



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

2016/2329(INI)

13.11.2017

DRAFT REPORT

on the implementation of Directive 2011/99/EU on the European Protection Order
(2016/2329(INI))

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

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(Joint committee procedure - Rule 55 of the Rules of Procedure)

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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

Procedure and sources

The European Protection Order (EPO) Directive was initiated by a group of twelve states under the presidency of Spain in 2010. The EPO Directive is based on Article 82(1) TFEU on judicial cooperation in criminal matters. On 11 January 2011, the Directive came into force and EU Member States had to implement the provisions of the Directive into their national laws by 11 January 2015. Ireland and Denmark are not bound by the EPO legislation.

This report represents an opportunity for the rapporteurs of both LIBE and FEMM committees to assess how the mechanism set up by the Directive 2011/99/EU¹, allowing persons who benefit from a protection order in criminal matters issued in one Member State to request an EPO, was applied in the Member States concerned.

This instrument is based on the principle of mutual recognition, which means that protection orders issued in one Member State have to be recognised and enforced in another Member State. One of the main challenges in the application of this instrument is to ensure that the protection of victims is not hampered by the diversity of national measures.

The report will look also into:

- the obstacles encountered in the implementation at Member States level;
- the connection with complementary instruments;
- challenges related to the diversity of measures that Member States may apply in execution of the EPOs;
- the impact of the instrument in terms of protection of victims of crime;
- recommendations on how to overcome the diverse challenges encountered in implementation.

Since their appointment, the two rapporteurs have collected information and have relied on the following sources, among others:

- a hearing held in the joint committee meeting of LIBE and FEMM Committees on 12 October;
- an Ex-post Impact assessment by Parliament's EPRS services, published in September 2017;
- exchange of information with the relevant colleagues of the European Commission and FRA, and relevant victim protection organisations;

The directive includes a review clause (Article 23) that states that *'by 11 January 2016, the Commission shall submit a report to the European Parliament and to the Council on the*

¹ OJ L 338, 21.12.2011, p. 2–18

application of this Directive. That report shall be accompanied, if necessary, by legislative proposals'. At the time of the drafting of this implementation report, the Commission did not submit a report on the application of this Directive.

General overview of the implementation of the European Protection Order Directive

Since the entry into force of Directive 2011/99/EU on the EPO in January 2015, very little data have been collected by the European Commission, EU agencies or NGOs to assess the use of this instrument at EU level.

According to EPRS assessment published in September 2017, to date, only seven EPOs have been identified. The very limited use of this instrument is striking given the number of victims who are benefiting from protection measures in criminal matters at the level of Member States – many of whom probably travel/move/commute across the EU on a regular and/or occasional basis. By way of illustration, it has been estimated that in 2010 over 100 000 women residing in the EU were covered by protection measures related to gender-based violence.

Although protection orders could be applied to anyone in need of protection, in practice such measures are mostly applied to protect women in cases related to intimate or domestic violence, harassment, stalking or sexual assault. Gender-based violence is a growing concern at EU level and in 2014 the EU Fundamental Rights Agency (FRA) estimated that one in three women in the EU has experienced physical and/or sexual violence since the age of 15 and that one in five women has experienced stalking. Stalking is listed as one of the offences which most often results in a protection order however it is also one of the offences listed as not being subject to criminal law in every Member State – this definitely disproportionately harms women in getting an EPO.

Protection orders are meant to protect a person against an act that may endanger their life, physical or psychological integrity, dignity, personal liberty or sexual integrity. The aim is to avoid contacts between an offender or a potential offender and a victim or an individual at risk of being assaulted.

All Member States provide for some form of criminal and/or civil protection orders. However, despite an apparent similarity in the way in which these measures are issued, a wide variety of measures exist across the Member States. Furthermore, the way in which they are applied in practice differs greatly.

To ensure that a person who has been granted protection measures in a Member State continues to benefit from an equivalent protection when moving or travelling to another Member State, the EU put in place Directive 2011/99/EU on the EPO, a mechanism for the mutual recognition of protection measures in criminal matters. The protection measures covered by the Directive concern situations where victims or potential victims of crime benefit from a prohibition or regulation of entering certain places, being contacted or approached by a person causing risk, the three most common types of protection measures within the EU.

At the time this instrument was proposed, in order to resolve the issue of separate legal bases in EU law for mutual recognition of civil law measures and criminal law measures, the Commission proposed to adopt a package consisting of the EPO Directive, dealing with criminal procedures, and a Regulation on mutual recognition of protection measures in civil

matters. The Regulation (EU) No. 606/2013 sets up a mechanism allowing for a direct recognition of protection orders issued as a civil law measure between Member States. Thus, persons who benefit from a civil law protection order issued in the Member State of its residence may invoke it directly in other Member States by presenting a certificate¹ to competent authorities certifying their rights. The Regulation applies as of 11 January 2015.

These two instruments are part of a comprehensive set of EU legal acts intended to enhance victims' protection across the EU.

The protection measures included in EPOs depend on the internal national legislations of the Member States: EPOs are issued on the basis of protection measures previously adopted in the issuing State according to its national legislation; the protection stated in the EPOs will be recognised in the State of execution by adopting the protection measures available in accordance with its national legislation.

According to the finding of the above mentioned ex post assessment by EPRS, this Directive has not led to a convergence/approximation of the diversity of national measures: the different national systems for the protection of victims are maintained, the internal legislation on the protection of victims has not been substantially modified, and the implementing laws of the Directive incorporate almost mimetically the provisions of the Directive, with hardly any adjustments.

As regards victims, an important point is the need to provide adequate information to the protected person, including the possibility of requesting an EPO if he/she is moving to another Member State. The authors of the study point to great deficiencies in that regard and underline a general lack of information and awareness campaigns targeted at the victims themselves across the Member States. In these situations, the lack of access to information is detrimental to victims' protection.

As EPOs always imply the moving of a victim from one Member State to another, all victims at some point will be confronted with an unknown legal system or language, placing them in a particularly vulnerable situation. Most Member States have not established any special measures or provisions regarding persons with specific needs.

The effective protection of the victim requires the procedure for the adoption and execution of an EPO to be quick. The national implementing laws of the Member States have used different formulas to stress the immediacy and urgency of the procedure, and in some cases even establish specific time limits. The coordination and communication among the competent and central authorities is also important to the protection of the victims and to the effectiveness of the EPO.

Experts underlined that the issue of training of professionals likely to come in contact with victims in need of protective measures appears to be key. According to the data available very few Member States have organised specific training on the EPO.

¹ OJ L 263, 3.9.2014, p. 10–20

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of Directive 2011/99/EU on the European Protection Order (2016/2329(INI))

The European Parliament,

- having regard to Articles 2 and 3 of the Treaty on European Union (TEU) and Articles 8, 10, 18, 19, 21, 79 and 82 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 3, 6, 20, 21, 23, 24, 41, 47 of the Charter of Fundamental Rights of the European Union,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),
- having regard to the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948,
- having regard to the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
- having regard to the UN Convention on the Rights of the Child, adopted in New York on 20 November 1989,
- having regard to the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women on 15 September 1995, and to the subsequent outcome documents adopted at the United Nations Beijing +5 (2000), Beijing +10 (2005), Beijing +15 (2010) and Beijing +20 (2015) special sessions,
- having regard to the General Comment adopted on 26 August 2016 by the UN Committee on the Rights of Persons with Disabilities on Article 6 (‘Women and Girls with Disabilities’) of the UN Convention on the Rights of Persons with Disabilities,
- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and to the Council Decisions (EU) 2017/865¹ and (EU) 2017/866 of 11 May 2017² on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence,
- having regard to Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA³,
- having regard to Council Directive 2004/80/EC relating to compensation to crime

¹ OJ L 131, 20.5.2017, p. 11.

² OJ L 131, 20.5.2017, p. 13.

³ OJ L 315, 14.11.2012, p. 57.

victims,

- having regard to Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA¹, and to Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA²,
- having regard to the Commission communication of 19 June 2012 entitled ‘EU Strategy towards the Eradication of Trafficking in Human Beings, 2012-2016’ (COM(2012)0286),
- having regard to Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order³,
- having regard to Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters⁴,
- having regard to 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 sanctions⁵,
- having regard to 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 detention⁶,
- having regard to 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 matters⁷,
- having regard to the Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings⁸,
- having regard to the Stockholm Programme – An open and secure Europe serving and protecting the citizens⁹,
- having regard to the Rights, Equality and Citizenship Programme 2014-2020,
- having regard to the Commission staff working document of 3 December 2015 entitled

¹ OJ L 101, 15.4.2011, p. 1.

² OJ L 335, 17.12.2011, p. 1.

³ OJ L 338, 21.12.2011, p. 2.

⁴ OJ L 181, 29.6.2013, p. 4.

⁵ OJ L 337, 16.12.2008, p. 102.

⁶ OJ L 294, 11.11.2009, p. 20.

⁷ OJ L 350, 30.12.2008, p. 60.

⁸ OJ C 187, 28.6.2011, p. 1.

⁹ OJ C 115, 4.5.2010, p. 1.

‘Strategic engagement for gender equality 2016-2019’ (SWD(2015)0278),

- having regard to the report of the European Agency for Fundamental Rights (FRA) entitled ‘Violence against women – an EU-wide survey’,
 - having regard to its resolution of 26 November 2009 on the elimination of violence against women¹,
 - having regard to its resolution of 10 February 2010 on equality between women and men in the European Union - 2009²,
 - having regard to its resolution of 25 February 2014 with recommendations to the Commission on combating Violence Against Women³,
 - having regard to its resolution of 9 June 2015 on the EU Strategy for equality between women and men post 2015⁴,
 - having regard to the European Parliamentary Research Service’s European Implementation Assessment of Directive 2011/99/EU, produced by the Ex-Post Evaluation Unit,
 - having regard to Rule 52 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
 - having regard to the joint deliberations of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women’s Rights and Gender Equality under Rule 55 of the Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women’s Rights and Gender Equality (A8-0000/2017),
- A. whereas any forms of violence against a human being are a direct violation of their human dignity, which is the very basis of all fundamental human rights and therefore must be respected and protected;
- B. whereas victims of violence and abuse are at risk of being subjected to secondary victimisation, retaliation and intimidation; whereas, therefore, providing them with the necessary protection, including across borders, depends to a great extent on the awareness of victims, society at large and all practitioners who come into contact with them;
- C. whereas the lack of provision of appropriate protection of a human being against gender-based violence has a detrimental effect on society as a whole;
- D. whereas one of the most important security aspects of every society is the protection of

¹ OJ C 285 E, 21.10.2010, p. 53.

² OJ C 341 E, 16.12.2010, p. 35.

³ Texts adopted, P7_TA(2014)0126.

⁴ OJ C 407, 4.11.2016, p. 2.

the personal integrity and freedom of every individual; whereas the European Agenda on Security does not include the safeguarding of personal safety and the protection of all individuals from gender-based violence as a priority;

- E. whereas violence and physical, psychological and sexual abuse disproportionately affect women¹; whereas one in three women in the EU has experienced physical and/or sexual violence since the age of 15; whereas the extent and severity of violence against women are often disregarded and trivialised in some Member States; whereas only about a third of women who are physically or sexually abused by their partners contact the authorities;
- F. whereas gender equality in all areas is a fundamental aspect of combating gender-based violence;
- G. whereas the Istanbul Convention stipulates that all of its provisions, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground;
- H. whereas, in order to reduce the estimated number of unreported cases of violence, Member States must put in place and reinforce instruments of protection for women to feel safe and to be able to report gender-based violence;
- I. whereas awareness-raising campaigns and sensitisation programmes to combat the trivialisation of domestic and gender-based violence would contribute to an increase in the willingness of victims to report abuse and request national and European protection orders (EPOs) as well as building up their trust in the relevant authorities;
- J. whereas in 2010, when the EPO was proposed by the European Council, 118 000 women residing in the EU were covered by protection measures related to gender-based violence; whereas in 2011, it was estimated that an average of 1 180 individuals would need continuous cross-border protection measures in the EU;
- K. whereas EPOs are instruments of mutual recognition and cooperation, which can neither function correctly nor safeguard victims until fully implemented by all Member States;
- L. whereas, particularly in cases of violence, some Member States issue protection measures on the basis of criminal proceedings, while others issue protection orders based on civil proceedings;
- M. whereas, due to the different judicial systems in the Member States, the implementation of EPOs are confronted with many difficulties and could consequently undermine the proper application of EPOs for victims;
- N. whereas the majority of Member States have no registry system to collect data on EPOs,

¹ The FRA's report entitled 'Violence against women: an EU-wide survey. Main results report' shows that one in three women (33 %) has experienced physical and/or sexual violence since the age of 15; one in five women (18 %) has experienced stalking and every second woman (55 %) has been confronted with one or more forms of sexual harassment. Given this, violence against women cannot be seen as a marginal issue that touches only on some women's lives.

nor is there a European central registry system to collect all relevant EU data;

O. whereas the EPO is applicable to victims of all types of crime, including victims of terrorism, human trafficking, gender-based violence and organised crime; whereas people in vulnerable situations who have fallen victim to crime need to be treated with particular consideration when applying for an EPO;

1. Calls on the Member States to clearly condemn gender-based violence;

General assessment of the implementation of the directive, and recommendations to improve the state of implementation and the functioning of the EPO

2. Acknowledges that all Member States, which are bound by the EPO Directive, have notified the Commission of its transposition into national law;

3. Notes with concern that, since the transposition of the EPO Directive, only seven EPOs have been issued by the Member States, although thousands of national protection orders have been requested and issued in the Member States in recent years¹;

4. Deplores that the Commission did not submit a report to Parliament and Council on the application of the EPO Directive by 11 January 2016; calls on the Commission to meet its reporting obligations as set out in the directive;

5. Recalls the obligation for the executing state to recognise the EPO with the same priority as the issuing state in spite of the various complexities and legal challenges involved;

6. Is concerned that there is a significant gap between coordination and communication among the Member States when an EPO is executed; calls on the Member States to improve and jointly enhance cooperation and communication in relation to the EPO as this would set in motion much more efficient procedures and simultaneous cross-border action among the Member States;

7. Calls on the Member States to set up a National Registry System of EPOs with the aim of collecting data, as well as to improve the exchange of information with the Commission and the Member States;

8. Calls on the Commission to set up a European Registry System to collect information on EPOs from all Member States;

9. Calls on the Commission and the Member States to publish the full list of competent authorities responsible for issuing and recognising EPOs and of central authorities transmitting and receiving EPOs in the Member States, and to make the list easily accessible to enable protected persons and victim support organisations to request EPOs or to settle related issues; calls on the Member States to strengthen their national and local institutions and competent authorities to enhance the accessibility and applicability

¹ The EPRS's study on the 'European Protection Order Directive 2011/99/EU – European Implementation Assessment' reports that 'it has been estimated that in 2010 over 100 000 women residing in the EU were covered by protection measures related to gender-based violence'.

- of the EPO in a manner conducive to EPOs being issued;
10. Calls on the Commission to foster all forms of exchange of good practices and cooperation between Member States as well as between Member States and civil society in order to safeguard the appropriate functioning of EPOs;
 11. Stresses that victims of crime who have or would consider obtaining a national protection order need to be informed and reminded of the possibility of requesting an EPO during criminal proceedings;
 12. Calls on the Member States to conduct an individual assessment, with a gender-sensitive approach, in relation to the provision of assistance and support measures when requesting EPOs;
 13. Deplores the lack of access to justice and legal aid for victims of all types of crime in some Member States which results in poor information provided to the victim of the possibility of requesting an EPO;
 14. Deplores that translation and interpretation services into a language the victim understands are not guaranteed by the Member States before, during and after the issuing of an EPO;
 15. Underlines that translation and interpretation services need to be available and free of charge for victims when a cross-border instrument in criminal matters such as the EPO is being executed;
 16. Deplores the shortage of special measures implemented by the Member States for victims in vulnerable situations or victims with specific needs; calls, therefore, on the Member States to adopt special guidelines and measures that will facilitate the EPO for victims in vulnerable situations or victims with specific needs;
 17. Calls on the Commission and the Member States to fix a clear and short timeframe for the competent authorities of the Member States when issuing EPOs in order to avoid increasing the uncertainty of protected persons, and, for the sake of achieving the same goal, to instruct the competent authorities to provide sufficient information to the victims during the process of taking a decision on their EPO requests;
 18. Calls on the Member States to take due account of the interest of the protected person by fully respecting the obligation not to inform the person causing danger of the location and other contact details of the protected person unless strictly necessary in order to meet the objectives of the protection order;
 19. Highlights the increasing efficiency of new technologies such as GPS monitoring systems and smartphone applications that trigger an alarm when danger is imminent as a means of improving the efficiency and adaptability of EPOs both within the issuing and the executing state;
 20. Highlights the importance of monitoring EPOs in the executing state in relation to the threat to which the victim is exposed in order to determine if the protection measures adopted have been properly implemented and if they need to be revised;

21. Calls on the Commission to monitor the implementation of this directive and launch infringement proceedings against all Member States that breach it;
22. Calls on the Commission and the Member States to carry out a thorough examination of possible ways of improving EPO-related legislation and practical support in order to guarantee the rights to international protection and to assistance and support enjoyed by victims of violence protected at national level;
23. Calls on EU agencies such as the FRA and the European Institute for Gender Equality to monitor the implementation of the directive regularly;
24. Calls on the Commission to launch a civil society monitoring and reporting call in order to improve the working of the EPO instrument in the Member States;
25. Calls on the Commission to launch calls promoting research into the use of national and European protection orders and to coordinate programmes to initiate awareness-raising campaigns within the Member States to inform victims of crime of the possibility of applying for an EPO and about cross-border protection measures;
26. Calls on the Member States to step up their work with NGOs and to provide, with their involvement, human rights-based, service-oriented, practical and intersectional training courses for all public officials working with victims on a professional basis in relation to the EPO and who are key to the correct implementation of this directive; stresses that specific and regular training and courses on the EPOs for the police, the personnel of the competent national authorities and for legal practitioners should be established in all Member States;
27. Calls on the Member States, given the increasing exposure of children and teenagers to violence online, to consider including education on gender equality and non-violence on the school curriculum;

General recommendations relating to gender-based violence

28. Calls on the Commission to include the protection of all citizens, especially those in the most vulnerable situations, in the European Agenda on Security with a focus on the victims of crimes such as trafficking in human beings or gender-based violence, including victims of terrorism, who also need special attention, support and social recognition;
29. Calls on the Commission to set up campaigns to encourage women to report any forms of violence on the basis of gender, thereby improving the accuracy of data on gender-based violence;
30. Calls on the Member States to launch long-term awareness-raising and intersectional sensitising campaigns on both gender-based violence and the available instruments of protection with the involvement of relevant NGOs;
31. Urges the Member States to step up their work with NGOs protecting the victims of violence in order to design strategies featuring both proactive and reactive measures in relation to gender-based violence, the functioning of the EPO instrument and the

necessary changes in legislation and support;

32. Calls on the Commission to present a legal act to support Member States in the prevention and suppression of all forms of violence against women and girls and of gender-based violence;
33. Calls on the Council to activate the *passerelle* clause by adopting a unanimous decision to identify violence against women and girls (and other forms of gender-based violence) as a criminal offence under Article 83(1) TFEU;

For a coherent EU legal framework protecting victims

34. Welcomes the signing, on 13 June 2017, of the EU's accession to the Istanbul Convention, which follows a holistic, comprehensive and coordinated approach, placing the rights of the victim at the centre, and which should be fully connected with the EPO; underlines the importance of this instrument in overcoming one of the barriers to the application of EPOs, namely the lack of recognition of stalking as a criminal offence across all Member States;
35. Calls on the Member States to fully enforce the Istanbul Convention and to allocate adequate financial and human resources to preventing and combating violence against women and gender-based violence, including by empowering women and girls, protecting victims and enabling them to be awarded compensation;
36. Calls on the Member States to ensure appropriate training, procedures and guidelines for all professionals dealing with the victims of all acts of violence covered by the scope of the Istanbul Convention in order to avoid discrimination or re-victimisation during judicial, medical and police proceedings;
37. Underlines that the judicial and practical flaws in the implementation of this directive can be counteracted by the proper interplay of the various EU victim-protection instruments, such as Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime;
38. Calls upon the Member States to inform victims about other protection measures in case the executing state ceases to come under the scope of this directive;
39. Calls on the Commission to take action with a view to reviewing the existing instruments of legal protection for the victims of crime and establishing a coherent EU legal framework for it;
40. Calls on the Commission to assess how this directive is applied in connection with the related instrument in civil matters, namely Regulation EU No 606/2013¹ and to propose guidelines on how these two legal EU instruments seeking to protect victims by recognising protection measures adopted under national civil or criminal legal proceedings could be more efficiently applied by Member States;

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¹ OJ L 181, 29.6.2013, p. 4.

41. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.