

European Protection Order. Initiative Belgium, Bulgaria, Estonia, Spain, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden

2010/0802(COD) - 22/01/2010 - Legislative proposal

PURPOSE: to lay down rules regarding the European Protection Order and in particular to ensure that the protection provided to a person in one Member State is continued in any other Member State to which the person moves.

PROPOSED ACT: Initiative of Belgium, Bulgaria, Estonia, Spain, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden for a directive of the European Parliament and of the Council.

BACKGROUND: Article 82(1) of the Treaty on the Functioning of the European Union) provides that judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions.

According to the Stockholm programme, adopted by the European Council at its meeting in 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. The programme also underlines that **victims of crime can be offered special protection measures which should be effective within the Union.**

The [resolution](#) of the European Parliament of 2 February 2006 on the current situation in combating violence against women and any future actions recommends that Member States formulate a zero-tolerance policy as regards all forms of violence against women and calls on Member States to take appropriate measures to ensure better protection of and support to actual and potential victims.

In a common area of justice without internal borders, it is necessary to ensure that the protection provided to a person in one Member State is continued in any other Member State to which the person moves.

IMPACT ASSESSMENT: various policy options have been examined:

- **Option A: No new action** to be taken in the European Union.
- **Option B: Non-legislative measures**, whose basic aim would be to establish a mechanism for exchanging information and good practices.
- **Option C: Legislative proposals** to amend [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 sanctions, and [Council Framework Decision 2009/829/JHA](#) 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 detention. Amended versions of those Framework Decisions could incorporate a protection mechanism for those cases where it is the victim who moves to a State other than the one which adopted the measure.
- **Option D: Legislative proposal comprising a single text** covering all scenarios relating to the extension of victim protection.

In the light of the impact assessment, the repercussions for fundamental rights and the need to have an effective victim protection instrument at European level, options C and D offer the best ways to deal with the issue and could meet the objectives identified in full. **The preferred option would be option D** in the light of the legislative consequences of existing instruments, the need for clarity when applying new legislative texts and the usefulness of having a legislative text specifically designed to deal with victim protection across borders.

CONTENT : this Directive sets out rules whereby the protection stemming from a protection measure adopted according to the law of one Member State ("the issuing State") can be extended to another Member State to which the protected person moves ("the executing State"), regardless of the type or duration of the obligations or prohibitions contained in the protection measure concerned.

The main elements of the proposal are as follows:

"European protection order" is defined as 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 the safeguard of the life, physical and psychological integrity, freedom or sexual integrity of a person.

Scope of the European protection order: a European protection order may be issued at any moment when the protected person intends to leave or has left the issuing State for another Member State. It shall only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following obligations or prohibitions:

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

Obligation to recognise the European protection order: Member States must recognise any European protection order in accordance with the provisions of the Directive. The latter 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.

Designation of competent authorities: each Member State must inform the Council which judicial authority or authorities are competent under its national law to issue a European protection order and to recognise such an order, when that Member State is the issuing State or the executing State. Member States may designate non-judicial authorities as the competent authorities for taking decisions under the Directive, provided that such authorities have the competence to take decisions of a similar nature under their national law and procedures.

Issue of a European protection order: on the basis of a protection measure adopted in the issuing State, a judicial authority of that State, or another competent authority as above, shall, only at the request of the protected person, issue a European protection order, after verifying that the protection measure meets all the requirements set out in the text. The protected person or his legal representative may submit a request

for the issuance of 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 in order to issue the order.

Form and content: the European protection order will be in accordance with the form set out in Annex I to the Directive. The information it must contain is prescribed in the text and includes the identity and nationality of the protected person, a summary of the facts and circumstances which have led to the imposition of the protection measure in the issuing State, and the identity and nationality of the person causing a danger.

Transmission procedure: the text states that 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.

Measures in the executing State: the proposal describes the series of actions that must be taken in the executing State, including informing the person causing danger, where appropriate, of any measure taken in the executing State.

Grounds for non-recognition of a European protection order: these include the following:

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;

the requirements set out in Article 2 on scope have not been met;

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;

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;

Subsequent decisions in the issuing State: the issuing State will have jurisdiction to take all subsequent decisions relating to the protection measure underlying a European protection order, notably the renewal, review and withdrawal of the protection measure, and the initiation of new criminal proceedings against the person causing the danger.

Grounds for revoking the recognition of a European protection order: this may happen where there is evidence that the protected person has definitively left the territory of the executing State.

Governing law: decisions made by the competent authority of the executing State shall be governed by its national law.

Languages: the European protection order shall be translated into the official language or one of the official languages of the executing State.

Costs: costs resulting from the application of the Directive shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

FINANCIAL IMPLICATIONS: this proposal for a Directive will not impose any major additional expenditure on Member States' budgets or, as already stated, on the European Union budget. In the long term, the costs which it may involve, relating mainly to the translation of the European Protection Order,

will in many instances represent savings by preventing the commission of new offences against the victim, that being the primary objective of this proposal.