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

2010/0802(COD) - 14/12/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 610 votes to 13, with 56 abstentions, a legislative on the draft directive of the European Parliament and of the Council on the European Protection Order.

It adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

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 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.

Scope: 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. 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. If a protection measure 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.

Recourse to a central authority: 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. 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.

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.

Issue of a European protection order: 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. 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 necessary requirements.

The right to be heard and to challenge the protection measure: in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with 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.

Guardian: if the protected person has a guardian or representative, that person may introduce the request on behalf of the protected person.

Information and rights in case of rejection: 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. 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. 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.

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 date from which the protected person intends to reside or stay in the executing State, and the period or periods of stay, if known; (b) 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; (c) whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State.

Reasons for refusal: the competent authority of the executing State may refuse to recognise a European protection order in the following circumstances:

- the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State;
- 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;
- recognition of the European protection order would contravene the *ne bis in idem* principle;
- 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.
- 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.

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 inform the issuing State and the protected person without undue delay of this refusal and of its motivation.

In case of the breach of a protection measure: 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, including rules on legal remedies against decisions adopted in the executing State relating to the European protection order. 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 the competences to take any non-criminal decisions related to the breach or 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.

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. Notice shall be given using the standard form set out in Annex II.

Competence and flexibility of the application: provisions are provided as regards the clarification of competence rules applicable in the issuing State and executing State. 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.

Discontinuation of measures: it is provided that 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. In these cases, 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.

Before discontinuing measures, 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.

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.

Data collection: 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.

Costs: a recital states that 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.