

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

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The Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality adopted, under Rule 51 on Joint Committee meetings, the report drawn up by Teresa Jiménez-Becerril Barrio (EPP, ES), Carmen Romero López (S&D, ES) on the draft directive of the European Parliament and of the Council on the European Protection Order.

They recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal. The amendments are the result of a compromise agreement between Parliament and Council and are as follows:

Objective: the 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.

The text clarifies that the 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 the 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

The draft directive states that it 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.

Definitions: Members amended some of the definitions. A "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.

"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.

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 (i) prohibition from entering certain localities, places or defined areas where the protected person resides or that he visits; (ii) 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 (iii) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

Issue of a European protection order: an EPO 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 time for which the protected person envisages to stay in the executing State and the seriousness of the need for protection. 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 the text. Before issuing an EPO 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.

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.

Content of an EPO: the compromise text adds that an EPO must contain (i) information on 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; (ii) 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; and where such information is known by the issuing authority without requiring further inquiry, (iii) whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State.

Grounds for non-recognition of a European protection order: Members extended the grounds for non-recognition, and add that: (i) an executing state may refuse to recognise a European protection order if the latter relates to an act that does not constitute a criminal offence under the law of the executing State; (ii) 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; (iii) recognition of the European protection order would contravene the ne bis in idem principle; (iv) 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; (v) 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.

Executing state: the text states that 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.

Information: where information is to be provided under the 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 the Directive, in a language they understand.