Basic information

2010/0802(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
European Protection Order. Initiative Belgium, Bulgaria, Estonia, Spain, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden See also 2016/2329(INI) **Subject** 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
FEMM Women's Rights and Gender Equality	JIMÉNEZ-BECERRIL BARRIO Teresa (PPE) ROMERO LÓPEZ Carmen (S&D)	02/03/2010 02/03/2010
	Shadow rapporteur MACOVEI Monica (PPE) COSTA Silvia (S&D) BILBAO BARANDICA Izaskun (ALDE) ROMEVA I RUEDA Raül (Verts/ALE) YANNAKOUDAKIS Marina (ECR) ERNST Cornelia (GUE/NGL) BLOOM Godfrey (NI)	

Former committee responsible	Former rapporteur	Appointed
FEMM Women's Rights and Gender Equality	JIMÉNEZ-BECERRIL BARRIO Teresa (PPE) ROMERO LÓPEZ Carmen (S&D)	02/03/2010 02/03/2010

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	JIMÉNEZ-BECERRIL BARRIO Teresa (PPE)	29/04/2010

	ROMERO LÓPEZ Carmen (S&D)	29/04/2010

Former committee for opinion	Former rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	JIMÉNEZ-BECERRIL BARRIO Teresa (PPE) ROMERO LÓPEZ Carmen (S&D)	29/04/2010 29/04/2010

Former committee for opinion on the legal basis	Former rapporteur for opinion	Appointed
JURI Legal Affairs	LICHTENBERGER Eva (Verts/ALE)	18/10/2010

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3008	2010-04-23
Justice and Home Affairs (JHA)	2998	2010-02-25
Justice and Home Affairs (JHA)	3018	2010-06-03
Justice and Home Affairs (JHA)	3034	2010-10-07
Transport, Telecommunications and Energy	3127	2011-11-24

European Commission

Commission DG	Commissioner
Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
22/01/2010	Legislative proposal published	00002/2010	Summary
08/02/2010	Committee referral announced in Parliament, 1st reading		
25/02/2010	Debate in Council		
23/04/2010	Debate in Council		Summary
03/06/2010	Debate in Council		Summary
07/10/2010	Debate in Council		Summary
29/11/2010	Vote in committee, 1st reading		Summary
07/12/2010	Committee report tabled for plenary, 1st reading	A7-0354/2010	
14/12/2010	Decision by Parliament, 1st reading	T7-0470/2010	Summary

14/12/2010	Results of vote in Parliament		
14/12/2010	Debate in Parliament		
24/11/2011	Council position published	15571/1/2011	Summary
01/12/2011	Committee referral announced in Parliament, 2nd reading		
05/12/2011	Vote in committee, 2nd reading		
06/12/2011	Committee recommendation tabled for plenary, 2nd reading	A7-0435/2011	Summary
12/12/2011	Debate in Parliament		
13/12/2011	Decision by Parliament, 2nd reading	T7-0560/2011	Summary
13/12/2011	Final act signed		
13/12/2011	End of procedure in Parliament		
21/12/2011	Final act published in Official Journal		

Technical information

Procedure reference	2010/0802(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	See also 2016/2329(INI)
Legal basis	Rules of Procedure EP 59 Treaty on the Functioning of the European Union TFEU 082-p1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	FEMM/7/06762

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE441.299	20/05/2010	
Amendments tabled in committee		PE445.751	19/07/2010	
Specific opinion	JURI	PE452.603	29/10/2010	
Amendments tabled in committee		PE454.387	23/11/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0354/2010	07/12/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0470/2010	14/12/2010	Summary
Committee draft report		PE475.902	22/11/2011	
Committee recommendation tabled for plenary, 2nd reading		A7-0435/2011	06/12/2011	Summary

Text adopted by Parliament, 2nd reading		T7-0560/2011	13/12/2011	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	00002/2010	22/01/2010	Summary
Supplementary legislative basic document	05677/2010	22/01/2010	Summary
Document attached to the procedure	05678/2010	22/01/2010	
Council statement on its position	16613/2011	18/11/2011	
Council position	15571/1/2011	24/11/2011	Summary
Draft final act	00071/2011/LEX	13/12/2011	

European Commission

Document type	Reference	Date	Summary
Document attached to the procedure	SEC(2010)0549	29/04/2010	
Follow-up document	COM(2020)0187	11/05/2020	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0029/2011 OJ C 355 29.12.2010, p. 0001	05/10/2010	Summary

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2011/0099
OJ L 338 21.12.2011, p. 0002 Summary

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

2010/0802(COD) - 24/11/2011 - Council position

The Council reached an agreement on the position of the Council at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on the European protection order.

In order to reach a sufficient support within the Council, in the course of the negotiations with the European Parliament the following modifications to the text have been agreed:

- **the scope of application of the instrument has been partially redefined**: by providing a tighter link between the possibility to issue a European protection order and a criminal conduct (Article 1). This modification aims at clarifying the connection of the instrument with the legal basis provided for by Article 82 (1) TFEU;
- **link to a decision taken in criminal matters**: with the same aim, it has been further specified that the protection measure at the basis of the European protection order must derive from a decision taken in criminal matters (Article 2 (2));
- **authority which issues the protection measure**: in order to maintain the widest possible adaptability of the instrument in relation to the different national legal systems for the protection of victims of crime, it has been further specified that, as long as the conditions above are met, the nature of the authority which issues the protection measure underlying the European protection order is irrelevant (Recital 9), and that the Member State executing the European protection order may do so in accordance with the specificities of its own national system by administrative, civil or criminal proceedings (Article 9);
- **relationship with Council framework Decision 2008/947/JHA**: a new paragraph has been added to Article 13 clarifying the relationship between the issuing of a European protection order and proceedings according to Council Framework Decision 2008/947/JHA on mutual recognition of decisions on probation measures and alternative sanctions.

To recall, the Council's Position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. On 23 September 2011, the Council (Justice and Home Affairs) took note of the draft agreement and confirmed its readiness to agree on the new text. The LIBE and FEMM Committees of the European Parliament on 4 October 2011 decided to mandate their Chairs to write a letter to the President of COREPER stating that, should the Council transmit formally to the Parliament its position in the form as it stands in the annex of the letter, they would, in their capacity as Chair of the Committee, recommend to the Plenary that the Council's position be accepted **without amendment**, subject to legal-linguistic verification, at Parliament's second reading.

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

2010/0802(COD) - 06/12/2011 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality adopted the recommendation for second reading contained in the joint report by Teresa JIMÉNEZ-BECERRIL BARRIO (EPP, ES), and Carmen ROMERO LOPEZ (S&D, ES), and recommended that the European Parliament approve without amendment the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on the European protection order.

To recall, the Council position in first reading reflects the compromise reached between Parliament and Council during negotiations. The main change in comparison with Parliament's position in first reading concerns the scope of application of the instrument which has been partially redefined, by providing a tighter link between the possibility to issue a European protection order and a criminal conduct (Article 1). This modification aims at clarifying the connection of the instrument with the legal basis provided for by Article 82 (1) TFEU.

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

2010/0802(COD) - 13/12/2011 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on the European protection order.

Parliament approved the Council position in first reading without amendment.

It should be noted that in an annexed declaration, the Council made a Statement on the comprehensive approach to the question of recognition of protection measures.

Considering the fact that this Directive is focused on protection measures taken in criminal matters, and given the different legal traditions in the Member States in this field, the Council is aware that this instrument will have to be complemented in the future by a similar mechanism for mutual recognition of protection measures taken in civil matters.

In this respect, the Council recalls that the proposal presented by the Commission for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters is currently under examination in the preparatory bodies of the Council.

In line with its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (see Measure ‘C’), the Council commits itself to continuing the examination of this proposal as a matter of priority. It also commits itself to ensure that

this instrument will complement the provisions of the Directive on the European protection order, so that the combined scope of application of the two instruments enables the cooperation among the Member States, irrespective of the nature of their national systems, with respect to **the highest possible number of protection measures for victims.**

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.

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

2010/0802(COD) - 07/10/2010

The Belgian presidency informed ministers of the state of play concerning the European protection order. The main point highlighted was that **the two European Parliament committees concerned (Civil Liberties and Women's Rights) supported by a strong majority the general aim of the draft text in an orientation vote on 29 September 2010** (voting result: 64 to 1).

The aim of the directive is to facilitate and enhance the protection afforded to victims of crime, or possible victims of crime, who move between EU member states.

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

2010/0802(COD) - 22/01/2010 - Supplementary legislative basic document

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.

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

2010/0802(COD) - 05/10/2010

Opinion of the European Data Protection Supervisor on the initiative of several Member States for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters.

This opinion reacts on two initiatives for a Directive of a number of Member States, as foreseen by Article 76 TFEU, namely:

- the initiative of 12 Member States for a Directive on the European Protection Order (EPO initiative),
- the initiative of seven Member States for a Directive regarding the European Investigation Order in criminal matters (EIO initiative).

Advising on these initiatives falls within the remit of the task entrusted to the EDPS in Article 41 of Regulation (EC) No 45/2001 for advising EU institutions and bodies on all matters concerning the processing of personal data. This opinion, therefore, comments upon the initiatives as far as they relate to the processing of personal data. Since no request for advice has been sent to the EDPS, this opinion is issued on his own initiative. He regrets that he was not consulted when these initiatives were issued.

Although the two initiatives have different objectives — i.e. improving protection of victims and cross-border co- operation in criminal matters through the collection of evidence cross border — they have important similarities:

- they are both based on the principle of mutual recognition of judgments and judicial decisions;
- they are rooted in the Stockholm programme; and

- they provide for exchange of personal data between Member States.

For these reasons, the EDPS considers it appropriate to examine them jointly.

The EDPS recommends with regard to both the EPO and the EIO initiatives:

- to include specific provisions stating that the instruments apply without prejudice to Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters,
- to include provisions requiring the Member States to ensure that:
- competent authorities have the resources necessary for the application of the proposed directives,
- competent officials shall observe professional standards and be subject to appropriate internal procedures that ensure, in particular, the protection of individuals with regard to the processing of personal data, procedural fairness and the proper observance of the confidentiality and professional secrecy provisions,
- authentication systems allow only **authorised individuals to have access to both databases containing personal data or premises where evidence are located**,
- tracking of accesses and operations are performed,
- audit controls are implemented.

The EDPS recommends with regard to the EPO initiative:

- to clearly state that, depending on the circumstances of the case, **the person causing the danger should be given only that personal data of the victim** (which in some cases may include the contact data) **strictly relevant for the full execution of the protection measure**;
- to clarify the expression ‘electronic means’ contained in recital 10 of the EPO initiative.

Moreover, and more in general, the EDPS:

- recommends the Council to establish a procedure in which consultation of the EDPS will take place, in case an initiative introduced by Member States is related to the processing of personal data,
- reiterates the need for a comprehensive data protection legal framework covering all areas of EU competence, including police and justice, to be applied to both personal data transmitted or made available by competent authorities of other Member States and to domestic processing in AFSJ.

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

2010/0802(COD) - 23/04/2010

The Council held a public debate on the state of play regarding the initiative for a directive on a European protection order on the basis of two current working documents: 8703/10 and 8703/10 ADD 1.

The aim of the directive is to facilitate and enhance the protection granted to victims of crime, or possible victims of crime, who move between EU Member States.

A majority of Member States spoke out in favour of the Spanish presidency approach and supported the most recent compromise texts. The goal of the presidency is to continue work in the Council preparatory bodies with a view to reach a **political agreement in June** and to forward the agreed text to the European Parliament. In the meantime, informal contacts with the Parliament will continue in view of the high political importance of the file.

Among the outstanding issues discussed is the question of **scope**. The presidency proposal supported by most Member States considers that it is necessary to work on a text allowing European protection orders to be issued and executed in all Member States, in accordance with their national law. European protection orders should be issued by any judicial or equivalent authority, independent of the legal nature of such authority (criminal, civil or administrative). It proposes a **three-step approach**:

- the issuing state makes a request for an European protection order,
- the receiving state recognises the European protection order,
- the receiving state executes the order by taking a decision under its national law in order to continue the protection of the person concerned.

The proposal for a European protection order is based on a joint initiative of twelve EU member states. Once adopted, the directive will specify measures that allow the executing state to continue the protection of a person. These measures would include obligations or prohibitions imposed on the person causing danger. The focus of the initiative is on crimes which may endanger the victims' life, physical, psychological and sexual integrity, as well as their personal liberty. The ultimate goal is to avoid new acts of crime and to reduce the consequences of previous acts of crime.

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.

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.

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

2010/0802(COD) - 03/06/2010

The Council discussed publicly the Member State initiative for a European protection order. The aim of the directive is to facilitate and enhance the protection granted to victims of crime, or possible victims of crime, who move between EU Member States.

After a long discussion, the presidency concluded that there is sufficient ground for the Council to continue discussions with the European Parliament with a view to reaching an agreement on the text of the draft directive. The presidency noted that at the next session of the Council in October 2010, the Council should assess the **position of the United Kingdom**, following a reasonable period of time as referred to in article 3, paragraph 2 of protocol 21 to the Lisbon Treaty.

The paragraph reads: "If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland."

Negotiations will now follow with the European Parliament and the Council will assess progress made at its next meeting in October 2010. Council and Parliament have to agree on a final text of the directive under the ordinary legislative procedure. Each Member State will then need to transpose the new rules into national law.

The proposal for a European protection order is based on a joint initiative of twelve EU Member States, presented in January 2010. The focus of the initiative is on crimes which may endanger the victims' life, physical, psychological and sexual integrity or their personal liberty. The ultimate goal is to avoid new acts of crime and to mitigate the consequences of previous acts of crime.