

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

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PURPOSE: presentation of an explanatory memorandum relating to the initiative by a group of Member States for a directive of the European Parliament and of the Council on the European protection order.

BACKGROUND: victim protection is a priority objective of any advanced criminal policy. Crime victims not only have a right to respect, reparation of the damage caused and punishment of the offender on the basis of a fair trial fully guaranteeing the rights of all parties, but also have an **overriding right not to be the victims of another offence**, particularly by the same person.

To that end, victim protection means activating appropriate mechanisms to prevent a repeat offence or a different, perhaps more serious offence, by the same offender against the same victim. Such repeat offences against the same victims 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, and they can obviously arise in all forms of crime.

All Member States of the EU apply measures to protect victims' lives, their physical, mental and sexual integrity and their 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. There is therefore a **need to provide a forceful response to this need to prevent further offences against victims in the State to which they have moved, focusing on their protection**.

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. The figures can obviously be multiplied if we include the victims of human trafficking and other offences. Victims' freedom of movement and the ease with which aggressors can move around the EU mean that protective measures must not be confined to the territory of the Member State in which they originated. Maintaining a restrictive attitude to protection by limiting it to the territory of the State whose judicial authority initiated it would amount either to limiting protected victims' freedom of movement or, if they do move away, to forcing them, expressly or tacitly, to forgo the protection which the State provided, thus putting them at increased risk.

The European Parliament resolution of 16 September 1997 on the need to establish a European Union-wide campaign for zero tolerance of violence against women calls on the Member States to review the administration of legal procedures and take action to remove barriers which prevent women from obtaining legal protection; the European Parliament returned to this matter in its [resolution](#) of 2 February 2006 on the current situation in combating violence against women and any future action.

The Council of the European Union adopted [Framework Decision 2001/220/JHA](#) on the standing of victims in criminal proceedings in order to deal with the issue of victims' procedural rights. It was later expanded by [Council Directive 2004/80/EC](#) relating to compensation to crime victims.

The document stresses that great care has been taken to ensure that the proposal is fully compatible with the rights of defence through meticulous drafting of the legal act, that being the basis for correct implementation by the Member States, and there is nothing in this initiative which is contrary to the procedural rights of the accused, making it an effective mechanism for victim protection at European level.

Objectives of the proposal: victim protection has always been one of the main objectives of the European Union in the area of freedom, security and justice. The Treaty on the Functioning of the European Union (TFEU) marks a new stage in the construction of the area of freedom, security and justice.

This proposal is for the adoption of a **legislative act on the basis of Article 82(1)(d), inter alia, of the TFEU**. It provides that the European Parliament and the Council, acting in accordance with the **ordinary legislative procedure**, shall adopt measures to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

It is designed to meet the objectives set out in 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. It relates in particular to a point in the programme which states that victims of crime or witnesses who are at risk can be offered special protection measures which should be effective within the Union.

Objectives of the European Protection Order: the European Protection Order is based on the following assumptions:

- there is a person in danger;
- the danger is such that the Member State in which the person resides has to adopt a protection measure in the context of criminal proceedings;
- the person decides to move to another Member State;
- the person continues to be in danger on the territory of the Member State to which he/she wishes to move.

The European Protection Order is designed to continue to protect persons finding themselves in such circumstances, ensuring that in the Member State to which they move they will receive a level of protection identical or equivalent to the protection they enjoyed in the Member State which adopted the protection measure.

Moreover, the measures included in the European Protection Order, offering the victim a guarantee of safety, are not a novelty in the legal order of the Member States since they are already recognised in Article 4 of Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions and in Article 8 of Council Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

The European Protection Order involves a mechanism based on mutual recognition and, as such, is not a harmonisation instrument. Its objective is not to ensure uniformity as regards the protection measures which each national legislature can adopt in the future but to eliminate existing borders from the point of view of victim protection.

The objective of the European Protection Order is therefore threefold:

- to prevent a further offence by the offender or presumed offender in the State to which the victim moves, the executing State;
- providing the victim with a guarantee of protection in the Member State to which he/she moves which is similar to that provided in the Member State which adopted the protection measure;
- preventing any discrimination between the victim moving to the executing State compared with victims enjoying protection measures initiated by that State.

In a word, the objective of the European Protection Order is to include victims in the evolving area of freedom, security and justice, an area which should extend not only to offenders but also to victims.

The Directive does not take the form of a more traditional judicial cooperation instrument because of the particular features of the need it is intended to meet; the protection of a person in a State other than the one which adopted the initial protection measure requires a dynamic and effective mechanism far removed from a bureaucratic procedure which would stand in the way of an effective response being adopted as swiftly as possible in the executing State. The adoption of a classic mutual recognition procedure would thus be incompatible with the immediate response required for a victim once again in danger in the executing State.