area/city code) (number)

Fax no.: (country code) (area/city code) (number)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. no.: (country code) (area/city code) (number)

Fax no.: (country code) (area/city code) (number)

E-mail (if any):

Languages that may be used for communication:

(d) Identification of the protection measure on the basis of which the European protection order has been issued:

The protection measure was issued on (date: DD-MM-YYYY):

The protection measure became enforceable on (date: DD-MM-YYYY):

File reference of the protection measure (if available):

Authority that adopted the protection measure:

(e) Summary of the facts and description of the circumstances, *including, where applicable, the classification of the offence*, which have led to the imposition of the protection measure mentioned under (d) above:

- (f) Indications regarding the obligation(s) or prohibition(s) that have been imposed by the protection measure on the person causing danger:
- Nature of the obligation(s): (you can tick more than one box):
 - a prohibition from entering certain localities, places or defined areas where the protected person resides or that he visits;***
 - if you ticked this box, please indicate precisely which localities, places or defined areas the person causing danger is prohibited from entering:
 - a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;***
 - if you ticked this box, please provide any relevant details:
 - a prohibition or regulation on approaching*** the protected person closer than a prescribed distance;
 - if you ticked this box, please indicate precisely the distance which the person causing danger has to observe in respect of the protected person:
 - Please indicate the length of time during which the abovementioned obligation(s) are imposed on the person causing danger:
 - Indication of the penalty or ***sanction (if any) in case of the breach of the prohibition:***

(g) Information regarding the person causing danger on whom the obligation(s) mentioned under (f) have been imposed:

Surname:

Forename(s):

Maiden *or previous* name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

- in the issuing State:
- in the executing State:
- elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

- Type and number of the identity document(s) of the person (ID card, passport):

If information is available without further enquiry, has the person causing danger been granted free legal aid in the issuing State?

- Yes.
- No.
- Unknown.***

(h) Other circumstances that could have an influence on the assessment of the danger that could affect the protected person (optional information):

(ha) *Other useful information (such as, where available and necessary, information on other States where protection measures have been previously taken with respect to the same protected person):*

(i) Please tick the box where appropriate and complete:

a judgment, as defined by Article 2 of Council Framework Decision 2008/947/JHA, has already been transmitted to another Member State

– If you ticked this box, please provide the contact details of the competent authority to whom the judgment has been forwarded:

a decision on supervision measures, as defined by Article 4 of Council Framework Decision 2009/829/JHA has already been transmitted to another Member State

– If you ticked this box, please provide the contact details of the competent authority to whom the decision on supervision measures has been forwarded:

Signature of the authority issuing the European protection order and/or of its representative to confirm the accuracy of the content of the order:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

ANNEX II

FORM

referred to in Article **9b** of

**DIRECTIVE 2010/.../EU OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL OF... ON THE EUROPEAN PROTECTION ORDER***

NOTIFICATION OF A BREACH OF THE PROTECTION MEASURE TAKEN ON THE
BASIS OF THE EUROPEAN PROTECTION ORDER

The information contained in this form is to be treated with appropriate confidentiality

(a) Details of the identity of the person causing danger

Surname:

Forename(s):

Maiden *or previous* name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

* OJ: please insert the number and date of this Directive.

(b) Details of the identity of the protected person:

Surname:

Forename(s):

Maiden *or previous* name, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(c) Details of the European protection order:

Order issued on:

File reference (if any):

Authority which issued the order:

Official name:

Address:

(d) Details of the authority responsible for the execution of the protection measure, if any, which was taken in the executing State in line with the European protection order:

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel.: (country code) (area code) (number)

Fax: (country code) (area code) (number)

E-mail:

Languages that may be used for communication:

- (e) Breach of the obligation(s) *imposed by the competent authorities of the executing Member State following recognition* the European protection order and/or other findings which could result in taking any subsequent decision:

The breach concerns the following obligation(s) (you can tick more than one box):

- a prohibition from entering certain localities, places or defined areas where the protected person resides or that he visits;*
- a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;*
- a prohibition or regulation on approaching* the protected person closer than a prescribed distance;
- any other measure, corresponding to the protection measure at the basis of the European protection order, taken by the competent authorities of the executing Member State following recognition of the European protection order*

Description of the breach(es) (place, date and specific circumstances):

In accordance with Article 9a (2):

- measures taken in the executing State as a consequence of the breach:

- possible legal consequence of the breach in the executing State:

Other findings which could result in taking any subsequent decision

Description of the findings:

- (f) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. no.: (country code) (area/city code) (number)

Fax no.: (country code) (area/city code) (number)

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

EXPLANATORY STATEMENT

The proposal for a directive on the European protection order, submitted by 12 Member States, is an initiative aimed at preventing crime. Even when Member States have provided for protection orders for victims, the resulting enforcement measures stop at the border of the issuing State. Victims, however, may move from one Member State to another for many reasons, not least to escape crime. Because they move in this way they are defenceless when judicial and law enforcement cooperation fails to protect them by implementing a rapid, effective Europe-wide early-warning and prevention mechanism. Setting up a cooperation arrangement along these lines is the aim that has given rise to this initiative. The action taken by Member States shows that crime can be prevented at European level when the aggressor or aggressors are identified.

The Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and Council Directive 2004/80/EC of 29 April 2009 relating to compensation to crime victims are based on the Council of Europe recommendation of 28 June 2005 on the position of the victim in the framework of criminal law and procedure, but they do not cover crime prevention, the case concerned here.

The Stockholm Programme and the related Action Plan set out the need to address the situation of victims, combat violence, and facilitate access to justice in the European judicial area, particularly in cross-border proceedings (Stockholm Programme, point 3.4.1). The communication on the Action Plan Implementing the Stockholm Programme (COM(2010)0171)¹ points out that the differences in guarantees provided to victims of crime should be analysed and reduced with a view to increasing protection by all means available, and in this context it is proposed to adopt a legislative proposal on a comprehensive instrument on the protection of victims and an action plan on practical measures, including developing a European protection order.

In keeping with the procedures resulting from implementation of the Treaty of Lisbon, Rule 51 of Parliament's Rules of Procedure allows reports to be drawn up on a cross-cutting basis. This report has benefited from input from the discussions in the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality as well as from the collaboration between the two rapporteurs.

The European Council presented its first proposal for a directive for a European protection order for victims on 5 January 2010. Since then the proposal has been modified and revised many times by the Council. Much of the content and the construction of the legal basis of the Council's proposal were based on a questionnaire which was answered in October 2009 by 20 EU Member States.

This report and the suggested amendments from both rapporteurs are based on the Council's version of 22 January.

The Council defines victim protection as activating appropriate mechanisms to prevent a repeat offence or a different, perhaps more serious, offence by the same offender against the

same victim. These protection measures are applicable only in the territory where the measures were laid down by a legal authority. A mechanism to extend these protection measures to another Member State is what the Council is aiming for. Or in other words, it wants to avoid the situation in which a victim would have to restart the whole legal process of gaining protection measures when moving to another Member State.

The rapporteurs' view

The rapporteurs largely agree with the Council's proposal. Taking into account the Stockholm Action Plan, the initiative of the European Union to maintain and develop an area of freedom, security and justice, which was approved by the European Council at its meeting on 10 and 11 December, this directive is the first of many coming initiatives to reach these goals. Victims of violence should not only be prevented in their country from being harmed by offenders, but also within the whole of the European Union they should have these kinds of preventive measures. For those reasons the rapporteurs support the overall concept of the protection order.

The scope of the initiative is deliberately wide. Although most of the protection orders in force concern women victims of gender violence, any other victim – that is to say, a child or adult of either sex – who had suffered violence at the hands of an identified aggressor could be covered. In this context the Stockholm Programme states that victims of crime, including terrorism, who are most vulnerable or who find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents, are in need of special support and legal protection. A European protection order should therefore be applicable to all *victims of crime*, such as victims of human trafficking, victims of female genital mutilations, forced marriages, honour killings, incest, gender violence, witnesses, victims of terrorism and victims of organised crime, regardless of the age or sex of the victim, where there is an identified aggressor. If the victim is too young for an order to be issued, he or she needs the assistance and approval of a tutor or legal representative.

The amendments proposed to the directive improve the text by

- improving the arrangements for revoking a European protection order,
- ensuring continuity of legal protection,
- limiting the reasons for refusal to recognise, or rejection of, a European protection order,
- laying down a 20-day deadline for execution of an order,
- clarifying the position as regards victims moving from one Member State to another.

However, the rapporteurs are aware of the complexity of the initiative and of the challenges that the directive might face in the future. The fact that the judicial systems of Member States are different and that the proceedings may be criminal, civil or administrative needs to be overcome.

The intention of the rapporteurs is to ensure the best protection possible of the victims by *inter alia* ensuring the necessary legal certainty. The victims should benefit from clear

procedures and always be informed about the measures that are available in both the issuing State and the States where they intend to move or have already moved. In addition, the grounds for refusal should be as restrictive as possible and the victim should be clearly informed about the reasons that have led to a refusal.

Furthermore, protection of victims does not mean just physical protection. Also the dignity of victims needs to be taken in account when we speak of victim protection. As mentioned in the Council Framework Decision on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA, ‘any action of the Union in this field must respect fundamental rights and observe the principles recognized in particular by the Charter of Fundamental Rights of the European Union (EU Charter) and the Convention for the Protection of Human Rights and Fundamental Freedoms (EHCR), notably human dignity’. It is also mentioned that every provision aimed at supporting victims in the concrete exercise of their rights in criminal proceedings, such as assistance measures, psychological assistance and legal counselling, should empower them and contribute to strengthening respect for their dignity. The rapporteurs consider it imperative to include protection for victims that aims to restore their dignity and the respect due to them as human beings, whenever they have decided to move to another country or are already living in another Member State.

The directive protects victims who have been mistreated by one single person. Reality, however, shows that more than one person could threaten or harm another person. If a judicial court is prosecuting a group of people and protective measures have been imposed, the European protection order, if it has been issued, should also cover protection against violence committed by a group of people.

This initiative from a group of Member States fails to provide for moral assistance, which should be included in the directive. Victims who have been morally damaged through violence of any kind whatsoever need to be provided with the right information and assistance on how they can start a new life while not losing the protection measures which have been imposed, even before they have the idea of moving to another Member State. Throughout the process this assistance should be considered.

This report is the result of two rapporteurs working to ensure that the European protection order is a strong instrument in providing a safer haven for victims of violence across Member States’ borders.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Juan Fernando López Aguilar,
Chair
Committee on Civil Liberties, Justice and Home Affairs
BRUSSELS
and
Ms Eva-Britt Svensson
Chair
Committee on Women's Rights and Gender Equality
BRUSSELS

Subject: Opinion on the legal basis for the Initiative for a Directive of the European Parliament and of the Council on the European Protection Order (00002/2010 – C7-0006/2010 – 2010/0802(COD))

Dear Colleagues,

The proposal for a European protection order is based on a joint initiative of twelve EU Member States¹ for a directive, presented in January 2010². The aim of the directive is to facilitate and enhance the protection granted to victims of crime, or possible victims of crime, who move between EU Member States, in particular crimes which may endanger the victims' life, physical, psychological and sexual integrity or their personal liberty. The ultimate goal is to avoid new acts of crime and to mitigate the consequences of previous acts of crime.

The legal basis proposed for the draft directive is Article 82(1)(d) TFEU, relating to judicial cooperation in criminal matters.

By letter of 7 October 2010, you asked the Legal Affairs Committee to give its opinion on the legal basis of the proposal. It appears that, following an orientation vote held with a view to negotiations with the Council at a joint meeting of your committees pursuant to Rule 51 of the Rules of Procedure, an amendment was adopted to introduce Article 82(1)(a) TFEU, relating to recognition of judgments and judicial decisions, as an additional legal basis.

I. Background

The Lisbon Treaty did away with the former pillar system and now virtually all legislation coming within what is now the Area of Freedom, Security and Justice, including Article 82 TFEU on cooperation in criminal matters in Chapter 4 of Title V, has to be adopted under the

¹ The Member States concerned are Belgium, Bulgaria, Estonia, Spain, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden.

² See document PE-CONS 2/10 of 22 January 2010.

ordinary legislative procedure.

In this field there remains a limited exception to the general rule that the Commission has the sole right to initiate legislation, namely under Article 76 TFEU, which provides that a quarter of the Member States may initiate legislation in the field of judicial cooperation in criminal matters and police cooperation (and in the field of administrative cooperation relating thereto).

The Council presented its first proposal for a directive for a European protection order for victims on 5 January 2010¹. Since then the proposal has been modified and revised many times by the Council. Much of the content and the construction of the legal basis of the Council's proposal were based on a questionnaire which was answered in October 2009 by 20 EU Member States².

The initiative seeks to create a European Protection Order for victims of violence whereby protective measures adopted in one Member State can be recognised, administered and enforced by the courts of a second Member State. Such a system would obviate any need for a protected person to take parallel proceedings in a Member State to which that person (the victim) moves or has moved.

The rationale of the proposal is that victims of crime not only have a right to respect, to compensation for the damage caused to them and to see the perpetrator punished on the basis of a fair trial fully guaranteeing the rights of all parties, but are also entitled to be protected from being victims of another offence, particularly by the same person.

Accordingly, there should be appropriate mechanisms designed to prevent a repeat offence or a different, perhaps more serious offence, by the same offender against the same victim. Such repeat offences are particularly frequent in the case of gender-based violence, although they also occur in other forms of crime such as human trafficking or sexual exploitation of minors.

All the Member States provide for measures to protect victims' lives, physical, mental and sexual integrity and freedom, but at present such measures are effective only on the territory of the State which adopted them and they leave victims unprotected when they cross borders. The protection which a Member State affords to crime victims should therefore not be confined to its territory but should apply to victims wherever they go in the EU.

On the basis of the figures available, purely for gender-based offences, it would seem that over 100 000 women residing in the EU are covered by protective measures of various kinds adopted by Member States in response to gender-based violence. These figures do not take account victims of human trafficking and other offences.

Given the ease with which perpetrators of crime can move within the EU, it would seem only right and proper that it should be possible to enable the scope of protective measures adopted in one Member State to be extended so as to protect a victim who wishes to exercise her right of free movement. Failing such action, victims would face a stark choice between forgoing their right of free movement as Union citizens or forgoing their right to protection. This is

¹ See document 17513/09 of 5 January 2010.

² See document 5002/10 of 6 January 2010.

unacceptable.

Parliament has repeatedly called on the Member States to review the administration of legal procedures and take action to remove barriers which prevent women from obtaining legal protection.¹

It is further pointed out that the EU legislator has not been inactive in the sphere of victim protection. There is the Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings in order to deal with the issue of victims' procedural rights² and Council Directive 2004/80/EC relating to compensation to crime victims³.

Indeed victim protection is one of the main objectives of the European Union in the area of freedom, security and justice and the Stockholm Programme to strengthen freedom, security and justice in the EU as approved by the European Council at its meeting on 10 and 11 December 2009 states that victims of crime or witnesses who are at risk should be offered special protection measures effective within the Union.

On 17 February 2010, the Council's Legal Service delivered an opinion⁴, at the Council's request, in which it concludes that Article 82(1)(d) TFEU can be relied upon as legal basis for the draft Directive, but that in order to give the initiative its due as an instrument of recognition of judicial decisions, it would be appropriate to refer also to also 82(1)(a) TFEU.

II. The position of the competent committees

At the above-mentioned joint meeting of 29 September 2010 of the Committee on Women's Rights and Gender Equality and the Committee on Civil Liberties, Justice and Home Affairs, a large number of amendments to the proposed directive were adopted following an orientation vote to establish the rapporteurs' mandate for negotiating with the Council with a view to reaching a compromise in first reading.

Amendment 1 of the amendments in question would add Article 82(1)(a) TFEU, concerning the recognition of all forms of judgments and judicial decisions as an additional legal basis. Clearly this refers to judgments and judicial decisions in criminal matters.

At the same time, other amendments (Amendments 18 and 84) were adopted which explicitly state that the proposed directive will not affect the application of, nor amend or replace, existing mutual recognition instruments in civil matters.

In the explanatory memorandum to the draft report of 20 May 2010 the rapporteurs state that they "largely agree with the Council's proposal", while emphasising that the scope of the initiative is deliberately wide and that a European protection order "should be applicable to all victims of crime, such as victims of human trafficking, victims of female genital mutilations,

¹ See Parliament's resolution of 16 September 1997 on the need to establish a European Union-wide campaign for zero tolerance of violence against women (OJ C 304, 6.10.1997, p. 55). See also its resolution of 2 February 2006 on the current situation in combating violence against women and any future action (OJ C 288 E, 25.11.2006, p. 66).

² OJ L 82, 22.03.2001, p.1.

³ OJ L 261, 06.08.2004, p.15.

⁴ See Council document 6516/10 of 17 February 2010.

forced marriages, honour killings, incest, gender violence, witnesses, victims of terrorism and victims of organised crime, regardless of the age or sex of the victim, where there is an identified aggressor". It is further stated that the proposed amendments aim at improving the proposed text by "ensuring continuity of legal protection" and "limiting the reasons for refusal to recognise, or rejection of, a European protection order".

III. The proposed legal basis

The legal basis put forward for the proposed directive is Article 82(1) point (d) of the TFEU. The competent committees propose adding point (a) of the same article to the legal basis.

*Article 82 TFEU*¹ (ex Article 31 TEU)

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

- (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;*
- (b) prevent and settle conflicts of jurisdiction between Member States;*
- (c) support the training of the judiciary and judicial staff;*
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.*

2. ...

3. ...

IV. Analysis of aim and content

As the Court of Justice has confirmed,² the choice of the legal basis for a measure must rest on objective factors which are amenable to judicial review, including, in particular, the aim and the content of the measure.

Given the scope of the question which has to be answered, it is necessary to approach this question by analysing how the European Protection Order is intended to work.

What is a European Protection Order?

¹ Emphasis supplied.

² Judgment of 3 September 2009 in Case C-166/07 *Parliament v. Council*, not yet reported in the ECR.

A European Protection Order (hereinafter “EPO”) is a judicial decision relating to a protection measure issued by a Member State and aiming at facilitating the taking by another Member State, where appropriate, of a protection measure under its own national law with a view to safeguarding the life, physical and psychological integrity, freedom or sexual integrity of a person¹.

Consequently, an EPO may be issued only where the issuing State has already issued a protection measure.

A protection measure is a decision adopted by a competent authority of a Member State imposing on a person causing danger one or more of the obligations or prohibitions referred to in Article 2(2), provided that the infringement of such obligations or prohibitions constitutes a criminal offence under the law of the Member State concerned or may otherwise be punishable by a deprivation of liberty in that Member State.

The prohibitions and obligations set out in Article 2(2) are as follows:

- (a) an obligation not to enter certain localities, places or defined areas where the protected person resides or that he visits;
- (b) an obligation to remain in a specified place, where applicable during specified times;
- (c) an obligation containing limitations on leaving the territory of the issuing State;
- (d) an obligation to avoid contact with the protected person; or
- (e) a prohibition on approaching the protected person closer than a prescribed distance.

Issue of an EPO

An EPO may be issued at any moment when the protected person intends to leave or has left the issuing State for another Member State. The issue of an EPO is conditional upon the prior adoption of a protection measure in the issuing State.

An EPO may be issued only by a judicial or other competent authority² of the issuing State at the request of the protected person. (The protected person may make the request to the competent authority of the executing State, but that authority will then have to forward the request to the competent authority of the issuing State.)

Authorities adopting a protection measure within the meaning of the directive are under a duty to inform the protected person about the availability of an EPO should that person intend to move to another Member State. They are also under a duty to advise that person to apply for an EPO before they go.

¹ Article 1 of the proposed directive.

² Under Article 4, Member States have to notify the General Secretariat of the Council of their authority or authorities competent to issue and recognise EPOs. Member States may designate non-judicial authorities as competent authorities, provided that such authorities have the competence to take decisions of a similar nature under their national law and procedures.

Form of the EPO

A standard form is annexed to the proposed directive. It has to contain information as to the identity and nationality of the protected person¹; the use of any technological instruments provided to the protected person; particulars of the competent authority of the issuing State; the identification of the protection measure on the basis of which the EPO is adopted; a summary of the facts and circumstances which led to the imposition of the protection measure; the obligations or prohibitions imposed by the protection measure, their length and the express indication that their infringement constitutes a criminal offence under the law of the issuing State or may otherwise be punishable by a deprivation of liberty; the identification of the person causing a danger; any other circumstances that could have an influence on the assessment of the danger, and, where appropriate, the express indication that a judgment, as defined by Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as defined by Article 4 of Council Framework Decision 2009/829/JHA, has already been transferred to another Member State and the identification of the competent authority for the enforcement of such a judgment or decision.

Does the executing State have to recognise an EPO?

Article 3 makes it obligatory for Member States to recognise an EPO made in accordance with the directive and it should be noted that the second paragraph of Article 3 provides that the “*directive shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU.*”

However, under Article 9, a Member State may give a reasoned refusal to recognise an EPO. The permitted grounds for refusal are:

- (a) the EPO is not complete or has not been completed within the time-limit set by the competent authority of the executing State;
- (b) the requirements set out in Article 2(2)² have not been met;
- (c) the protection derives from the execution of a penalty or measure that is covered by amnesty according to the law of the executing State and relates to an act which falls within its competence according to that law;
- (d) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt the protection measures.

What happens in the executing State?

Under Article 8 of the proposed directive, the competent authority in the executing State has to

- (a) recognise the EPO and take all measures that would be available under its national law in a

¹ And of that person’s legal representative if the protected person is a minor or lacks legal capacity.

² See above.

similar case in order to ensure the protection of the protected person (unless it decides to invoke one of the grounds for non-recognition);

(b) inform the person causing danger of any measure which it takes;

(c) take any urgent and provisional measure needed in order to ensure the continued protection of the protected person; and

(d) immediately notify the competent authority of the issuing State of any breach of the protection measure underlying the EPO (using a standard form).

The competent authority of the executing State has to inform the competent authority of the issuing State and the protected person about the measures which it adopts.

Action subsequent to the issue of an EPO

Only the issuing State may renew, review, withdraw or modify the protection measure, issue an arrest warrant, etc. or initiate any new criminal proceedings against the person causing the danger, which it is to do under its law (Article 10).

The executing State may revoke the recognition of an EPO only where there is evidence that the protected person has definitively left its territory (Article 11).

Decisions made by the competent authority of the executing State under the directive are to be governed by its national law (Article 13).

V. Conclusion

Given the nature of the proposed European Protection Order as it appears from the foregoing analysis, it is entirely appropriate to add to the legal basis of Article 82(1)(d), which aims at facilitating cooperation between national judicial or equivalent authorities in relation to criminal proceedings and the enforcement of decisions, Article 82(1)(a), which deals with rules and procedures for ensuring "recognition of all forms of judgments and judicial decisions".

Consequently, it is considered that Article 82(1)(d) TFEU can be relied upon as legal basis for the draft Directive, but that in order to give the initiative its due weight as an instrument of recognition of judicial decisions, it would be appropriate to refer also to Article 82(1)(a) TFEU.

VI. Recommendation

The committee considered the above question at its meeting of 28 October 2010.

At its meeting of 28 October 2010 the Committee on Legal Affairs accordingly decided,

unanimously¹, to recommend you as follows: the proposed Directive should be adopted on the basis of Article 82(1)(a) and (d) TFEU.

Yours sincerely,

Klaus-Heiner Lehne

¹ The following were present for the final vote: Raffaele Baldassarre (acting Chair), Sebastian Valentin Bodu (Vice-Chair), Eva Lichtenberger (rapporteur), Françoise Castex, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Daniel Hannan, Kurt Lechner, Bernhard Rapkay, Diana Wallis, Cecilia Wikström and Tadeusz Zwiefka.

PROCEDURE

Title	European Protection Order			
References	00002/2010 – C7-0006/2010 – 2010/0802(COD)			
Committee responsible Date announced in plenary	LIBE-FEMM (Joint Committee meetings - Rule 51) 27.1.2010			
Committee(s) asked for opinion(s) Date announced in plenary				
Rapporteur(s) Date appointed	Carmen Romero López 2.3.2010	Teresa Jiménez- Becerril Barrio 2.3.2010		
Legal basis disputed Date of JURI opinion	JURI 28.10.2010			
Discussed in committee	3.5.2010 29.9.2010	1.6.2010 25.11.2010	22.6.2010	2.9.2010
Date adopted	29.11.2010			
Result of final vote	+: -: 0:	47 0 5		
Members present for the final vote	Jan Philipp Albrecht, Regina Bastos, Emine Bozkurt, Simon Busuttill, Andrea Češková, Carlos Coelho, Marije Cornelissen, Silvia Costa, Tadeusz Cymański, Cornelia Ernst, Edite Estrela, Iratxe García Pérez, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Philippe Juvin, Juan Fernando López Aguilar, Astrid Lulling, Claude Moraes, Elisabeth Morin-Chartier, Georgios Papanikolaou, Carmen Romero López, Raúl Romeva i Rueda, Judith Sargentini, Nicole Sinclair, Birgit Sippel, Joanna Katarzyna Skrzydlewska, Eva-Britt Svensson, Britta Thomsen, Wim van de Camp, Axel Voss, Renate Weber, Marina Yannakoudakis, Anna Záborská			
Substitute(s) present for the final vote	Izaskun Bilbao Barandica, Ioan Enciu, Ana Gomes, Franziska Keller, Kartika Tamara Liotard, Rovana Plumb, Kyriacos Triantaphyllides, Cecilia Wikström, Glenis Willmott			
Substitute(s) under Rule 187(2) present for the final vote	Eider Gardiazábal Rubial, María Irigoyen Pérez, Arlene McCarthy, Judith A. Merkies, Peter Skinner, Jutta Steinruck			