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

2010/0802(COD) - 13/12/2011 - Final act

PURPOSE: to improve the protection of victims so that the protection given to a person in one Member State will also be recognised and apply in another Member State.

LEGISLATIVE ACT: Directive 2011/99/EU of the European Parliament and of the Council on the European protection order.

BACKGROUND: Article 82(1) of the Treaty on the Functioning of the European Union (TFEU) 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 (December 2009), mutual recognition should 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 points out that victims of crime can be offered special protection measures which should be effective within the Union.

In its resolution of 2 February 2006 on the current situation on combating violence against women, rthe European Parliament called for the formulation of a zero-tolerance policy as regards all forms of violence against women, and for Member States to take appropriate measures to ensure better protection and support of victims. Similarly, its resolution of 10 February 2010 on equality between men and women in the European Union, Parliament endorses the proposal to introduce the European protection order for victims.

For its part, the Council in its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, stated that action should be taken at the level of the Union in order to strengthen the rights and protection of victims of crime complemented by an appropriate mechanism concerning measures taken in civil matters.

CONTENT : following agreement in second reading between the European Parliament and the Council, this Directive sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has been adopted with a view to protecting a person against a criminal act by another person which may endanger his life, physical or psychological integrity, 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 in the territory of that other Member State, following criminal conduct, or alleged criminal conduct, in accordance with the national law of the issuing State. Each Member State must inform the Commission which judicial or equivalent authority is competent under its national law to issue a European protection order and to recognise such an order.

Need for an existing protection measure under national law: a European protection order may 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 prohibitions or restrictions:

- a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

- 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

- a prohibition or regulation on approaching the protected person closer than a prescribed distance.

Issuing 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 that the protected person intends to stay in the executing State and the seriousness of the need for protection;

- issue a European protection order only at the request of the protected person and after verifying that the protection measure meets the specified requirements;

- inform the protected person (or guardian or representative, as appropriate) about the possibility of requesting a European protection order in the case that that person decides to leave for another Member State, as well as of the basic conditions for such a request.

If the request to issue a European protection order is rejected, the competent authority of the issuing State shall inform the protected person of any applicable legal remedies that are available, under its national law, against such a decision.

Form and content of the European protection order: the European protection order shall be issued in accordance with the standard model annexed to the Directive and contain the information specified in the text, including (i) the identity and nationality of the protected person,

(ii) the date from which the protected person intends to reside or stay in the executing State; (iii) the name, address, telephone and fax numbers and e-mail address of the competent authority of the issuing State; (iv) a summary of the facts and circumstances which have led to the adoption of the protection measure in the issuing State; (v) the prohibitions or restrictions imposed on the pweson causing the danger ; (vi) the identity and nationality of the person causing danger.

Transmission procedure: the Directive makes provision for direct communication between competent authorities.

Measures in the executing State: upon receipt of a European protection order, the competent authority of the executing State shall, without undue delay, recognise that order and take a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person. It must also:

- inform the person causing danger, the competent authority of the issuing State and the protected person of any measures adopted, as well as of the possible legal consequence of a breach of such measure;

- not disclose the address or other contact details of the protected person to the person causing danger.

Grounds for non-recognition of a European protection order: the competent authority of the executing State may refuse to recognise a European protection order under certain circumstances specified in the text and amongst others:

- the European protection order is not complete;
- the requirements set out regarding a protection order under national law have not been met;
- 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 the conduct in relation to which the protection measure has been adopted is statute-barred under the law of the executing State
- under the law of the executing State, the person causing danger cannot, because of that person's age, be held criminally responsible for the act or the conduct.

Grounds for discontinuation of measures taken on the basis of a European protection order: the Directive sets out provisions on discontinuation of the measures taken in execution of a European protection order. This will take place where there is clear indication that the protected person has definitively left that territory, or where the maximum duration of the measures adopted in execution of the order has expired. 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.

Priority in recognition of a European protection order: a European protection order shall be recognised with the same priority that would be applicable in a similar national case, taking into consideration any specific circumstances of the case, including the urgency of the matter.

Notification in the event of breach: the competent authority of the executing State must 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 will enable the competent authority of the issuing State to promptly decide on any appropriate response with respect to the protection measure imposed in its State on the person causing danger. Such a response may comprise, where appropriate, the imposition of a custodial measure in substitution of the non-custodial measure that was originally adopted, for example, as an alternative to preventive detention or as a consequence of the conditional suspension of a penalty. Notice shall be given using the standard form set out in Annex II.

Competence in the executing State: the executing State shall be competent to adopt and to enforce measures in that State following the recognition of a European protection order.

Since different kinds of authorities (civil, criminal or administrative) are competent to adopt and enforce protection measures in Member States, the Directive provides a high degree of flexibility in the cooperation mechanism between the Member States under this Directive. Therefore, the competent authority in the executing State is not required in all cases to take the same protection measure as those which were adopted in the issuing State, and has a degree of discretion to adopt any measure which it deems adequate and appropriate under its national law in a similar case in order to provide continued protection to the protected person.

Competence in the issuing State: the competent authority of the issuing State shall have exclusive competence to take decisions relating to: (a) the renewal, review, modification, revocation and withdrawal

of the protection measure and, consequently, of the European protection order; (b) the imposition of a custodial measure as a consequence of revocation of the protection measure.

Costs: the text states that the protected person should not be required to sustain costs related to the recognition of the European protection order which are disproportionate to a similar national case.

Other provisions: the Directive goes on to make provision for the following :

- language used in a European protection order ;
- costs resulting from the application of the Directive in the executing State ;
- relationship with other agreement and arrangements ;
- consultation between competent authorities.

Review: by 11 January 2016, the Commission shall submit a report to the European Parliament and to the Council on the application of the Directive, accompanied, if necessary, by legislative proposals.

ENTRY INTO FORCE: 10.01.2012.

TRANSPOSITION: 11.01.2015.