TERESA FREIXES
LAURA ROMÁN
(Directors)

NEUS OLIVERAS
RAQUEL VAÑÓ
(Coordinators)

THE EUROPEAN PROTECTION ORDER

ITS APPLICATION TO THE VICTIMS OF GENDER VIOLENCE

Funded by the
Daphne Programme
of the European Commission

tecnos

THE EUROPEAN PROTECTION ORDER

Its application to the victims of gender violence

TERESA FREIXES
LAURA ROMÁN
(*Directors*)

NEUS OLIVERAS
RAQUEL VAÑÓ
(*Coordinators*)

THE EUROPEAN PROTECTION ORDER

ITS APPLICATION TO THE VICTIMS OF GENDER VIOLENCE

AUTHORS

ATANAS ATANASOV
ELISABET CERRATO
EMIL DECHEV
JAVIER FREIXES
TERESA FREIXES
SVETLA MARGARITOVA-VOUTCHKOVA
VÍCTOR MERINO
NEUS OLIVERAS
CARMEN RODRÍGUEZ-MEDEL
LAURA ROMÁN
MERCÈ SALES
BETTINA STEIBLE
NÚRIA TORRES
RAQUEL VAÑÓ
CASPAR VISSER

tecnos

Cover design:
Carlos Lasarte González

Cover photograph:
Christopher Michel

Juan Ignacio Luca de Tena, 15 - 28027 Madrid
ISBN: 978-84-309-6553-3
Legal Deposit: M-7493-2015
Layout: Grupo Anaya

Printed in Spain

TABLE OF CONTENTS

EPO gender

www.epogender.eu

Members of the project

UNIVERSITAT ROVIRA I VIRGILI

UAB Universitat Autònoma de Barcelona

СЪЮЗ НА СЪДИИТЕ В БЪЛГАРИЯ

Bulgarian Judges Association

UNIWERSYTET SZCZECIŃSKI

University of Szczecin

Collaborators

SANDRA RAMOS, URV

IED Instituto Europeo de Derecho
European Institute of Law

Funded by the Daphne Programme of the European Commission

This publication has been produced with the financial support of the III Daphne Programme of the European Union.
The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission.

PREFACE*

Analyzing the transposition of Directive 2011/99/EU on the European protection order in order to establish how it can effectively contribute to the protection of the victims of gender violence, has not been an easy task. Not only because legally speaking it is an extremely complex issue given the fact that it concerns all kinds of victims and the lack of a uniform concept of gender violence in the European Union, or because the procedures in which the European protection order must be embedded are not harmonized either, being sometimes criminal, sometimes civil in nature, but also because we are dealing with a subject featuring several dimensions which are difficult to grasp and which, nonetheless, require a clear and functional legal perception.

The recent and exhaustive report «*Violence against women: an EU-wide survey*» published by the European Union Agency for Fundamental Rights has confirmed what was already an open secret: that gender violence in Europe is reaching epidemic levels. All the more reason why its eradication should be made a community objective of the highest priority, considering that as a phenomenon that crosses international frontiers, its solutions should be global. In this respect, it is evident that the solid Europe announced by the Lisbon Treaty also requires the construction of a viable common living space, where citizens can exercise their rights and obligations not just freely, but also under equal conditions, i.e. in living conditions without threats or violence, protected from discrimination in general, and from gender discrimination in particular.

It is inconceivable, from any analytical perspective, that in present-day Europe, in particular within the European Union, the exercise of a citizen's right such as the freedom of movement might cause a victim of gender violence to lose the protection she has been granted in her place of residence due to the fact that she moves to another Member State. The exercise of a fundamental right, such as the freedom of movement in these cases, may not lead to the impossibility of exercising other fundamental rights, such as the right to respect for one's physical and/or moral integrity, human dignity, or even the right to life. It is for this reason that the European Union has had to ad-

* By Teresa Freixes, Professor in Constitutional Law, UAB, and Jean Monnet Chair and Laura Román, University College Professor in Constitutional Law, URV.

dress this issue, for lack of a direct legal basis in the Treaties, using ancillary instruments such as the one regulating the protection order, based on the judicial cooperation in criminal matters.

Exploring the phenomenon of gender violence, however, means treading unsettled ground, where, due to the wide variety of cases the causes do not always coincide with the consequences, nor the origins with their manifestations, the means with the end or the end with the means in the countries making up the European Union. This is why this kind of «meta-violence» (multiple types of violence in one) requires something more than just political will. A profound review is therefore necessary, both *ad intra*, within the Member States, and *ad extra*, on a supranational level, which until now has not proven easy, in spite of the institutional efforts to combat this scourge.

A good example of this is the Daphne III Programme of the European Commission, which seeks to «contribute to the protection of children, young people and women against all forms of violence and to attain a high level of health protection, well-being and social cohesion, with the specific objective of contributing to the prevention of, and the fight against, all forms of violence occurring in the public or the private domain against children, young people and women, including sexual exploitation and trafficking in human beings, by taking preventive measures and by providing support and protection for victims and groups at risk». The same goal of protecting the victims of violence in a comprehensive way can be found in Directive 2011/99/EU of the European Parliament and the Council of 13 December 2011, which in addition establishes a mechanism for judicial cooperation which aims to ensure this protection when a victim of violence exercises her right to free movement within the EU: the European Protection Order (EPO).

Technically, the European protection order is a «decision, taken by a judicial or equivalent authority of a Member State in relation to 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 continuing the protection of the protected person». The European protection order (EPO) aims to ensure that the victims of violence, including the victims of gender violence, who have obtained a protection order in one of the Member States of the EU, continue to receive this protection when they move to another Member State. This principle, which seems so obvious and so simple, presents a large number of difficulties. The European Union has therefore created a number of instruments, such as the EPO, which guarantee that Court decisions made in one of the Member States are also enforced in other Member States, as established by article 82 of the Treaty on the Functioning of the European Union, when providing that judicial cooperation implies the mutual recognition of judgments and judicial decisions.

In this respect, taking into account the implementation of the goals of the Directive in the national territories of the 26 Member States to which it applies, the availability of the three measures established in the Directive must be guaranteed, i.e. the prohibition from entering certain localities, places or defined areas where the protected person resides or visits; the 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 the prohibition or regulation on approaching the protected person closer than a prescribed distance. Ireland and Denmark are excluded from its scope of application, as they decided to exercise their right to opt out, established in relation to the area of freedom, security and justice, which allows them to abstain from applying certain legislation. The United Kingdom, which could also have opted out, chose to participate in the adoption and the application of the Directive.

The measures proposed in the Directive are «minimum measures», which do not prevent the Member States from providing greater protection on an individual basis. They do however constitute the minimum standard of protection to be ensured by adopting an EPO in the issuing State, which the executing State in its turn must implement effectively through measures that have similar effects under its national law.

The adoption of the Directive on the European protection order has proven really challenging, just as challenging as getting the EU to address the issue if gender violence using instruments of *hard law*, i.e. through binding legal instruments. In spite of the ongoing efforts by civil society representatives, it has never been possible to introduce the fight against gender violence into the Union Treaties. What has come closest was a declaration which was adopted after the failure to approve the European Constitution and which was attached to the Lisbon Treaty: the Declaration on article 8 of the Treaty on the Functioning of the European Union (that introduces the objective of eliminating the inequalities between men and women and promoting their equality). This *soft law* instrument, which was adopted by the Intergovernmental Conference that adopted this Treaty, literally states that: «The Conference agrees that, in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims». Being only a Declaration, it does not create the direct legal basis required for the adoption of EU rules regulating directly the fight against gender violence. This lack of effectiveness is due to the fact that, when article 51 of the Treaty of the European Union provides that «The Protocols and Annexes to the Treaties shall form an integral part thereof», it excludes declarations such as the Declaration on article 8 TFEU. For this reason, it was necessary to use as legal basis other instruments

that had been adopted in the framework of the area of freedom, security and justice, in particular in the field of judicial cooperation.

In this context, building on precedents such as the European arrest warrant, Directive 2011/99/EU was adopted at the initiative of the Spanish presidency, surrounded by considerable controversy. The controversy was basically due to the fact that the proposed protection measures, based on the protection order existing in Spain since 2003 which was subsequently included in the Act on Comprehensive Protection Measures against Gender Violence, were criminal in nature, while in several EU Member States the measures for the protection of the victims of gender violence were clearly civil in nature. As a result, a lot of hair-splitting was done to establish the scope of the protection order, ultimately leading to the incorporation of the minimum standard previously mentioned. Moreover, in an attempt to clinch the matter, especially in procedural terms, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 was adopted, establishing minimum standards on the rights, support and protection of victims of crime, as well as Regulation 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters.

Even though these three legal instruments do not specifically address the protection of the victims of gender violence, given that they are applicable to all types of victims, they do cover the victims of gender violence, so that they complement the measures established in the Directive on the European protection order.

Having due regard to European legislation, the EU Member States, including Spain, must adapt their internal regulations to the provisions of the above-mentioned Directive, among others by approximating their laws and regulations on the subject. In order to do so, they will have to establish the required procedural mechanisms, designate contact authorities, and ensure the effective implementation of the protection measures included in the order. In this respect, January 2015 constitutes an important landmark, for this is when the term expires within which the EU Member States must take the appropriate measures to transpose the Directive.

Nonetheless, in spite of all these efforts, the heterogeneity of the existing protection measures regarding gender violence in the Member States, a corollary of their different legal, historical, geographical and political traditions, instead of uniting them often separate the 26 Member States covered by the Directive, provoking quite a few problems, especially when one seeks —as is the case here— the harmonisation of victim protection in the EU. Offering solutions to these problems, or at least trying to do so, is one of the main objectives of the Epogender project presented below.

***

The European project Epogender «*Gender Violence: Protocols for the protection of victims and effectiveness of protection orders. Towards an efficient implementation of Directive 2011/99/EU (2012-2014)*», financed under the Daphne III Programme, has its origin in the need to analyse the various protection measures that the EU Member States have implemented in the field of gender violence, so as to ensure that all victims, regardless of their country of origin, have at their disposal the same or at least adequate mechanisms to fight this phenomenon when they decide to exercise their freedom of movement and/or residence in virtue of a European protection order under Directive 2011/99/EU. In this context, the Epogender project limits itself to analyzing the criminal protection offered to the victims of gender violence within the European Union, and focuses particularly on the three measures laid down in the Directive as indicated earlier, i.e. the 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; and the prohibition or regulation on approaching the protected person closer than a prescribed distance.

What Epogender essentially seeks to do, is to provide indicators which allow for a correct transposition of the provisions of Directive 2011/99/EU, thus contributing, albeit only partially through minimum standards, to an approximation of the protection of the victims of gender violence in the European Union. Given the fact that the Directive does not oblige the Member States to revise their legislation in order to adapt it to the new community rules, it is vitally important to detect the existing common standards and disparities in this field, not just with regard to regulations but also with regard to the practices used to ensure the effectiveness of the European Protection Order.

For this purpose, a team was created which is co-ordinated by the Rovira i Virgili University (URV) and the Autonomous University of Barcelona (UAB), with the participation of the University of Szczecin (SZC) from Poland and the Bulgarian Judges Association (BJA), as well as experts from different EU Member States and specialized professionals, such as judges, lawyers, public prosecutors, police officials, and social services. The European Institute of Law has facilitated access to the legislation of the different EU Member States, as well as to the experts from various countries that have collaborated with the project.

The objectives of Epogender include:

— Identify the current situation in the Member States of the measures for the protection of victims of gender violence.

— Detect harmonized protection measures as well as divergences in the protection that might affect victims when exercising their freedom of movement and residence within the EU, as well as the difficulties and challenges to be met when harmonizing the measures and standards in question.

— Provide indicators with a view to a correct transposition of Directive 2011/99/EU, in particular with respect to: legal interests protected, conditions included when issuing the order, measures included in the order, information to the victim and to the person causing danger, competent authorities, procedures, execution in the State of destination, and other relevant aspects that have been detected in the course of the research carried out for the project.

— Organize training workshops for practitioners and other actors engaged in the protection of victims (judges, prosecutors, competent public authorities and social services, police officers, lawyers); These have taken place mainly in Spain (more specifically by organizing a course at the International University Menéndez y Pelayo, together with the University of Valencia), in Poland (University of Szczecin), and Bulgaria (Bulgarian Judges Association).

— Disseminate the Project and its results in order to raise awareness in society and among people concerned. The project and its objectives have been presented at various universities, e.g. at the University of Lisbon, the Free University of Berlin, University Roma Tre and the University of Trento, as well as at other specialized academic institutions. Mention should also be made of the dissemination of the project during the Gender Summit that was held in Brussels in June 2014.

In order to achieve these objectives the following methodology was used:

— Elaboration of a directory of legislation which includes the current legislation in the Member States related to the protection measures for the victims of gender violence. To this end, starting from an initial inventory of the relevant legislation, track has been kept of new regulations adopted in the various Member States, as various changes have occurred over the last years.

— Elaboration of a questionnaire to be sent to the different national authorities with competence in the field of gender violence in order to collect information on the relevant legislation, to confirm its validity or modification in the course of the project and identify practices related to the protection of the victims of gender violence in the Member States, especially when Protocols are being used. The draft questionnaire was reviewed by specialized professionals (judges, public prosecutors, lawyers, members of NGOs, police officials, and social services). The results of the questionnaire were duly processed in order to contribute to the objectives of the project.

— Preparation of 26 national reports, one for each Member State bound by Directive 2011/99/EU (Ireland and Denmark are excluded from the application of the Directive). The main objective of these reports is to systematically analyze, State by State, applying the same conceptual and procedural framework to each of them, the national legislation and practices regarding the protection of the victims of gender violence.

— Publication of the initial results of the project in the handbook *Protección de las víctimas de violencia de género en la Unión Europea* (also published in English under the title *Protection of Gender-Based Violence Victims in the European Union*), explaining the main lines of investigation by means of 26 national reports and an analysis of the questionnaire sent to the national authorities, as well as the issues encountered during the first year of the project. The University Rovira i Virgili and the Autonomous University of Barcelona were in charge of the publication of the book, which came out in June 2014.

— Performance of a comparative analysis on the basis of the national reports and the results of the questionnaires returned by the national authorities. In this way, comparing the various national legal systems, the existing differences and similarities between them were identified, mainly taking into account the objectives laid down in Directive 2011/99/EU on the European protection order, but also, where necessary, the connections with Regulation 606/2013 on mutual recognition of protection measures in civil matters, given that both instruments provide for the same measures and have practically the same objectives.

— Elaboration and explanation of the suitable indicators for an effective and correct transposition of Directive 2011/99/EU using the results of the comparative analysis in order to contribute to an effective implementation of the European protection order.

— Elaboration of additional reports on the experience in Bulgaria with the transposition of the Directive, on the evolution of practices regarding the protection order in cases of gender violence in Spain, and on the rules and regulations concerning the protection against gender violence adopted by the United Nations, the Council of Europe and the European Union.

All this has been brought together in this book, which is the result of two years of hard work by the project team. It should also be pointed out that a website has been set up in the framework of the project (www.epogender.eu), that has not only contributed to its dissemination, but has also constituted an important working and networking tool for the participants in the project. The website contains additional publications derived from the project, as well as other relevant documents.

ACKNOWLEDGEMENTS

We would like to express our gratitude to all the institutions that have supported this project, not just financially, but also by participating in the various activities connected to it. In the first place, our gratitude goes out to the European Commission (Daphne Programme) and the participating universities (University Rovira i Virgili and the Autonomous University of Barcelona in Spain and the University of Szczecin in Poland), as well as the Bulgarian Judges Association. We would also like to thank all the experts, advisors and professionals who have contributed to improving our research at some stage, in particular: Montserrat Escudé (Mossos d'Esquadra-Catalan police), Carmen Rodríguez-Medel (Judge), Irena Fuentetaja (Ministry of Justice), David Dueñas (URV), Antonio Fernández Mata (Judge), Laura Picó (Lawyer), Àngels Gensana (Catalan Women's Institute); Monitoring Committee of the Intervention Protocol for cases of gender violence (City of Tarragona) and the Equality Observatory (URV). We would further like to thank those who have collaborated in the training sessions held in the framework of the project: the team specialized in gender violence of the University of Valencia, lead by Elena Martínez, to the International University Menéndez Pelayo, as well as the State Prosecution Service, the General Council of the Judiciary, the Government Delegation on gender violence, and in Bulgaria, the Ministry of Justice, the Bulgarian Gender Research Foundation and Bulgarian Lawyers for Human Rights. And finally, we would also like to recognize the synergies with other projects and teams who have contributed to our analyses with new perspectives and who, undoubtedly, will contribute to the development of future actions and projects. In this respect, we are grateful to the project team of POEMS (Protection Orders in the European Members States, Daphne Programme, EU) and the members of the projects Equality and MISEAL (Alfa Programme, EU).

ABBREVIATIONS

BOCG	*Official Journal of the Spanish Congress* (*Boletín Oficial de las Cortes Generales*)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OJEC	*Official Journal of the European Communities*
OJEU	*Official Journal of the European Union*
EIGE	European Institute for Gender Equality
AFSJ	Area of Freedom, Security and Justice of the European Union
FRA	European Union Fundamental Rights Agency
GPS	Global Positioning System
IED	European Institute of Law (*Instituto Europeo de Derecho*)
JHA	Justice and Home Affairs
NA	Not available
EPO	European Protection Order
NGO	Non-governmental organisation
UN	United Nations
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on European Union
UAB	Autonomous University of Barcelona
EU	European Union
URV	University Rovira i Virgili

MEMBER STATES (MS)

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
EE	Estonia

EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	The Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom

CHAPTER I

GENDER VIOLENCE, EUROPEAN UNION AND PROTECTION OF VICTIMS

1. MAIN INTERNATIONAL LANDMARKS IN THE ERADICATION OF VIOLENCE AGAINST WOMEN*

1.1. Introduction: approaching gender violence

The phenomenon of gender violence cannot be approached from one single angle: its multiform nature turns it into a polysemic concept, a kind of meta-violence combining multiple types of violence in one, that runs the risk of being misconstrued if not properly addressed. In order to include each and every manifestation of this phenomenon, both the research parameters and the terminology used should be broadened as much as possible, given the fact that only through such a broad approach, i.e. using a transversal and holistic perspective, this cross-border problem can be addressed. Moreover, its complexity requires something more than a coordinated effort at all levels in order to combat (and understand) it with all necessary guarantees.

In this respect, the Epogender project seeks to analyze gender violence on the basis of the available protection mechanisms for victims, and in particular the European protection order introduced by Directive 2011/99/EU. However, before going into the research, it is essential to describe the reality underlying this issue.

A fundamental premise is the recognition that gender violence constitutes a violation of the human rights of women. This should be pointed out, because unfortunately their presence in the public sphere is still fairly recent. The patriarchal and androcentric DNA characterizing our societies has concealed this scourge under a guise of anonymity and misconceived «privacy» resulting in impunity for acts committed in the family sphere. A circumscription which is based on fear, the dread of rejection, and the difficulty of breaking cultural rules leading to perverse consequences: the revictimisation of the victim by institutionalized silence.

---

* By Laura Román, University College Professor in Constitutional Law, URV.

Overcoming these obstacles and stigmas has not been easy, even less considering that this problem is rooted in something as enduring as human geography. The fight against gender violence has been waged on different fronts: both *ad intra*, within States, and *ad extra*, on the supranational plane, both individually and collectively, committing more or less means on institutional or grass root level, with undeniable scientific contributions, practical or theoretical, sometimes at different speeds, but always moving in the same direction, in a phased but constant effort. As a result, a series of significant advances can be observed which have moved gender violence to the sphere where it belongs —the public sphere— and where it can finally be addressed as what it really is: a pandemic[1].

This has been confirmed by the principal international and European organisations, whose statistical data show the Dantesque scenario with which we are confronted.

According to the World Health Organisation, one in three women experience physical or sexual violence by an intimate partner at some point in their lives[2]. Adding to this the fact that 38% of all murders of women globally were reported as being committed by their intimate partners[3], the numbers show a situation of the highest alert.

At the European level, the situation is just as worrying. The latest EU-wide survey published in March 2014 by the Fundamental Rights Agency of the European Union (FRA) on violence against women in the European Union[4], based on 42,000 interviews with women in the 28 EU Member States, confirms the worst scenario: most cases of violence against women are not reported. The study in fact states that only one in three women report these cases[5], meaning that, considering that we are dealing with the largest investigation carried out worldwide on the subject so far, there is more than

---

[1] http://www.unwomen.org/es/what-we-do/ending-violence-against-women/facts-and-figures (accessed on 20/10/2014).

[2] WHO: *Violence against women. The health sector responds*. 2013. Available at: http://apps.who.int/iris/bitstream/10665/87060/1/WHO_NMH_VIP_PVL_13.1_spa.pdf (accessed on 20/10/2014).

[3] WHO: Global and regional estimates of violence against women. Prevalence and health effects of intimate partner violence and non-partner sexual violence. Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council. Available at: http://apps.who.int/iris/bitstream/10665/85243/1/WHO_RHR_HRP_13.06_spa.pdf (accessed on 20/10/2014).

[4] European Union Agency for Fundamental Rights (FRA): *Violence against women: an EU-wide survey*, Publications Office of the European Union, Luxemburg, 2014.

[5] The survey shows that only 14% of women reported their most serious incident of intimate partner violence to the police, and 13% reported their most serious incident of non-partner violence to the police. European Union Agency for Fundamental Rights (FRA): *Violence against women: an EU-wide survey*. Publications Office of the European Union, Luxemburg, 2014, p. 3.

enough reason for concern. Moreover, the last Eurobarometer on gender inequalities in the EU[6] shows that 48% of European citizens feel that violence against women is the clearest manifestation of gender inequalities, which seems to be quite true.

In view of these data, there is no doubt that we are faced with a serious public health issue[7] that affects all States regardless of their level of development and all spheres of society, in spite of all principles of equality, that are often reduced to mere declarations of intent. Nonetheless, there is always the possibility of research. After all, realities do not exist unless they are documented. Although the statistical data are still fairly recent —coherent with the tradition of concealing gender violence— and only show the tip of a huge iceberg, the truth is that for the first time they provide information which is essential to address the problem. At the same time, contextualizing its origins and highlighting the main landmarks of this process is equally important in order to arrive at a proper understanding of this phenomenon, despite all the limitations. This requires, among others, drawing on the international precedents in the fight against gender violence, both at international and European level, as a basis for this study.

1.2. The advances made by the United Nations

On the international plane, the most important document adopted so far on this subject is the treaty also known as the Magna Charta of Women, i.e. the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), approved by the General Assembly of the United Nations on 18 December 1979[8], which for the first time codifies obligations of States to combat inequality, even though —surprisingly— it does not include violence as a unequivocal cause of discrimination in its text. An omission which has not prevented the Convention from being considered the legal framework *par excellence* on which the entire international system for the protection of women is built.

---

[6] The European Parliament commissioned the Flash survey by phone, which was carried out between 19-21 January 2012 among 25,539 European citizens in (then) 27 EU Member States. The questions focused on pay gaps and other issues, such as the responsibility for child care and gender issues in the work environment. The report on the Eurobarometer, accessed on 20/10/2014, is available at: http://www.europarl.europa.eu/pdf/eurobarometre/2012/femme_mars/rapport_en.pdf.

[7] As claimed by the World Health Organisation (WHO): http://www.who.int/mediacentre/factsheets/fs239/es/ (accessed on 20/10/2014).

[8] Available at: http://www.un.org/womenwatch/daw/cedaw/text/sconvention.htm (accessed on 20/10/2014).

In this respect, it is equally important to acknowledge the efforts made by the so-called international conferences on women which were held as of 1975. These four thematic conferences, that were organized successively in Mexico (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995), through their actions plans, declarations and programmes contributed in a decisive way to the women's cause on the world agenda, establishing common objectives and strategies to achieve the full development of women and equal opportunities.

It was not until 1985, in the context of the Third World Conference on Women in Nairobi, that a first international appeal was made to eradicate the violence against women. Years later, this proposal was formally included in the UN Declaration on the Elimination of Violence against Women, which was adopted on 20 December 1993 in the framework of the Human Rights Conference held in Vienna. The main contribution of the Conference is that, for the first time, violence against women is explicitly recognized as a violation of human rights, a fact that the international community had ignored repeatedly as a result of the asymmetric power relations between men and women, which lay at the foundations of the traditional domination and discrimination of women by men. This is expressed in article 1 of the Declaration, which for decades constituted the usual point of reference for defining the concept of «violence against women», that was described as «any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life».

The Declaration also identifies three main categories of violence against women —physical, sexual and psychological— that may occur both within the family and within the community at large and which may be tolerated or even perpetrated by the State. As a result of this, it condemns both private and public violence against women, and requires the Member States to adopt the necessary measures for its eradication. The true importance, though, of the concluding documents of the Vienna Conference is the formal recognition of all forms of violence against women, since the documents not only amend the most criticized flaw of CEDAW, but they add a series of measures and actions aimed at eliminating these kinds of violence.

The Fourth World Conference on Women, held in Beijing in 1995 with the participation of the European Union, constitutes a new milestone in the promotion of women's rights worldwide and particularly in the treatment of violence against women, as in addition to considering it a phenomenon that goes against human rights, it advocates a new strategy consisting of introducing the gender perspective into all public policies and processes in all areas and at all levels (so-called *gender mainstreaming*).

The concluding documents of the Conference, the Beijing Declaration and the Platform for Action[9], contain the strategic objectives and actions that should be carried out in order to overcome the obstacles to the development and empowerment of women. These include the eradication of violence against women, which forms the fourth critical area of concern, for which three strategic objectives are established:

1) Take integrated measures to prevent and eliminate violence against women;
2) Study the causes and consequences of violence against women and the effectiveness of preventive measures; and
3) Eliminate trafficking in women and assist victims of violence due to prostitution and trafficking.

The most interesting aspect of these documents, for the present purposes, is the fact that they are constantly being updated, as both the UN and the European Union have gone back to them in order to examine and evaluate the status of the acquired commitments and the advances made[10], leading to so-called gender policies in which the elimination of the violence against women is often included as a priority objective.

1.3. The advances made by the Council of Europe and the Istanbul Convention

At the European level, both the Council of Europe and the European Union, to an extent prompted by the international legislation, have undertaken to reinforce women's rights and address the issue of gender violence.

On 11 May 2011, the Committee of Ministers of the Council of Europe adopted in Istanbul the Convention on preventing and combating violence against women and domestic violence, the first binding fundamental rights

[9] Currently, all the Member States of the European Union have signed this Declaration, which is available at: http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20S.pdf (accessed on 20/10/2014).

[10] Up to date, three five-year reviews have taken place regarding the application of the Declaration and the Action Platform: Beijing +5 in June 2000; Beijing +10 in 2005; and Beijing +15 in New York in 2010. In the European Union various reports have been published on the implementation of the commitments agreed in Beijing: in May 2000, in 2005 (during the Luxemburg presidency of the European Council), and in 2010 (during the Swedish presidency of the European Council). More recently, in 2012, the European Institute for Gender Equality (EIGE) published the *Review of the Implementation of the Beijing Platform for Action in the EU Member States: Violence against Women-Victim Support*, Publications Office of the European Union, Luxemburg, 2012, which provides very interesting information on the services the Member States offer to victims of gender violence.

treaty on violence against women[11]. The Convention establishes a comprehensive framework on the basis of the principles of equality and non-discrimination on the one hand and due diligence standards on the other, and is structured on the basis of the three P's (prevention, protection, and prosecution), to which a fourth pillar is added, consisting of integrated policies and data collection. These pillars in turn determine the scope of the States Parties' obligations and due diligence aimed at ensuring the elimination of all kinds of violence against women, as well as their protection. It is in the chapters dedicated to the substantial and procedural rules where the biggest advances can be found, since these regulate matters such as the obligation of the State Parties to criminalise certain conducts, such as female genital mutilation, sexual violence, and forced marriage.

The Convention, that covers all types of violence against women, also establishes coordination mechanisms between States in case victims exercise the freedom of movement or the freedom of establishment. For this purpose, article 47 provides that the Parties shall take the necessary legislative or other measures to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sentence. Furthermore, articles 52 and 53 provide for the adoption of specific protection measures for victims or persons at risk[12]. These provisions do not mean the European protection order (the subject of this investigation) loses its relevance, since

---

[11] The Convention is available at: http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210.htm (accessed on 20/10/2014).

[12] Article 52. *Emergency barring orders*.—Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.

Article 53. *Restraining or protection orders*.—1. Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.

2. Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:

— available for immediate protection and without undue financial or administrative burdens placed on the victim;

— issued for a specified period or until modified or discharged;

— where necessary, issued on an ex parte basis which has immediate effect;

— available irrespective of, or in addition to, other legal proceedings;

— allowed to be introduced in subsequent legal proceedings.

3. Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

the Istanbul Convention has a global scope and seeks ratification by the large possible number of States worldwide. Moreover, it does not establish strict obligations of judicial cooperation, unlike Directive 2011/99/EU. Its legal approach is therefore different, and to a certain extent complements the European protection order.

The Convention entered into force on 1 August 2014, after achieving the ten ratifications required under article 75. The following EU Member States have ratified the Istanbul Convention so far: AT, BE, DE, EL, ES, FI, FR, MT, IT, HU, HR, LT, LU, NL, PL, PT, RO, SE, SI, SK and UK.

1.4. The protection of the victims of gender violence in the European Union

1.4.1. *The progressive configuration of EU gender policies*

Even though none of the founding Treaties provides the European Union with a specific legal basis to act in the field of gender violence, the EU has made a decisive contribution to this cause through its own gender policies[13]. Neither the lack of references to gender violence in the primary law of the EU, nor the absence of exclusive or shared competences, have prevented the European institutions from taking a stand on this issue. On the contrary: in recent years there is increasing evidence of the EU's will, not just to emphatically condemn acts of aggression against women, but to contribute to the elimination of sexist violence in all its manifestations and to mitigate its effects on victims. To this end, the initiatives of the European Union in the field of gender violence have already been linked to different community policies (labour market, healthcare…), to various generic legal instruments (such as the prohibition of all kinds of discrimination of art. 10 TFEU), or more recently, to specific rights recognized in the Charter of Fundamental Rights of the European Union (respect for human dignity, right to physical and mental integrity, prohibition of torture and inhuman or degrading treatment).

An example of this commitment is the Daphne Programme under which this project is carried out. Since 1997, this programme includes the specific objective of preventing and combating all forms of violence, both in the public and in the private sphere, that affect children, young people and women, basically through promoting measures aimed at non-governmental organisa-

[13] Among others, reference must be made to the important efforts of the Union in establishing and stimulating policies regarding equal pay, labour and employment equality, as well as regarding the gradual incorporation of the gender perspective in the daily work of the European institutions and the fundamental objectives of the Union.

tions, awareness campaigns, research on violence and its effects, and the creation of multidisciplinary networks active in this field[14]. At the same time, an important *acquis* of soft law has been built up, consisting of conclusions of the Council, action programmes of the Commission and an intense activity of the European Parliament by means of resolutions which undoubtedly have contributed to inspire, guide and interpret binding legal instruments.

While there is no overall binding strategy on the violence against women in all its dimensions corresponding to the commitments assumed by the European institutions and the Member States, the European Union founds its main legislative decisions on what used to be the «Third Pillar», i.e. the Area of Freedom, Security and Justice of the European Union (AFSJ), which since the Lisbon Treaty[15] has facilitated the creation of a single European space where persons are free to move around and where citizens can exercise their fundamental rights with security, obtain effective judicial protection, and receive a similar level of protection in all Member States without any discrimination[16]. The respect for the different legal systems and traditions of the Member States proclaimed in article 67 TFEU has turned the cooperation between national authorities into an essential mechanism for achieving these objectives, especially through the mutual recognition of their decisions in both criminal and civil matters, one of the cornerstones of the AFSJ[17]. It has been this area where over the past years the most significant legislative contributions have been made to safeguard the rights of the victims of gender violence, including their right to free movement within the European Union without any limitation or reduction of the levels of protection they enjoy in

[14] At this moment, the Daphne III Programme for the period 2007-2013 has already ended. As of 2014, according to the Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Rights and Citizenship Programme [COM(2011) 758 final], this programme will be included in the broader programme «Fundamental Rights and Citizenship» and the sections «Non-discrimination and diversity» and «Gender Equality» of the Programme for Employment and Solidarity (PROGRESS). The merging of these programmes will allow to establish a global focus on funding in the area of rights and freedoms of persons as laid down in the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union.

[15] Title V is dedicated to the Area of Freedom, Security and Justice, articles 67 to 89.

[16] The Lisbon Treaty distributes the issues related to the AFSJ over four main areas: policies regarding border controls, asylum and immigration; judicial cooperation in civil matters; judicial cooperation in criminal matters; and police cooperation.

[17] In the area of judicial cooperation in criminal matters, article 82(2) TFEU provides for the establishment of minimum standards to be applied in the Member States in order to facilitate the mutual recognition of judgments and judicial decisions. This provision constituted the legal basis for Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, which recasts and replaces Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings and Directive 2004/80/EC relating to compensation to crime victims.

their country of origin. We will go into these legislative changes in the following pages.

1.4.2. *The Stockholm Programme*

The Stockholm Programme[18], a strategic five-year plan (2010-2014) launched by the European Council in 2009, sets out the priorities of the European Union for the area of freedom, security and justice. One of the objectives of the so-called «Europe of rights» consists of ensuring the free movement of citizens and their families within the territory of the Union. For this purpose, the programme recommends extending and enhancing the protection for vulnerable groups under these circumstances. These groups specifically include women who are victims of gender violence or genital mutilation, who should also receive financial support[19]. According to the programme, these victims are in need of special support and protection when they find themselves in a Member State of which they are not nationals or residents, i.e. whenever they exercise the freedom of movement by going to another Member State[20]. In this respect the European Council calls on the Commission and the Member States to «examine how to improve legislation and practical support measures for the protection of victims, to improve the implementation of existing instruments, and to adopt special protection measures which should be effective within the Union».

In the same sense, the Action Plan implementing the Stockholm Programme confirms the objective of the Union to ensure the protection of fundamental rights and states that «All policy instruments available will be deployed to provide a robust European response to violence against women and children, including domestic violence and female genital mutilation […]». It also includes the commitment to submit a «Legislative proposal on a comprehensive instrument on the protection of victims and action plan on practical measures including developing a European Protection Order»[21].

---

[18] European Council, Stockholm Programme - An open and secure Europe serving and protecting citizens, *OJEU* C 115, 4-5-2010, pp. 1-38. Also available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF (accessed on 20/10/2014).

[19] Article 2(3)(3) of the Stockholm Programme.

[20] Article 2(3)(4) of the Stockholm Programme.

[21] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering an area of freedom, security and justice for Europe's citizens, Action Plan Implementing the Stockholm Programme, Brussels, 20.4.2010 [COM (2010) 171 final].

As a result of these provisions, and in line with the objectives and actions to be pursued in the area of freedom, security and justice, in 2010 three legislative initiatives coincided, which —considering their binding character— constitute the most significant advance to date in the protection of the victims of gender violence. We are referring to Directive 2011/99/EU on the European protection order[22], in the field of judicial cooperation in criminal matters; to Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime[23]; and to Regulation no 606/2013 on mutual recognition of protection measures in civil matters[24]. Although none of these instruments is specifically meant for victims of gender violence, all of them establish mechanisms that may be used to combat this kind of violence as they are based on the principle of mutual recognition of judicial decisions in civil and criminal matters.

Considering that the subject of our investigation is the European protection order, in the following section we will focus our analysis on Directive 2011/99/EU and the EPO, its instrument for judicial cooperation in criminal matters.

2. DIRECTIVE 2011/99/EU ON THE EUROPEAN PROTECTION ORDER*

2.1. Introduction

The initiative for Directive 2011/99/EU was taken by Spain when it assumed the six-month Presidency of the Council of the European Union in January 2010[25]. Although the preparatory work proved to be complicated as multiple obstacles had to be overcome (among other things, the opposition of the European Commission who had lost the monopoly on the legislative initiative after the entry into force of the Lisbon Treaty[26]), the proposal was finally sub-

[22] Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, *OJ* L 338, 21.12.2011, pp. 2-18.

[23] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, *OJ* L 315, 14.11.2012, pp. 57-73.

[24] Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, *OJ* L 181, 29.6.2013, pp. 4-12.

* By Neus Oliveras, University College Professor in Constitutional Law, URV.

[25] In 2003, Spain approved Act 27/2003 of 31 July regulating the Protection Order for Victims of Domestic Violence [*Ley 27/2003, de 31 de julio reguladora de la Orden de protección de las víctimas de violencia doméstica*] (*BOE*, 1 August 2003).

[26] The opposition of the Commission was basically motivated by technical reasons, considering that the different protection orders existing in various Member States were sometimes

mitted by eleven Member States (which besides Spain included BE, BG, EE, FI, FR, HU, IT, PL, PT, RO and SE) following the rules laid down in the TFEU[27], i.e. in accordance with the ordinary legislative procedure and thanks to an alliance between the European Parliament and a Council majority[28].

The Directive's goal is to ensure that the protection measures adopted in one Member States to protect the victim of a criminal act is maintained and continued in any other Member State to which the person moves or has moved. The European protection order is criminal in nature and only covers specific protection measures, namely the ones described in article 5 of the Directive:

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

b) the prohibition or regulation of contact, in any form or by any means, with the protected person; and

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

The Directive includes 42 recitals, which are very useful to interpret and contextualize the content of the 25 articles that follow. Two annexes are attached, containing the form for the European protection order and a form for the notification of a breach of the measure taken on the basis of the European protection order.

2.2. Principles of the Directive: legal basis and scope of application

2.2.1. *Nature of the protection measures and legal basis of the Directive*

Recital 10 of the Directive explicitly states that the European protection order does not cover protection measures adopted in civil matters[29]. Originally,

---

civil, sometimes criminal in nature, indicating that the harmonisation to which the adoption of a Directive should lead, might prove extremely complex.

[27] According to article 289(4) TFEU: «In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States […]». In these cases, article 76 TFEU establishes that: «The acts referred to in Chapters 4 [Judicial cooperation in criminal matters] and 5 [Police cooperation] […] shall be adopted: *a*) on a proposal from the Commission, or *b*) on the initiative of a quarter of the Member States». This legal basis was corroborated by the opinion of the Legal Service (not published); see Doc. 6516/10, 17.2.2010.

[28] For a detailed explanation of the obstacles encountered in the preparatory phase, we refer to Magdalena M. Martín Martínez, who states that the firm support of the European Parliament was decisive for the final approval of the European protection order. See: «Protección a las víctimas, violencia de género y cooperación judicial peal en la Unión Europea Post-Lisboa» (in Spanish), *Revista de Derecho Comunitario Europeo*, no. 39, 2011, pp. 415-421, and specifically pp. 418 and 421.

[29] Logically, recital 9 of Regulation 606/2013 limits its scope of application to protection measures adopted in civil matters and refers for protection measures adopted in criminal matters to Directive 2011/99/EU.

the EPO was meant to be an instrument for the recognition of protection measures adopted both in criminal and in civil matters in order to respond to the existing diversity in the legislation of the Member States, and to the different legal systems providing for criminal, civil or mixed measures[30]. Even so, in spite of the fact that on many occasions a combination of different measures are used, it was decided to base the Directive on criminal cooperation because the legal interests to be protected, such as life, physical or mental integrity, or sexual freedom, have traditionally been safeguarded under criminal law. The main objection was that, according to some States, these measures go beyond the legal basis used for the Directive, i.e. article 82 TFEU which regulates the judicial cooperation in criminal matters, and would also need to be based on article 81 TFEU regarding judicial cooperation in civil matters[31]. For this reason, during the negotiations on Directive 2011/99/EU, in order to overcome the frontal opposition by the Commission and the doubts of certain Member States regarding the procedure followed, the scope of the European protection order was limited to criminal matters. In addition, given that in this way a full protection of the victims could not be achieved, preparations started, this time at the initiative of the Commission, for the adoption of Regulation (EU) 606/2013 of the European Parliament and the Council of 12 June 2013 on mutual recognition of protection measures in civil matters[32]. The Regulation uses a certificate containing all the relevant information for the recognition and execution of the protection measures, which must be brought to the notice of the protected person. According to article 22, the Regulation shall apply from 11 January 2015, which coincides with the deadline before which the Member States must implement the Directive on the European protection order in their national legal sys-

[30] As Marta del Pozo Pérez explains, the Spanish initiative was very ambitious, but had to make a series of concessions in order to obtain the support of other Member States who, while recognizing the relevance of this instrument, considered it necessary to shield their legal sovereignty in criminal matters from the decisions of other Member States. See: «Análisis crítico de la orden europea de protección desde la perspectiva de las víctimas de violencia de género». Figueruelo Burrieza, A.; del Pozo Pérez, M.; León Alonso, M. (dirs.); Gallardo Rodríguez, A. (coord.), *Igualdad. Retos para el siglo XXI*, Andavira, Santiago de Compostela, 2012, p. 13.

[31] Paula Sánchez Martín has dedicated a enlightening section to the issue of the legal basis in «La orden europea de protección». Martínez García, E. (dir.); Vegas Aguilar, J. C. (coord.), *La prevención y erradicación de la violencia de género. Un estudio multidisciplinar y forense*, Aranzadi, Pamplona, 2012, pp. 489-491.

[32] More specifically, the Regulation is based on article 81(2), *a*), *e*) and *f*) of the Treaty on the Functioning of the European Union. According to article 81, the Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Unlike article 82, article 81 does not predetermine that the legal instrument to be used in order to achieve the specified objectives must be a Directive.

tems. As indicated in the explanatory statement, it aims to complement the Directive on the European protection order, as explained earlier[33]. One of the remarkable features of these two instruments of the EU is that both provide for the same three protection measures, i.e. restrictions on the access to certain places, contact restrictions, and restrictions regarding the distance within which the protected person may be approached. The existence of two different legal instruments, a Directive and a Regulation, which use different recognition mechanisms —a European protection order and a certificate— but which pursue the same goals by the same means, is somewhat confusing (to say the least), even though it can be explained by their different legal basis.

2.2.2. *The irrelevance of the legal nature of the competent authority*

This aspect is complicated by another element: as stated in recital 10 of the Directive, the criminal, administrative or civil nature of the authority adopting a protection measure is not relevant[34]. This approach was one of the reasons for the discrepancies during the preparatory work on the Directive explained above, and originates in the fact that in the Member States, besides the criminal judicial organs, there is a variety of jurisdictions, authorities and rules used to issue protection orders with the same guarantees and effectiveness. The Directive takes into account the different legal traditions of the Member States, thus allowing for a certain flexibility in choosing the competent authorities, both for issuing protection orders and executing them[35].

---

[33] Article 21 of Directive 2011/99/EU.

[34] Recital 10 of the Regulation insists that the civil, administrative or criminal nature of the authority ordering a protection measure should not be determinative for the purpose of assessing the civil character of a protection measure, but that the notion of civil matters should be interpreted autonomously, in accordance with the principles of Union law. The option chosen by the Directive, which does not provide that the authority adopting the protection measure must necessarily be a judicial authority, is considered most questionable by Marta del Pozo Pérez, who understands that in a constitutional State «a decision of this nature cannot be adopted by an authority or organ which is not judicial, with all legally established guarantees». She adds that if the judicial authorities have a distrust of other judicial authorities, this lack of trust will be even greater «if the other authority is administrative or *pseudo-judicial*», and that the principle of mutual recognition was exclusively intended judicial decisions, and not for equivalent decisions. See: «La orden europea de protección. Especial referencia a las víctimas de violencia de género», *Revista Europea de Derechos Fundamentales*, no. 19, 2012, pp. 176-178.

[35] This solution, as Magdalena M. Martín Martínez explains, is also applied in international law. Extrapolating the principles used in those cases, she considers that two conditions must be met: the issuing authority must be a State organ, and that organ must have the proper competences of a public power («imperium»). See: «Protección a las víctimas, violencia de género y cooperación judicial penal en la Unión Europea Post-Lisboa», *Revista de Derecho Comunitario Europeo*, no. 39, 2011, p. 425.

Likewise, the Directive does not require these authorities to be the same[36]. This flexibility, however, does not conflict with legal security. Thus, the Member States must inform the Commission which judicial or equivalent authority or authorities are competent under its national law to issue a European protection order and to execute such an order. The Directive also foresees the possibility of designating a central authority in order to coordinate and centralize the processing of European protection orders[37]. In view of the diversity and plurality of authorities, it is considered convenient to have direct communication and consultations between them in order to facilitate the application of the Directive.

2.2.3. *Types of measures*

The Directive does not include all the protection measures that may be available under the national legislation of the Member States for the protection of victims, but only the three main types of protection measures mentioned above, restricting the personal contact or regulating the distance to be observed between the protected person and the person causing danger. Therefore, an essential condition for issuing an EPO is the previous adoption under national law of one of the three protection measures established in article 5 of the Directive, even though 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 (see Recital 20 of the Directive). Thus, the criterion is not to offer the exact same protection measure, but to guarantee in the executing State a protection which is equivalent to the one provided to the protected person in the issuing State. This again ensues from the principle of flexibility in the cooperation between Member States, and is a way to take into account the diversity both in legislations and in authorities competent to adopt protection measures. As a result, *a priori*, the other protection mea-

[36] Sabela Oubiña Barbolla analyzed the advantages and drawbacks of centralizing the competence to issue and adopt these orders with a few criminal judicial organs. On the one hand, she considers that the deconcentration to all the Examining Courts is excessive, but on the other hand she finds the proximity of the judicial organs to the protected persons to be positive. See: «La orden europea de protección: realidad o ilusión». Castillejo Manzanares, R. (dir.); Catalina Benavente, M. A. (coord.). *Violencia de género, justicia restaurativa y mediación*, La Ley, Grupo Wolters Kluwer, Madrid, 2011, pp. 273-275.

[37] Articles 3 and 4 of the Directive. The Directive also refers to the possibility that this coordination may be carried out by various authorities, probably having regard to the decentralized territorial structure of different EU Member States.

sures that have been adopted for the benefit of the victim in the State of origin are excluded, e.g. support measures. However, this does not preclude the receiving State from providing complementary measures under its own legislation.

Finally, with regard to the protection measures established in the Directive it should be pointed out that these include both final measures, i.e. measures adopted as part of a final decision in criminal proceedings, and provisional ones, i.e. measures adopted under national law as precautionary measures. Moreover, the Directive allows for the use of electronic means to ensure compliance with the protection measures. These measures should be included in the EPO and the details to be provided on the EPO-form attached to the Directive. These mechanisms to ensure compliance with the adopted protection measures, although quite effective, do present new problems, such as their high costs, territorial sphere of application, and the technical compatibility of the electronic surveillance systems used by the Member States.

2.3. Procedures, applicable law and implementation of the Directive

2.3.1. *Legal capacity to request a protection order*

To begin with, it should be recalled that the material scope of application of the Directive includes all victims (as established in recital 9), and not just the victims of gender violence, including all «possible» victims of crime. This extension of the scope of application corresponds to the objective of the protection order to prevent further acts of violence and not just to respond to them. It does however raise some concerns regarding its interpretation[38]. According to the principles of criminal law, a protection measure shall only be adopted in relation to a potential or future criminal act if there are reasonable grounds to assume it will be committed. It cannot be used as a simple general preventive measure for hypothetical criminal acts. This leads us to the consideration that the category of «possible victims» should be limited to cases where a person is protected by precautionary measures, yet could also include persons at risk of genital mutilation or forced marriage.

The protection measures based on a European protection measure may also cover the relatives of victims. In this case, a specific EPO should be is-

[38] Marta del Pozo Pérez regards this extension of the personal scope of application to all victims as dangerous and questionable because of the legal insecurity it creates. She considers there must an objective situation of risk «because otherwise fundamental rights of the accused are being violated on the basis of mere suspicions or assumptions». See: «La orden europea de protección. Especial referencia a las víctimas de violencia de género», *Revista Europea de Derechos Fundamentales*, no. 19, 2012, p. 172.

sued for each of them[39]. On the other hand, the Directive excludes using the European protection order for other purposes than the protection of victims, such as witness protection or the social rehabilitation of the offender[40].

The person with capacity to request a protection order is the protected person, or where applicable, her representative or guardian, for whose benefit the corresponding protection measures have already been adopted, and who moves or has moved to another Member State where she wishes to stay. The fact that the protection order cannot be issued *ex officio* has been criticized, considering that it concerns an issue of public interest, or at the request of third parties such as relatives or professionals (e.g. social workers), possibilities which are available in some national legal systems. The request may be submitted both in the issuing State and in the executing State, although it is preferable to do so in the issuing State, as recognized in article 6(5) where it is specified that when a competent authority adopts a protection measure it shall inform the protected person about the possibility of requesting a European protection order in the case that that person decides to leave for another Member State, and advise the protected person to submit an application before leaving the territory of the issuing State. This advice makes sense, as the request submitted in the executing State will be transferred to the issuing State, where the underlying proceedings were carried out and where the protection measures were adopted, the existence of which is a prerequisite for issuing a European protection order.

In any case, it should be clear that the EPO is addressed to the State to which the protected person moves or has moved, which the Directive defines as the executing State. This is one of the limitations of the European protection order, characterizing it as a cooperation mechanism between Member States, and another of the elements differentiating it from the certificate to be issued regarding civil protection measures provided for in the adopted Regulation, where it is the protected person who, if she wishes to invoke a protection measure ordered in the Member State of origin, provides the Member States to which she moves with the certificate issued in the Member State of origin[41].

2.3.2. *The adoption and recognition of the European protection order*

The adoption and recognition of an EPO are not automatic. As for its adoption, the issuing State must take into account several elements, such as

[39] Recital 12.

[40] Recitals 9 and 11.

[41] See article 4(1) of Regulation 606/2013, which provides that «A protection measure ordered in a Member State shall be recognised in the other Member States without any special procedure being required [...]».

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, criteria which are mentioned by way of example in article 6(1) of the Directive, as part of a non-exhaustive enumeration which may include other circumstances. In this respect, a short stay during a weekend in another EU Member State may bring the competent authority of the issuing State to consider that the adoption of a protection order is disproportionate in relation to all the required procedural steps, even though the Directive does not establish a minimum period. Following the logic of the procedures, it is also the issuing State which decides on any modification of the initial protection measures, such as their renewal, review, modification and withdrawal, which will be reflected in the EPO.

A delicate subject which concerns fundamental rights, and in particular the right to defence, is the right to be heard of the person causing danger. According to the Directive, she has the right to be heard and to challenge the protection measure. If she has not been granted these rights in the procedure leading to the adoption of the protection measure, she should be given the possibility to be heard during the procedure regarding the adoption of the EPO. However, the protected person may have already moved to another Member State, where she requests the protection order, or the person causing danger may be abroad or on a location different from the one where the adoption of the order is being considered. In these cases, the resources will have to be made available in order to allow the hearing to take place. One option may be the use of a videoconference. The same goes when the protection measures are renewed or modified by the issuing State.

To begin with, the executing State, when receiving an EPO, shall recognise it «without undue delay»[42], and in consequence adopt the necessary available measures under its national law to maintain the protection of the victim. As clearly stated in recital 18, the recognition of a European protection order requires that the executing State «accepts the existence and validity of the protection measure adopted in the issuing State, acknowledges the factual situation described in the European protection order, and agrees that protection should be provided and should continue to be provided in accordance with its national law». Given that the executing State is not required to apply identical protection measures to the ones adopted in the issuing State, but may adopt measures that offer an equivalent level of protection, the executing State is obliged to inform the person causing danger, the protected person, and the issuing State about the concrete measures adopted. Naturally, the notification to the person causing danger will not contain any details regarding the address or other contact information of the protected person,

[42] Article 8 of the Directive.

unless such details are necessary in view of the enforcement of the measure adopted.

Nonetheless, as indicated earlier, the recognition of the European protection order by the executing State is not necessarily automatic, as the Directive provides for a considerable number of grounds for non-recognition. These include non-compliance with certain formal requirements or the case where the executing State does not consider the acts to which the protection measures refer to be a criminal offence[43]. If the executing State decides not to recognize the protection order on one of these grounds, it must inform the issuing State and the protected person thereof. The latter should also be informed about of the applicable legal remedies that are available under its national law and the available protection measures, also under its national law. This last provision, though useful, is not really consistent with the principles of the Directive, which seeks to avoid that the protected person must start new proceedings or must submit evidence one again in the executing State as if a decision had not been made already in the issuing State. This could even lead to the paradoxical situation where a protected person is denied a European protection order, yet is granted a protection measure under the national law of the executing State, as a result of which parallel protection measures will be applicable in two EU Member States without an EPO being applied[44].

---

[43] The grounds for non-recognition specified in article 10 of the Directive are the following: *a*) 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; *b*) the requirements set out in article 5 have not been met, which refers to the protection measures on which a protection order may be based; *c*) the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State; *d*) the protection derives from the execution of a penalty or measure that, according to the law of the executing State, is covered by an amnesty and relates to an act or conduct which falls within its competence according to that law; *e*) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt measures on the basis of a European protection order; *f*) 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; *g*) recognition of the European protection order would contravene the *ne bis in idem* principle; *h*) under the law of the executing State, the person causing danger cannot, because of that person's age, be held criminally responsible; *i*) the protection measure relates to a criminal offence which, under the law of the executing State, is regarded as having been committed within its territory. In this aspect the Directive also differs from the Regulation, which does not establish any grounds for non-recognition, but a series of requirements to be met in order to apply the certificate.

[44] This paradoxical situation is pointed out by Sabela Oubiña Barbolla in «La orden europea de protección: realidad o ilusión». Castillejo Manzanares, R. (dir.); Catalina Benavente, M. A. (coord.), *Violencia de género, justicia restaurativa y mediación*, La Ley, Wolters Kluwer Group, Madrid, 2011, pp. 295-296.

2.3.3. *Breach of protection measures and their discontinuation*

Given that the protection measures deriving from an EPO are decided by the executing State, the Directive provides that in event of a breach of the protection measures it is the competence of the executing State to take (initial) enforcement measures. On the one hand, the executing State shall notify the issuing State of such a breach, and on the other hand may adopt measures, ranging from the imposition of penalties if the breach amounts to a criminal offence under its national law, to the adoption of urgent and provisional measures to protect the victim pending a subsequent decision by the issuing State. All this information should be notified using the standard form regarding breach of measures attached to the Directive.

A highly problematic issue which is not dealt with in the Directive is the identification of the person causing a breach of the measures. One could automatically assume this must have been the person causing danger. However, the protection measures may be breached by the protected person herself by accepting or provoking incompliance, e.g. by voluntarily and consciously approaching the person causing danger. This situation can be solved by applying the national law of each Member State. In case of the European protection order, however, a possible solution might be its suspension[45].

It further depends on the competence of the executing State to suspend or discontinue the protection measures derived from an EPO under the conditions established by the Directive, e.g. where the protected person no longer finds herself in its territory or where, according to its national law, the maximum term of duration of the measures adopted in execution of the European protection order has expired[46]. In any case, the issuing State must be informed of such a decision, whose opinion may also be asked on the need for maintaining the protection measures. Where possible, the protected person should also be informed. The executing State is also competent to choose whether to modify existing measures according to its national law in case these are modified by the issuing State, or refuse recognition on the grounds laid down in the Directive, following the same logic as applicable in recognizing an EPO.

As far as technical difficulties for the application of the Directive are concerned, one of the aspects to consider is the language[47]. The Directive solves

---

[45] This situation is explained and this solution is suggested by Sabela Oubiña Barbolla in «La orden europea de protección: realidad o ilusión». Castillejo Manzanares, R. (dir.); Catalina Benavente, M. A. (coord.), *Violencia de género, justicia restaurativa y mediación*, La Ley, Wolters Kluwer Group, Madrid, 2011, pp. 297-298.

[46] Article 14 regulates these cases based on an apparently exhaustive list.

[47] According to Sabela Oubiña Barbolla, the bad quality of the translations is a frequent complaint of officials involved and an important obstacle for the defence of foreign clients according to lawyers. For this reason, she proposes the establishment of high-quality transla-

this issue by establishing that European protection orders shall be translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State. However, any Member State may state that it will accept a translation in one or more other official languages of the Union. Moreover, all the information that must be provided to the protected person and the person causing danger shall be provided in a language they understand[48].

A related issue are the costs resulting from the application of a European protection order, which may include the costs deriving from translations, notifications served to the parties involved, proceedings initiated due to the non-recognition of an EPO, or the use of electronic surveillance devices. Article 18 of the Directive attributes the major part of these expenses to the executing State, so that it will bear a large part of the costs deriving from the execution of a judicial decision by the competent authority of another Member State[49].

2.3.4. *Transposition of the Directive*

Directives are suitable instruments for the approximation of the national legislation of the Member States and to avoid conflicts with Union law. The present Directive however does not oblige the Member States to modify their national legal systems to enable them to adopt protection measures, nor to amend their criminal law system for executing a European protection order (recitals 8 and 10).Even so, it provides that the executing State should have the legal means for recognising the decision previously adopted in the issuing State in favour of the victim (recital 18)[50]. It should however not be forgotten that this is

---

tion services at the national level. See: «La orden europea de protección: realidad o ilusión». Castillejo Manzanares, R. (dir.); Catalina Benavente, M. A. (coord.). *Violencia de género, justicia restaurativa y mediación*, La Ley, Wolters Kluwer Group, Madrid, 2011, pp. 280-281.

[48] On the other hand, to facilitate the application of protection measures in civil matters in case of the free movement of persons the Regulation uses a standard multilingual certificate which contains the least possible space for free text. See recitals 23 and 24, and article 5(1) of the Regulation.

[49] Suzan Van der Aa and J. W. Ouwerkerk suggest that if the executing State could claim reimbursement of the expenses from the issuing State, this would constitute a practical incentive to cooperate and would reinforce the protection of the victim. See: «The European Protection Order: No time to waste or a waste of time?», *European Journal of Crime, Criminal Law and Criminal Justice*, 2011, vol. 19, no. 4, p. 13.

[50] Paula Sánchez Martín explains that we are dealing with an instrument based on mutual recognition and not on harmonisation «as the goal is not to standardize the national legislations of the Member States but to remove the frontiers between Member States» with regard to the protection of victims. See: «La orden europea de protección». Martínez García, E. (dir.); Vegas Aguilar, J. C. (coord.), *La prevención y erradicación de la violencia de género. Un estudio multidisciplinar y forense*, Aranzadi, Pamplona, 2012, p. 500.

the legal method established for criminal cooperation under article 82 TFEU. The obligations imposed by the Directive on the participating Member States, which in our view form part of the transposition process, include the obligation to notify the Commission of the competent authorities designated for issuing and recognizing EPOs, the existence of agreements and arrangements with other States affecting the objectives of the Directive, and other information on the application of the national procedures regarding European protection orders. In addition, recital 31 recommends the Member States to provide appropriate training to judges, prosecutors, police and judicial staff involved in the procedures aimed at issuing or recognising European protection orders, which in our opinion is an essential element for the effective implementation of the Directive and the effectiveness of the European protection order.

3. THE CONCEPT OF GENDER VIOLENCE IN THE LEGAL SYSTEMS OF THE MEMBER STATES*

3.1. Establishing the concept of gender violence

One of the key issues in the protection of the victims of gender violence is the lack of a common legal concept or conceptual framework in the different Member States. This concept or conceptual framework is not established by Directive 2011/99/EU either. In fact, even though the Preamble contains an explicit reference to gender violence, it is not the intention of the European legislator —at least not in adopting this instrument— to have the Member States introduce the same concept in their legal order or to identify the elements characterizing this phenomenon[51].

It must be stressed that the main goal of the Directive is to create a system that allows for the recognition and execution of judicial decisions —in particular protection orders— among Member States. The main goal of the Epogender project, however, has been to analyze the legislation of the Member States related to protection orders in cases of gender violence. For this reason, the national questionnaires sent to various experts in each Member State enquired about the concept of violence that is recognized in each legal system (whether this is gender violence, (intra)family violence or domestic violence). For the purposes of this study, the concept of gender violence used has been the one defined in the Beijing Platform for Action and the Declara-

* By Víctor Merino, Lecturer in Philosophy of Law, URV.

[51] Recital 9 of the Directive expressly states that it regulates «protection measures which aim to protect all victims and not only the victims of gender violence, taking into account the specificities of each type of crime concerned».

tion on the Violence against Women of the General Assembly of the United Nations[52], according to which gender violence is violence exerted against women because of their female condition. In these documents domestic violence or intrafamily violence is defined as violence committed in the family or domestic sphere. Thus, unlike the previous concept, this kind of violence is not defined on the basis of the person subjected to violence, but on the area or sphere where it takes place.

Although an agreed definition is missing on the European level, the institutions of the European Union have taken various important steps to promote the creation and enhancement of a European system for combating gender violence, all of which have been taken after the adoption of Directive 2011/99/EU, though. In this respect, the European Parliament adopted a resolution in 2011 on priorities and outline of a new EU policy framework to fight violence against women[53], in which it proposed a number of concrete recommendations in the framework of common strategy of the Member States to combat gender violence. This document also refers to the lack of an internationally recognized definition of the concept of gender violence, in spite of the 1993 Declaration of the General Assembly of the United Nations and that of the Platform of Action of the Beijing World Conference of 1995, which did give a definition of this phenomenon, as indicated above.

Although Directive 2011/99/EU does not provide an explicit definition, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, includes —again, in the Preamble— a conceptual framework which, building on the definitions of the United Nations, broadens and clarifies the different notions used in national legislations.

In accordance with the concepts used by the referred international instruments, Directive 2012/29/EU states in recital 17 of the Preamble that gender-based violence is violence directed against a person because of that person's gender, gender identity or gender expression. Without the female gender being mentioned explicitly, this definition seems to indicate that in case of

---

[52] The Declaration states in recital B that «whereas although there is no internationally recognised definition of the term «violence against women», it is defined by the United Nations as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life». Declaration on the Elimination of Violence against Women (A/RES/48/104), United Nations, General Assembly, 20 December 1993, article 1; Beijing Platform for Action 1995, point 113. It should be reminded that both documents consider the origin of the violence to be the gender of the victim, which is why they refer to it as gender violence.

[53] European Parliament resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women [2010/2209(INI)].

structural discrimination of one of the sexes or genders, it is this gender (the discriminated sex or gender) which identifies the subject against whom gender violence is directed. In our view the international documents refer to the female gender as the one against which violence has historically been directed, so that the female condition has been the characteristic of this type of violence.

To this first criterion recital 17 adds another: violence that affects persons of a particular gender disproportionately (as indicated earlier, this kind of violence has been directed in a disproportionate way against women), is also understood as gender-based violence. This shows that the quantitative or phenomenological criteria used also reflect the structural inequality lying at the root of this type of violence.

The next recital defines violence in close relationships as a different, though sometimes related kind of violence. It must be recalled that gender violence is characterized by the gender of the victim and not by the sphere in which it is exerted. For this reason, when gender-based violence is committed in the family sphere or in close relationships, one must be aware that, at least conceptually, we are dealing with different types of violence. This means in many cases different kinds of violence coincide, that is, there tends to more intrafamily violence against women, which in part can be explained by the existence of a structural discrimination affecting the relations between persons of opposite genders in the family sphere or in close relationships. This being said, of course not all intrafamily violence is directed against women, nor does gender violence limit itself to violence in the family sphere or in close relationships. This same distinction can be found in article 3 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention.

In spite of this trend, and most likely due to the difficulty of harmonizing the criminal legal systems of the Member States, neither the European legislator nor the national legislators have tried to promote the creation of a common framework, or to align the existing legal frameworks in this field. That is to say, the analysis of the national legislations shows that a variety of concepts and notions is used, which in turn determine the material and personal scope of protection. In other words, depending on the concept of gender violence used in each legal system, different degrees of protection are provided against particular (criminal) acts. The concept used determines the subjects covered by this protection, as well as other equally important elements, such as the kind of measures available or the role of the police in cases of gender violence.

3.2. An attempt to systematize the various notions of gender violence

An analysis of the definitions of gender violence provided in the questionnaires responded by the national authorities shows that, for the purpose of classification, three general trends can be observed in the different legal systems:

a) In the first place, a group of States uses a concept of gender violence in their legal systems based on the sex or gender of the victim (Austria, Spain, France, Sweden). In these countries specific rules exist (generally criminal rules) which include an explicit definition. Even so, occasionally, as in the case of the Spanish legal order, no distinction is made between gender violence and domestic violence.

b) A second group of countries is characterized by the fact that their legal systems, and particularly their criminal law, provide for a concept of violence related to the domestic or family sphere. In this case no concept of gender violence exists, nor are victims differentiated by their sex or gender. In these legal systems protection orders may be adopted when violence is exerted against the members of a family unit, which (in most cases) includes children and ascendants, extending protection up to the third or fourth degree, or even to same-sex couples.

c) The third group of States, finally, is characterized by not using any kind of definition of gender violence or legal description of it as a criminal offence, not even in the form of domestic or intimate partner violence. This group includes Finland, where the protection does not make reference to the gender of the victim except in the context of certain procedural measures established to protect victims against generic violent acts (such as threats or injuries), which are distinguished according to the sphere in which they are committed. Therefore, with respect to classification, these countries hold an intermediate position between the former and the present group. In this group other legal systems can also be found, which include Germany, Estonia and Latvia, which do not contain any reference to a possible specific criminal offence against which a protection order as defined by the Directive can be adopted, and which neither have specific procedural protection measures.

3.2.1. *Legal systems with a specific concept of gender violence*

Those countries that have specific regulations on the subject and in particular use a specific concept of gender violence different from family or domestic violence, tend to define it as violence specifically directed against

women. This is the case of Austria, which has had a law for the protection of the victims of gender violence since 2009. This act modifies a first act on the same subject from 1997 that already included a specific concept of gender violence and that modified several general laws, such as the Civil Code, the Criminal Code, procedural laws, etc. It should be noted that this method to modify general laws through special laws in order to introduce specific measures concerning gender violence has been repeatedly used by those countries which have adopted concrete rules on the subject.

This was done for instance in Spain, where Organic Act 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender Violence recognizes gender violence as violence committed in a close relationship among partners that live or have lived together, and where the victim is a woman. It consequently does not contain a definition of gender violence *stricto sensu*, as it requires a close relationship, even though the title of the act includes the term. It does however use a concept of gender violence in relation to the measures for awareness raising and prevention included in the same act. This conceptual limitation may be due to technical-juridical considerations deriving from the necessity to establish a legal description of the offence of domestic violence exerted against women in the context of a close relationship.

Similarly, France adopted a specific act on gender violence in 2010, Act 2010/769 on violence committed specifically against women, partner violence, and their effects on children. This act is further implemented by Decree 2010/1134 of 29 September 2010 on the civil procedure for the protection of victims of partner violence, and seems to follow the same parameters as the Spanish legislation.

This group finally includes Sweden, which distinguishes itself from the previous countries because it establishes a specific notion of gender violence, but the protection is extended to victims outside close relationships, and also to same-sex couples. In 1998, the Swedish parliament approved the Act on Violence against Women, by which it modified the Criminal Code introducing a new offence penalizing violent acts in the broad sense committed by a man against a woman with whom he maintains or has maintained an intimate relationship. The offence is called «serious violation of a woman's integrity», removing the legal interest from the family or domestic sphere, though emphasizing the intimate relationship between the aggressor and the victim. All in all, the protection measures go beyond the «female victim-subject», which allows this approach to be classified somewhere between the present category and the following.

3.2.2. *Legal systems that have incorporated the concept of violence against women in the form of domestic or partner violence*

The tendency most frequently observed among the legal systems analyzed is to establish a definition in the form of a prohibition of domestic or family violence. From this however it may not be inferred that the meaning of domestic or partner violence is the same in all these countries. In this respect, two subcategories can be observed, depending on whether the family members are specifically identified and whether they can obtain protection in case of violence. This makes it more difficult to determine the degree of protection and the subjects that enjoy this protection, as explained earlier, due to the lack of an agreed concept of gender violence and even of the concept of family. In some cases, this violence only includes different members of the nuclear family (such as parents and children, provided the marriage is between partners of opposite sexes), while in other cases to just a few, so that the concept of domestic or intrafamily violence does not exactly determine the personal scope of protection due to the diverging recognition of the different types of families (which allow to include relatives beyond the parent-child relation or even same-sex couples).

In addition, mention should be made of the difficulty to identify the regulatory sources used to introduce the definition of violence into the legal system. In some cases the concept is recognized in criminal rules, while in other cases this is done by means of procedural rules regulating the protection measures. In both cases, this regulatory dispersion complicates even more the possibility of establishing a conceptual and legal framework unifying the different legal orders.

In this respect, in Belgium a specific law was adopted in 1997 to fight partner violence. Subsequently, other instruments related to this phenomenon were added. For instance, the Act of 28 January 2003 on awarding the family home to the spouse or unmarried partner who has been victim of physical violence by her partner, modifying the Criminal Code, or the Act of 15 May 2012 on sanctions for incompliance of the temporary eviction order in case of domestic violence. Something similar was done in Luxembourg, where there is a specific law on domestic violence since 2003, last modified on 30 July 2013, which in turn modifies general laws such as the Police and General Police Inspection Act, the Criminal Code, the Code of Criminal Procedure, and the Code of Civil Procedure.

This phenomenon has also been regulated through a specific law in Bulgaria, where in 2005 the Act on Protection against Domestic Violence was adopted (Act 27 of 29 March 2005). Article 2 of that act defines domestic violence as any act of physical, sexual, psychological, emotional or financial violence, as well as any attempt to exert such violence, and any restric-

tion of the privacy, freedom or fundamental rights of a person with whom the offender maintains or has maintained a family relation or a situation of cohabitation. The extension of the definition of violence to emotional or financial violence underlines the need to establish a common or at least similar legal framework, because the types of violence or aggressions against which protection can be requested and obtained also vary from one legal system to another.

By contrast, the Czech Republic promulgated Act 135/2006 prohibiting domestic violence, however without including a definition of this concept. This act includes protection measures for this kind of violence, but does not define the concept because the Criminal Code already contains a legal description of domestic violence as an offence, without using this term though: cruelty to a close person or another person living with the perpetrator in a common dwelling. It should be noted that in the Czech Republic the National Action Plan for the Prevention of Domestic Violence for the Years 2011-2014 does offer a proper definition of the notion of domestic violence. However, this definition is not binding because of the legal status of this document.

This group also includes Cyprus, where Act 212(I)/2004 on Violence in the Family defines domestic violence as: «any act, omission or conduct by which a member of the family inflicts physical, sexual or mental harm on any other member of the family, including any act which forces the victim to have sexual intercourse without her consent, and which limits his/her freedom». In a similar way, in Greece Act 3500/2006 on the Eradication of Domestic Violence explicitly defines domestic violence as a criminal offence against one of the members of the family. For the purposes of this act, family members include:

a) spouses or parents and first and second degree relatives by blood or by marriage and adopted children;

b) relatives by blood or by marriage up to fourth degree and persons whose legal commissioner or foster parent is a family member, if they cohabit, and any minor person living in the household; and

c) the permanent companion of man or woman and children, common or one of them, if they cohabit, and the former companions.

In Croatia, in 2009 the Act on the Protection against Family Violence was adopted, which modifies the previous act from 2003. According to the version of 2009, the objective of the act is to prevent, punish and eliminate all forms of family violence. Similarly, in Lithuania, the 2011 Act on Protection against Domestic Violence is the first legal instrument on this kind of violence in this country, although the Criminal Code already contained related offences. This act defines domestic violence as any act in the family sphere

violating human rights and freedoms, which include any intentional act of physical, mental, sexual, financial or other kind of aggression, by commission or omission, causing physical harm, damage to property or non-monetary damages.

In 2006, Malta adopted the Domestic Violence Act, which was modified in 2013. It defines domestic violence in article 2 as «any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other». The act further provides a broad definition of a member of the nuclear family, which includes relatives by blood or marriage up to the third degree. However, in the case of intimate relationships the legal description is limited to partners who have formalized their relationship through marriage. Moreover, prosecution of this kind of violence is only possible within a maximum of one year after the violence ended.

Poland, in its turn, adopted the Act on Counteracting Domestic Violence in 1995. It was modified in 2010 in order to provide greater protection when this violence is committed against specific persons, in particular women and children. It also covers same-sex couples. This type of violence is defined as «sporadic or repeated voluntary acts or omissions that violate the rights or personal property of the closest persons or a person with whom the offender lives, in particular if it causes to these persons a loss of life or health, violates their dignity, physical integrity or freedom, including their sexual freedom, causes harm to their physical or mental health, and leads to moral suffering and harm by the persons affected by this violence».

In Portugal there are several specific laws on domestic violence, the most relevant being Act 112/2009 of 16 September 2009, establishing regulations on the prevention of domestic violence and support to victims thereof, by which the Act of 1999 was revoked, and which led to the reform in 2013 of the earlier regulations on the subject in the Criminal Code. This modification also included the introduction into article 152 of the Portuguese Criminal Code of an explicit provision on violence against «persons of the same sex with whom the offender maintains an intimate partner relationship or a relationship similar to marriage, even though there is no cohabitation».

The same approach was followed in Romania, where Act 217/2003 on the prevention and fight against family violence was modified in 2012. After this reform Romanian law defines domestic violence as «any intentional act or omission constituting violence by a member of the family against any other member of the same family which may cause physical, mental, emotional or psychological harm, including coercion and the arbitrary deprivation of liberty». It is further indicated that this category includes acts which impede women to exercise their rights and liberties, although no legal description of this offence has been included in the Romanian Criminal Code, except for an

aggravating circumstance consisting of the commission of violence against the members of the same family. In this respect, although the concept of «family» is not defined, an extensive list is provided of the persons against whom this type of violence may be committed, which includes not only those with whom the offender has maintained an intimate partner relationship, but also direct relatives such as guardians and legal representatives, excepting —as explicitly excluded— «those who exercise these responsibilities in a professional capacity».

In Slovenia, the Family Violence Protection Act was adopted in 2008, which defines family violence as «any form of physical, sexual, psychological or economic violence exerted by one family member against the other, or disregard of any family regardless of the age, sex or any other personal circumstance of the victim or perpetrator of violence». It also explicitly provides a list of persons against whom this violence may be exerted, offering a broad interpretation of the concept of family, which includes spouses, unmarried partners, same-sex relationships, descendants and ascendants, and even generically speaking persons with whom the offender lives.

The United Kingdom adopted the Domestic Violence, Crime and Victims Act in 2004, which introduced a definition of domestic violence. Since then, the British legal system understands domestic violence to be «any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality». It should be noted that the Act defines *adult* as a person of 16 years and older (since 2013, when the legally established age of 18 was lowered) and includes in the nuclear family parents, children, brothers and sisters and grandparents «whether directly related, in-laws or step-family». Worth noting is it neutral stance on gender and the inclusion of same-sex couples.

Unlike the previous countries, Hungary reformed its Criminal Code in 2013 in order to criminalise family violence. It criminalises as such repeated violence «in a short period of time», without specifying the sex of the victim nor of the aggressor. In this sense, it provides that family violence is repeated violence against spouses, ex-spouses, ex-cohabitants, custodians, persons under custody, guardians or persons under guardianship cohabiting in the same household or the same property. However, it excludes from legal protection women in couples who do not cohabit or in ex-couples who did not cohabit, unless they have children with the abuser. Same-sex couples are specifically included.

3.2.3. *Legal systems without a concept of gender violence or domestic violence*

Finally, a third category can be distinguished which does not include a concept of gender violence, nor of domestic or family violence. These are legal systems which either have not established any specific criminal offence to criminalise this phenomenon, or which penalize offences against the life, integrity or freedom of other persons, without specifically establishing that the victim is a woman or a family member. In these countries, however, the procedural regulations may contain rules on the adjustment of general protection measures in case the victim is a woman.

In Germany, the relevant law for cases of gender violence is the 2002 Act on Civil Law Protection against Violent Acts and Stalking. Strictly speaking, this Act does not even specify that the violence in question should be «domestic». Article 1(1) provides that «When someone intentionally and wrongfully harms the body, health or freedom of another person, the court is obliged to adopt, at the request of the victim, the necessary measures to prevent any additional violence. Threatening with these violent acts shall be considered harassment». The same occurs in the Netherlands and Slovenia, where gender violence or domestic violence are not specifically criminalised and these acts are covered by general offences, such as maltreatment, threats, etc. Slovakia, for instance, penalizes physical or psychological aggression against «close persons», which comprises violence in the family sphere.

Similarly, neither in Latvia nor in Estonia domestic violence is legally defined or specifically regulated. As a matter of fact, their Criminal Codes do not include any offences covering gender violence, nor any aggravating circumstance or specific rules in case intrafamily violence is committed against women. Latvia, moreover, still uses a traditional concept of the nuclear family (defined as two spouses and their children), as well as a family-related concept of privacy. The rules applied to the phenomenon of gender violence are the general rules on violence laid down in the Criminal Code.

With regard to Finland, its legal order does not contain any specific regulations on domestic violence or gender violence. However, there are other kinds of measures related to this kind of violence. In this respect, the protection of the victims of domestic violence is based on general procedural measures established in the Finnish legal system. There are regulations that allow for the adoption of specific protection measures in the family sphere; these are not part of the criminal or substantive law, but of procedural law.

Finally, in Italy there is no law which specifically regulates domestic violence, and consequently there is also no legal definition of domestic violence or gender violence, except for article 572 of the Italian Criminal Code which penalizes the maltreatment of relatives and other cohabitees, or the offence

of sexual violence or harassment, which understandably has a special impact on women. The possible protection measures available in these cases of violence are scattered over different legal instruments without any coherence. One of the more relevant instruments is Act 154 of 5 April 2001 on measures against violence in family relations, which modifies the procedural legislation in order to introduce precautionary protection measures for victims in general.

3.3. Final reflections

The previous analysis brings us to the conclusion that there is no common concept or notion of gender violence, nor a uniform model applied in the legal systems of the EU Member States. To the extent that this fact affects the levels of protection available to victims and the personal scope of protection, it would be convenient to adopt certain criteria that would allow to approximate the legal systems on this point in order to avoid diverging effects of the regulations on gender violence. An example of these different levels of protection are the different violent acts that each legal system considers liable to be qualified as gender violence or domestic violence. Thus, in some countries the legal description of the relevant offence refers to physical violence, while in other countries these also include emotional or financial violence. With regard to the personal scope of protection, it should be reiterated that the indefinite character of certain concepts, such as «family», leads to the legal protection of different kinds of families, as these may include same-sex relationships or not, or include different types of family members. Thus, in some legal systems the family is restricted to members that maintain intimate relationships, while in others it also includes descendants and/or ascendants, etc., meaning the protection will vary depending on the country where it is requested.

This disparity in the application of the protection measures laid down in the Directive might lead to the so-called «mirror effect». This effect could produce itself both in cases where a country that receives a victim with an EPO must adopt the protection measures contained therein, while some or all of these measures are not applied or recognized by the receiving country for national victims of gender violence, and in cases of persons whose protection is not recognized or granted. This situation could occur, for example, when the receiving country does not apply one of the protection measures to an offence which is recognized in both countries, or does not recognize the protection measures granted to persons who have maintained an intimate, same-sex relationship. In both cases, this has a negative impact on the nationals of the receiving or executing State, who observe that their authorities are re-

quired to guarantee this protection to the victims of gender violence from another country, but not to national victims[54].

The different conception of gender violence moreover influences the variety, nature and importance of the protection measures which are provided in the different Member States. In this respect, the three measures that may be included in the protection order according to the Directive may have different characteristics, for example, as for their duration, but can also be complemented by the Member States with additional measures, such as financial aid, social support or supervision. These measures, which are not included in the Directive, also cause comparative disadvantages between the victims of gender violence in different Member States.

In this respect, the Directive should contribute to an approximation of the national legal systems *ad intra* in criminal and procedural matters. In other words, for the procedural protection measures to be effective the legal system must contain a legal framework that includes a prohibition of gender violence suited to the characteristics of this phenomenon, and be comparable between the different national legal systems. This is necessary because ultimately the divergence in the scope of protection or the content of the provisions on protection measures —at least as far as gender violence is concerned— negatively affects the level of protection provided to victims, and may also affect the level of compliance of the provisions of Directive 2011/99/EU.

4. THE EUROPEAN PROTECTION ORDER AS AN INSTRUMENT OF JUDICIAL COOPERATION IN CRIMINAL MATTERS IN THE EUROPEAN UNION*

4.1. European judicial cooperation in criminal matters: from conventional cooperation to instruments of mutual recognition

Since time immemorial, the judicial authorities have been required to request legal assistance from authorities in other States, be it to gather evidence in other countries or, more frequently, to apprehend the perpetrator of a criminal offence.

---

[54] It must be noted that according to article 10(1)(c) of Directive 2011/99/EU the competent authority of the executing State may refuse to recognise a European protection order if the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State. This may lead to a certain lack of protection of the victims of violence if, as we have seen, there are clear differences in the substantial criminal law of the Member States with regard to gender violence.

* By Carmen Rodríguez-Medel, Senior Judge, Section Head of the International Relations Service, Spanish General Council of the Judiciary.

Initially, this cooperation was based on the principle of reciprocity, and subsequently on bilateral agreements through which the States involved defined the relations between their respective authorities responsible for criminal procedures. Only in very specific areas (e.g. organized crime, terrorism or corruption) these bilateral agreements have been substituted by multilateral treaties adopted in the framework of global organisations, such as the United Nations.

Over the past 50 years, European judicial cooperation in criminal matters has mainly been based on instruments agreed in the framework of the Council of Europe. Thus, ever since its creation in 1949, this international organisation has played an essential role in European judicial cooperation in criminal matters, both because of the important issues addressed by the conventions it has promulgated, and because of the large number of countries that have become parties to these agreements. Among these agreements, a fundamental legal instrument is the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959[55], Convention no. 30 of the Council of Europe. This convention explicitly aimed to complement the 1957 European Convention on Extradition, but in the course of time it has acquired an autonomous role and enough substance of its own to become a leading legal instrument in the field of European legal cooperation in criminal matters, a role which it continues to play today. In the fifty years since the Convention entered into force (12 June 1962) it has proven to be an open and flexible instrument, which has turned it into an extremely useful tool for legal cooperation in criminal matters.

This leading role of the Council of Europe was enhanced by the fact that the European Union initially chose to focus its activities on economic integration, which indirectly left the European legal and judicial cooperation in the hands of this other European organisation. Only fairly recently the European Union has created its own instrument for judicial cooperation in criminal matters, which nonetheless lacks substantive autonomy and merely serves as a complement to the 1959 Convention of the Council of Europe. This instrument is the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union[56]. The explanatory report[57] on this Convention underlines the idea that «the Council felt that mutual assistance between the Member States already lay on solid foundations, which had largely demonstrated their effectiveness», in direct reference to the foundations laid by the instruments of the Council of Europe.

---

[55] Opened for signature on 20 April 1959; entered into force on 12 June 1962 after three contracting parties ratified the Convention. Spain signed it on 24 July 1979 and ratified it on 18 August 1982, after which it entered into force on November 16th of the same year. Published in the Spanish Official Journal (*BOE*) on 17 September 1982.

[56] *OJ* C 197, 12.7.2000. For Spain: Declaration of provisional application published in the official journal (*BOE*) on 15 October 2003. It entered into force on 28 October 2005.

[57] *OJ* C 257, 24.10.2002.

As for its legal nature, the Convention is an agreement of international law, meaning that adhesion to it depends on each of the Member States. As a matter of fact, it did not enter into force until 23 August 2005, after achieving the required number of ratifications[58], a requirement which took a long time to be met. Due to this delay, various States, in accordance with the express provisions of the convention, made declarations of anticipated application, allowing for its provisional application between States parties that made a similar declaration. The Convention still has not entered into force in all the EU Member States, showing the limitations inherent in these mechanisms of judicial cooperation, which are clearly insufficient for the purposes of the European Union in its present form.

As a result of this insufficiency of the classic conventional cooperation, the European Union resorts to another system of criminal cooperation, which is absolutely new and idiosyncratic of the European Area of Freedom, Security and Justice: the instruments of mutual recognition. With its introduction, the times of requesting and requested States are over. Instead, there are now issuing States, which adopt the orders, and executing States, which recognize and execute them within an obligatory term. Directive 2011/99/EU on the European protection order is one of these instruments based on this new approach to judicial cooperation. Its analysis requires a brief explanation of the origins of the principle of mutual recognition, its meaning, its manifestations, and its regulation in the different Treaties of the European Union.

4.1.1. *Judicial cooperation in the original community law*

The founding Treaties did not provide for any kind of cooperation in the field of justice. The Single European Act establishes the free movement of persons as an objective, but it is not until the Treaty of the European Union, also called the Maastricht Treaty, that the areas of Justice and Home Affairs start playing a major role in what will then be called the «European Union». For the purpose of this explanation, it should be noted that this Treaty created new forms of cooperation between the governments of the Member States, introducing a three pillar structure, of which the third —intergovernmental in nature— regulated the cooperation in the areas of Justice and Home Affairs. The relevant provisions of the Treaty considered to be of common interest a

[58] As a general rule, the Treaties enter into force once they have been ratified by all contracting parties. However, the Treaty of Amsterdam, as it modified the Treaty on the European Union, established a special rule according to which the treaties concluded under article 34(2) of the Treaty would enter into force if they had been ratified by half of the contracting parties. The Convention on Mutual Assistance in Criminal Matters was the first treaty to be signed based on this new clause.

series of areas, such as the fight against drug addiction, combating fraud on an international scale, judicial cooperation in civil and criminal matters, customs cooperation, police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime. The instruments available to the Council for the coordination of the actions of the Member States in these areas included joint positions, common actions and conventions.

The Amsterdam Treaty maintained the three pillar structure, but expressly included the AFSJ as an objective of the Union. The new Title VI established as one of the objectives of the Union to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters. The common action on judicial cooperation in criminal matters included specifically facilitating cooperation, extradition, ensuring compatibility in rules applicable in the Member States as necessary to improve such cooperation, preventing conflicts of jurisdiction, and progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in three fields: organised crime, terrorism and illicit drug trafficking.

These developments consequently constituted the original framework of community law which served as a basis for the promulgation of the instruments of mutual recognition.

4.1.2. *The instruments of mutual recognition: definition and origins*

The principle of mutual recognition[59] is a guiding principle of regulation, which can be used only as a basis for concrete, specific instruments. It consequently has a sectoral or fragmented character. It provides effectiveness to a judicial decision in criminal matters by one Member State —the issuing State— in the entire AFSJ of the Union, so that another Member State —the executing State— is required to recognize and execute it within a predetermined period of time. Only on expressly stipulated, exceptional grounds the executing authority is allowed to refuse recognition or execution in its national territory[60].

---

[59] On this principle, see: De Hoyos Sancho, M. «El principio de reconocimiento mutuo como principio rector de la cooperación judicial europea». Jimeno Bulnes, M. (coord.), *La cooperación judicial civil y penal en el ámbito de la Unión Europea: instrumentos procesales*, J. M. Bosch Editor, Barcelona, 2007, pp. 67-93.

[60] De Hoyos suggests that a distinction should be made between a broad and a narrow concept of mutual recognition. She therefore defines mutual recognition in the broad sense as «the need for decisions issued in criminal matters by the judicial organs of a Member State

As for the principle itself, it is already commonplace to state that the principle of mutual recognition finds it origin in the case law[61] of what used to be the Court of Justice of the European Communities[62]. More specifically in the case «Cassis de Dijon» of 20 February 1979, which established this principle in relation to the free movement of goods, with the result that any product manufactured and marketed in a Member State according to the rules of that State must be admitted, in principle, to any other Member State. The exceptions to this general principle must be limited and related to public health and consumer protection[63].

The principle was subsequently extended from the free movement of goods to other freedoms, such as the free movement of services and the freedom of establishment, as well as to the field of judicial cooperation in civil and finally criminal matters. It was introduced gradually into the latter field

---

to be recognized and executed in a compulsory way, without previous examination; in other words automatically» in another Member State. The author stresses on the one hand the relation of this principle with the so-called «principle of the State of origin», which implies that «what is legal in one of the Member States of the Union must recognized and held to be valid and effective in the other Member States». On the other hand, she suggests that this interpretation of the principle of mutual recognition would allow for it to be qualified as a «principle of equivalence or assimilation». She then points out that this broad notion is not the one used in the instruments based on the application of this principle, which is logical considering the lack of harmonisation of essential legal elements such as the procedural safeguards of the accused. The fact that grounds for non-recognition are used, shows that the narrow concept of this principle is being used, which according to the author leads to «mutual judicial protection», which means that «both the judicial authority issuing the request for recognition and the executing authority are necessarily co-responsible for the protection of the fundamental rights and freedoms of the persons affected by any form of cooperation or recognition». See: De Hoyos Sancho, M., «Armonización de los procesos penales, reconocimiento mutuo y garantías esenciales». De Hoyos Sancho, M. (coord.), *El proceso penal en la Unión Europea: garantías esenciales*, Lex Nova, Valladolid, 2008, pp. 56-68.

[61] Although it is also quite clear that this principle was used as the basis for the European Convention on the international validity of criminal judgments, done in The Hague on 28 May 1970, Convention no. 70 of the Council of Europe, as shown by the Explanatory Report, available at: http://conventions.coe.int/Treaty/en/Reports/Html/070.htm (accessed on 20/10/2014).

[62] Under the Treaty of Lisbon the Court changed its name to Court of Justice of the European Union (arts. 13 and 19 TEU and arts. 251-281 TFEU).

[63] The case concerned the importation in Germany of a French liqueur called «Cassis de Dijon». Germany prohibited its import because it did not respect the minimum percentage of alcohol required for liqueurs under German legislation (more specifically, it contained 15-20% of alcohol, which fell short of the 25% minimum required in Germany). The German government argued that it should not be admitted for reasons of public health (the German legislation aimed to prevent the proliferation of alcoholic beverages that favoured the tolerance of alcohol among consumers) and the protection against unfair market behaviour, such as the fact that one Member State could establish alcohol percentages that subsequently could be imposed on other Member States. The Court of Justice, however, dismissed the German arguments establishing the principle that a product that has been legally manufactured in a Member State must have access to the market of another Member State.

by the successive meetings of the European Council in Cardiff, Tampere and Laeken, which progressively attributed increasing importance to the principle of mutual recognition of criminal judicial decisions with a view to promote the «fifth freedom», i.e. the free movement of judicial decisions among the EU Member States.

The conclusions of the Presidency of the European Council in Cardiff[64] held on 15 and 16 June 1998 only contain a very short reference to this new principle. Concretely, in conclusion 39, after recognizing the need to enhance the ability of national legal systems to work closely together and increase the effectiveness of the fight against cross-border crime, it asks the Council «to identify the scope for greater mutual recognition of decisions of each others' courts». Regarding this European Council meeting, Gless recalls that it was the British representatives who proposed to extend the principle of mutual recognition (which was already applied in civil and commercial matters) to criminal matters as an alternative, to be sure, for further legislative harmonisation[65], an issue which already then prompted resistance in the United Kingdom[66].

This brings us to an inevitable choice that confronts the European Union in the field of judicial cooperation: to seek further harmonisation of the national legislations of the Member State or to advance by way of mutual recognition without previous harmonisation. As we will see, this dilemma is particularly pressing when it comes to the European protection order.

For now, suffice it to say that from a historical perspective the principle of mutual recognition was used as a way to increase the effectiveness of judicial cooperation without having to harmonize the national legislations involved. It was thus a way to allow the Member States to preserve their highly valued national sovereignty in criminal and procedural matters. It was for this reason that the principle of mutual recognition during the European Council in

---

[64] The conclusions of the European Council meeting are available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/ec/54316.pdf (accessed on 20/10/2014).

[65] Cfr. Gless, S. «Mutual recognition, judicial inquiries, due process and fundamental rights». Vervaele, J. A. E. (ed.). *European Evidence Warrant.* Intersentia, Antwerpen-Oxford, 2005, p. 122, and the same author in «Free movement of evidence in Europe». Armenta Deu, M. T.; Gascón Inchausti, F.; Cedeño Hernán, M. (coords.), *El Derecho Procesal Penal en la Unión Europea. Tendencias actuales y perspectivas de futuro*, COLEX, Madrid, 2006, p. 123; in both cases citing the British author Peers, S. «Mutual recognition and Criminal Law in the European Union. Has the Council Got it Wrong?», *Common Market Law Review*, 2004, pp. 5-9.

[66] On the scepticism this produced in the European Council, which felt that what the British intended was to avoid the harmonisation of criminal law, see Kerchove, G. «La orden de detención europea y el principio de reconocimiento mutuo (I)». Arroyo Zapatero, L.; Nieto Martín, A. (dirs.); Muñoz de Morales, M. (coord.), *La orden europea de detención y entrega*, Ed. Universidad de Castilla-La Mancha, Cuenca, 2006, p. 22.

Tampere[67], held on 15 and 16 October 1999, was given a final impulse, thus becoming a cornerstone of the European legal cooperation in criminal matters.

The conclusions of the Tampere meeting dedicate an entire part to «A genuine European Area of Justice». Within this part, section VI is fully dedicated to the mutual recognition of judicial decisions[68] (especially those decisions that allow authorities to act quickly to gather evidence and seize assets, providing expressly that «evidence lawfully gathered by one Member State's authorities should be admissible before the courts of other Member States»[69]). A subsequent programme of measures was requested to implement the principle of mutual recognition[70].

The conclusions of Tampere, however, also refer to more ambitious solutions, mentioning, albeit timidly, the need to approximate legislations —which would facilitate co-operation between authorities and the judicial protection of individual rights— and to include in the afore-mentioned programme «aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition». The conclusion can only be that already in an early stage it was suspected that mutual recognition would be insufficient, and that the judicial cooperation in the Union would need to be based on an approximation of legislation or the establishment of common minimum standards in procedural matters.

The failed Treaty establishing a Constitution for Europe[71] is the first of the founding Treaties that expressly includes the principle of mutual recognition of judicial decisions in criminal matters.

But as this Treaty did not enter into force, it is not until the Lisbon Treaty[72] that the principle of mutual recognition is expressly included in the primary law of the Union. In the former Treaty establishing the European Community, now called the Treaty on the Functioning of the European Union[73], Title V was fully dedicated to the AFSJ. Already in Chapter 1 (arts. 67-76) of this Title, which lays down the general provisions, it is stated that the Union shall endeavour to ensure a high level of security. It seeks to do so through

---

[67] The conclusions of the European Council meeting in Tampere are available at: http://www.europarl.europa.eu/summits/tam_en.htm (accessed on 20/10/2014).

[68] Conclusion no. 33.

[69] Conclusion no. 36.

[70] Conclusion no. 37.

[71] *OJ* C 310, 16.12.2004.

[72] Signed on 13 December 2007, modifying the Treaty on European Union and the Treaty establishing the European Community, in force since 1 December 2009. *OJ* C 306, 17.12.2007, corrigendum *OJ* C 290, 30.11.2009, and *BOE* of 27 November 2009, corrigendum *BOE*, 16 February 2010.

[73] The consolidated version of the Treaty on the Functioning of the European Union was published in the Official Journal on 30 March 2010.

measures for prevention, coordination and cooperation, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws[74]. The literal wording seems to point to a preoccupation of the Union with security (which is the only value in the context of the AFSJ that is established as a Union objective to be pursued through mutual recognition). Chapter 4 (arts. 82-86) is dedicated exclusively to judicial cooperation in criminal matters, and starts by saying that judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions. It provides that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, among others, to lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions[75].

Without doubt, it is noteworthy that, besides this declaration of principles, this chapter also foresees measures aimed at the approximation of the laws and regulations of the Member States.

Thus, to the extent necessary to facilitate mutual recognition, the European Parliament can establish minimum standards by means of directives.

These minimum standards, which must take into account the differences between the legal traditions and systems of the Member States, shall concern three fundamental aspects:

— mutual admissibility of evidence between Member States;
— the rights of individuals in criminal procedure;
— the rights of victims of crime.

They may also concern any other specific aspects of criminal procedure which the Council has identified in advance by a unanimous decision after obtaining the consent of the European Parliament[76].

Consequently, since the entry into force of the Lisbon Treaty the principle of mutual recognition has been explicitly laid down in EU primary law as a fundamental principle of the judicial cooperation in criminal matters within the European Union.

After the Lisbon Treaty entered into force, the European Council held in Brussels on 10 and 11 December 2009[77] approved the Stockholm Pro-

[74] Article 67(3) TFEU.

[75] Article 82(1) of the Treaty on the Functioning of the European Union, in the version established by article 69 A(1) of the Lisbon Treaty.

[76] Article 82(2) of the Treaty on the Functioning of the European Union, in the version established by article 69 A(2) of the Lisbon Treaty.

[77] The conclusions are available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111882.pdf (accessed on 20/10/2014).

gramme[78], which like its predecessors emphasized the need to continue developing the principle of mutual recognition of judicial decisions.

4.1.3. *Instruments based on the principle of mutual recognition*

As we just explained, the formal introduction of the mutual recognition of judicial decisions in criminal matters as a guiding principle of regulation takes place under the Amsterdam Treaty. It is therefore this treaty which initially determined the legislative options of the European legislator to adopt the instruments giving expression to this principle. For this reason, until the entry into force of the Lisbon Treaty, all these instruments took the legal form of framework decisions.

Framework decisions have the following characteristics:

— They are binding for the Member States as far as the results are concerned, but leave the national authorities the freedom to choose the form and means to achieve them.

— They allow for the approximation of the rules and regulations of the Member States, so that these will have to adapt their internal legislation to the provisions of the framework decision within the term of implementation established therein.

— They have no direct effect, even though since the María Pupino Case[79] the Court of Justice of the European Communities did establish the principle

---

[78] Document 17024/09 of 2 December 2009.

[79] The decision of the Grand Chamber of the Court of Justice of the European Communities of 16 June 2005 concerned a request for a preliminary ruling submitted by an Italian judge with regard to the Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. In the Italian proceedings it was not required for the examining magistrate to gather preliminary evidence for the type of crime of which María Pupino was accused. The Italian examining magistrate asked the Court of Justice whether preliminary evidence was possible in application of the Framework Decision on the standing of victims. The Court of Justice ruled in paragraph 43 that «the Court concludes that the principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with article 34(2)(b) EU». Moreover, in paragraph 44 the Court indicates that this «is limited by general principles of law, particularly those of legal certainty and non-retroactivity». On this decision, see Muñoz de Morales Romero, M. «La aplicación del principio de interpretación conforme a las decisiones marco: ¿hacia el efecto directo?, especial referencia al caso Pupino». Arroyo Zapatero, L.; Nieto Martín, A. (dirs.); Muñoz de Morales, M. (coord.), *El Derecho penal de la Unión Europea. Situación actual y perspectivas de futuro*, Ed. Universidad de Castilla-La Mancha, 2007, pp. 291-323; cfr. Sarmiento, D., «Un paso más en la constitucionalización del tercer pilar de la Unión Europea. La sentencia Maria Pupino y el efecto directo de las decisiones marco», *Revista electrónica de estudios internacionales*, no. 10, 2005.

that national law should be «interpreted in conformity» with the provisions of the framework decision.

The Treaty on the Functioning of the European Union, after the reform by the Lisbon Treaty, regulates an ordinary legislative procedure which is applicable to the legal acts concerning the AFSJ.

The legal acts of the Union comprise regulations (general application, binding in all their elements, and with direct effect), directives (binding for the Member States as far as their results are concerned, leaving at the discretion of the authorities the choice of form and means), decisions (binding), recommendations and opinions (non-binding)[80].

The ordinary legislative procedure regulates the joint adoption by the European Parliament and the Council, at the proposal of the Commission, of regulations, directives and decisions[81].

Directives do not have certain drawbacks that framework decisions had. Particular mention should be made of the participation of the European Parliament in the decision-making process and the subsequent subjection of the legislative process to democratic procedures. Significant is also the increased weight of the role of the national parliaments, which is enhanced by the mechanism of ex-ante political review[82] laid down in the Treaty of Lisbon. Besides these changes, the review of legislation by the Court of the European Union under the competences awarded by the Lisbon Treaty is especially relevant.

The first instrument regarding the area of freedom, security and justice which was adopted on the basis of the principle of mutual recognition of judicial decisions in criminal matters after the entry into force of the Lisbon Treaty was the Directive on the European protection order[83], which will be analyzed further on. The second was the Directive on the European investigation order[84].

Mention should also be made, however, of the instruments adopted as framework decisions, considering that the Directive on the European protection order constitutes a mechanism that complements earlier framework decisions, in particular the framework decision on supervision measures as an alternative to provisional detention and the framework decision on probation measures.

---

[80] Article 288 TFEU.

[81] Article 289 TFEU.

[82] This is regulated under Protocol no. 1 of the Lisbon Treaty, called «On the role of national parliaments in the European Union», and specifically articles 2-4.

[83] Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, *OJ* L 338, 21.12.2011, pp. 2-18.

[84] Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, *OJ* L 130, 1.5.2014, pp. 1-36.

When examining the adopted instruments of mutual recognition, it is fundamental to distinguish between those that refer to the recognition and execution of judicial decisions concerning the pre-trial and trial phase of criminal proceedings which are completed by the sentence, and those that refer to decisions that take effect during the execution phase of the sentence.

Of course there are also instruments that refer to both phases, which constitute a mixed category, as they concern decisions that produce effects during the execution of the judgment, as well as during the pre-trial and trial phase.

The first of the instruments of mutual recognition to be adopted, surely also the most important, fits into this category.

In line with the historical tradition of legal cooperation, it concerns surrender of persons: Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States[85]. It belongs in this category because it concerns recognition of judicial decisions ordering the arrest and surrender of a person to the State issuing the order, in order to facilitate criminal proceedings or the execution of a conviction.

Part of this category is also Council Framework Decision 2008/675/JHA of 24 July 2008[86] on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. This framework decision aims to ensure that Member States take into consideration convictions delivered in another Member State against the same person for different facts, with effects both during the pre-trial phase and during the trial and execution phase.

The Directive on the European protection order, that concerns us here, also fits this category as the judicial decision to be recognized may concern protection measures to be applied during the trial, pre-trial or execution phase. It may therefore have effects during these same phases.

The instruments for the recognition of decisions with effects during the pre-trial and trial phase of criminal proceedings are:

— Council Framework Decision 2003/577/JHA of 22 July 2003[87] regulating the recognition and execution of measures which provisionally prevent the destruction, transformation, displacement, transfer or disposal of property that might be subject to confiscation or evidence. This therefore concerns the pre-trial and trial phase of criminal proceedings, previous to execution. Chronologically speaking this is the second instrument of mutual recognition, regulating the freezing of property and the securing of evidence.

---

[85] *OJ* L 190, 18.7.2002.
[86] *OJ* L 220, 15.8.2008.
[87] *OJ* L 196, 2.8.2003.

— Council Framework Decision 2008/978/JHA of 18 December 2008[88] on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. Its objective is the recognition and execution of judicial decisions to obtain objects, documents and data for use in proceedings in criminal matters initiated in the issuing State.

— Council Framework Decision 2009/829/JHA of 23 October 2009[89] 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. It regulates the recognition and execution of decisions adopted in the course of criminal proceedings imposing supervision measures as an alternative to provisional detention.

The third category comprises instruments for the mutual recognition of judicial decisions in criminal matters which produce effects during the execution of the final sentence. It includes:

— Council Framework Decision 2005/214/JHA of 24 February 2005[90] on the application of the principle of mutual recognition to financial penalties. The decision to be recognized will always be a final decision requiring payment of a financial penalty from a natural or legal person. It will therefore produce effects during the execution of the penalty.

— Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders[91], where the decision to be recognized imposes a final penalty or measure leading to the final confiscation of property, meaning it will produce effects during the execution phase.

— Council Framework Decision 2008/909/JHA of 27 November 2008[92] on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. It concerns recognition of final judgements or court orders imposing a custodial sentence or a measure involving the deprivation of liberty in response to a criminal offence as the result of criminal proceedings.

— Also part of this category is Council Framework Decision 2008/947/JHA of 27 November 2008[93] on the application of the principle of mutual

[88] *OJ* L 350, 30.12.2008.
[89] *OJ* L 294, 11.11.2009.
[90] *OJ* L 76, 22.3.2005.
[91] *OJ* L 328, 24.11.2006.
[92] *OJ* L 327, 5.12.2008.
[93] *OJ* L 337, 16.12.2008.

recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. In this case, the probation decision must have been imposed on the basis of a judgment, meaning it will produce effect during the execution thereof.

— Particular mention deserves the only framework decision that was horizontal in character, i.e. that was designed to reform the previous framework decisions applying the principle of mutual recognition. Council Framework Decision 2009/299/JHA of 26 February 2009[94]. The objective of this decision is to enhance the procedural rights of persons and foster the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. It seeks to provide common grounds for non-recognition under all instruments of mutual recognition of decisions rendered following a trial at which the person concerned did not appear in person, in order to establish more uniformity in the field of judgments by default, the lack of which had been seriously complicating the use of the previously adopted instruments.

4.1.4. *Characteristics of the instruments of mutual recognition*

The instruments of mutual recognition start from a premise which is very different from the one on which conventional requests for assistance are based. We are no longer dealing with a judicial authority of a Member State «requesting» the assistance of an authority in another Member State. On the contrary, these instruments involve two judicial authorities who share a common legal area, viz. the Area of Freedom, Security and Justice of the European Union. No request for assistance is made. Instead, the execution of a judicial decision or order adopted by the judicial authority of the issuing State is transferred to the judicial authority of the executing State for its immediate enforcement.

Characteristic of all instruments of mutual recognition is the fact that they all use a similar standard form or certificate. The content of the standard form may be different for each instrument, but all of them require the issuing authority to use the certificate included as an annex to the respective framework decision or directive.

Besides these compulsory certificates or forms, other characteristics of instruments of mutual recognition are established time limits within which the decision must be recognized and executed, and more importantly, the provision of expressly defined grounds for non-recognition. Consequently, the adopted decision must be recognized and executed within the specified time

[94] *OJ* L 81, 27.3.2009.

limits, so that only by way of exception, when a ground for non-recognition laid down in the instrument applies, recognition may be refused.

Another common element of the instruments of mutual recognition is the elimination of the verification of double criminality, although in this case the European protection order is an exception. As a result, in each framework decision or directive a list of offences is included which under certain conditions, if the issuing authority indicates that the decision concerns these offences, exempts the executing State from verifying the double criminality of the acts concerned.

Thus, the instruments of mutual recognition have given rise to a new kind of judicial cooperation that is much more dynamic than the conventional cooperation. Precisely because of their effectiveness these instruments have acquired a particular importance, not only in the classic areas of judicial cooperation, such as the arrest and surrender of wanted individuals or the freezing of the proceeds of crime, but also in more novel areas which form part of 21st century criminal law, such as the protection of the victims of crime, with which the instrument analyzed here is concerned.

4.2. The European protection order

A first characteristic of the Directive on the European protection order to be taken into account in order to understand how the EPO works, is that this instrument complements two previously adopted instruments of mutual recognition: Framework Decision 2008/947 on probation decisions and Framework Decision 2009/829 regarding decisions on supervision measures as an alternative to provisional detention. These instruments respectively concern convicted or accused persons on whom any of the following penalties or measures have been imposed:

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

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

Consequently, if a person convicted in one Member State moves to another, the judicial authority handling the proceedings will issue a probation decision to ensure that the penalty is enforced by an authority in the Member State to which the person concerned has moved.

If a precautionary measure is adopted during the pre-trial phase, the judicial authority will issue a decision on the supervision measures imposed on the accused as an alternative to provisional detention, to be enforced by the executing State. These measures, as mentioned above, may include a prohibition to contact or approach the victim, or from entering places where the victim or visits.

The objective of the EPO is to allow this penalty or precautionary measure to be recognized and executed in a third State to which the victim moves or has moved, i.e. neither the State where the criminal proceedings were held, nor the State where the accused or convicted person finds himself. Nevertheless, the Directive explicitly states that the rules on recognition of the framework decisions should be followed if the issuing authority based its decision on these instruments, which will thus have preference over the provisions of the Directive. In short, the protection order exclusively focuses on, or «accompanies» the victim and only indirectly concerns the offender. This basically only occurs when the offender breaches the protection measures, for this violation allows the executing authority to adopt measures against the person causing danger, which may include both precautionary measures and the measures available in the framework of the criminal proceedings that may be brought due to the violation of the protection measures.

Besides the fact that it complements other instruments of mutual recognition, it should be noted that the Directive on the European protection order extends the personal scope of application to all kinds of victims. It does not limit itself to the victims of crimes committed in the domestic sphere or to victims of a particular gender. In principle, it covers all victims of crime.

Nevertheless, it is essential to realize that the protection measure to be enforced in another Member State must have been adopted in a criminal procedure. Therefore, the Directive does not cover protection measures adopted in civil or administrative matters.

For the national protection measures to be extended to another Member State, the victim must show that the danger to her integrity, freedom or dignity subsists in the other Member State to which she wants to move. For the purpose of issuing a European protection order, the judicial authority that adopted the protection measure must therefore consider not only the fact that the protected person decides to reside or stay in another Member State, but also the length of the period that the protected person intends to stay there and the seriousness of the need for protection in that territory.

In addition, an EPO can only be issued at the request of the victim or her legal representative. It cannot be issued *ex officio* or solely at the request of the Public Prosecutor's Office.

When the issuing authority decides to extend the protection of the victim to the executing State, it only needs to send the standard form set out in An-

nex I of the Directive. There is no obligation (although it may be convenient) to attach the judicial decision on the national protection measures. The use of this standard form will undoubtedly allow the national authorities in the various Member States to quickly become familiar with it, thus facilitating the immediate recognition and execution of the underlying decision. Moreover, the fact that this instrument has been translated to all the languages of the European Union (after all, the Directive has been translated and published in the Official Journal in all the languages and the compulsory form is included in one of the Annexes) will surely enhance the protection procedures in any State to which the victim decides to move.

The European protection order should specify which prohibitions or restrictions have been imposed by the national protection measure to protect the victim. These prohibitions or restrictions must necessarily be one or more of the three types of measures established in article 5 of the Directive. If the national legislation of a Member State allows for the adoption of protection measures different from these three measures, their execution cannot be transferred to another Member State based on this instrument of mutual recognition, as they fall outside the material scope established by the Directive.

After the order is received in the executing State, the competent authority may apply, in accordance with its national law, criminal, administrative or civil measures to enforce the protection. This means that the law applicable to the execution of the EPO will always be the law of the executing State, even if this entails a certain adaptation of the protection measures as originally adopted during the criminal proceedings in the issuing State.

The considerable differences between the legislations of the Member States constitute one of the main obstacles for the practical application of this Directive. When we discussed the principle of mutual recognition in general, it was already pointed out that it arose as a way to avoid ceding sovereignty by harmonisation. The EPO is one of the clearest examples of the deficiencies to which mutual recognition without previous harmonisation may lead.

Thus, the complete lack of harmonisation of offences in the family sphere result, among others, in certain acts constituting a criminal offence in some countries, yet not in others. As one of the prerequisites of the European protection order is that it must have been adopted in criminal matters, it may frequently occur that the executing State, after receiving an EPO, decides not to recognize it for lack of double criminality of the acts concerned, in view of the fact that these do not constitute an offence in the executing State. In this respect, the Directive is the only instrument of mutual recognition that allows for general non-recognition of adopted decisions (EPOs) for lack of double criminality, without the exception of any criminal category or establishing any kind of threshold. Moreover, as indicated earlier, even if there is double criminality the competent authority in the executing State may choose to ap-

ply measures of different nature, adopting civil or administrative measures if these are the ones provided for in the national legal system for the protection of victims.

On top of this, in some Member States such as Germany or Austria the protection measures to which we referred (prohibition to enter certain places, prohibition to contact or approach the victim) are adopted in civil proceedings, meaning they are excluded from the scope of application of the Directive, preventing the authorities from issuing EPOs in these cases because they have not been adopted in criminal matters.

This essential shortcoming obliged the Union to create an instrument for judicial cooperation that included protection measures adopted in civil matters. This was done through the adoption of Regulation (EU) No. 606/2013 of the European Parliament and the Council of 12 June 2013 on mutual recognition of protection measures in civil matters. As a result, there are now two different legal instruments, one civil and one criminal, seeking to protect victims by a series of similar measures.

To complicate matters, however, the legislation of some Member States, such as Spain, does not provide for the execution of this kind of civil instruments, or at least it did not do so at the time the legislation for the transposition of the criminal EPO was adopted. Consequently, a civil EPO issued for instance by the German authorities would not be recognized in Spain as an EPO in criminal matters, even though due to their characteristics the measures contained in it according to Spanish legislation would be considered criminal in nature.

In short, the lack of harmonisation of substantive and procedural law has obliged the EU to introduce different mechanisms for the mutual recognition of judicial decisions for the protection of victims, giving rise to an unstructured mosaic of civil and criminal regulations which is bound to lead to problems of interpretation in judicial practice.

The Directive also regulates certain procedural aspects of particular importance, some of which also entail inherent complications.

In the first place, it provides for the possibility that the victim requests an EPO to be issued either by the judicial authority handling the criminal proceedings in which the national protection measures were adopted, or by the judicial authority of the State to which the victim has moved, i.e. the executing State. This double option will require special coordination and communication between the two authorities: even though inevitably it will be the issuing State which will have to decide on the appropriateness of issuing an EPO, there is no doubt that a request for recognition by the victim to the authority in the executing State may lead to delays, difficulties in determining the competent authorities and duplication.

In the second place, the Directive requires that the person causing danger is heard before issuing an EPO. This creates a hearing procedure different

from the one regarding the adoption of the protection measures in the issuing State. Depending on when the request is submitted by the victim, it may prove difficult to carry out this hearing procedure if the accused or convicted person has left the country or cannot be located at the time of the request, despite being present during the criminal proceedings.

In the third place, the Directive refers to available remedies in case the request of the victim for a protection order is dismissed, in this case under the national law of the issuing State. No provision is made however regarding the possible remedies to be used by the accused or convicted person in case the EPO is issued, nor the possibility for the person causing danger to participate in any appeal filed by the victim. Moreover, these issues will depend on the internal legislation of the Member States, which complicates the situation even further.

In the fourth place, the Directive gives the accused or convicted person the possibility to appeal the EPO in the State that decides on its recognition and enforcement, which is quite surprising considering that one of the premises of the Directive is that it is the victim who will find herself in the executing State, but not the person causing danger. If this were the case, the applicable instrument would that on probation measures or that on supervision measures as an alternative to provisional detention.

Finally, the competent authority of the executing State shall inform the accused or convicted person of the possible legal consequences of a breach of the protection measures under its national law. In case of breach, the authority of the executing State must notify the issuing State thereof, even though the first is competent to impose penalties on the person causing danger for breaching the protection measures. However, this breach must also be notified to the State supervising probation measures or monitoring supervision measures as an alternative to provisional detention, leading to a series of legal consequences in three Member States: the issuing State, the executing State and the supervising State. Considering these issues, it is evident that there is an urgent need for coordination between the judicial authorities of the different Member States, a coordination which, at the present time, may be difficult to achieve taking into account the experience with other instruments of mutual recognition.

4.3. Conclusion

European judicial cooperation has undergone a significant evolution ever since the principle of mutual recognition became the cornerstone of criminal cooperation in the area of freedom, security and justice of the European Union. Nonetheless, the European protection order is still far from being a

sufficiently effective mechanism considering its main objective, the protection of a crime victim in another Member State than the one where the crime was tried. Its complementary character in relation to other instruments of mutual recognition, the fact that it does not cover all types of procedures and measures, and even expressly excludes measures adopted in civil matters, combined with the lack of harmonisation of the relevant substantive and procedural law, do not promise well as far as the effectiveness of the EPO is concerned. Only establishing an extraordinary coordination between judicial authorities and strengthening the mutual trust of the Member States in each other's legal systems, this instrument of mutual recognition may still prove its practical value.

Undoubtedly, the goal pursued by the European protection order is commendable. However, only time will tell whether the legal mechanisms created to achieve this goal are adequate.

CHAPTER II

ANALYSIS OF THE NATIONAL RULES AND REGULATIONS ON PROTECTION MEASURES FOR THE VICTIMS OF GENDER VIOLENCE

1. INTRODUCTION*

Among the variety of measures adopted by the European Union to promote the protection of victims within the area of freedom, security and justice, the Epogender project has chosen to analyze Directive 2011/99/EU on the European protection order from a gender perspective in order to establish the viability of this protection order as an instrument of judicial cooperation in criminal matters, more specifically with regard to cases of gender violence.

In accordance with its legal status, the transposition of Directive 2011/99/EU is the responsibility of the individual Member States, which «shall bring into force the laws, regulations and administrative provisions to comply with this Directive by 11 January 2015», as established under article 21.

After elaborating a first document with the preliminary results of the project, the second phase of the Epogender project seeks to provide recommendations and indicators to help the twenty-six Member States to which the Directive applies (Denmark and Ireland are expressly excluded[1]) incorporate

* By Epogender team.

[1] See in this regard recitals 41 (on the exclusion of Ireland) and 42 (on the exclusion of Denmark) of Directive 2011/99/EU. Recital 41 provides that «In accordance with articles 1 and 2 of the Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application». Recital 42 provides that «In accordance with articles 1 and 2 of the Protocol (No. 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application». The United Kingdom, that could have decided to apply the opt-out clause in the framework of the European area of freedom, security and justice, declared however that it was willing to participate in the adoption and implementation of the Directive.

its provisions into their national law in the most homogeneous and effective way. Quite a challenge considering the fact that the EU Member States advance at «different speeds» in general terms but especially in the field of gender. The historical, geographic, political, economic and social differences that distinguish the Member States are also reflected in the legal sphere. In this specific case, various aspects such as the heterogeneity of the existing concepts of gender violence, the diverging policies to combat this phenomenon, the lack of uniform legislation or regulatory dispersion, the diversity of the legal methodologies and practices, the plurality of authorities involved, and an excess of bureaucratic procedures, render it difficult to achieve the ultimate goal of the Directive, i.e. the establishment of an effective system of judicial cooperation in criminal matters in order to protect the victims of crime, and as far as this study is concerned, the victims of gender violence.

In view of the diversity encountered, the Epogender project has tried to identify similarities and common parameters in the legislation of the Member States, offer guidance on how to reduce the differences and promote ways of collaboration that allow the EPO to become truly effective. In sum, to achieve an integrated approach to the application of the protection order at European level and to accomplish, where possible, better results in the fight against gender violence across the European Union.

The methodology applied during the two years of the project can be divided in two phases, which basically coincide with each calendar year.

Thus, during the first year of the project the basic information required for the investigation was gathered, in order to determine the current legal situation of this issue in the twenty-six Member States concerned by Directive 2011/99/EU. To this end, first of all a questionnaire was prepared to be addressed to the different national authorities in order to obtain information on the relevant legislation and practices regarding the protection of the victims of gender violence in the Member States, using itemized questions to enquire about specific aspects or parameters. The draft questionnaire was reviewed and discussed during meetings and seminars not only with the members of the project team, but also with other professionals and experts on the subject, such as judges, prosecutors, lawyers, members of NGOs, police officials and social workers.

The response rate to the questionnaire was 88.4%, which corresponds to 23 out of the 26 Member States affected by the Directive. The only countries that did not respond were Italy, Malta and the United Kingdom.

While waiting for the questionnaires to be returned, the researchers prepared a directory of legislation on the subject, which included the current legislation of the Member States regarding protection measures for victims of gender violence.

With the information gathered from both the questionnaire and the legislation of each Member State 26 detailed national reports were prepared, one

for each of the Member States bound by Directive 2011/99/EU. The main objective of these reports was to analyze the national legislation and practices regarding the protection of the victims of gender violence.

The results of this first part of the investigation allowed the research team to define the scope of the investigation more precisely, which was essential to perform the comparative analysis proposed. The preliminary results of the first year of the investigation have been published in both Spanish and English in the following volumes: Freixes, T.; Román, L. (eds.): *Protección de las víctimas de violencia de género en la Unión Europea.* UAB Edicions-Publicacions URV, Tarragona, 2014 / Freixes, T.; Román, L. (eds.): *Protection of Gender-Based Violence Victims in the European Union*, UAB Edicions-Publicacions URV, Tarragona, 2014.

During the second year of the investigation, the objective of the project was to carry out a comparative analysis of the various national legal systems based on the above-mentioned material. Unlike the preliminary investigation, the analysis did not focus on establishing the strategies of each Member States with regard to gender violence, but compared a series of parameters identified as relevant in the questionnaire, which not only cover different aspects of the Directive (protection measures, procedures, authorities…), but also provide valuable information on other services and support measures. This analysis has made it possible to detect the existing differences and similarities between the Member States, identify models and political orientations with respect to gender violence, and as a consequence propose suitable indicators to facilitate the transposition of the Directive, which in most Member States has not (fully) been carried out. Unfortunately, in some cases, due to the fact that the relevant information was not provided or could not be properly verified, country information was classified as «Not available».

The comparative analysis is divided into four main sections. The first section exhaustively deals with all the aspects related to the three protection measures included in the Directive; the second one analyze the different aspects of the procedure established for the adoption of the protection measures; the third main section discusses the effectiveness of the measures; the last section goes into the other measures and guarantees concerning the protection of victims of gender violence which, however, fall outside the direct scope of application of the Directive.

Each of these sections and subsections contains an analysis of the data and the resulting conclusions, while the relevant indicators for the transposition of the Directive have been brought together in a separate final chapter for the purpose of accessibility.

The present chapter contains the results of the second year of the investigation, concluding the Epogender project.

2. THE PROTECTION MEASURES LAID DOWN IN THE DIRECTIVE*

The goal of the EPO is to restrict the personal contact, both in person and through various means of communication, between the protected person and the person causing danger. To this end, the protection measures stipulate conditions to prevent physical contact and limit all forms of communication between both individuals[2]. According to article 5 of Directive 2011/99/EU, a European protection order may only be issued when a protection measure has been previously adopted by a Member State, imposing one or more of the following prohibitions or restrictions:

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

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

Consequently, a European protection order can only be issued if the State adopting the measure has imposed, under its national law, at least one of the three measures mentioned in order to protect the victim from any criminal acts that may endanger that person's life, physical or mental integrity, dignity, individual freedom or sexual integrity[3].

Article 7 of the Directive, which concerns the form and content of the EPO, specifies in paragraph *f*) that the order must contain information on «the prohibitions or restrictions imposed, in the protection measure underlying the European protection order, on the person causing danger, their duration and the indication of the penalty, if any, in the event of the breach of any of the prohibitions or restrictions. In line with this provision, the EPO form set out in Annex I of the Directive requires the competent authority in paragraph *g*) to provide «indications regarding the prohibition(s) or restriction(s) that have been imposed by the protection measure on the person causing danger, i.e. to indicate which of the three protection measures laid down in article 5 of the Directive have been imposed under the national law of the issuing State. It also requires an indication of the length of time during which the prohibition(s) or restriction(s) have been imposed, as well as the penalty (if any) in the event of the breach of the prohibition or restriction.

---

* By Núria Torres, Associate Professor in Criminal Law, URV.

[2] See recital 21 of the Directive.

[3] See article 1 of the Directive.

Once the EPO has been issued, the executing State must determine the protection to be provided to the protected person. In this respect, article 9 of the Directive obliges the executing State that receives a duly transmitted EPO to recognise that order and take a decision adopting any measure available under its national law in a similar case in order to ensure the protection of the protected person. With regard to the content of the protection measure to be adopted in the executing State, article 9(2) of the Directive stipulates that it shall, to the highest degree possible, correspond to the protection measure adopted in the issuing State. The Directive therefore requires the executing State to adopt a protection measure of a similar nature as that of the measure imposed by the issuing State. Nonetheless, the Directive, mindful of the different modalities of measures applied in the Member States for the protection of victims, includes two clauses in article 9 that allow the cooperation mechanism between the Member States to be applied with a certain flexibility. On the one hand, paragraph 2 of article 9, in direct reference to recital 20 of the Directive, establishes that the competent authority of the executing State is not always obliged to apply the exact same protection measure as the one adopted in the issuing State. In this way, the Directive grants the executing State 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. On the other hand, article 9(1) in fine gives the executing State the possibility of applying criminal, administrative or civil measures, in accordance with its national law.

In view of these provisions and taking into account the purpose of this investigation, it is important to analyze which of the measures established in the Directive as the basis for the protection order are regulated in the legal systems of all the Member States. To this end, we will analyze the nature of the protection measures available in the Member States, regardless of their formal denomination and their specific regulatory framework. This should help us determine the compatibility of the measures available in the various Member States, and ultimately, the possibility of enforcing the EPO in an effective way.

2.1. The protection measures in the legislation of the Member States: Which measures are provided for?

2.1.1. *The prohibition from entering certain localities, places or defined areas where the protected person resides or visits*

The first of the measures mentioned in article 5 of the Directive, as a measure imposed in the executing State that may give rise to a European pro-

tection order, is the prohibition from entering certain localities, places or defined areas where the protected person resides or visits.

The Member States that provide for this protection measure in their legal system are AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK and UK, in other words, all of the Member States concerned by the Directive.

Even though all of the States analyzed provide this protection measure under their national law, its application is not regulated in the same context and under the same conditions for its execution. The scope of application of this measure varies considerably from one Member State to another.

Thus, in some countries this prohibition can only be adopted by police officials in order to prevent the person causing danger from entering the home of the victim. This is the case, for example, in Bulgaria, Germany and Slovenia, where the prohibition is exclusively imposed as a police measure, for a short period of time. In other States the measure, after initially being adopted by the police, may be confirmed and extended by means of a judicial decision once criminal proceedings are brought. In these cases, the measure constitutes a precautionary measure which will be applied temporarily as long as the proceedings continue. The option to convert an initial police measure into a precautionary measure can be found, for instance, in AT, CZ, HR, HU, SI, LV, NL, SE and UK.

A second group of Member States are those that allow to apply this measure as a precautionary measure during criminal proceedings, independently of whether the measure was already adopted for protection purposes by the police. This group consists of the following Member States: AT, BE, CY, CZ, EE, EL, ES, FI, FR, HR, HU, IT, LT, LV, MT, NL, PL, SE, SI and UK. By contrast, this prohibition is not available as a precautionary measure during the criminal proceedings in BG, DE, PT, RO and SK.

A third group, finally, is formed by those Member States that apply this measure as a criminal penalty or as an alternative penalty to protect the victim after the conviction of the accused. The countries that provide for a prohibition to enter the residence of the victim or other places which she visits as a criminal penalty are: BE, CY, ES, FR, HR, HU, IT, LT, LU, MT, NL, PL, RO, SE and SK. The following countries, however, do not provide for this prohibition as a criminal penalty: AT, BG, CZ, DE, EL, FI, LV, PT, SI and UK.

2.1.2. *The prohibition or regulation of contact, in any form, with the protected person*

The Member States whose legal system provides for 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, are: AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PL, SE, SI and UK.

Some Member States, such as Romania, have regulated this prohibition as a purely civil but not as a criminal measure. Other States allow this measure to be applied by the police authorities, or by both police and civil authorities. This is the case in Latvia, Slovenia and the United Kingdom.

More interesting for the purpose of this investigation is to establish how many Member States have included the prohibition to contact the victim as a precautionary measure in criminal proceedings. This is the case in AT, BE, BG, CY, CZ, EE, ES, FI, FR, HR, HU, IT, LT, LU, MT, NL, PL, SE and UK. In all these States the prohibition to contact the victim may be adopted for a varying length of time during the course of the criminal proceedings. By contrast, those who do not allow for this prohibition to be used as a precautionary measure in criminal proceedings (without prejudice to the possibility of applying it in civil proceedings) are: DE, EL, LV, PT, RO, SI and SK.

It should also be noted that the prohibition to seek contact with the protected person may also be imposed as a criminal sanction after the sentence by which the aggressor is convicted. This is legally provided for in the following States: BE, CY, EE, ES, FR, HR, HU, IT, LT, LU, MT, NL, PL and SE. On the other hand, its application as a criminal sanction is not possible in AT, BG, CZ, DE, EL, FI, LV, NL, PT, RO, SI, SK and UK.

2.1.3. *The prohibition or regulation on approaching the protected person closer than a prescribed distance*

In the third place, the Member States whose legal system provided for a prohibition or regulation on approaching the protected person closer than a prescribed distance, are: AT, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK and UK.

Other States such as Belgium or Greece, however, do not allow for this measure, or only apply it as a civil measure. In Germany this measure exists only as a short-term police measure.

The Member States which have regulated the prohibition to approach the victim as a protection measure during the course of the criminal proceedings are: AT, BG, CY, CZ, EE, ES, FI, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI and UK. Those who, on the contrary, do not regulate this prohibition as a precautionary measure during criminal proceedings are: BE, DE, EL, FR, RO and SK.

The Member States that apply this measure as a criminal penalty or as an alternative penalty are BG, CY, EE, ES, HR, HU, LT, LU, MT, NL, PL, RO,

SE and SK. The following countries, however, do not allow for the application of this prohibition as a criminal sanction: AT, BE, CZ, DE, EL, FI, FR, IT, LV, PT, SI and UK.

TABLE 1
Measures defined in Directive 2011/99/EU that already exist in the EU Member States

MS	Entry restriction	Contact restriction	Approach restriction
AT	X	X	X
BE	X	X	
BG	X	X	X
CY	X	X	X
CZ	X	X	X
DE	X	X	X
EE	X	X	X
EL	X		
ES	X	X	X
FI	X	X	X
FR	X	X	X
HR	X	X	X
HU	X	X	X
IT	X	X	
LT	X	X	X
LU	X	X	X
LV	X	X	X
MT	X	X	X
NL	X	X	X
PL	X	X	X
PT	X		X
RO	X		X
SE	X	X	X
SI	X	X	X
SK	X	X	X
UK	X	X	X

SOURCE: Elaborated by Epogender.

All the Member States provide in their legal systems for protection measures for victims. Moreover, all Member States provide for protection measures which coincide with the three protection measures laid down in the Directive as the basis for a European protection order. However, not all these measures are meant specifically for victims of gender violence, and as we will see further on, their legal characteristics are very diverse.

The protection measure regulated by the largest number of Member States is the prohibition to enter the home of the victim or the places she visits. On the other hand, not all countries have regulated the prohibition to approach or contact the victim. As for the first protection measure, its greater prevalence might be explained by the introduction and extensive use of barring orders in various Member States, an instrument generally imposed by the police which obliges the person using violence to abandon the home shared with the victim.

As for the other protection measure, the fact that this measure is less widely available may be due to the difficulties involved in its execution and supervision. In this respect, carrying out a measure prohibiting the (presumed) aggressor to approach the victim requires a more extensive monitoring of both parties, given that it does not limit itself to the surveillance of a specific location, but implies offering protection to the victim wherever she may be. The supervision of the correct enforcement of this measure therefore requires more extensive human, financial and technological resources than those needed for the static surveillance of a concrete location. This, in our view, could bring certain States to excluding this measure from their legal system.

2.2. Nature of the protection measures: civil measures, administrative measures, precautionary measures or criminal sanctions?

One of the most important aspects of this comparative analysis is the identification of those Member States that provide for protection measures in their legal systems to be applied to criminal matters, both to cases where the offender has already been convicted for a criminal act and to cases where the person causing danger has already been accused, but not yet sentenced.

The aspect is even more relevant if one considers that some Member States address the issue of gender violence (or domestic violence) from the civil perspective, and not from the criminal perspective. As a result, with regard to the protection measures that may be adopted in response to acts of violence against women and taking into account the nature of these measures in each of the Member States, two main models can be distinguished. On the one hand, there are those States that consider that the response to violence against women should basically consist of civil measures. On the other hand, there are the States that opt for criminal measures, be it precautionary measures or criminal sanctions to be applied once the criminal responsibility of the offender has been judicially established. These two models, however, are not neatly delimited. As we will see, besides a small number of States that have established only civil protection measures, the majority of Member

States have included in their legal system both civil and criminal measures, the latter being divided into precautionary measures and penalties. Moreover, in some Member States the civil and/or criminal measures may be combined with administrative measures that may be imposed by the police in case urgent protection is needed.

2.2.1. *Member States that only provide for civil or administrative protection measures*

The regulation of the measures for the protection of victims is paradigmatic in the sense that no criminal protection measures are available, neither in the criminal law of procedure, nor as penalties or security measures. This means the protection measures that can be offered to victims and more specifically to women who have been victims of domestic violence or gender violence, are exclusively civil and administrative in nature, as in the case of the measures taken by the police.

The model for the protection of victims chosen by these two States, where there are no criminal protection measures, leads us to question the applicability of the EPO in this particular context. Austria and Germany will most likely not become States issuing European protection orders in the terms laid down in the Directive, but will probably resort to other legal instruments, such as the certificate foreseen in Regulation 606/2013 on mutual recognition of protection measures in civil matters, which in this respect was basically conceived as a complement to Directive 2011/99/EU. In spite of this, they will be able to act as States executing the European protection orders issued by other Member States, meaning they will have to implement the mechanisms to do so.

2.2.2. *States establishing protection measures with the character of criminal precautionary measures*

The second group of States consists of those who legally provide for protection measures to be applied during the pre-trial and trial phase. In this case, the protection measures for the victim are applied while the criminal investigation and trial last in order to avoid leaving the victim in a situation of risk until the offender is finally convicted or acquitted. The measures are intended to safeguard the safety and integrity of the victim in the pre-trial and trial phase, and are regulated in the laws on criminal procedure and/or a special law on domestic violence or violence against women. In some countries these precautionary measures adopted during the criminal trial phase can be combined with civil or police measures, as well as with criminal sanc-

tions with the same protective component. The Member States that have included in their criminal procedural law one or more of the protection measures laid down in the Directive to be applied as precautionary measures are: BE, BG, CY, CZ, EE, EL, ES, FI, FR, HR, HU, IT, LT, LU, MT, NL, PL, PT, SE, SI, SK and UK.

With regard to the possible combination in these States of these precautionary measures and measures of a different nature for the protection of victims, the following cases can be distinguished: The legal systems of Belgium and Finland, to begin with, do not provide for civil or police protection measures. In other words, the criminal precautionary measures which a judge or court can impose in the course of the criminal investigation and the subsequent trial, are the only protection measures that may be adopted in favour of victims.

Greece regulates protection measures for victims in the laws of criminal procedure, but also in the civil sphere.

In the Czech Republic and Slovenia the criminal precautionary measures for the protection of victims exist alongside civil and police measures, while in other Member States such as Bulgaria and Estonia are provided for alongside civil measures and criminal sanctions.

The largest group of Member States consists of those that legally recognize the possibility to apply both procedural criminal measures and substantive criminal measures for the protection of victims. To this category belong the legal systems of CY, ES, MT[4], PL and PT. The last group, finally, is comprised of the legal systems of HU, LT, LU, NL and SK, which allow for the application of protection measures for victims that fall under the four legal categories analyzed in this study, i.e. procedural and substantive criminal measures, as well as civil and police measures.

2.2.3. *States establishing protection measures constituting criminal sanctions or alternative sanctions*

For the purpose of this study it is also important to determine which of the Member States provide for measures to protect victims in their substantive criminal law. In this context, the protection measures constitute criminal penalties, alternative penalties and other probation measures concerning the offender, which have been imposed as the result of the perpetration of a crime and judicial decision convicting the offender.

The fact that these measures are adopted in the form of a criminal conviction or a subsequent judicial decision substituting the initially imposed prison sentence by conditions for the supervision of the convicted person whose

[4] These measures may also be applied in civil proceedings.

sentence has been conditionally suspended or who is granted probation, does not exclude that one of the main goals of these measures is the protection of the victim. The inclusion of this type of measures on the list of criminal penalties or alternative sanctions shows that the legal consequences of a crime cannot exclusively be geared towards punishing the offender, but also to protecting the victim and the social rehabilitation of the convicted person.

In this regard, it is important to note that most Member States provide for sanctions or measures that aim to ensure that victims are protected once the criminal proceedings have concluded. Nonetheless in this context some further explanations are needed.

Thus, in States as Romania both civil and criminal protection measures are available. The protection orders that may be adopted during the pre-trial and trial phase of the proceedings, however, are civil in nature. It is not until the accused is finally convicted that the court may impose any of the criminal sanctions established in the Criminal Code for the protection of the victim.

Some Member States, such as CY, MT, IT and PT, have established protection measures both as criminal precautionary measures and as criminal sanctions.

A wider range of protection measures is found in Bulgaria and Estonia, where they regulated in the substantive criminal law as in the civil and criminal procedural law. Croatia, Sweden and the United Kingdom on their part have included protection measures in the substantive criminal law, the procedural criminal law and police regulations. Finally, as indicated earlier, HU, IT, LT, LU, NL and SK allow for the application of protection measures for victims that fall under the four legal categories analyzed in this study.

TABLE 2

Legal nature of the protection measures in the EU Member States

MS	Civil measures	Administrative measures adopted by the police	Criminal precautionary measure	Criminal penalty imposed by sentence
AT	X	X		
BE			X	
BG	X		X	X
CY			X	X
CZ	X	X	X	
DE	X	X		
EE	X		X	X
EL	X		X	
ES			X	X

MS	Civil measures	Administrative measures adopted by the police	Criminal precautionary measure	Criminal penalty imposed by sentence
FI			X	
FR	X		X	X
HR		X	X	X
HU	X	X	X	X
IT	X	X	X	X
LT	X	X	X	X
LU	X	X	X	X
MT			X	X
NL	X	X	X	X
PL			X	X
PT			X	X
RO	X			X
SE		X	X	X
SI	X	X	X	
SK	X	X	X	X
UK	X	X	X	X

SOURCE: Elaborated by Epogender.

The research carried out shows that the measures laid down in the regulations of the various Member States are quite heterogeneous and are not applied in the same way. Thus, not in all Member States these measures are criminal in nature. In some Member States the protection measures for victims are civil in nature, and in others criminal and civil measures coexist, under the same denomination as the measures established in the Directive. In addition, some Member States allow the measures to be adopted by police officials, probation officers or social workers, which means the measures are administrative in nature.

To the extent that the Directive limits the European protection order to measures adopted in criminal matters, the States that exclusively provide for civil protection measures in their legal systems are excluded from the scope of application of the Directive as issuing States of European protection orders. In other words, the imposition in these States of civil protection measures would not provide the victim with a sufficient legal basis to request the adoption of a protection order in the terms established in the Directive in order to achieve a similar protection as provided in the issuing State after moving to another State of residence. Even so, these States still fall under the scope of application of the Directive as executing States, in so far as a victim can address herself to the competent authority of the executing State with a European protection order issued on the basis of protection measures adopted in the issuing State. Consequently, when transposing the Directive all Member States should anticipate possible problems derived from these regulatory differences and ensure that there are no obstacles in its internal law to prevent the relevant authorities from recognizing a protection order, regardless of the nature of the authority that adopted it in the issuing State, and guarantee that the measures can be enforced in accordance with their national law.

Naturally, this does not alter the fact that the protection of the victim outside the territory of the State where the relevant measures were initially adopted may also be recognized and enforced by means of other legal instruments that are civil in nature, such as the certificate used under Regulation 606/2013.

2.3. Personal scope of application of the measures: Who is protected?

Article 1 of the Directive establishes that the protection measures are intended to protect a person against the criminal conduct of another person that may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity. Moreover, recital 9 of the Directive underlines that it applies to protection measures which aim to protect all victims and not only the victims of gender violence. Nonetheless, given that the purpose of this investigation is to analyze the viability of the application of European protection orders to victims of domestic violence and gender violence, it is of particular interest to establish which kinds of victims have access in the different Member States to the protection measures provided for in their legal systems and determine in which cases explicit mention is made to the victims of gender violence.

Even though the majority of Member States state in their rules and regulations the persons to which the protection measures established under their national law may be applied, not all of them specifically mention the victims of domestic or gender violence as persons who are entitled to request a protection order. This is the case, for example, in Germany, where victims in general are given the possibility of requesting a protection measure, without including an express reference to women as a specific category to which these measures apply. Among the States which do expressly include the victims of domestic and gender violence as addressees of the protection measures, their legal systems may be classified according to the scope of persons entitled to protection, which may be more or less broad.

In Austria, for instance, the persons that may benefit from a protection measure are those who reside in the same home as the aggressor, including his wife, partner, children, relatives and housemates. In Hungary, the protection measures that may be imposed in criminal proceedings are meant for the persons that live or have lived together with the aggressor.

In CZ, EL, IT, RO and SK the beneficiaries of the protection measures include the spouse, descendants, ascendants and other relatives.

The regulations of other Member States, besides referring to the spouse or other relatives, include references to any victim or person at risk. This is the case of BE, BG, CY, EE, ES, FI, FR, HR, LT, LU and SE.

Some other States include among the beneficiaries of the protection measures a wide range of persons. In Slovenia, for instance, when civil protection measures are applied, the beneficiaries include the spouse, descendants, ascendants, other relatives, persons with a common child, persons living in a common household, any blood relative in the direct line, any blood relatives coming from any line up to the third level, step-relatives up to the second level, adoptive parents and adopted children, foster parents and foster children, guardians and wards, ex-spouses, unmarried partners and former unmarried partners, same-sex partners and former same-sex partners.

In the United Kingdom, the 2010 Crime and Security Act establishes as the potential beneficiaries of protection any victim of domestic violence as well as associated persons, a category which according to article 62 of the Family Act includes:

a) persons that are or have been married to each other;
b) persons who are or have been civil partners of each other;
c) persons who are cohabitants or former cohabitants;
d) persons who live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
e) relatives;
f) persons who have agreed to marry one another (whether or not that agreement has been terminated);
g) persons who have or have had an intimate personal relationship with each other which is or was of significant duration;
h) have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);
i) in relation to any child, persons who are both its parents or who have parental responsibility;
j) persons who are parties to the same family proceedings (other than proceedings under this Part).

Finally, mention should be made of the regulation under the Spanish legislation of the persons who may benefit from protection measures imposed as an accessory penalty under a criminal conviction. This probably is the legal provision that regulates the personal scope of those entitled to protection with the highest detail. In this respect, the persons who the Criminal Code recognizes as entitled to protection by application of a prohibition to approach or contact the victim are those who are victims of the violence exerted by the aggressor. They include: His spouse, a person who has had a similar intimate relationship with the offender, even without having lived together,

descendants, ascendants, brothers and sisters by blood, adoption or marriage of the victim or of the spouse or cohabitee, minors or incapacitated persons who live with him or who are subject to the parental rights, guardianship, care, foster care or safekeeping of the spouse or cohabitating partner, or a person protected by any other relation by which that person is a member of the core family unit, as well as persons who, due to their special vulnerability are subject to custody or safekeeping in a public or private centre.

> In the context of gender violence, the definition of the personal scope of application of the protection measures often refers to concepts as the family, which may include a larger or more limited number of persons depending on the legislation of each particular country. It would therefore be recommendable that the relevant rules specify the persons included in this or similar concepts, as has been done in several Member States. Moreover, the definitions used of the persons who may request a protection measure seem to be related to the different views in each Member State on gender violence. In any case, considering the broadness of the scope of the Directive on this point, it would be recommendable to seek more concordance between the Member States regarding the persons who may request protection measures, and consequently, a European protection order.

2.4. Material scope of application of the measures: In which cases the protection measures may be applied?

Based on the replies to the questionnaires sent to the national authorities of each of the Member States, we can conclude that most of them do not limit the application of the protection measures to victims of a specific crime, but allow these measures to adopted in response to crimes of different kinds. Thus in BE, BG, EE, ES, FI, FR, HR, LV, NL and PT, for instance, these protection measures may be adopted in response to acts that may constitute partner violence, domestic violence, harassment, forced marriage, human trafficking and sexual violence, among others.

With regard to the adoption of protection measures for female victims of violence, it should be noted that all the Member States indicate that they provide for these measures in cases where a woman is the victim of violence on the part of her (male) partner or in case of violence committed in the domestic sphere. By contrast, some Member States indicate that they do not allow for the application of these protection measures when the violence is exerted within a same-sex relationship. This is the case in for instance CY, EL, LV and SK.

The replies received to the questionnaire further show that some States do not apply these measures in case of forced marriage or human trafficking (DE, EL, LU and SI).

TABLE 3
Cases in which protection measures may be adopted in the EU Member States

MS	Partner violence		Domestic violence	Harassment	Forced marriage	Human trafficking	Sexual violence	Other
	Male *v.* female	Same-sex						
AT	X	X	X	X			X	X
BE	X	X	X	X	X	X	X	X
BG	X	X	X	X	X	X	X	
CY	X		X			X	X	
CZ	X	X	X	X		X	X	X
DE	X	X	X	X			X	X
EE	X	X	X	X	X	X	X	X
EL	X		X					
ES	X	X	X	X	X	X	X	X
FI	X	X	X	X	X	X	X	X
FR	X	X	X	X	X	X	X	X
HR	X	X	X	X	X	X	X	X
HU	X	X	X	X	X	X		X
IT								
LT	X	X	X	X	X	X	X	
LU	X	X	X	X			X	
LV	X		X	X	X	X	X	X
MT								
NL	X	X	X	X	X	X	X	X
PL	X	X	X	X	X	X	X	X
PT	X	X	X			X	X	
RO	X	X	X	X			X	X
SE	X	X	X	X	X		X	
SI	X	X	X	X			X	X
SK	X		X	X	X	X	X	X
UK								

SOURCE: Elaborated by Epogender.

2.5. Temporal scope of application of the measures: How long does protection last?

The duration of the protection order is very important for practical purposes, as it determines how long the victim will be protected. The rules on this aspect in the Directive, however, are not particularly simple. Some effort has to be made in order to gather from the text of the instrument which State —the issuing or the executing State— is competent to decide the duration of the measure.

In first instance, it is the issuing State that adopts a protection measure for the victim under its national law, including its duration. On the form to be used for transmitting the protection order (Annex 1 of the Directive), paragraph *g*) requires an indication of the length of time the prohibition(s) or restriction(s) are imposed on the person causing danger. This is information that the issuing State should communicate to the executing State. From this perspective, it might seem that it is the issuing State which establishes the length of the measure, with the result that the victim will be protected in the State of destination for the same term as was established in the judicial decision adopting the measure. Article 11 of the Directive however provides that the law of the executing State shall apply to the adoption and enforcement of the decision by which the measure for the protection of the victim was adopted. Moreover, article 14(1) (b) of the Directive provides that the competent authority of the executing State may discontinue the measures taken in execution of a European protection order where, according to its national law, the maximum term of duration of the measures has expired. This means the executing State has the possibility to decide on the duration of the measures, and to end them before the term established by the issuing State has expired. For this reason, it is of particular interest to determine whether the duration of the measures is similar in the different Member States, meaning the victim can expect to be protected during the same period of time in the executing State as the one established in the issuing State.

In this respect, it turns out that the duration of the protection measure in every State does not depend so much on the type of prohibition adopted as on the procedural phase during which it is adopted. In other words, no important differences were found between the Member States depending on whether the measure adopted constituted a prohibition to enter certain localities, a prohibition to contact the protected person or a prohibition to approach the protected person closer than a prescribed distance. By contrast, the length of the measures is closely related to the phase or the situation in which they are adopted, i.e. they vary depending on whether they are police measures, precautionary measures or penalties.

As far as protection measures adopted by police authorities are concerned, these are generally applied during a short period of time. For in-

stance, the duration of the measures does not exceed 48 hours in Slovenia[5] and Slovakia[6], 72 hours in Hungary, or fourteen days in Denmark. When the adopted protection measures are only applicable during such a short period of time, there may be hardly any point in requesting a European protection order as it will be difficult to issue one before this term has expired.

Conversely, the term of duration of protection measures is generally longer when they are adopted in the course of criminal proceedings. In these cases, the length of the protection measure tends to linked to the final outcome of the criminal proceedings, be it by dismissal, conviction or acquittal. This happens, for example, in BG, CZ, EE, HR, LT and LV. In other cases, the legislation provides a maximum term of duration that does not necessarily coincide with the duration of the trial. This is the for example in Cyprus, where the maximum term of duration is 24 days, in Hungary, where it ranges from 10 to 60 days, in Austria and Finland, where the three types of prohibitions last a maximum of one year, in Italy, where the maximum term is four years, and Malta, where the maximum is three years[7].

Also when the protection measure is adopted in the context of a penalty or security measure after the aggressor has been found criminally responsible by a court, the differences between the Member States can be considerable. Thus, in some Member States where the prohibitions are adopted as alternative to a prison sentence, the duration of the prohibitions will match the length of the original penalty. This happens for example in Cyprus[8] or Slovakia. In other States the maximum term of duration of the measures is legally established. In Belgium, for example, the penalty consisting of a prohibition to contact the victim lasts only three months; in Estonia and France the penalty can last up to three years; in Croatia, Spain and Slovakia up to five years. In Spain, the penalty may even be imposed for a term of ten years in case of the victim of a serious crime.

The differences in the duration of the protection measures does not depend so much on the type of measure as on the procedural phase in which there are adopted. These differences in the term of duration may cause the victim to receive protection in the executing State during a much shorter period than the one established in the State where the prohibition was adopted, given the fact that the executing State is allowed to discontinue the measures adopted in execution of a European protection order when it has expired according to its national law. Another question is whether the measure may be modified *a posteriori* during its execution.

[5] In Slovenia, the Court may renew these measures for 10 days, up to a maximum of 60 days.

[6] In Slovakia a bill is being discussed allowing to extend the term of 48 hours to ten days.

[7] However, this term of three years may be extended.

[8] This possibility of substitution exists for prison terms up to six months.

2.6. Modification of the protection measures

This section deals with the possibility of changing the duration and nature of the measures once they have been recognized by the executing State and their enforcement has started.

According to article 13 of the Directive, the competent authority of the issuing State has exclusive competence to take decisions relating to the renewal, review, modification, revocation and withdrawal of the protection measure and, consequently, of the European protection order. The decision concerning the extension or renewal of a European protection order is governed by the law of the issuing State, although, as established in paragraph 5 of article 13, it is obliged to inform the competent authority of the executing State thereof without delay.

The possibility to renew the imposed protection measures is regulated in CY, CZ, FI, HR, LT, LU, LV, MT, RO, SI, SK and UK.

In France, the protection measure may be renewed if it is adopted as a precautionary measure, but not as a penalty.

With regard to the modification of the protection order it is important to point out that this action by the issuing State may lead to two possible reactions by the executing State. As established in article 13(7), the executing State may choose between modifying the adopted measures and continue the enforcement of the protection, or refuse to apply the modified prohibition or restriction if the modification means that the new measure no longer corresponds to the prohibitions contained in the Directive or if the transmitted protection order shows shortcomings which have not been remedied within the assigned period. This issue is relevant because it might mean that the modification of the imposed measure could bring the executing State to decide not to continue providing protection to the victim for reasons which are not directly related to the need for protection of the victim, but rather because of flaws in the information provided by the issuing State, and even because these shortcomings were not corrected in time by the executing State. It should be recalled that this term is not established by the Directive, but as article 9(4) provides, it shall be «a reasonable period for it to provide the missing information».

The Member States that allow for the possibility to modify the imposed protection measures are CY, CZ, FI, FR, HR, HU, LT, MT, RO, SK and UK. In Croatia, for example, the legislation provides that the initial measure may be substituted by a less severe measure.

Finally, the revocation and withdrawal of the protection measure is also a possibility regulated in several Member States, and which the Directive includes in the European protection order. In this respect, article 13(6) of the Directive provides that if the competent authority in the issuing State has

revoked or withdrawn the European protection order, the competent authority in the executing State shall discontinue the measures adopted as soon as it has been duly notified by the competent authority of the issuing State. Consequently, if the issuing State revokes or withdraws the imposed protection measure, the executing State should discontinue the adopted measures given that article 13(1)(a) provides that the revocation or withdrawal of the measure entails the revocation or withdrawal of the European protection order. The Member States that allow for the possibility to suspend the initially imposed protection measures are CZ, FI, FR, HR, LT, MT, RO, SK and UK.

3. THE PROCEDURE FOR THE ADOPTION OF THE PROTECTION MEASURES*

3.1. Who can request the protection measures in the Member States?

As established in article 6(2) of the Directive, only the protected person is entitled to request the protection measures set out in article 5, i.e. the person whose «life, physical or psychological integrity, dignity, personal liberty or sexual integrity may be endangered by the criminal act of another person (art. 1 of the Directive). When we apply this rule to the subject of our investigation, this means that once the protection measures have been adopted in the State of origin, only the victim of gender violence will be allowed to request that this protection is extended to another Member State of the European Union.

The question who may request the adoption of protection measures is regulated differently in the legal systems of the Member States. In particular, it should be noted that only a few of them follow the criterion of the Directive. The following situations can be found:

In the first place, in line with the European rule, Germany and Greece have established that the request for protection measures may only be brought by the victim (or person with a legitimate interest)[9]. The same criterion that is basically applied in France, although in addition to the victim it allows for the Public Prosecutor's Office to request the protection measures as well.

At the other extreme we find Austria, where the victim herself cannot request protection measures; this decision is left to the public authorities, and more specifically to the police and the Public Prosecutor's Office.

---

* By Elisabet Cerrato, Lecturer in Procedural Law, URV.

[9] Due to the lack of response from the Greek authorities, this observation is inferred from the examination of Act 3500/2006 on the Eradication of Domestic Violence, as carried out by the Epogender research team.

A third scenario is found in Bulgaria, which excludes requests by the public authorities and other public agents[10], but which extends the scope of the interested parties who may file such a request to include relatives and social workers, besides the victim.

Finally, we have found that in an attempt to provide maximum protection to the victims of gender violence, most Member States coincide in establishing a broad scope of applicants entitled to request protection measures, which includes both the victim and her relatives, as well as the authorities and other public agents. This is the situation in CY, CZ, EE, ES, FI, HU, LT, LU, PL, PT, RO, SE, SI and SK, although there are differences as to the public agents who are allowed to submit such a request. While in CY, FI, HU, LT, LU, PL, PT, SE and SI both the police and the Public Prosecutor's Office are allowed to intervene, in Spain, the Czech Republic and Romania only the Public Prosecutor's Office is allowed to do so; in Estonia on the other hand the police may do so, but not the public prosecutor[11]. In the case of Slovakia, the competent authorities are not specified. Moreover, in EE, CY, CZ, FI, LT, LU, PL, PT, RO, SE and SI the request for protection measures may also be filed by social workers, although in the case of Finland it should be noted that this is only possible if the victim herself does not do so. In LT, LU, PL, PT and SE it is found that, besides the parties already mentioned, a request for protection measures can also be presented by physicians and any other person who is aware of a case of gender violence. Finally, in Lithuania and Romania, any other person who knows of a case of gender violence may request protection measures, in addition to the parties already mentioned.

Particular mention should be made of the cases of Croatia and the United Kingdom. In Croatia, besides the victim, the police, the Public Prosecutor's Office and the social services, the court itself may adopt *ex officio* the protection measures mentioned in section 2.1. In the case of the United Kingdom, the measures may be adopted by the police or the courts, regardless of any request by the victim or her legal representative.

In addition, there are six Member States where the party entitled to request protection measures depends on the criminal, civil or administrative nature of the requested measures, viz. BE, HU, IT, LV, NL and UK.

The Belgian legal system awards a wide range of parties the capacity to request protection measures when they are criminal in nature. It more specifically allows the victim and her relatives to do so, as well as the authorities

[10] More specifically, protection measures may not be requested by the police, the Public Prosecutor's Office, and other persons who may be aware of a case of violence.

[11] In this group Malta might also be included. In spite of not having received a response to the questionnaire, the investigation carried out by the Epogender team suggests that the protection measures may be requested both by the police and the parties concerned.

and other public agents, including the police, the Public Prosecutor's Office, physicians, social workers or any other person who is aware of a situation of violence. In the case of civil measures, however, the possible applicants are reduced to the victim and her relatives.

In the case of Hungary, where criminal measures are concerned, a restraining order may be requested by the prosecutor, the civil claimant, the substitute civil claimant, the aggrieved party, the legal representative of the aggrieved party that has no or limited capacity to act, and the legal representative of a minor living in the same household with the accused. On the other hand, if an administrative barring order is sought, or a civil order, the request can be made by the police, the abused, relatives of the abused, the child protection services and guardianship authorities, public education institutions, or health institutions.

As for Italy, a distinction should be made between the request for (criminal) precautionary measures, civil measures and emergency orders (barring orders). In the first case, the lack of cooperation of the Italian authorities, which have not responded to the questionnaire sent by the project team, has made it impossible to establish the persons or authorities who are allowed to submit a request for these protection measures. We have found, however, that the request for civil measures must be made by the victim, while the barring orders will be adopted by the judicial police without a previous request of the person concerned, even though in some cases authorisation by the Public Prosecutor's Office is required.

In the case of Latvia, in criminal proceedings it normally is the victim who must request protection after reporting the relevant criminal conduct, while in civil proceedings the victim will first have to go to the police, after which the relevant court will decide on the protection measures. On the other hand, as stated in the reply to the questionnaire by the Latvian authorities, the only authority competent to request protection measures is the Public Prosecutor's Office[12].

In the Netherlands the request for protection measures may basically be submitted by the police, the Public Prosecutor's Office, doctors and social workers, except in civil proceedings where they can also be requested by the parties concerned.

Finally, in the United Kingdom, when the measures are requested in a criminal context, they may be requested by the victim or her legal representative (restraining order), the police in case of DVPNs (Domestic Violence Protection Notice) or the courts in case of DVPOs (Domestic Violence Protection Order). If the measure is civil in character, the measures can only be applied for by the victim.

[12] Certain discrepancies may be observed between the legislation and the information provided in the questionnaire.

Most EU Member States in their different regulations allow for protection measures to be requested, besides the victim, by her relatives, as well as authorities and other public agents. However, the decision of the victim to move to another Member State entails that the victim herself must apply for the corresponding European protection order in order to maintain the protection awarded by the issuing State, even if the original protection measures were requested by another party than the victim. In this regard, it can be observed that the legislations of the Member States allow much more parties to request protection measures than the Directive, which limits the right to request a European protection order to the protected person. This might lead to a reduced protection of the victims.

On the other hand, the limitation of the competence to request an EPO may be justified as the victim is probably concerned about not revealing her new address and thus avoid being located. Moreover, she is the only person who is fully informed about her travel plans. In any case, it would be necessary to inform the victim that regardless of who requests the protection measures, she is the only one responsible for requesting a European protection order in case she wants to exercise her right to free movement.

Extending the scope of persons allowed to request an EPO beyond the victim herself when transposing the Directive in order to include the parties who originally requested the protection measures might be considered a ground for non-recognition under article 10(1) (a) of the Directive.

3.2. Which authority may adopt a protection measure?

From the joint analysis of recitals 8 and 10 of the Directive it may be inferred that even though the European protection order only applies to protection measures adopted in criminal matters, the criminal, administrative or civil nature of the authority adopting the protection measure is not relevant. This follows from the respect for the different legal traditions of the Member States and the conviction that effective protection can be provided by means of protection orders issued by an authority other than a criminal court, as indicated in recital 8 of the Directive. In any case, article 1 of the Directive seems to express a preference for judicial organs when it states that European protection orders may be issued by «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. Even so, the express recognition of the competence of judicial authorities to issue protection orders does not exclude that other authorities may also be competent.

When examining the approach the Member States have opted for on this matter, we found that a majority of them have chosen to attribute the competence to adopt protection measures for the victims of gender violence to judicial organs, be it exclusively or conjointly with other authorities of a different nature (Public Prosecutor's Office, police, and even social workers and government organs). The Member States who have chosen to attribute this

competence exclusively to a judicial authority include BG, CY, ES, FR, MT, PL, RO and UK. As a second group we find the States which have attributed this competence also to other authorities. Within this group various alternatives can be found:

— In BE, CZ, LU and PT, besides the judicial authority, protection measures for victims of gender violence may also be adopted by the Public Prosecutor's Office.

— Other countries have established that these measures may also be adopted by the police. This group includes AT, DE, FI, HU, IT, LV and LT, even though with slight differences regarding the conditions under which this can be done. Thus, the fact that police measures are essential in the first phase of the Austrian protection system explains why in Austria the police may adopt barring orders for a period of up to four weeks, after which a civil court must adopt the corresponding provisional protection measure. In Germany, in principle it is the judicial authority who adopts protection measures, although at the level of the *Länder* they may also be adopted by the police. A similar situation exists in Finland, where the competence belongs to the court and under specific circumstances to the police. In Hungary, in the case of civil protection measures, the police are allowed to issue preventive and provisional protection measures during 72 hours[13], with the possibility of the preventive order being maintained/renewed by the civil court for up to 30 days. In this context mention should also be made of Italy, where criminal precautionary measures and civil measures may be adopted by a judicial authority, while the judicial police may adopt an urgent barring order, although in some cases during the preliminary investigation this order must previously be authorized by the public prosecutor. Finally, based on the replies to the questionnaire by the Latvian authorities, in Latvia the decision regarding the application of a protection measures may be taken by the court, the Public Prosecutor's Office (during the preliminary investigation, with the authorisation of the examining magistrate), and the police (during the preliminary investigation, with the authorisation of the examining magistrate). However, the information collected by the Epogender team shows that the authority competent to issue a criminal protection measure in Latvia is the «person directing the proceedings» or «the examining magistrate». It is therefore a judge or examining magistrate who is competent to issue such a measure for preventive purposes, be it as an autonomous security measure or as a complementary measure to certain penalties (arts. 244 and 245 of the Code of Criminal Procedure); in civil matters, the competent authority is the civil judge (art. 250 of the Code of Criminal Procedure).

[13] Act LXXII on Restraining Orders because of Violence between Relatives, adopted in 2009 by the Hungarian Parliament.

— More flexibility can be found on this issue in Estonia, Croatia and Slovenia, which extend the power to issue protection measures, besides the judicial authorities, to the Public Prosecutor's Office, the police and —for specific measures— to social workers. Regarding the latter, it must be clarified that the competence of social workers extends to additional protection measures offering social support, which go beyond the measures specified in the Directive.

— Lastly, in Greece, the Netherlands and Slovakia, certain administrative or government organs are also competent to issue protection measures. More specifically, in the Netherlands, besides the judicial authority, also the mayor, the Ministry of Justice, the prison director or the director of the psychiatric clinic (the last one in cases of probation) may adopt protection measures, albeit under very specific circumstances. In Slovakia, in addition to judges, public prosecutors and the police, this power is attributed to administrative authorities.

Only one country was found where judicial organs under national law are not the competent authority to issue protection measures for victims of gender violence. This is the case of Sweden, where, unlike the other countries just described, this competence belongs exclusively to the Public Prosecutor's Office.

TABLE 4
Authorities competent to adopt protection measures in the EU Member States

MS	Judicial authority	Public Prosecutor's Office	Police	Administrative authorities/ Other
AT	X		X	
BE	X	X		
BG	X			
CY	X			
CZ	X	X		
DE	X		X	
EE	X	X	X	X
EL	X			
ES	X			X
FI	X		X	
FR	X			
HR	X	X	X	X
HU	X		X	

MS	Judicial authority	Public Prosecutor's Office	Police	Administrative authorities/ Other
IT	X		X	
LT	X		X	
LU	X	X		
LV	X		X	
MT	X			
NL	X			X
PL	X			
PT	X	X		
RO	X			
SE		X		
SI	X	X	X	X
SK	X	X	X	X
UK	X			

SOURCE: Elaborated by Epogender.

In this context, it should be noted that the legislation of some Member States specifies the nature or type of judicial organ that may adopt the mentioned protection measures. Thus, for example:

— In Bulgaria, the prohibition to approach the victim must be established by the competent court of first instance, and the restrictions on free movement in the context of probation by the criminal court.

— According to the legal system in Cyprus, the judicial organ handling a case of gender violence and the possible adoption of protection measures will vary depending on whether the offence concerned is punishable by more than five years of prison, or less. Thus, offences punishable by less than five years —and consequently, the related protection measures— shall be examined by a mixed court with civil and criminal competences, which in this case will exercise its criminal jurisdiction. On the other hand, when the penalty exceeds five years of prison, the criminal court is competent.

— In the case of Germany, according to federal law, only the family courts are competent to issue protection measures. However, at the level of the *Länder*, the police may adopt protection measures *ex officio* if the circumstances so require. Only in case the police decide to take the person causing danger into custody, it should immediately request a court decision.

— In Hungary, criminal protection orders may only be adopted by a criminal court; following the same logic, civil protection orders may only be adopted by the civil court.

— The Italian legal system provides that criminal precautionary measures are adopted by a criminal court and civil measures (so-called protection orders) by a civil judge.

— Lastly, in Malta, even though the competence belongs to the criminal courts, in cases of marital crisis it is the civil court which is competent to adopt the same protection measures as the criminal courts.

> The competence to adopt criminal protection measures for the protection of victims of gender violence is hardly a controversial issue across the European Union, as most of the Member States have attributed this competence to a judicial authority. In some cases, in addition to the judicial authority, the competence has been granted to authorities as the Public Prosecutor's Office, the police or a governmental organ. Only one country has attributed this power exclusively to the Public Prosecutor's Office.
>
> In any event, the open regulation established by the Directive in this respect allows us to observe that the same authorities that each of the Member States has designated to adopt protection measures in the field of gender violence will also be competent to issue European protection orders, without a modification of the national regulations being required. Consequently, this will not be a conflictive issue when it comes to transposing the Directive.
>
> Nonetheless, this matter does raise certain practical difficulties regarding its implementation. Thus, even when the nature of the competent authority is the same in both States, for example judicial, it will be very difficult for the judge issuing the European protection order to know to which specific judicial authority in the executing State he should address himself. For this reason, it would be most recommendable that, in terms of article 4(1) of the Directive, each State were to designate a central authority responsible for the transmission and reception of EPOs.

3.3. Adoption of the measures: *ex officio* or at the request of the party concerned? The role of the victim in requesting the protection measures

As previously discussed, article 6(2) of the Directive clearly and explicitly requires a previous request by the protected person to adopt a European protection order. The adoption *ex officio* by the judicial or equivalent authority in the executing State therefore is not permitted. It must be noted that, in addition, this provision limits the submission of such a request to persons who have already obtained a protection measure from the issuing State, i.e. the victim, or in terms of the Directive, the protected person. Therefore, for the competent authority of the issuing State to be able to issue a European protection order it is required, firstly, that the protected person has filed the relevant request, and secondly, that the protection measure whose effects should be extended to another Member State is one of the three types of measures specified in article 5 of the Directive.

In order to get a clearer picture of the situation of the EU Member States in this regard, this section aims to establish whether protection measures may be adopted ex officio by the competent authority of the Member States, at the request of the party concerned, and whether a combination of both options is allowed. An analysis of each particular legal system has led us to the following conclusions.

Parallel to the provisions of the Directive, in DE, BG, EL and RO the legislation established that, as a general rule, protection measures for victims of gender violence cannot be adopted ex officio, but only at the request of the party concerned, albeit under certain conditions. In the case of Germany, as indicated earlier, at the level of the *Länder* the police can take protection measures *ex officio* if the circumstances so require. In the case of Bulgaria, the competent authority will depend on the nature of the measure to be adopted. Thus, as a general rule, the legislation establishes that the persons who may request the application of a protection order are the victims, their relatives and social workers. However, in the case of the application of a precautionary measure, this may be imposed by the judge at the request of the victim or at the request of the public prosecutor with the consent of the victim. On the other hand, a request for a (civil) protection order in the field of domestic violence may be submitted by victims over 14 years or their guardians; brothers, sisters or other direct relatives; the guardian of the victim; the Directorate of Social Assistance if the victim is a minor, under guardianship or incapacitated. In Romania, apart from the victim, the request may be presented on behalf of the victim by the public prosecutor, the authority or administrative unit responsible for the protection of victims of gender violence, and the representative of the providers of social services for the prevention and fight against domestic violence, with the consent of the victim.

We understand that Italy should also be included in this category with regard to civil protection measures, which must always be requested by the victim[14].

A second category identified is the one found in the legal system of Austria, where the applicable legislation is civil and measures may be adopted *ex officio* and at the request of the party concerned. The situation in the Netherlands is very similar, although it must be noted that measures to be adopted under civil proceedings require a previous request by the victim.

However, the approach followed most frequently by the Member States has been to combine the two previous methods so as to allow the measures to be requested by the person concerned as well as their adoption *ex officio* by the competent authority. This is the case in BE, CY, CZ, EE, ES, FI, FR, HR,

[14] There is no information available with regard to the criminal measures.

HU, LT, LU, LV, MT[15], PL[16], SE, SI[17], SK, UK and LV[18]. It has not been possible to establish the situation in Portugal[19].

In this context it should be noted that in some States the protection measures may be adopted by the competent authority, be it a court or the police, without the consent of the victim or even against her will. This occurs in AT, BE, CY, CZ, DE, ES, FI, FR, HR, HU, LU, LV, PL, SE, SK and UK. It should be observed that in some States, however, as for instance in Hungary, the term of duration of the restraining order that the court may issue will be limited to 30 days if the victim has not consented to it.

By contrast, other States require a previous request by the victim or another person concerned as a precondition for the adoption of a protection measure. This modality is applied in BG, EE, EL, PL and RO.

Be this as it may, with a view to the implementation and application of European protection orders the practical relevance of this aspect is limited considering the content of article 6(2) of the Directive, which only grants the right to request a European protection order to the protected person. Consequently, regardless of whether the protection measure has been adopted *ex officio* or at the request of the victim in the issuing State, the European protection order can only be issued if the victim has so requested the judicial or equivalent authority in the issuing State or the executing State [art. 6(3)].

Another aspect to be considered is whether, once the measure has been adopted, there is the possibility of suspending or revoking its application in case the victim opposes it. This matter is of interest to the extent that article 13(1) of the Directive provides that the issuing State will have exclusive competence to take decisions relating to the revocation or withdrawal of the protection measure, and consequently, of the European protection order. As a result, if the legislation of the issuing State accepts the opposition of the

---

[15] The legislation examined seems to indicate that this may be done both by the police and the parties concerned.

[16] It should be added that the criminal proceedings may only be initiated at the request of the victim if the injuries caused by the violent acts require a recovery period of maximum seven days.

[17] They may be requested *ex officio* in case of restraining measures by the police or precautionary measures adopted during the proceedings.

[18] Although the questionnaire states that the measures are adopted ex officio by the competent authority, the desk research showed that the court may adopt criminal protection measures both *ex officio* and at the request of the party concerned; and in the case of civil protection measures after a previous request from the victim or the police.

[19] Two questionnaires were returned by the Portuguese authorities, which contain contradictory replies: one of them states that the competent authority will decide on the measures exclusively at the request of the party concerned, while the other indicates that the protection measure may be adopted both *ex officio* by the competent authority and at the request of the victim, and even at the request of any person with a legitimate interest.

victim, the executing State will become bound by this decision and shall have to discontinue the protection measure, even if its own legislation does not include this circumstance as a ground for revoking or withdrawing the protection provided to the victim.

In some Member States the possibility is accepted that opposition by the victim to the adopted protection measure may determine its revocation or withdrawal, and therefore end its applicability. Therefore, the will of the protected person is essential to establish the validity or discontinuation of the imposed measure. This is the case in BE, CY, EE, EL, FI, FR LV, PL, RO and SE. Nonetheless, in some of these States, such as Belgium or France, the revocation is not automatic, but a judge must assess whether to maintain or revoke the measures in case the victim opposes their application.

By contrast, other States such as BG, CZ, ES, HR, LU and SI do not attach any importance to the opposition of the victim to maintaining the protection order, so that it is maintained in spite of the will of the person concerned. In this context the criminal legislation of Spain is worth noting, where the Criminal Code not only obliges the judge to apply the prohibition to approach or contact the victim as a penalty in cases of gender violence —regardless of the will of the victim— but also allows the measure to remain valid during extensive periods of time (of up to ten years in case of serious offences and five years in case of less serious offences), without the court being able to revoke it if the victim herself opposes the measure.

> The choice of the Directive to make the issuing of European protection orders dependent on a previous request by the victim means that in order to maintain the effects of the original measures in another EU Member State the order must at all times have been requested by the victim, even when the original protection measure was adopted under national law by the competent authority without a previous request by the protected person.
>
> As a result of this, special attention should be given to this issue in the Member States where the protection measures may be adopted both at the request of the victim and *ex officio* by the competent authority. Thus, once the Directive has been implemented, at the moment of deciding on the adoption of protection measures the competent authorities of the Member States should inform the protected person that if she wishes to extend the effects of the protection to another Member State, she herself should so request as the competent authority cannot act at its own initiative.

3.4. Which procedure must be followed for the adoption of a protection measure?

At this point, reference must be made again to recitals 8 and 10 of the Directive, which make clear that the competence of the judicial authority to issue European protection orders is undisputable. However, as already point-

ed out, the Directive also allows for protection orders to be issued by authorities of a different nature (basically, administrative) when these are the ones who adopted the original measures concerned for the protection of a victim of gender violence.

The Directive itself does not establish a specific procedure to be used for issuing European protection orders. Article 1 refers to the national law of the issuing State, so that, without having to modify the national legislation, the issuing State may use its national procedures to issue a European protection order. Because of this, it is essential to examine the internal law of the various Member States on this point.

This analysis shows, to begin with, that the national rules and regulations have given priority to judicial procedures to adopt protection measures for victims of gender violence, albeit not exclusively. Thus, two situations can be distinguished: on the one hand the States that only allow the protection measures to be adopted by a judicial procedure; on the other hand those that in addition to judicial procedures allow them to be adopted by other types of procedures.

Judicial procedures are used exclusively in AT[20], BE, BG, CY, ES[21], FR, LV, MT, PT[22], RO and UK. Therefore, it is evident that in these countries protection measures may only be adopted by judicial organs through the relevant judicial procedures.

In some cases it has been possible to establish the exact nature of the judicial procedure to be used, with the following results:

— In Bulgaria, the procedure is criminal in nature in case of the precautionary measure laid down in article 67 of the Code of Criminal Procedure and in case of article 42.a regarding probation. In the remaining cases (regarding domestic violence) the measures are adopted through civil procedures.

— In Cyprus and Spain the procedure is exclusively criminal, although this needs some further explanation. Thus, the Cyprus legal system provides

[20] In Austria the procedure is judicial, although legally the possibility exists for the police to expulse and/or bar entry of the person causing danger to the family home at the request of the party concerned or ex officio for a period of two weeks. In the case that the protected person requests protection measures from the court, the police measures may be extended up to four weeks.

[21] In the case of Spain it must be indicated that in its reply to the questionnaire the competent national authority observed that: «In order to be granted protection measures, the woman must have a protection order issued by a court, or exceptionally, until the protection order is issued, a report from the Prosecutor stating evidence of gender-based violence. Then, for the adoption of the specific protection measures, judicial or administrative procedures will be used, according to the nature of the said measure».

[22] Again, discrepancies are observed between the two questionnaires returned by Portugal: one of them states that the procedure is judicial, while the other indicates that it is mixed.

that protection measures can only be adopted for victims of gender violence under the criminal jurisdiction, i.e. by a mixed court (with civil and criminal competences) or a criminal court. By contrast, the criminal procedure in Spain is handled by a specialized criminal court (Court on Violence against Women).

— Even though the procedure in Malta is judicial, the measures may be adopted under civil or criminal proceedings. Civil judges may adopt the same measures as criminal judges, although in the first case (marital crises) their character will be civil and in the second case criminal.

— In Romania the protection order is a civil instrument, so that there is no link with or dependence on the criminal proceedings instituted against the perpetrator of domestic violence.

— This means the civil court may impose protection measures for the victim before the criminal proceedings have started, during the criminal investigation, during the criminal trial or even after the final decision in criminal proceedings.

— Finally, in the United Kingdom the procedure may be both civil and criminal.

As a second group, there are the States which allow for the possible previous intervention by the police. This is the case in DE, FI, IT, HU, LU, SI and SK, with the following particularities:

— In Germany the procedure will be in all cases judicial and civil when protection measures are concerned. It is administrative in case urgent security measures are required; in this case it is the police who, *ex officio*, may adopt the necessary measures. However, if the police were to decide that the person causing danger should be taken into preventive custody, they must immediately request a judicial decision, converting the procedure into a judicial one.

— As in Italy the competence to decide on protection measures may belong to a criminal or a civil court —depending on whether precautionary measures or civil measures (protection orders) are taken— it is evident that in both cases the legally prescribed procedure will be followed[23]. Moreover, the Italian legal system establishes that the judicial police may adopt barring orders during the preliminary investigations with previous authorisation by the Public Prosecutor's Office.

[23] After analyzing the Code of Criminal Procedure, the Epogender team concluded that the barring order regarding the family home, the prohibition to approach the places visited by the victim and the prohibition to contact the victim (art. 282 ter) are adopted by the court. Moreover, according to article 282 quater on the obligation to notify, the measures adopted under articles 282 bis and 282 ter shall be notified to the competent public security authorities so that they will take the necessary measures in relation to the possession of arms.

— In Hungary protection measures for victims of gender violence may be adopted both by the police and the judicial authority. In the first case, the measures that may be adopted by the police are preventive and provisional. In the second case, the judicial authority may be a civil or a criminal court. In the latter case a distinction should be made between the civil court which is competent to issue preventive restraining orders (provisional in character) and the criminal court which is competent to issue restraining orders (coercive measure).

— In Luxemburg, the legislation allows for the urgent intervention by the police in an early phase, which includes the competence to expel from the family home the person against whom sufficient indications exist that he has committed, or has the intention to commit, an offence against the life or physical integrity of another person with whom he lives, a measure of which the Public Prosecutor's Office must subsequently be informed.

— In Slovenia, depending on whether the measures are based on the Act for the Protection against Family Violence (civil in nature) or the Code of Criminal Procedure (criminal precautionary measures), these will be adopted by a civil or a criminal court, i.e. in any case through a judicial procedure. On the other hand, urgent protection orders or barring orders, which are both administrative and judicial in character, will initially be adopted by the police through an administrative procedure and subsequently validated during a judicial procedure.

This last group of States, which combines judicial and administrative procedures, is comprised of CZ[24], EE, HR, LT, NL[25], PL and SE.

Lastly mention should be made of the case of Greece, which unlike any other State has opted for a system of mediation[26]. Act 3500/2006 for combating domestic violence establishes mediation as the initial dispute settlement mechanism for specific cases of domestic violence. Even though the law does not explicitly say so, the Greek authorities indicate that these are the less serious cases, i.e. those penalized with up to five years of prison. Mediation will only be used if the accused agrees to it, or only when, in case of

[24] In the Czech Republic, the measure is administrative if adopted by the police. Moreover, even though the response to the questionnaire does not say so expressly —although it recognizes the possibility of adopting protection measures through an administrative procedure instead of a judicial procedure— the Czech police may issue a prohibition to enter certain localities, places or defined areas where the protected person resides or visits (third measure specified by the Directive).

[25] Worth mentioning is the case of the Netherlands, where protection measures may be judicial (civil or criminal) or administrative in nature. Thus, besides by the court, the measures may also be adopted by the director of the penitentiary, the Ministry of Justice or other non-judicial authorities.

[26] Given the lack of response by the Greek authorities, this information was obtained from the analysis by the Epogender team of the relevant Greek legislation.

offences *in fraganti*, the court agrees to postpone the trial[27]. This mediation is criminal in character[28] aims to provide instructions to the aggressor to change his behaviour and follow a therapeutic support programme. In case the offender fails to meet the objectives of the programme, the perpetrator will be prosecuted for flagrant violation of the law[29]. The party responsible for assessing the viability of this mediation and its application is the public prosecutor. If the aggressor respects the mediation agreement for three years, the case will be dismissed and the investigations by the Public Prosecutor's Office will be cancelled. If he does not comply, the case will be re-opened and the criminal proceedings will be continued as established in the Code of Criminal Procedure. Consequently, this last option only applies when mediation is not indicated or when it has failed[30].

TABLE 5
Procedures for the adoption of protection measures in the EU Member States

MS	Only judicial	Possible previous intervention by the police	Mixed judicial and administrative procedure	Other
AT	X			
BE	X			
BG	X			
CY	X			
CZ			X	
DE	X	X		
EE			X	
EL				X
ES	X			

[27] See: Australian Government. Country Advice. Greece. Violence against women. May 2012.

[28] As shown by Chapter D of this law, expressly dedicated to «criminal mediation», which is regulated under articles 11 to 14 of Act 3500/2006 on combating domestic violence. This is also indicated by LEXOP, a project that aims to build a multidisciplinary network of organisations involved in the fight against gender violence so as to ensure a coordinated response and to allow the institutions to combat violence, protect the victims and prosecute the aggressors (http://www20.gencat.cat/portal/site/interior/menuitem.749d9d1d4de644df65d789a2b0c0e1a0/?vgnextoid=fe22df364deb5310VgnVCM1000008d0c1e0aRCRD&vgnextchannel=fe22df364deb5310VgnVCM1000008d0c1e0aRCRD&vgnextfmt=default, accessed on 17/11/2014).

[29] See: Australian Government. Country Advice. Greece. Violence against women. May 2012.

[30] There is no information available on the development and completion of the criminal proceedings in case the mediation does not work.

MS	Only judicial	Possible previous intervention by the police	Mixed judicial and administrative procedure	Other
FI	X	X		
FR	X			
HR			X	
HU	X	X		
IT	X	X		
LT			X	
LU	X	X		
LV	X			
MT	X			
NL			X	
PL			X	
PT	X			
RO	X			
SE			X	
SI	X	X		
SK	X	X		
UK	X			

SOURCE: Elaborated by Epogender.

As explained in section 3.2, most Member States have opted for the adoption of protection measures through judicial procedures, though not all of them.

In spite of this, the flexibility provided by the Directive on this point, by referring to the national law of the issuing State as the legal basis for the procedures used for the adoption of the measures specified in article 5, regardless of being judicial, administrative or even police procedures, means this aspect will not give rise to any problems when the Directive is transposed.

3.5. WHEN MAY PROTECTION MEASURES BE ADOPTED?

The referral by the Directive to the national law of the issuing State when it comes to the procedure for issuing a European protection order (art. 1) means that it is also the national law of this State which determines the correct time for doing so.

In order to examine how the different Member States have regulated this issue, we will make a distinction between those States that adopt protection measures exclusively through judicial procedures and those that, besides by judicial procedures, allow these measures to be adopted through administrative procedures, including those followed by the police. In each of these two cases it will be examined whether the legally established moment for the adoption of the protection measure is: before the proceedings are initiated; once the proceedings have started, but before the court decision; after the court has decided; or at any given moment.

3.5.1. *States in which the procedures are strictly judicial*

Among the States which exclusively use judicial procedures to adopt protection measures, the following categories can be found.

Cyprus represents a first type of approach, where the legal system establishes that protection measures may be adopted in two different phases: before the proceedings are initiated and after the court has decided.

A second approach is that where the measures may be adopted once the proceedings have started but before the court reaches a decision, and also after a verdict is reached. This is the case of France where, as may be observed, the measures may not be adopted before the proceedings are initiated.

Most of the Member States that provide for the adoption of protection measures through judicial procedures allow for the measures to be adopted at any given time, i.e. before the proceedings, during the proceedings and after the final judicial decision. This approach is followed in BE, BG, DE, ES, FI, LU[31] and RO[32].

Finally, there is a group of Member States that, due to their particularities, needs to be discussed individually. These are AT, CY, LV, MT, PT and UK.

— In Austria, the legislation allows for the protection measures for victims of gender violence to be adopted before the judicial proceedings, as well

[31] In Luxemburg, in case of emergency these protection measures may be adopted before the proceedings are initiated, after having received authorisation from the Public Prosecutor's Office.

[32] It must be recalled that the adoption of protection measures in Romania does not require that the trial has been carried out and the criminal responsibility of the offender has been established, only the risk for the victim. Thus, given the fact that the protection order is a civil measure, there is no relation or dependency whatsoever on the criminal proceedings against the perpetrator of domestic violence. This means the civil court may impose the protection measures for the victim before the criminal proceedings have started, during the preliminary investigation, during the trial, and even after the final verdict.

as during the trial up to the moment of the final decision. In spite of this, it should be noted that, moreover, the police may decide to apply immediate protection measures (before the start of any judicial proceedings) when they consider that violence has occurred or may occur. In this way, while the police measures are being applied, the victim has the opportunity to request judicial protection measures from the family court (civil jurisdiction).

— In Cyprus a provisional protection order is issued with measures that may be applied until criminal proceedings are instituted against the offender for acts of violence; it may be requested and decided to maintain these measures during the trial until the final decision.

— Regarding Latvia, we only hold information on the criminal protection measures, which may be adopted once the judicial proceedings have started, but before the final decision.

— As for Malta, the research carried out by Epogender shows that the moment or phase of adoption depends on the type of measure that is to be adopted in the context of criminal proceedings. Thus, protection orders may be issued until the proceedings are completed; restraining orders may be issued together with, or after the verdict. The protection measures in civil matters may not be adopted before the formal initiation of separation or divorce proceedings.

— With regard to Portugal, the inconsistencies must be highlighted that exist between the two questionnaires returned by the national authorities. In one of them it is indicated that measures may be adopted once the judicial proceedings have started but before the final decision; in the other it is added that they may also be adopted after the judicial decision is taken.

— In the case of the United Kingdom, the moment of adoption will vary depending on the procedure used. If the proceedings are criminal in nature, they may be adopted at any given time; if they are civil, they may be adopted whenever the victim decides to submit a request to the court.

3.5.2. *States in which the procedure may be judicial and/or administrative*

When analyzing the countries where the procedure may be judicial and/or administrative, two groups can be distinguished: those countries where the time of adoption for both procedures (judicial and administrative) coincides, and those where the time of adoption varies according to the procedure used.

As for the first group, the time of adoption of the protection measures is the same for both procedures in the Czech Republic, Poland and Sweden, even though in each of these countries the moment is different. More specifically:

— In the Czech Republic it is established that the protection measures may be adopted in both procedures before the proceedings are initiated or once they have started, but before the final decision.

— The Polish legal system provides that in both cases the protection measures may be adopted during the proceedings, until the final decision.

— Sweden in its turn allows for the measures to be adopted at any given time, during both procedures.

In the second group of countries, the moment of adoption varies depending on the judicial or administrative nature of the procedure. Thus, in EE, HR, HU, LT, NL and SI the following rules are applied:

— According to the Estonian system, in the judicial procedure the protection measures may be adopted after the judicial proceedings have been initiated, during the trial and also after the final verdict; however, it is unclear what happens in case of the administrative procedure as the national authority of Estonia did not answer this question of the questionnaire.

— Likewise, in the case of Croatia we can only explain what happens in the judicial procedure, because the reply of the authorities to the questionnaire does not refer to the administrative procedure. Thus, as a general rule, the protection measures may be adopted before the start of the judicial proceedings, during the trial and after the final decision is made. In short, at any given time. Moreover, it should be noted that the protection measures may be applied autonomously, i.e. without a conviction or other sanctions being required. Criminal precautionary measures, on the other hand, may be adopted before or during the trial, but in any case before sentence is passed. If measures are adopted in the form of criminal sanctions, these will be imposed as part of the sentence, to be carried out after the trial has ended.

— In Hungary, when protection measures are adopted in the framework of a judicial procedure, this may take place before the proceedings have started or during the trial, but before the final decision. By contrast, in the case of an administrative procedure they may only be adopted before the proceedings.

— In Lithuania, when the procedure is judicial, the protection measures may be decided at any given moment; no information is available on what happens in case of an administrative procedure.

— In the case of the Netherlands, if the procedure is judicial, the measures may be adopted once the proceedings have started, but before the final sentence; if it is administrative, they may be adopted at any given moment.

— The Slovenian legislation establishes that when the measures are civil in character, they may be adopted before, during and after the judicial process. On the other hand, when they are criminal, and more specifically pre-

cautionary measures, they may be adopted once the proceedings have started, but before the final verdict. In the case of urgent orders or barring orders, these may be adopted at any given time, regardless of the judicial process[33].

We have not obtained any information on this aspect with regard to Greece, Slovakia and Italy. In the first two cases because the authorities of these Member States did not answer the corresponding question of the questionnaire. In the case of Italy because the competent authorities did not return the questionnaire which was sent to them; nor did it prove possible to obtain the relevant information through the research carried out by the Epogender team.

> The situation in the Member States with regard to the moment or phase protection measures for the victims of gender violence may be adopted has proven to be very diverse and complex, up to the point where one must conclude that there are almost as many modalities as there are Member States, which makes them very difficult to classify.
>
> Nonetheless, this diversity need not constitute an obstacle to the transposition of the Directive, considering that the instrument is inherently flexible on this point as it does not specify the moment protection measures should be adopted. In line with the previous section, the lack of a specific rule in the Directive means that the Member States will refer to their national law in order to solve this issue. Even so, this diverse landscape portends a complicated application of the Directive as a result of inevitable practical issues, such as the short term of duration of some of the adopted protection measures, which may render the European protection order quite useless.

3.6. Which formal guarantees are included in the process for the adoption of protection measures?

As has already been pointed out several times in the course of this section, as this procedure has been regulated in diverging ways by the Member States, the Directive has avoided any attempt to establish a standard procedure to be used for issuing a European protection order. Instead, it has opted for referring to the national law of the issuing State, thus avoiding that modifications —sometimes considerable— needed to be carried through in the internal rules and regulations.

In spite of this, the Directive has not refrained from regulating certain specific aspects that should be taken into consideration, regardless of the procedure applied.

---

[33] The questionnaire sent to the national authorities only refers to the moment the protection measures can be adopted in the framework of judicial proceedings (both criminal and civil), enquiring whether they can be adopted before the proceedings are initiated, in the course of the proceedings or after the final judicial decision.

3.6.1. *The request for protection measures*

According to article 6(3) of the Directive, for a European protection order to be issued, the protected person must submit a request either to the competent authority of the issuing State or to the competent authority of the executing State. However, nothing is said about the format of such a request, so that it may be assumed that a simple written document, without specific formal characteristics, will suffice to apply for the order to be issued.

By contrast, article 7 of the Directive does specify the form and content of the European protection order to be issued, which should follow the form set out in Annex I and include the details laid down in article 7[34].

At the level of the Member States, the requirements to be met by the request for the adoption of protection measures for the victims of gender violence is a matter that has hardly been treated in a uniform way. The level of requirement varies considerably.

Thus, on the one hand, a small number of countries requires the request to be submitted using a «standard form», viz. Portugal, Romania and Sweden. A second group of Member States require the request to be submitted in writing, while complying with certain formal requirements. This group includes AT, BE, CY, CZ, ES, FR, HR, LT, LU, LV (in the case of criminal proceedings)[35] and UK[36]. The most flexible legal systems on this point are, finally, those of BG, DE, EE, FI, PL, HU and SI[37], which do not require the request to fulfil any formal conditions.

Specific mention in this regard must be made of the Netherlands, where the requirements to be met by the request vary depending on the administrative or judicial nature of the procedure. Thus, in the case of temporary restraining orders a standard form is used. In the case of criminal proceedings, however, these are initiated by a summons.

Lastly it must be noted that the lack of a reply to this question in the questionnaire from IT, LV, MT, EL and SK could not be redressed by additional research on the part of the Epogender team.

---

[34] The form is included in the annexes to this study.

[35] In civil matters, we have only found that the temporary protection against gender violence using the form approved by the Council of Ministers (art. 250.46 of the Code of Civil Procedure).

[36] This conclusion only applies to requests for restraining orders and go orders.

[37] This observation does not coincide with the information from the questionnaire returned by the Slovenian authorities, which states that the measures cannot be requested and that it is the public prosecutor who decides when the accused finds himself in police detention and is brought before the court in urgent criminal cases.

The tendency among the Member States on this particular issue has been to require a certain formality with regard to the request for a European protection order, be it in the shape of a standard form or a written document meeting a number of minimum conditions.

Nonetheless, the European legislator does not seem to have given much importance to this aspect as the Directive does not include any formal requirement that the request for a European protection order must fulfil. This being so, it would still be very useful if victims could have access to a simple standard form indicating the details to be provided by the applicant.

3.6.2. *Legal counsel*

The Directive does not provide either that legal assistance is a condition for requesting a European protection order, so that it may be assumed that the protected person may submit the request and participate in the procedure without the need to be assisted by legal counsel.

In some Member States, however, legal counsel is a requirement in the procedure for the adoption of protection measures. This is the case of NL, ES, EE and RO. On the other hand there are many more countries which, in line with the Directive, do not consider legal counsel necessary. This group includes AT, BE, BG, CY, CZ, DE, FI, FR, HR, HU, LT, LU[38], LV, NL, PL, PT, SI, SE and UK.

We have been unable to establish the situation in IT, MT, EL and SK for lack of information.

Most Member States on this point follow the line of the Directive, which does not provide that the assistance by legal counsel is a requirement for requesting a European protection order, or to participate in the decision procedure. This option in the Directive must however not be seen as a limitation, given that any party who so wishes, may —instead of must— let herself be assisted by legal counsel.

3.6.3. *The right to be heard*

The text of the Directive does not provide for a phase in which the parties involved in the procedure leading to the issuing of a European protection order are to be heard, except in the case referred to by article 6(4). As a result,

[38] Although in Luxemburg legal counsel is not compulsory, the parties may be represented or assisted by a lawyer, but also by their spouse or the person they live with, relatives by blood or marriage in a direct line up to the third degree, persons who are at their personal service or at the service of their company, or by a collaborator of the support service for victims of domestic violence. In case the representative is not a lawyer, he should have special authorisation.

the person causing danger shall only be heard, and have the possibility to challenge the adopted protection measure, if he did not get this possibility during the procedure leading to the adoption of the protection measure, the effects of which are to be extended to another Member State.

In any case, the right to be heard is guaranteed in most Member States in the procedures on the adoption of protection measures for victims of gender violence. As such, it is recognized in AT, BE, BG[39], CY, DE, EE, ES, FI, FR, HR, HU, LT, LU, NL[40], PL, PT, RO[41], SI[42] and UK. Only in three cases there is no phase during which the parties are heard before the decision on adopting the protection measures is taken: the Czech Republic, Latvia[43] and Sweden.

For lack of information on EL, IT, MT and SK it is not possible to establish how this aspect is regulated exactly.

Even though the Directive does not provide for a hearing phase as part of the procedure for issuing a European protection order, this does not mean this fundamental right has been neglected during the decision-making process, as might seem to be the case at first glance.

On the one hand, the right to be heard is included in the procedure leading to the adoption of the protection measures under the national law of most Member States, so that this right of the parties is ensured. On the other hand, in order to maintain the effects of the adopted measures in another Member State, the Directive establishes that European protection orders are to be issued «in accordance with the national law of the issuing State (art. 1).

For this reason, it makes sense that only in case the issuing State had not granted the parties the possibility to be heard, the Directive requires the person causing danger to be heard before the European protection order is issued.

[39] In Bulgaria exists the possibility to issue an «immediate protection order». In this case, when the request contains indications of a direct and immediate threat to the life or health of the victim, the judge can issue, within 24 hours after receiving the request, during a closed session without hearing the parties, an immediate protection order for the victim. This protection order shall immediately be notified to the parties and be sent to a delegation of the Ministry of the Interior.

[40] The questionnaire clarified that the hearing will be held in case of a temporary restraining order.

[41] Nonetheless, in case of extreme urgency, the judge may issue a protection order even the same day, and decide on the request based on the documentation submitted, without hearing the parties.

[42] The hearing of the parties is carried out regardless of the civil or criminal nature of the protection measure, except when an emergency or barring order is issued, as these are measures adopted by request of the police and not of the victim.

[43] Even though a hearing does not seem to be legally required in Latvia, article 246 of the Code of Criminal Procedure provides that in any case, and in particular in case of deprivation of liberty, the aggressor must be notified of the adoption of the measure, which he must be allowed to challenge (revocation and appeal are regulated respectively in articles 249 and 262 of the Latvian Criminal Code).

With a view to the transposition of the Directive, therefore, the right to be heard should only be provided for in those States that have not regulated a right to be heard during the procedure regarding the adoption of protection measures, a hearing procedure which, to be sure, must be particularly discreet so as not to disclose information to the aggressor on the future whereabouts of the protected person.

3.6.4. *Term for the adoption of the protection measures*

Even though it is true that the Directive does not establish a maximum term within which the executing State must recognize and enforce the European protection order transmitted by the issuing State, article 9(1) does state clearly that this shall be done «without undue delay.

Again, the regulations of the Member States regarding the adoption of protection measures for victims of gender violence prove to be quite diverse, in this case regarding the required term for their adoption.

In line with the Directive, a first group may be distinguished which does not provide for a specific term within which these measures must be adopted under national law. This group includes AT, BE, BG[44], DE, EE, FR, HR[45], LV, PL and PT[46].

Other Member States, however, have established specific terms in their national legislation. This is the case in CY, CZ, ES, HU, LT, LU, NL, RO, SI[47] and UK[48].

---

[44] Although there is no maximum term within which the measures must be adopted, it is established that the victim must request their application within a month after the violence occurred. Moreover, article 12(1) of the Bulgarian Act on Protection against Domestic Violence provides that within a month after receiving the request, the judge must determine the date for the hearing. Therefore, the period between the violent acts and the adoption of protection measures is maximum two months. However, some authors have pointed out that in spite of the legal term of one month for the holding of the hearing, in many cases these terms are extended or several hearings are held, so that only the first of them complies with the legally established term. As a matter of fact, often the decision is adopted after two to six months, with may represent a risk for the safety of the victim.

[45] The research carried out by the Epogender team shows that in the case of Croatia the proceedings in cases of gender violence are urgent. For this reason, any authority to take action related to domestic violence shall act urgently. Any proceedings instituted under this act are urgent. The courts are required to act without delay, and no later than twenty-four hours of the submission of the request (art. 5 of the Act on Protection against Family Violence).

[46] This time, the two questionnaires received from Portugal coincide in stating that there exists no term within which the measures must be adopted, although one of them adds that in the case of urgent coercive measures adopted in domestic violence cases, measures should be adopted within 48 hours.

[47] Due to their urgent nature, emergency or barring orders may be adopted immediately by the police.

[48] It must be clarified that the only criminal measures which must be adopted within an established term is the Domestic Violence Protection Order, which shall be adopted within 48 hours after a Domestic Violence Protection Notice has been issued.

The situation in EL, FI, IT, MT, SE and SK on this point is not clear due to a lack of information.

> In any case, whether or not a maximum term for the adoption the protection measures is legally established in the respective Member State, the goal of the Directive is for the protection measures to become effective as soon as possible. The executing State must therefore act with due diligence in this respect.

3.6.5. *The type of decision by which the protection measures are adopted*

As established under article 9(1) of the Directive, the executing State shall recognise the protection order and take a decision «adopting any measure that would be available under its national law in a similar case. The Directive, however, does not specify through what kind of decision. This provision makes sense, as the Directive allows measures established under the law of the executing State for similar cases to be applied. Therefore, we understand that this must also include the type of decision by the measures are adopted, as in fact may be inferred from article 11(1), which refers to article 9(1). Thus, as article 9(1) literally states that «The executing State may apply, in accordance with its national law, criminal, administrative or civil measures, it may do so by means of the type of decision that its own national law has established for the adoption of protection measures». As a result, the type of decision will vary depending on the internal procedure followed for the adoption of the protection measures.

It will therefore be necessary to determine by which type of decision or decisions the protection measures for victims of gender violence are to be adopted in each Member State. After all, this same decision will be adopted by the executing State —in accordance with its national law— in order to apply the measures included in the European protection order.

In order to analyze this issue systematically, it must be examined taking into account the nature of the procedure followed to adopt the protection measures. As we have already seen, in some States this procedure is strictly judicial, while in other States it may be judicial or administrative, depending on the measure to be adopted.

With regard to the Member States that have opted for adopting protection measures exclusively through judicial procedures, in some cases we have been able to establish the type of judicial decision required, while in other cases, due to a lack of detail in the replies to the questionnaires returned by the national authorities, this proved impossible. An analysis of the available information collected on this aspect has produced the following results:

— In Austria[49], the legislation refers to the adoption of a judicial order.

— Germany, Romania and United Kingdom[50] indicate that the measures are adopted by a judicial decision.

— By contrast, the legislation of Cyprus and Belgium are not clear on this point. Thus, neither the legal information on Cyprus nor the answers provided to the questionnaire by the national authorities indicate what type of judicial decision is used to adopt the protection measures. The reply to the questionnaire by the national authority in Belgium is also insufficiently clear, as it only states that it depends on the type of measure.

— The Bulgarian authority in its turn refers to a judicial decision or sentence, depending on the procedure followed: the civil procedure under the Law on Protection against Domestic Violence or the criminal procedure under the Code of Criminal Procedure.

— In Spain, the judicial decision takes the form of an interlocutory order (*auto*)[51].

— In France the protection measures are also adopted by means of a judicial decision, in this case in the form of an order or sentence.

— In Latvia, the decision will in all cases be judicial; in criminal matters the protection measures will be adopted by a reasoned and written decision.

With respect to the Member States that allow protection measures to be adopted both by judicial procedures and by administrative ones, the following situations can be found:

— On the one hand, some States that that allow protection measures to be adopted both by judicial procedures and by administrative procedures have focussed in particular on the decision in judicial proceedings. This is the case of EE, CZ, HR and HU. Thus, in the case of Estonia, it is established that the decision shall be a court order; in the Czech Republic, the measures will be adopted through a decision of the presiding judge; in Croatia, they will be adopted in the form of a sentence of the court; and in Hungary, as indicated in the questionnaire, the measures are adopted through a ruling[52].

---

[49] However, the first urgent measures (eviction, prohibition to approach the house) are taken by the police by means of an administrative decision.

[50] This is how the measures are adopted in criminal proceedings. We do not know, though, if this also applies to civil proceedings.

[51] According to the questionnaire, the protection order is issued by a court, or exceptionally, until the protection order is issued, based on a report from the Prosecutor stating evidence of gender-based violence.

[52] The questionnaire from Hungary clarifies that in accordance with the Hungarian Criminal Procedure Act, there are two types of decisions: a ruling (which is not conclusive) and a judgment (containing either conviction or acquittal). The judgment is the conclusive decision.

— A different situation can be found in the Netherlands and Poland. In these two cases, even though the replies given to the questionnaire by the respective national authorities indicate that the type of decision will depend on the competent authority, the possible types of decisions to be adopted in the judicial or administrative procedures are not stated. Even so, in the case of the Netherlands, when the decision is taken by a judge, it will obviously be judicial in character; if it is taken by the Public Prosecutor's Office, the Ministry of Justice or the directors of penitentiaries or mental health institutions, the decision will be administrative. In the case of Poland, the reply to the questionnaire by the national authority indicates that the adoption of the protection measures will be done by means of a decision of the authority carrying out the proceedings (e.g. prosecutor, court, depending on the stage of proceedings).

— Slovenia, finally, is the country (in the group of States that allow for different procedures to be used for the adoption of protection measures) that best explains the type of decision used in each case. As a general rule, the measures will be adopted through a judicial decision, except when emergency or barring orders are concerned, which will be adopted immediately and orally by the police.

To conclude, it must be noted that a considerable number of States have failed to provide any information on this matter, so that it was impossible to determine which type of decision is used in these countries to adopt protection measures for the victims of gender violence. This group includes EL, FI, IT, LT, LU, MT, PT, SE and SK.

The terminological diversity and the lack of definition among the Member States with regard to the kind of decision to be used for the adoption of protection measures for the victims of gender violence shows how difficult it might be for some of the Member States to implement a harmonized legislation on this issue.

On this point, again, the Directive has sensibly opted for respecting the different legal systems of the Member States so as to avoid imposing a single type of decision which would oblige most States to amend their internal rules and regulations.

3.6.6. *Mechanisms to appeal adopted protection measures*

Judging by the provisions of article 6(7) of the Directive, legal remedies are only available against a decision to reject the request for a European protection order to be issued, but not against a decision to grant such as request. In this case, the competent authority of the issuing State shall inform the applicant (protected person) of «any applicable legal remedies that are available, under its national law, against such a decision».

However, once the request is accepted and the European protection order is issued, article 11(1) of the Directive provides that, to the extent that the executing State is competent to adopt and enforce the measures included in the European protection order, it shall also be competent to apply the available remedies under its national law «against decisions adopted in the executing State relating to the European protection order».

At the level of the Member States, it can be observed that in most cases the decision to grant or reject a request for protection measures can be challenged; only in a few States this possibility does not exist.

Such a remedy does not exist in Cyprus and Croatia[53]. In all the other EU Member States, however, these decisions can be challenged, even though in different ways and under different conditions, depending on the national law of each State:

— In Austria, the decision may be challenged through the Family Court (civil jurisdiction) by way of an appeal that may be filed both by the victim and the offender, following the normal procedural rules of appeal.

— An appeal can also be brought against the decision of the court on the adoption of the protection measures in BE, BG, DE, EE, ES, FR and RO, even though there are some differences as to the competent authority that may hear the appeal. In the case of Belgium, the appeal varies depending on the judge that ordered the protection measure and on the trial phase. In BG, FR and RO[54] the appeal is heard by the Court of Appeal. With regard to Estonia, even though its national law also allows for protection measures to be adopted through an administrative procedure, in its reply to the Epogender questionnaire the national authority only refers to the possibility of challenging this decision by means of a judicial procedure. Lastly, the answers provided to the questionnaire by the Spanish authorities clarify that the appeal may be submitted to the same court that adopted or rejected the measures, as well as to a higher instance court.

— Finland allows for the decision to be challenged by appeal. In their reply to the questionnaire the national authorities moreover add that when the decision concerns a restraining order, appeal may be brought before the Court of Appeal.

— The decision on protection measures may also be challenged in Hungary, although insufficient information was provided on the exact procedure.

— In Croatia, the decision to grant or reject the request for protection measures may be challenged through a complaint. However, as shown by the

[53] However, a party may submit a request for cancelling the protection measure.

[54] In this case, the Court of Appeal may suspend the execution until the appeal is resolved, albeit after paying security.

Croatian Code of Criminal Procedure, the appeal does not stay the execution of the precautionary measures. Although the questionnaire returned by the authorities of the Netherlands only refers to the appeal before a court, it should be recalled that in this Member State the protection measures may be adopted both by a judicial and an administrative procedure. In this case, the appeal procedure will depend on the type of decision adopted. When the decision is judicial, it may be appealed to a higher instance court, while in the case that the decision is made by an administrative organ, in first instance an objection procedure must be followed, after which —where necessary— an appeal may be lodged with the administrative court. A similar approach is followed in Poland, where the appeal varies depending on whether the measure has been adopted by a judicial or an administrative organ.

— The Lithuanian authorities confirm that the possibility exists to challenge the decision to grant or reject a request for measures, without specifying however before which organ and through which procedure. They merely indicate this will depend on the protection measure.

— Although the questionnaire returned by the Luxemburg authorities denies the existence of any appeal options, the Luxemburg legislation shows that it is possible to lodge an appeal against the measure to expel the offender from the family home. This appeal does not suspend its execution, though.

— Similarly, in Portugal, the two replies received to the questionnaire both indicate that the decision of the authority cannot be challenged. Act 112/2009 establishes, however, that the measures included in it (which do not refer to the possibility of appeal) may not be contrary to general procedural law, a basic principle of which is that judicial decisions can be appealed to a higher court. We therefore believe that rejections can be appealed.

— According to the questionnaires regarding Sweden, the decision may be challenged both in the administrative and the judicial procedure, even though the terminology used (one refers to court proceedings and the other to standard appeals) seems to indicate the appeal is purely judicial. According to the Swedish Code of Judicial Procedure, the general procedure for all judicial decisions requires that the appeal is lodged with the same organ that adopted the decision by means of the so-called «general proceeding of appeal». In Slovenia it is possible to challenge the protection measures provided for in the Code of Criminal Procedure by an appeal, although it is not specified to which organ. Emergency orders and barring orders may also be challenged, in this case at the District Court.

— In Latvia, protection measures adopted in criminal proceedings may be appealed to the same authority that rendered the decision. No information was found with regard to civil measures.

— Finally, we did not receive any reply to this item in the questionnaires addressed to the national authorities of EL, IT, MT and SK.

The Directive's intention has been to let any appeals against decisions adopted by the executing State in execution of a European protection order be carried out in accordance with the national law of the executing State. Therefore, in each individual case the internal legislation of the respective State must be considered.

Although it is true that most Member States provide for the possibility of appeal, it is also true that the legally established appeal procedures under national law are very diverse. Even so, given that the Directive does not seek to harmonize the national legislations on this point, this will allow its transposition to be carried out with respect for the specific regulations in each Member State.

3.6.7. *Registration of the protection measures*

With a view to evaluating the application of the Directive, article 22 provides that the Member States shall communicate to the Commission «relevant data related to the application of national procedures on the European protection order», which shall at least reflect «the number of European protection orders requested, issued and/or recognised».

This provision of the Directive raises the question whether there exists in the Member States some kind of control mechanism that provides information on the requested and adopted protection measures, if possible specifically in the field of gender violence. The solutions the Member States have opted for are varied, most noteworthy being the creation by some States of a public register in which the adopted protection measures are recorded.

The countries which have introduced such a register include: EE, ES, FI, HR, HU[55], LT, LU and RO. At the other end of the spectrum we find countries such as Belgium, France and Latvia, which have not established a public register.

As for the remaining Member States no information was found indicating the existence if a public register. This was the case of AT, BE, BG, CY, CZ, DE, NL, PL, SE, SK and UK. In a limited number of cases (EL, IT, MT and SI) no information on this issue was provided by the authorities.

[55] In accordance with the Hungarian law, there is a criminal register which contains data on defendants who are under the scope of coercive measures. The criminal register of the persons under the scope of coercive measures shall contain the data of those persons who are under the scope of pre-trial detention, home curfew, house arrest, restraining order, temporary involuntary treatment in a mental institution, further more persons who are not under pre-trial detention anymore due to bail.

Regardless of whether the Member States do or do not have a public register in which the measures adopted for the protection of the victims of gender violence are recorded, this type of control will be required from them with regard to the European protection orders that are issued, albeit not in the form of a public register but as information provided to the European Commission. This information will have to include at least the following data: the number of European protection orders requested, issued and/or recognised.

4. EFFECTIVENESS OF THE PROTECTION MEASURES FOR VICTIMS*

4.1. Supervision of the compliance with the protection measure

With regard to the supervision of the compliance with the protection measure, article 11 of the Directive on the governing law and competences in the executing State provides that: «The executing State shall be competent to adopt and to enforce measures in that State following the recognition of a European protection order. The law of the executing State shall apply to the adoption and enforcement of the decision provided for in article 9(1), including rules on legal remedies against decisions adopted in the executing State relating to the European protection order».

From this provision it may be inferred that the supervision of the measures included in the European protection order falls to the executing State. In fact, if the adoption and execution of protection measures after the recognition of a European protection order are competence of the executing State, it is only logic that the same State shall be responsible for the supervision of these measures. What is not indicated is the authority to which this competence is attributed, although generally speaking this will be the police. This does not mean that other resources cannot be used, such as emergency phone lines or electronic surveillance devices such as GPS.

An analysis of the national reports prepared by the Epogender research team, together with the information collected by the questionnaire sent to the national authorities, shows the following trends among the Member States:

As a general rule, most Member States —AT, BE, BG, CZ, DE, EL, ES, FI, FR, HR, HU, IT, LT, LU, LV, NL, PT, RO, SE, SI and UK— have assigned the supervision of protection measures for victims of gender violence to the police. This is hardly surprising, considering the general tasks that the police fulfils at the national level as guarantor of the fundamental rights and freedoms of citizens, and the fact that the protection of victims is ensured either by criminal procedures or by civil/administrative procedures, which are all

* By Raquel Vañó, Post-doc Researcher, URV.

areas where the police has jurisdiction. The competences of the police in this regard are extensive. In Luxemburg, for example, the police can oblige the aggressor to hand in his keys and other devices allowing him to enter the family home, accompany him to pick up his personal belongings and inform him immediately about his new place of residence.

The exception to this rule are CY, EL, MT and PL, countries where neither the legislation nor the authorities which have replied the questionnaire prepared by the Epogender team make reference to the police, while both in Greece and in Poland certain supervisory tasks are delegated to a specific official: to a so-called prosecutor-mediator in the first case, and to the probation officer in the second case. While the prosecutor-mediator in Greece is exclusively in charge of supervision in cases of criminal mediation, the probation officer in Poland only carries out his supervisory tasks once a final verdict has been reached. In this way, the convicted aggressor is permanently monitored by a probation officer during the term of duration of the conditions established for his probation. Any change in his conduct may bring the court to increase the supervisory measures (new or stricter obligations as part of the probation arrangements) or on the contrary, reduce the surveillance measures (revocation or modification of the originally imposed obligations).

Lastly, in Bulgaria the «local probation services» fulfil the same role, although their activities complement those of the police, who also participate in the supervision of the protection measures.

In addition, it can be observed that regardless of the supervision by the police, many countries have introduced emergency phone lines for victims of gender violence. This is the case of BE (albeit at the regional and local level, and not at national level), CZ, FR, HR, LT, LV, PL, PT, SE and UK. In the following countries police supervision is further complemented by the use of electronic monitoring devices: BE, ES, FI, FR, IT, PL, PT, SE and SK.

An atypical case is Cyprus, where the legislation does not provide for any mechanism to supervise the compliance with the protection measures, nor are there any electronic devices being used for surveillance.

At the other extreme we find the example of Spain, where all the previously mentioned mechanisms are used in a coordinated way to supervise protection orders: police, emergency phone lines and electronic, telematic or GPS control devices.

Regardless of the supervision mechanisms used, their existence should be communicated to all of the authorities involved in the enforcement of a European protection order. Moreover, the victim must be informed at all times of the legal and procedural status of the aggressor, as well as the status of the protection measures.

4.2. Control mechanisms of the execution of the protection measures

By and large, only nine States claim to use electronic or telematic control devices, be it based on radiofrequency or GPS, to monitor the location of the aggressor and the distance between the victim and the aggressor. These countries include: BE (not at the federal level, but in some of the regions), ES, FI, FR, IT, PL, PT (where they exist but are not used, according to the national authorities), SI and SK. Within this group only a small minority uses both systems mentioned, i.e. radiofrequency and GPS monitoring systems, namely: ES, FR, PT (with the indicated reservation) and SE. The remaining Member States, which constitute the majority, either do not confirm their existence or simply do not have them.

For logical reasons, the authority that decides on the application of electronic or telematic control mechanisms is the same authority as the one that decides on the adoption of a protection measure. This authority not only assesses the necessity to adopt protection measures for the benefit of the victim, but also considers whether it is convenient to take additional precautions by using this type of devices. It must be realized, though, that the use of these devices implies a restriction of fundamental rights and freedoms, which is why in most cases their application is subject to the express consent of the aggressor. For this reason, their use is generally limited to cases of high risk or extreme imminent danger.

As a general rule, in the countries where these devices are used, the authority that supervises the use of these electronic or telematic control mechanisms is the same as the one that imposed the protection measure. The collected information shows that only in a limited number of cases (BG, EL, NL, PL and UK) there are exceptions to this rule.

The first exception is Bulgaria, where this task falls to the local probation services. Another exception is Greece in those cases where the prosecutor-mediator intervenes, that is, only in cases of criminal mediation. In the remaining cases the general rule applies, meaning the responsibility lies with the same organ that adopted the measure. In the Netherlands, the competent authority is the Public Prosecutor's Office, while in Poland this is competence of the probation service. In the United Kingdom the use of these mechanisms is decided by the specialized centres for victim support.

The police are the main organ responsible for the supervision of protection measures, as this task forms part of their main competences. However, the increasing availability of new technologies and their improved applicability has allowed States to introduce new mechanisms to monitor the application of protection measures. One of the more basic instruments are emergency phone lines with short numbers that are easy to remember, which offer their personal care 24/7 and which in most cases collaborate closely with the police and other social services and victim support services. One of the strong points of this service is anonymity: in general, the number of the caller is not registered, nor is the victim obliged to identify herself. The available statistics show that these phone services are frequently used and often constitute the first channel through which victims seek help.

Less used are electronic or telematic monitoring devices (radiofrequency or GPS) because of some inherent disadvantages: they imply a restriction of fundamental rights and freedoms; their use is voluntary as, generally speaking, nobody may be forced to carry them, with some exceptions; they carry technical problems related to their installation, supervision and control, in particular when the victim moves to another country; their benefits must justify the costs, etc. In fact, only three States use both types of devices (radiofrequency and GPS): Spain, France and Sweden (Portugal claims to have them, but expressly indicates that they are not used). Moreover, their use at the European level carries additional problems that currently have no solution, e.g. none of these technologies has sufficient reach to cover the entire territory of the European Union, sometimes not even to cover the entire country; the national authorities of the different Member States involved have to coordinate their activities to carry out the required transnational supervision.

4.3. Breach of a protection measure

4.3.1. *Competent authority*

The first reference to the breach of protection measures is found in article 11(2) of Directive 2011/99/EU, which provides that: «In the event 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 shall, in accordance with paragraph 1, be competent to: *a*) impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under the law of the executing State; *b*) take any non-criminal decisions related to the breach; *c*) 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». To which paragraph 3 of article 11 adds: «If there is no available measure at national level in a similar case that could be taken in the executing State, the competent authority of the executing State shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware».

From these provisions it may be inferred that the breach of a protection measure must in any case be penalized as its effectiveness to a large extent

depends on it. The relevant sanction, however, depends on the gravity of the breach, the type of protection measure breached, and the circumstances of each case, which can therefore only be determined by examining the various national legislations.

In most of the Member States the breach of protection measures and its consequences are judged by the same authority that adopted them, be it criminal, civil or administrative. This is the case in BE, BG, CY, CZ, DE, EE, ES, FR, HR, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK and UK.

Although the competence regarding the violation of protection measures is generally attributed to the same authority that imposed them, in some countries other authorities intervene. This is the case of France and the Netherlands. In France there are two exceptions to the general rule: In case of breach of supervision orders the liberty and custody judge is competent; in case of breach of probation orders, the judge responsible for enforcing sentences is competent. In the case of the Netherlands, it should be noted that the competence to judge the breach of a protection measure depends on the procedure that was used to adopt it. As a result, the competent organ may be the public prosecutor, the examining magistrate, a higher police official, the Ministry of Justice, or the director of the penitentiary.

In addition, article 12 of the Directive establishes that the breach of a protection measure must always be notified: «The competent authority of the executing State shall notify the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order. For this purpose, Annex II to the Directive includes a standard notification form».

4.3.2. *Sanctions in the event of breach of protection measures*

The sanctions provided for in case of breach of a protection measure vary depending on the procedure that was used to adopt it and the nature of the breach. The most common penalties imposed are imprisonment and/or a fine, depending in the gravity and the nature of the breach, as these violations are regulated under the general rules regarding the breach of any kind of protection measure.

— Most of the countries examined include imprisonment among the possible penalties: AT, BE, BG, CZ, DE, EE, ES, FI, FR, HR, HU, LU, MT, NL, PT, RO, SE, SK and UK.

— In other Member States, generally those where the breach of a protection measure is considered a minor offence, fines are applied: AT, BE, BG, CZ, DE, EE, ES, FI, FR, HR, HU, LU, MT, NL, PT, RO, SE, SI and UK.

— Another frequent sanction or consequence of the breach of a protection measure is the extension of its term of duration (FI, FI, FR, HR, HU, LT, NL, SI, SK and UK), or the toughening of the measures imposed (Latvia and Poland).

— In case of emergency, that is when the breach a protection measure puts the victim in serious danger, some Member States allow for the provisional detention of the aggressor, e.g. in Croatia, Hungary and Slovenia.

Directive 2011/99/EU does not establish any specific sanctions in the event protection measures are breached, but obliges the Member States to penalize these violations. The sanction to be imposed, however, is left to their discretion, which means the same breach may be penalized differently in each Member State.

It would therefore be convenient if the sanctions for breaching a protection measure were to be harmonized in some way, or at least to ensure that all Member States impose some kind of sanction in case of breach as required by the Directive, and where possible establish the same kind of sanctions depending on the gravity of the breach.

The effectiveness of fines to avoid breaches is disputable. The amounts imposed tend to be small and therefore hardly dissuasive. Then again, raising the amounts might be counterproductive if the fine were to affect the financial means of the family as whole. For this reason, it would be recommendable to apply more restrictive measures or extend the term of duration of the imposed measures.

4.4. Linguistic barriers

Article 17 of Directive 2011/99/EU provides that «A European protection order shall be translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State». For this reason, it should be examined whether the competent authorities of the Member States provide translation and/or interpretation services to victims during the procedure on the adoption of protection measures.

A large majority of Member States offer translation and/or interpretation services to the victims of gender violence (AT, BE, BG, CY, CZ, DE[56], EE, ES, FI[57], HR, HU, LT, LU, LV, PL, PT, SE, SI, SK and UK). Three countries

[56] According to the German Judiciary Act, the victims of gender violence are entitled to an interpreter during civil proceedings if any of the parties does not speak German, as any other party in the proceedings.

[57] The public authorities in Finland seek to ensure the accessibility of the relevant information and the public services to immigrants and ethnic groups by providing all the information in their own language, which suggests there exist victim support services that offer translation services. See: Ministry of Social Affairs and Health (2010): *Action Plan to Reduce Violence against Women*. Publications of the Ministry of Social Affairs and Health, no. 15, pp. 47 ss.

(France, Romania and the Netherlands[58]) do not provide these services, although in France it is foreseen that with the transposition of Directive 2012/29/EU on the rights of victims translation and interpretation services will be introduced in the criminal proceedings establishing protection measures.

Nonetheless, not all of the Member States provide translation services for all the official languages of the European Union. Only nine countries offer translation in all languages (AT, BG, CZ, HR, HU, LU, LV, PT and SE), while five of them offer translation in some of the official languages. This is the case of Belgium (French and Dutch), Estonia (any language upon request), Spain (Spanish, the co-official languages in Spain, English and French), Slovenia[59] and Slovakia (English). Three countries do not provide translation services for any of the official languages of the EU (Germany, France and Romania), although in France after the implementation of Directive 2012/29/EU the victims and the national authorities will have access to translation services for all the official languages of the Union. No information is available on the situation in eight countries (CY, EL, FI, IT, LT, MT, PL and UK).

Most of the countries which provide translation and interpretation services do so free of charge. More specifically, fourteen of the Member States mentioned (AT, BG, CY, CZ, EE, HR, HU, LU, LV, PL, PT, SE, SI and UK) offer these services free of charge, while in Belgium, Romania and Slovakia these services must be paid for. No information is available on this aspect in the case of DE, EL, ES, IT and MT. The replies of the Lithuanian authorities to the questionnaire on this point are ambiguous.

TABLE 6

Translation and/or interpretation services in the EU Member States

MS	Translation and/or interpretation services	All official languages of the EU	Some official languages of the EU	Free of charge
AT	X	X		X
BE	X		X	
BG	X	X		X
CY	X	NA	NA	X
CZ	X	X		X
DE	X			NA

[58] According to the information provided in the national report on the Netherlands, the authorities competent to issue protection orders do not always offer translation services and the translation of documentation is not common. Interpreters are available however during the criminal proceedings.

[59] The languages are not specified, though.

MS	Translation and/or interpretation services	All official languages of the EU	Some official languages of the EU	Free of charge
EE	X		X	X
EL	NA	NA	NA	NA
ES	X		X	NA
FI	X	NA	NA	NA
FR*				
HR	X	X		X
HU	X	X		X
IT	NA	NA	NA	NA
LT	X	NA	NA	NA
LU	X	X		X
LV	X	X		X
MT	NA	NA	NA	NA
NL				
PL	X	NA	NA	X
PT	X	X		X
RO				
SE	X	X		X
SI	X		X	X
SK	X		X	
UK	X	NA	NA	X

SOURCE: Elaborated by Epogender. NA: Not available.

* It is foreseen that with the transposition of Directive 2012/29/EU on the rights of victims translation and interpretation services will be introduced in the criminal proceedings establishing protection measures.

The right to translation and/or interpretation services is guaranteed to all victims of gender violence in almost all of the Member States concerned by Directive 2011/99/EU, albeit it not always in their condition as victims of gender violence, but under the general guarantees associated to criminal proceedings. The Member States have another reason, though, to include these services in their legislation: Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime gives victims a right to interpretation and translation, free of charge, in accordance with their role in criminal proceedings (art. 7). The existing diversity with regard to interpretation and translation services for all the official languages of the EU hinders an effective transposition of the Directive and the creation of transnational cooperation mechanisms.

4.5. Data and statistics on protection measures

With a view to a correct application of the Directive, recital 32 and article 22 refer to the need to gather relevant data on the number of European protection orders requested, issued and recognised, and point to the usefulness of other kinds of data, for example on the types of crimes concerned. For this reason, the Member States need to have in place a system for the compilation of statistical data.

With respect to the compilation of data on gender violence and protection orders, almost all Member States collect statistical information on these issues, although in Cyprus[60] and Italy the statistical data available on gender violence and protection measures are rather limited.

In most Member States (AT, CZ, DE, EE, LT, FR, HR, HU, LT, LU, LV, NL, PL, PT, SE and SI) the compilation of statistical data is the direct responsibility of the Ministry of Justice and/or the Ministry of the Interior, or is otherwise carried out by their subsidiary organs. In Spain, Finland and Romania this compilation also depends on the Ministry of Health and Social Services. In Slovakia and the United Kingdom these statistical data are collected by their respective National Institutes of Statistics.

In some States specialized organs exist that collect and process the relevant statistical data. Examples of this are the Intervention Centres in Austria, specialized in domestic violence, the Secretariat-General on Gender Equality or the Emergency Helpline 15900 in Greece, the Spanish Observatory on Domestic Violence and Gender, and MIPROF[61] (Interministerial Mission for the protection of women victims of violence and the fight against human trafficking) in France, or the Committee for cooperation between professionals specialized in the fight against violence in Luxemburg. In this last State, the current legislation obliges the authorities involved to publish a yearly compilation of relevant statistical data from their own field. Thus, the Ministry of Justice, the police, the Public Prosecutor's Office and domestic violence support services (both for victims and aggressors) collect annual data classified by gender, age and the relationship between offender and victim (including whether there was cohabitation). Systematic information is compiled on re-

[60] According to a study carried out by the Mediterranean Institute for Gender Studies, *React to domestic violence. Building a support system for victims of the domestic violence. Cyprus mapping study: implementation of the domestic violence legislation, policies and the existing victim support system*, December 2010, p. 3, the national data on the prevalence of domestic violence are scarce and the only data available are those collected by the Cyprus Police and the Association for the Prevention and Handling of Violence in the Family, an NGO that runs a domestic violence hotline and a women's shelter.

[61] http://www.gouvernement.fr/gouvernement/en-direct-des-ministeres/la-mission-interministerielle-pour-la-protection-des-femmes-vi (accessed on 20/10/2014).

ported incidents/offences, eviction measures, police interventions, interventions by the social services, cases under investigation, and convictions. Moreover, the Act on Domestic Violence charges the Committee for cooperation between professionals specialized in the fight against violence with the centralisation and analysis of the statistical data, including a yearly report.

In France, the statistical data on gender violence and protection orders are also collected through the programme CASSIOPEE (*Chaîne Applicative Supportant le Système d'Information Opérationnel pour le Pénal et les Enfants*)[62] of the Ministry of Justice, which allows for the registration of all proceedings and their characteristics. By means of this programme all relevant information is collected on registered lawsuits. More specifically, it contains personal data, bank details and addresses of detainees/prisoners, witnesses, victims and civil parties. Its principal objective is to shorten the duration of judicial proceedings and to provide information to victims.

In some States, such as Belgium, the statistical data are compiled by different organs, but these are not centralized in clear categories. Thus, statistics are collected by the police, the Public Prosecutor's Office, the courts with regard to convictions, the social services, and NGOs specialized in victim support. There also exist various sociological studies on the subject. These data are not accessible to the general public. Consulting them is complicated and each organ uses its own compilation methods. In Finland as well the statistical data on gender violence are collected by various organs.

As for the accessibility of the relevant statistical data, in some Member States (AT, BE, DE, EL, FR, HR, HU and NL) the information is not available to the general public, i.e. access is restricted.

By contrast, in other Member States these statistics are available to the general public (CZ, EE, ES, LT, LU, LV, PL, PT, RO, SE, SI, SK and UK). They may be consulted through the websites of official organs, in specific reports on the subject, or in the case of Slovenia, after previously submitting a request to the competent institution. In Luxemburg, for instance, the statistical data are available on the internet. The available information includes the annual report of the Police (Ministry of the Interior), the annual report of the SAVVD (Support Service for the Victims of Domestic Violence), the annual report of the Ministry of Equal Opportunities, and the annual report of the Committee for cooperation between professionals specialized in the fight against violence.

[62] http://www.justice.gouv.fr/justice-penale-11330/cassiopee-un-meilleur-partage-de-linformation-22455.html (accessed on 20/10/2014).

Even though most Member States compile statistical data on gender violence and protection orders, these data are not sufficiently centralized by one organ in order to allow for their adequate use. In addition, the different ways in which these data are processed makes their analysis more complicated, considering that the various organs involved use different indicators. As for the access to these statistics, most Member States have made an effort to make the relevant databases available to the general public. Nonetheless, there is still much room for improving the visibility and accessibility of the statistics and publications in this field.

A good practice in this respect is the specialized software application used by the French Ministry of Justice to collect statistical information. The centralisation through this programme of all information on judicial proceedings, on the basis of clearly defined categories, facilitates their subsequent processing and improves the information provided to victims.

Another good practice is the creation of specialized organs whose mission includes the centralisation and analysis of the relevant statistical information. This is for example the case of Luxemburg, where the Committee for cooperation between professionals specialized in the fight against violence has been charged by law with the centralisation and analysis of the statistical data, including the publication of a yearly report.

Finally, it must be noted that in some Member States, such as Luxemburg, the obligation to collect certain statistical data is established by law, which contributes to the systematic compilation of information.

4.6. The communication between judicial authorities

The Directive provides that the competent authorities of both issuing States and executing States must establish the necessary communication channels between them. Article 8 of Directive 2011/99/EU 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 State to establish its authenticity», while article 12 obliges the executing State to notify the issuing State of any breach of the European protection order. Article 16 finally regulates the possible consultations between the competent authorities. Thus, for the Directive to be truly effective, the competent authorities of the Member States must establish adequate channels of communication.

In this context, an analysis was made of the communication channels used by the authorities, both internally and with their European counterparts.

Internally, the Member States use the customary channels, i.e. telephone, fax, bureaufax, ordinary and certified postal mail, and electronic mail (with

and without confirmation of receipt); some Member States, such as EE, ES, FR, LT, NL and SE, also use videoconference. The authorities of FI, NL, PL, PT and RO have indicated that in addition internal private networks (intranet) is used for the communication between the competent authorities.

At the international level, even though all Member States have their respective liaison magistrates and national contact points, only a few of them (EE, ES, FR, HR, SE and SI) communicate with the authorities of other Member States through the existing international mechanisms for police and judicial cooperation, basically those established in the framework of the European Judicial Network, Europol and Interpol.

All the Member States at the internal level use the customary channels of communication between authorities (telephone, fax, postal and electronic mail with or without the corresponding confirmation of receipt), besides increasingly using electronics resources such as videoconferences. At the international level, the existing international mechanisms for police and judicial cooperation, basically those established in the framework of the European Judicial Network, Europol and Interpol, are used less frequently.

5. BEYOND THE PROTECTION MEASURES OF DIRECTIVE 2011/99/EU*

5.1. Other protection measures in the Member States

Besides the three types of protection measures laid down in article 5 of Directive 2011/99/EU on which the European protection order may be based, the EU Member States in their national legal systems provide for other types of protection measures for the victims of gender violence, which include very diverse measures, such as detention of the aggressor, the prohibition on carrying arms, restricted use of the family home, care, visiting and contact arrangements for the children, financial maintenance arrangements, measures to avoid risks or harm to the children, placement in shelters, and residence or work permits for victims.

Unlike the three prohibitions or restrictions laid down in the Directive, these measures are not directed exclusively at the person causing danger, but may also be addressed to the victim or her closest relatives, especially where minors are involved. Their purpose is to complement the protection of the victim, which is why they cover health, financial and social aspects.

Almost all of the Member States provide at least one of these complementary measures. As a result, the range of options is very wide: The collected data show that:

* By Bettina Steible, PIF Doctoral Research Fellow, UAB.

— Detention or custody measures are provided for in the following countries: BE, BG, CZ, DE, EE, EL, ES, FR, HR, LT, LU, PL, RO, SE and SI. Their application is limited to the most serious cases.

— The prohibition on carrying arms as a protection measure is regulated in: BE, CY, ES, FR, HR, HU, IT, LT, LU, MT, NL, PL, RO, SE and SK. Just as the custody measures, these tend to be precautionary measures that are only applied if the circumstances so require.

— Arrangements regarding the use of the family home are applied as protection measures in the following States: BE, BG, CZ, DE, ES, FR, IT, LV, PL, PT, RO, SI and UK. In some cases, this measure may fall within the scope of the Directive as it may be the indirect consequence of the prohibition to enter the places the victim visits and prohibition to approach her. This does not preclude, however, that it may be applied as an autonomous measure.

— The restrictions related to the custody, visiting rights and contact arrangements with the children are provided for in the legal systems of: BE, BG, CY, CZ, EE, FR, HR, HU, LU, LV, PL, PT, RO, SE, SI, SK and UK. Minors usually enjoy autonomous protection in all legal systems, under which they have their own legal status, so that in most States these restrictions are provided for.

— In line with these measures, also given the fact that the best interests of the child prevail in most Member States, there are additional protection measures that are exclusive aimed at avoiding risks or harm to minors. These are available in the following countries: BE, BG, CY, CZ, FR, HR, LV, PL, PT, RO, SE, SI, SK and UK.

— The placement in shelters may be used as a protection measure in AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HU, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI and SK. However, the competences, tasks and services of these shelters vary considerably from one State to another, even though all of them offer a basic level of protection aimed at solving emergency situations.

— In other cases, residence or work permits are arranged for victims, specifically in the following countries: BE, EL, FR, LV, RO and SI. These measures have acquired particular relevance due to the high levels of migration in the Member States of the European Union. Granting these permits may lead to victims acquiring inherent citizen's rights or reinforce them, leading to the regulation of the situation of the most vulnerable victims. If the victim increases her independence and acquires her own means of subsistence, she will have more possibilities of escaping from the spiral of violence.

— Maintenance allowances or other financial maintenance arrangements are used as a protection measure in BE, CY, IT, LV, RO, SI and SK.

— Finally, various Member States offer complementary protection measures aimed at the rehabilitation of the offender. These are provided for in AT,

BG, DE, FI, HR, IT, MT and RO. In Latvia, although it is not operational yet, the Ministry of Welfare has planned to implement a programme for the social rehabilitation of both victims and aggressors. To this end, two experimental groups have been set up that work with aggressors. The Latvian government will guarantee the funding of this social rehabilitation as of January 2015[63]. A paradigmatic example is Romania, where the health centres for aggressors are regulated by law and constitute social support centres which ensure social rehabilitation and reintegration, educational support as well as family advice and mediation, besides offering psychiatric treatment and treatments against alcoholism and drug addictions in collaboration with hospital and other health centres. As a matter of fact, the internment of aggressors in these centres is also provided for in the Romanian Criminal Code. The Criminal Code goes even further and establishes security measures that may be imposed on the aggressor in case of domestic violence and violence against women. These measures are: the obligation to be submitted to medical treatment (art. 113) or hospital treatment (art. 114).

Besides these measures the following particular arrangement may be mentioned:

— In the first place, in Austria so-called «intervention centres» were established in nine provinces, financed by the Ministry of the Interior and the Ministry for Social Affairs. Their main mission is to protect the victims of gender violence and coordinate the assistance provide to them by all of the institutions involved. The procedure is the following: in the cases where a protection order (eviction and barring order) is issued, the police provide the relevant intervention centre with the personal details of the victim. Subsequently, the centre contacts the victim to offer her any protection needed.

— Another interesting case is the so-called «instant monetary aid» offered to victims in Hungary. This aid is meant to cover the extraordinary expenses of the victim related to accommodation, clothing, food and transport, and may even include funeral expenses in case the victim cannot afford to pay them. The request for aid must be submitted within three days following the aggression. The amount of aid varies each year (in 2010, for example, the amount was approximately 320 euros) and any victim, without restriction and regardless of her financial situation, has access to this kind of support.

— Lastly, there is a number of Member States that have adopted Victim's Statutes aimed at providing specific protection to the victims of crime. This is the case of Portugal, where a Victim's Statute was adopted by Act 112/2009,

[63] Information provided by the national authorities of Latvia in response to the Epogender questionnaire.

which offers a high level of protection which includes the right to information (among others, about the status of the aggressor), remote assistance, compensation for personal or material damages, police and judicial protection, work support, etc. Another case is that of Spain, where a bill on the Victim's Statute for victims of crime was adopted by the Council of Ministers on 1 August 2014, which is now being debated in the Spanish Congress. This Statute seeks to bring together all the rights of victims in one single legal instrument, as established under European legislation. The Statute introduces some important new provisions on gender violence, such as the obligation to inform the victim without her asking when the aggressor is released (except when the victim expressly requests not to be informed), or the right of underage children of victims of gender violence or domestic violence to the same support and protection measures as the victims themselves.

Most of the Member States, moreover, offer social protection measures, a category which also includes a wide variety of measures:

— In some States these include economic or financial assistance: BE, CZ, DE, EL, ES, HR, LU, NL, PT, RO and SE. This type of assistance aims to compensate the expenses derived from emergency situations, such as the satisfaction of basic or other needs after an aggression.

— Legal assistance is available in AT, BE, BG, CY, CZ, EE, EL, ES, FR, HR, LT, LU, LV, PT, RO, SE, SK and UK. Legal assistance is considered essential in cases of gender violence, as these proceedings tend to be hard, long and expensive, so that the best option is to offer legal assistance free of charge.

— Health assistance is provided for in BE, BG, CY, CZ, EE, EL, ES, FR, HR, LT, LV, PT, RO, SE, SK and UK. In cases of gender violence, health assistance should not only cover the physical needs of the victim, but also psychological support. For this reason, many Member States also offer psychological assistance (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HR, LT, LV, NL, PT, RO, SE, SK and UK).

— Social support measures finally also include labour market advice, which is offered in the following countries: EL, ES, LV, RO and UK. In cases where the victim of gender violence is financially dependent on the aggressor, this may constitute an impediment to report the aggressions. Labour market support may help the victim in these situations to become financially independent.

It is quite rare to find legal systems among those examined that provide for a single instrument that allows to simultaneously adopt civil and support measures aimed at offering comprehensive protection to the victims of gender violence. As a matter of fact, those that do are the exception:

— A first example of this is Bulgaria, where article 5 of the Act for the Protection against Domestic Violence establishes a number of concrete measures, such as the eviction of the aggressor from the common home; temporarily establish the residence of the children and the parent that did not commit acts of violence under the conditions defined by the court, provided this is not harmful to the child; the obligation of the offender to participate in specialized programmes; and the referral of the victim to special programmes for their recovery.

— The same goes for the Spanish Organic Act 1/2004 of 28 December 2004 on comprehensive protection against gender violence, which includes all kinds of judicial, financial and social measures, and which also includes the children in its personal scope of application.

— Another Member State which allows for the simultaneous adoption of civil and social measures is France, pursuant to articles 515-9 to 515-13 of the Civil Code, as amended by Act 2010-769.

— In Romania, the legal instrument used for the simultaneous adoption of civil protection measures and support measures for the victims of gender violence is the protection order introduced by Act 35/2012 modifying Act 217/2003, which allows the court to adopt, at the request of the victim, measures aimed at restricting contact with the aggressor, while at the same time addressing other issues, such as the allocation of the family home or the custody of the children.

— Finally mention should be made —although the instrument does not exist as yet— of the will of the Finnish government to set up a single centralized mechanism for these purposes.

— A case by itself are the Netherlands, where technically it is possible to simultaneously apply some of the measures described, although there is no single instrument that allows to do so in a comprehensive way.

The protection measures provided which do not fall under the three types of measures covered by the European protection order are so diverse that it is difficult to classify them and draw clear conclusions. Moreover, as a general rule these other measures are adopted regardless of the criminal, civil or administrative nature of the main proceedings regarding the acts of gender violence, which makes it hard to catalogue them.

Nevertheless, the existence of these complementary measures contributes in an important way to the protection of the victim and the persons close to her, as they do not limit themselves to the classic protection measures which mainly seek to protect the physical integrity of the victim. Most Member States are fully aware that gender violence requires a comprehensive approach, and while the immediate priority is to safeguard the physical integrity of the victims, their complete recovery must be accompanied by a series of measures that contribute to overcoming the harm done and help the victim to reintegrate into society. This holistic approach to gender violence allows for the issue to be addressed at various levels and by various sectors of society with the involvement of multiple public

administrations, agents and services. This is what makes these measures effective and at the same time explains their heterogeneity, which reflects the existing legislative traditions within the European Union, as well as the experience built up by the different States in combating this phenomenon.

The accessory nature of these measures leaves their adoption largely to the discretion of the competent authority in each case. On the one hand, this may be beneficial, as it makes it possible to take into account the specific circumstances of each individual case, on the other hand it might hinder the effective protection of the victims from a transnational perspective: the scope and nature of the protection may vary from country to country, creating first-rate and second-rate victims. In a context of integration that seeks to harmonize the protection of victims at the European level, this might be a serious ground for concern.

To this it must be added that the access to some of these measures at times requires independent procedures to be followed, which are neither automatic nor necessarily determined by an authority, but where the victim must approach different administrations to request access to different kinds of benefits and support for victims. This fact causes the access to protection measures to be more bureaucratic and might involuntarily lead to a repeated victimisation. After all, the difficulty of accessing this support hinders its effectiveness instead of being a complementary tool to help the victim.

All these measures fall outside the scope of the Directive, and therefore cannot be included in a European protection order. As a result, only those States where truly comprehensive laws for the protection against gender violence or Victim's Statutes exist, which are but a minority, legally guarantee the provision of these «other measures» while in the remaining States this is left to the discretion of the competent authority, or what is worse, end up depending on the available material resources, which in most cases are very limited.

5.2. The victims' right to information

The effectiveness of the protection measures also depends on the information victims have about them. There are basically two ways to inform the victims about the protection measures:

— *a priori*, by organizing information and awareness campaigns, and
— *a posteriori*, that is after the violence has occurred, through the existing information services for victims.

This section describes the information sources used, the kind of information provided and indicates whether information campaigns on the European protection order have been organized in the Member States concerned by the Directive.

5.2.1. *Information services*

In all of the Member States concerned by the Directive there exist information services for the victims of gender violence. Although the infor-

mation sources vary from one country to another, the sources used most frequently are the police and the specialized victim support services. It should be noted, though, that the sources mentioned here are not necessarily the ones most used by victims as only the existing ones are stated (about the use of which no information may have been provided). More specifically, the victims of gender violence have access to the following information sources.

In practically all Member States, the victims of gender violence can obtain information from the police, except in BU, CZ, DE, FI, IT and NL.

Reference must be made to the important role played by certain organs in countries such as France. Thus, at each Departmental Directorate for Public Security a person responsible for victim support, with the help of the different persons responsible for public security at local level in the various districts, is charged with the relations between the relevant associations, the improvement of reception centres and the centralisation of useful information. 121 positions for social workers have been created (106 in the 100 public security districts, 26 at the police/gendarmerie, and 15 at the Directorate for Neighbourhood Security in the Paris metropolitan region) and 57 for psychologists, of which 19 work at the Directorate for Neighbourhood Security in the Paris metropolitan region and the rest at police stations to assist victims and offenders. Finally, it should be mentioned that 150 reception points of victim support associations have been set up at police stations[64].

In fifteen countries, specialized victim support services provide information to victims, albeit under different names (AT, BE, BG[65], CY, CZ, EE, EL[66], ES, HR, HU, LU, LV, NL, RO[67], SE[68] and UK[69]). Some of these entities are known as intervention centres[70], crisis centres[71] or more generally as vic-

[64] Any victim of a criminal offence, when reporting the crime, shall be informed of the addresses of the victim support associations.

[65] The specialized entities in Bulgaria are the State Agency for the Protection of Minors and the National Commission for Combating the Trafficking of Human Beings.

[66] Counselling Centers of the General Secretariat for Gender Equality.

[67] Directorate-General of Social Assistance and Child Protection.

[68] The National Centre for Knowledge on Men's Violence Against Women (NCK), based at Uppsala University, has been created by the Swedish government and participates in the National Programme for the Care of Victims of Sex Crimes. See: http://nck.uu.se/en (accessed on 20/10/2014).

[69] Victims in the United Kingdom can get help from several specialized centres, such as the Central Assault Referral Centres (SARCs), UK Human Trafficking Centre, Forced Marriage Unit, Witness Care Units (WCU) or Refuges.

[70] For example: Violence Protection Centres or Intervention Centres (Austria); Intervention Centres (Czech Republic).

[71] In the case of Latvia, they are called Crisis Centres or Family Crisis Centres.

tim support services[72], while others are specifically referred to as support centres for the victims of gender violence[73].

In eleven countries (BE, BG, CZ, FR, LT, LV, PT, SE, SI, SK and UK) the victims of gender violence can obtain information from specialized NGOs. In some countries, such as Lithuania, these play an essential role, as a network with public funding is responsible there for providing these services.

In nine Member States specialized phone lines exist that offer information about protection measures (BG, DE, EE, EL, IT, LT, PL, SE and UK). As shown by the national report on Italy, this is the only source of information available to victims of gender violence there.

In seven countries the victims can also obtain information from the social services (BE, CY, CZ, ES, FI, FR, HR, RO and SI).

In seven Member States, it is the public administrations who provide information through websites or brochures (BE, CZ, DE, LT, LV, SE and SK).

There are seven countries where information is made available by the Public Prosecutor's Office (AT, BE, EE, ES, HU, LT and LU[74]). Reference must be made to the important role of the Public Prosecutor's Office in Belgium, where immediately after having issued a barring order the public prosecutor contacts the victim support service in his district's office in order to request them to assist and inform the persons living at the same address as the barred person.

In six countries (AT, ES, FR[75], HR, HU and SI) the courts can also provide information on protection measures to victims of gender violence.

In five Member States (BE, CZ, EE, LU and LT), shelters play an essential role in informing victims.

In Belgium and Spain, victims can also use services for legal advice to obtain information on the available protection measures.

Lastly, the health institutions constitute an important source of information in Croatia, as shown by the reply of the national authorities to the Epogender questionnaire.

No information is available on the situation in Malta.

---

[72] For example: Victim Support Offices in Spain; Office for Support to Victims and Witnesses in Croatia; Victim Support Services in Hungary; Support Service for Victims of Domestic Violence in Luxemburg. The main task of the *Maisons de Justice* (Belgium), which exist in each court district, is to inform and assist the victims of criminal offences, inform citizens in general, as well as the judicial and administrative authorities.

[73] For example: the Association for the Prevention and Handling of Violence in the Family and the Advisory Committee on the Prevention and Handling of Domestic Violence in Cyprus; Domestic Violence Support Centres in the Netherlands.

[74] By the victim support service of the State Prosecutor's Office and the Ministry of Equal Opportunities (this Ministry has a dedicated website for cases of gender violence: http://www.violence.lu, accessed on 20/10/2014).

[75] By means of the website of the Ministry of Justice, leaflets of the courts of justice and specialized victim support offices at the courts.

5.2.2. *Specialized police units*

In nine Member States specialized police units exist to protect and inform the victims of gender violence (BE, CZ, EL, FR, LU, PT, SE, SK and UK).

In some of these States these units act as coordination points for the other entities involved in the protection of gender violence, which may be considered a good practice:

— In the case of France, special teams for family protection have been operational since October 2009 to intensify the efforts to combat family violence. These teams have been charged with the protection of particularly vulnerable families and individuals, victims of violence or ill-treatment (minors, battered women and ill-treated elderly persons), both in the family sphere and in their usual living environment (asylum centres, reception centres, etc.). The police officers who work in these units receive specialized training. Among others, a course of four days on intimate partner violence, child abuse by parents, and violence against elderly persons. Moreover, all police stations have dedicated e-mail addresses for victims of family violence.

— In the United Kingdom, these units are called Domestic Violence Units or Community Safety Units, which constitute a key support for victims of gender violence[76]. Most police forces have a specialized department responsible for investigating, evaluating and following up cases of domestic violence. Their members also participate in specialized training courses.

— In Lithuania, each police station furthermore has an officer dedicated to coordinating the activities related to violence against women: assistance, information and advice.

By contrast, eleven Member States do not have specialized police units to protect and inform victims (AT, BG, CY[77], DE, EE, HR, HU, LT, LV, NL and RO).

No information is available on the situation in Malta and Poland.

---

[76] More information on the specialized police units is available at: http://www.womensaid.org.uk/domestic-violence-survivors-handbook.asp?section=000100010008000100330003 (accessed on 20/10/2014).

[77] The only particularity established under article 9 of Act 212(I)/2004 amending the Violence in the Family (Prevention and Protection of Victims) Act 2000 is that the complaints of the victims are presented to a police officer of the same sex.

5.2.3. *Type of information*

The victims of gender violence can obtain the following information from the above-mentioned authorities:

— On the type of support they can receive (financial, healthcare, psychological, labour market, legal, etc.): in all Member States, except Germany and Finland.

— On how to report the violence and the consequences of reporting it: in all countries affected by the Directive, except Germany and Finland.

— On how the proceedings work: all Member States except six (DE, EE, FI, LT, LU and PT).

— In eight States there exists the obligation to inform the victim on the procedural or criminal status of the aggressor (BE, FR, HR, HU, LT, NL, PT and SE).

— On how the obtain protection, including the adoption of protection measures: all countries except Finland.

— On how to obtain compensation: in all Member States, except three (CY, DE and FI).

— On the right to translation and interpretation: all Member States, except Germany.

In short, fifteen Member States provide complete information to victims on all of these aspects. It should also be noted that some States only offer information on one item. This is the case of:

— Germany, which provides information on the ways to obtain protection, including the adoption of protection measures;

— Finland, where the authorities only provide information on the right to translation and interpretation.

Worth mentioning are also some particular practices developed by some of the Member States in this regard. In Spain, for example, the authorities have the obligation to adopt all the necessary measures to ensure that women with disabilities who are victims of violence are informed of their rights and available resources. This information must be provided in an accessible format and be comprehensible to persons with disabilities, e.g. using sign language or other adapted form of communication.

The case of the United Kingdom is interesting because the victims of gender violence are not only assisted by an information network comprised of specialized support centres, professionals, police and NGOs, they are also protected under a series of protocols, codes of good practice, guidelines and

agreements aimed at facilitating a proper understanding of their problems and offering them all sorts of support (legal, financial, healthcare, social, etc.). These practical guidelines and codes of conduct for professionals seek to improve the support to both victims and witnesses. Some examples are: Care and Treatment of Victims and Witnesses, Pre-trial Witness Interviews[78], Code of Practice[79], Witness Charter[80] or the Code of Practice for Victims of Crime[81], which stands out from the previous ones as it establishes the minimum services a victim is entitled to when she is involved in judicial proceedings. As a consequence, this Code is to be applied by the police and the judicial authorities —Crown prosecution Service, Courts Services and Probation Service— which constitutes an important precedent in the recognition of victims' rights.

TABLE 7
Information provided to the victims of gender violence in the EU Member States

MS	Kind of support the victim may receive	Information on how to report violence and consequences	How proceedings work	How to obtain protection, including the adoption of protection measures	How to obtain compensation	Right to translation and interpretation
AT	X	X	X	X	X	X
BE	X	X	X	X	X	X
BG	X	X	X	X	X	X
CY	X	X	X	X		X
CZ	X	X	X	X	X	X
DE				X		
EE	X	X		X	X	X
EL	X	X	X	X	X	X
ES	X	X	X	X	X	X
FI						X
FR	X	X	X	X	X	X

[78] http://www.cps.gov.uk/legal/v_to_z/care_and_treatment_of_victims_and_witnesses (accessed on 20/11/2014).

[79] http://www.cps.gov.uk/victims_witnesses/resources/interviews.html (accessed on 20/11/2014).

[80] http://www.cps.gov.uk/legal/v_to_z/witness_charter_cps_guidance (accessed on 20/11/2014).

[81] http://www.cps.gov.uk/legal/v_to_z/victims_code_operational_guidance (accessed on 20/11/2014).

MS	Kind of support the victim may receive	Information on how to report violence and consequences	How proceedings work	How to obtain protection, including the adoption of protection measures	How to obtain compensation	Right to translation and interpretation
HR	X	X	X	X	X	X
HU	X	X	X	X	X	X
IT	NA	NA	NA	NA	NA	NA
LT	X	X		X	X	X
LU	X	X		X	X	X
LV	X	X	X	X	X	X
MT	NA	NA	NA	NA	NA	NA
NL	X	X	X	X	X	X
PL	X	X	X	X	X	X
PT	X	X		X	X	X
RO	X	X	X	X	X	X
SE	X	X	X	X	X	X
SI	X	X	X	X	X	X
SK	X	X	X	X	X	X
UK	X	X	X	X	X	X

SOURCE: Elaborated by Epogender. NA: Not available.

5.2.4. *Information and awareness campaigns*

Although Directive 2011/99/EU does not contain any obligation in this respect[82], the organisation of campaigns to raise awareness on the issue of gender violence is a key element to ensure the effectiveness of the protection measures and the fight against gender violence. In fact, awareness campaigns are one of the best ways, on the one hand, to disseminate information on the protection measures available to victims so that they know where to go to in case of violence and how to escape from a vicious circle, and on the other hand, to make the public at large aware of this phenomenon and its possible solutions.

[82] The preamble of the Directive makes reference to the organisation of information and awareness-raising campaigns in the following terms: «Member States and the Commission should include information about the European protection order, where it is appropriate, in existing education and awareness-raising campaigns on the protection of victims of crime» (recital 35).

As shown by the national reports, information campaigns on the protection measures for victims of gender violence have been organized in 18 Member States. In many of them, however, no reliable data are available to determine whether these campaigns have been effective (AT, BE, CZ, FI, FR[83], HR[84], LT, LU, LV, NL, PL, PT, SE and UK). It should be noted that in Luxemburg and the Netherlands there have been no campaigns specifically aimed at the victims of gender violence, but information campaigns on gender violence for the general public. Only three countries (Bulgaria, Greece and Romania) claim to have data to evaluate the effectiveness of these campaigns, although they have not provided them. Five Member States, lastly, have not held any information campaign on the existing protection measures (CY, DE, EE, HU and SK).

In Romania, a campaign to raise awareness on the fight against domestic violence was held between September 2012 till January 2013, in accordance with the Loan Agreement for Loan 4825-RO between the Romanian government and the International Bank for Reconstruction and Development (IBRD), approved by Act No. 40/2006.

The goal of this campaign was:

— to involve the members of the community;

— to raise awareness among local authorities on the importance of participating in the prevention of and fight against domestic violence;

— to increase the awareness of the general public on the prevention of and the fight against domestic violence; and

— to change the community perception of this phenomenon.

The campaign included the following activities:

[83] On the website of the Ministry for Women's Rights some of the communication campaigns on the fight against gender violence are reviewed: http://femmes.gouv.fr/dossiers/lutte-contre-les-violences/les-campagnes-de-communication (accessed on 15/10/2014).

[84] The question regarding the existence of data on the effectiveness of these campaigns was answered negatively, yet the results of the campaign on preventing gender violence —*Silence is not gold (Šutnja nije zlato)*— is available on the website of the European Institute for Gender Equality (http://eige.europa.eu/content/national-campaign-to-prevent-gender-based-violence-%E2%80%93%E2%80%9Csilence-is-not-gold%E2%80%9D-%E2%80%9C%C5%A1utnja-nije-zlato, accessed on 20/11/2014). Moreover, according to the European Parliament, the number of reported cases has increased over the past ten years due to the growing awareness of the Croatian population. See: Palikovic Gruden, M.; Gruden, A., *Note on the Policy on Gender Equality in Croatia, update 2013*, European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs (Erika Schulze), September 2013, p. 12.

— Organisation of a national conference in Bucharest at the beginning and the end of the campaign, as well as seven regional conferences on specific aspects of preventing and fighting domestic violence.

— Holding a survey in order to: *a*) get to know the actions and the level of awareness of the public authorities regarding domestic violence; *b*) evaluate the existing information among the institutional actors involved in this field; and *c*) evaluate the social services and the existing protection mechanisms with regard to victims and aggressors.

— Organisation of 35 street events (e.g. caravans) following three different routes, in order to make the members of the community and/or the victims of domestic violence aware of the importance of this phenomenon, the existing protection measures and the legal framework for the promotion and protection of their rights. The caravans stopped in all the county capitals; material was distributed to inform and support all parties involved and provide specialized information to interested persons, victims and potential victims.

The questionnaires returned by the national authorities show that only Romania has organized information campaigns on the European protection order through the Directorate-General for the Protection of Minors of the Ministry of Labour, Family, and Social Protection. The goal of this campaign was to promote the transposition of the Directive into the national legal system. According to the questionnaires, only Portugal has planned to carry out information campaigns on the European protection order.

All of the Member States concerned by Directive 2011/99/EU provide for some source of information on the protection measures for the victims of gender violence. In this context, the police and specialized victim support services are the preferred organs to provide information to victims. By contrast, healthcare institutions are least used to provide this kind of information, as this occurs only in Croatia.

Some States have established complex systems based on the collaboration of both governmental and non-governmental organs, as is the case in the United Kingdom. It should be noted that the organs involved use different means of communication, viz. personal advice, brochures, helplines, online information, etc. In this respect, most of the entities mentioned tend to provide information through their websites, which ensures good dissemination and accessibility, although not all of these websites include the information translated to other languages.

In only nine Member States specialized police units exist to protect and inform the victims of gender violence. Three of these countries (France, Latvia and the United Kingdom) have turned these units into important coordination points, which constitutes a good practice even though, as indicated, not all of these websites include the information translated to other languages.

A majority of Member States (15) provide complete information on all of the essential aspects of protection: the kind of support victims can obtain (financial, healthcare, psychological, labour market, legal, etc.); the reporting of violence and its consequences; how proceedings work, how the obtain protection, including the adoption of protection measures; how to obtain compensation; and the right to translation and interpretation.

Some of the Member States have developed good practices which may serve as a model for the other States, such as the obligation to adopt all the necessary measures to ensure that women with disabilities who are victims of violence are informed of their rights and available resources (Spain), or the adoption of guidelines and codes of conduct aimed at facilitating a proper understanding of the problems of the victims of gender violence, offering them all sorts of support (United Kingdom).

Although in most Member States the type of information provided on protection measures is satisfactory, it is somewhat concerning that only in eight countries the authorities are required to inform the victim about the procedural status of the aggressor.

Finally, even though most Member States have already organized information campaigns on the existing protection measures, until today only Romania has organized a campaign on the European protection order. If the Member States hold information campaigns, it might also be useful to verify the effectiveness of these campaigns.

6. TRAINING FOR PROFESSIONALS INVOLVED AND ACTION PROTOCOLS AND PLANS*

6.1. Training for professionals involved

Directive 2011/99/EU states in recital 31 that the «Member States should consider requesting those responsible for the training of judges, prosecutors, police and judicial staff involved in the procedures aimed at issuing or recognising a European protection order to provide appropriate training with respect to the objectives of this Directive». Moreover, according to recital 35 «Member States and the Commission should include information about the European protection order, where it is appropriate, in existing education and awareness-raising campaigns on the protection of victims of crime».

In this context, it was analyzed whether in the Member States training on gender violence is provided, and specifically whether any training courses, including information campaigns, have been organized on the new European protection order.

As for the training activities on gender violence, in all Member States training courses exist aimed at the competent authorities involved in adopting protection measures, in particular judges and prosecutors, except in Italy, where according to the information received only the police is being trained on this issue.

Moreover, in most of these States (BE, BG, CH, CZ, EE, ES, EL, FI, FR, HR, HU, LU, LV, NL, PL, PT, RO, SE, SI, SK and UK) the training on gender violence is also offered to other professionals involved, such as the police and social workers. In some of the Member States (BE, ES, EL, FI, LT, LU, LV, PL, PT, SI and UK) specialized courses exist for lawyers, social workers, healthcare professionals (physicians, psychologists, therapists, nurses and

* By Mercè Sales, Lecturer in Constitutional Law, UAB.

midwives), teachers and public officials involved in the procedures. Finally, in Latvia, Slovenia and Poland specific training is available for the networks of NGOs that give support to victims of gender violence.

In ES, FR, PL and PT training activities are also organized on different educational levels.

In some States (BG, ES, FR and SI) there even exists a legal obligation to provide courses on the subject.

With regard to individual Member States, it should be noted that in Belgium training is provided to the police, judges, public prosecutors, social workers, healthcare professionals (physicians, psychologists, therapists, nurses and midwives), teachers and all public officials involved in the procedures.

In Bulgaria, there are not only specialized training courses for the police and social workers, but the Act on the Protection against Domestic Violence requires the administration to implement procedures for the selection and training of the persons responsible for protecting the victims.

In Estonia, every year specialized courses are organized during several days aimed at all the professionals providing support to the victims of gender violence.

In Spain, in addition to training the authorities and their staff dealing with victims, the Act on Gender Violence requires that courses are taught at all educational levels on the subject, both to students and teachers.

In Finland there clearly is a strong commitment of the public administrations and services to develop joint action plans and ensure that the existing services are used by victims. This had led to specific training courses on gender violence and specialized care for groups that are particularly vulnerable, such as migrants, women with disabilities, sexual minorities, etc. Moreover, the Finnish government insists on achieving advances in the social, legal and criminological research on violence, which in turn should benefit the authorities and social services[85], as well as an improvement of the specialized training courses for the staff of all the entities involved in prevention and awareness building, but also those involved in judicial proceedings.

As pointed out earlier, in Latvia, Slovenia and Poland specific training is also available for the networks of NGOs that give support to victims of gender violence. In this respect, in Poland, training courses have been developed for specialized staff providing primary support to victims, and an education handbook has been elaborated on domestic violence against elderly persons and persons with disabilities. These courses are aimed at the persons who have direct contact with the victims of domestic violence, i.e. social workers and family support centres, police officers, probation officers, teachers, representatives

[85] Ministry of Social Affairs and Health (2010): *Action Plan to Reduce Violence against Women*. Publications of the Ministry of Social Affairs and Health, no. 15, pp. 40 ss.

of health services, members of the municipal committees for combating alcohol abuse, the staff of social therapy centres, child care centres and schools, adoption and custody centres, employees of NGOs, psychologists, representatives of the clergy, public officials that coordinate matters related to the prevention of domestic violence and the medical staff at centres for the treatment of addictions. The objective of these training activities is to create interdisciplinary teams for the prevention of domestic violence. The National School for the Judiciary and Public Prosecution also offers training modules on domestic violence and organizes educational programmes for aggressors.

With regard to the European protection order, none of the Member States except Slovakia has organized courses, training activities or information campaigns on this new instrument, neither for the professionals involved nor for the general public. Nevertheless, some States such as France are planning to inform the authorities involved in the implementation of the European protection order; Estonia wants to organize an information campaign both for the professionals involved and for the public at large.

All Member States provide some sort of training activities on the issue of gender violence aimed at the competent authorities involved in the adoption of protection measures. As a general rule, they all offer specialized courses for the members of the judiciary and the Public Prosecutor's Office. Moreover, in most States the police, who are generally the first to intervene in these cases, as well as the social services receive specialized training on the subject. The general trend is that these training activities are extended to other groups of professionals because the Member States know that awareness, good information and specialized training are necessary tools to achieve optimum prevention and an effective approach to the problem.

6.2. Action protocols in the field of gender violence

As a preliminary remark, it should be clarified what is understood by action protocols in the field of gender violence, especially in order to distinguish them from other similar instruments, which is not always easy.

Action protocols consist of regulations, generally administrative in nature, that establish procedures which determine how to act in certain situations in which different public organs are involved, although sometimes private organisations may also be concerned. They usually refer to particularly complex situations that require the use of systematic instructions (protocols) for the coordination or joint/successive actions of the different entities involved to be sufficiently effective or efficient. The adopted regulations or instructions may be laid down in laws, but not seldom they are established by way of conventions or agreements between administrations and/or private entities that participate in the joint or successive actions. Although they are often formally referred to as protocols, they may also be denominated circu-

lars, agreements or conventions, or even manuals, depending on the nature of the rules contained in the instrument and the administrative practices of each country. This means that in order to identify the relevant action protocols it is not sufficient to select them on the basis of their denomination, but their content and legal nature must also be examined.

Therefore, they are not legal regulations (in the sense of statutory law), although they may be adopted by legal mandate, as frequently their elaboration is required by law; in exceptional cases, the protocols themselves are included in laws. The fact that they generally speaking do not have a statutory legal status does not mean that they are not of obligatory compliance, as long as it is clear whether the rules contained in them are binding or merely advisory. In other words, they may be binding depending on the content of the protocol.

Thus, as for their legal nature, protocols generally have a regulatory status and, as far as their content is concerned, establish action procedures for complex situations in which different public and private entities intervene.

This is what distinguishes them from so-called «good practices, which are not formalized, although they may be identified as such. They are also different from interadministrative coordination networks, which simply establish the joint action to be taken by the various organs involved in a concrete situation, without however specifying the procedures to be followed. Finally, they also differ from actions plans, which basically define objectives to be achieved, although naturally it may occur that an action plan establishes an action protocol or requires the adoption of such a protocol.

Based on these considerations, the research carried out regarding the Member States bound by Directive 2011/99/EU in the framework of the Epogender project has shown that there are countries that have no action protocols whatsoever in the field of gender violence (or at least they could not be identified), that in other countries there are no protocols, yet there do exist good practices, network coordination mechanisms or action plans that may concern protection orders, and finally countries that have specific protocols in this field.

There are five Member States where no action protocols in this field could be identified, neither based on the national reports nor on the replies of the competent national authorities to the questionnaire: AT, CZ, DE, IT and LT. All of them have legislation regulating this issue, but no protocols or other administrative rules in this field have been detected.

At this point, it should be remarked that the existence or inexistence of action protocols should not be interpreted as a better or worse approach of the respective Member States in the fight against gender violence. In Austria, for example, there are no protocols, yet the legislation is very clear and contains far-reaching protection measures for the victim of gender violence, criminal and administrative sanctions for offenders and measures for the prevention of violence. It is the political action taken by each Member State that

leads to the adoption of legal measures in the Criminal Code, the family laws or other kinds of laws, or where appropriate, administrative regulations, protocols, action plans or similar plans.

In the next part of this section we will analyze the Member States that do have action protocols in the field of gender violence, i.e. BE, CY, ES, FI, FR, HR, HU, LU, MT, NL, PL, PT, SI and UK. The adoption of these protocols is not incompatible with the adoption of action plans or similar policy instruments.

In Belgium, various protocols established by means of administrative circulars, regulate the steps to be followed for the protection of victims of gender violence. As a result of the entry into force of the Act of 15 May 2012, the Public Prosecutor's Office issued a circular the main objectives of which are to interpret this Act, to give instructions for its uniform application laying down a framework to be used in each case and clearly specifying the role of the various organs intervening in each case (public prosecutors, police and victim support services), as well as the modalities of their interventions[86]. There were already previous circulars[87] that were issued after the adoption of the Act of 28 January 2003 on the allocation of the family home to spouses or partners who were victims of the physical violence of their partners, which aimed to establish coherent definitions of these crimes in order to achieve relevant statistics for the entire territory and evaluate the effectiveness of the measures used in this field[88].

Moreover, various public prosecutor's offices issued specific circulars to address the issues of gender violence and detention orders, e.g. the 2004 circular «Zero Tolerance» of the Public Prosecutor's Office in Liège, which provided that the aggressor should be placed at a distance by obliging him to live temporarily in a shelter for homeless people[89].

In Cyprus, the Advisory Committee for the Prevention and Combating of Violence in the Family[90] provided for an action protocol[91] in the Manual for

---

[86] http://www.milquet.belgium.be/fr/une-nouvelle-circulaire-qui-precise-l'interdiction-temporaire-de-residence-en-cas-de-violence (accessed on 20/10/2014).

[87] Circular no. COL3/2006 of the Board of Prosecutors General at the Brussels Court of Appeal, 01/03/2006, and Circular no. COL4/2006 of the Board of Prosecutors General at the Brussels Court of Appeal, 01/03/2006.

[88] http://www.cvfe.be/sites/default/files/doc/EP2009-8-EvaluationCol4-Partie1-Rene.pdf (accessed on 20/10/2014).

[89] http://www.cvfe.be/sites/default/files/doc/ep2012-8-rbegon-loieloignementauteur-synth-verdana_0.pdf (accessed on 20/10/2014).

[90] As indicated in *The UN Secretary-General's database on violence against women*, «the Advisory Committee was established under Section 16 of the Violence in the Family (Prevention and Protection of Victims) Law 47(I)/1994 which was replaced by the Laws 119(I)/2000 and 212(I)/2004». http://sgdatabase.unwomen.org/searchDetail.action?measureId =17442&baseHREF=country&baseHREFId=402 (accessed on 20/10/2014).

[91] These documents are available at http://www.familyviolence.gov.cy; and http://sgdatabase.unwomen.org/uploads/CyprusManualofInterdepartmentalProceduresregardingviolencein thefamily (gre).pdf (accessed on 20/10/2014).

Interdepartmental Procedures of 2002, revised in 2009. This Manual for Interdepartmental Procedures was prepared by the Advisory Committee for the Prevention and Combating of Violence in the Family and approved by the Council of Ministers. In Spain various protocols exist that concern the fight against domestic and gender violence. The following protocols are currently in force[92]:

— Police protocol to evaluate the levels of risk in the field of violence against women in the cases established under Organic Act 1/2004 of 28 December 2004 (Instruction no. 10/2007 of the Secretary of State for Security).

— Protocol for the adoption of a protection order for victims of domestic violence.

— Coordination protocol for the criminal and civil jurisdictions in the field of domestic violence.

— Action protocol for the coordination between the security forces and judicial organs with a view to the protection of the victims of domestic and gender violence.

— Action and coordination protocol for the State security forces and the Spanish Bar Association in the field of gender violence, regulated under Organic Act 1/2004 on the comprehensive protection against gender violence.

— Action protocol for the implementation of telematic surveillance systems for the enforcement of restraining measures in the field of gender violence.

— Common protocol for actions by the healthcare sector in cases of gender violence.

With regard to Finland, no information has been found on general action protocols in this field, although the information contained in the Action Plan and other policy documents confirm that specific protocols exist, at least in the field of social care and healthcare, as well as recommendations to extend these joint action protocols to all the entities involved in the fight against gender violence[93].

France has numerous action protocols in the field of gender violence. In general these apply to those services that offer first-line assistance for the protection of victims, such as hospitals, social services, victims' associations and lawyers. Protocols have also been found to exist for the specialized ser-

[92] All these protocols are available at the website of the General Council of the Judiciary: http://www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Guias_y_Protocolos_de_actuacion/Protocolos (accessed on 20/10/2014).

[93] Ministry of Social Affairs and Health (2010): *Action Plan to Reduce Violence against Women*. Publications of the Ministry of Social Affairs and Health, No. 15.

vices of the Public Prosecutor's Office, courts, mayors' offices and administrative organs. An example of this is the protocol signed by the administration of the Department Indre-et-Loire with various victim support associations, hospitals, social services and the Public Prosecutor's Office[94]. Its main objectives are, among others, to provide information and support to victims (and possible minors involved), take care of the aggressors, train the parties involved in the assistance, carry out preventive actions and compile statistics. In addition, it should be noted that some departments and services have specific protocols regarding the application of protection orders. The Department of Seine-Saint Denis, for example, has created a protocol on the application of the protection order[95] with the collaboration of the competent courts, the Public Prosecutor's Office, the Bar Association and various associations that intervene in the process. The protocols lay down the steps to be followed by each actor in the process and clarifies the tasks to be performed.

Croatia in 2005 specifically adopted specific Protocol on Rules of Procedure in Cases of Domestic Violence[96]. This protocol establishes the obligatory cooperation between the different authorities involved in resolving cases of domestic violence. The authority that first intervenes in the case has the obligation to inform the remaining competent authorities in this field. The police must inform the social services in order to provide the necessary care and support to the victims; the social services and care centres in turn are required to inform the police about any possible criminal acts. This kind of cooperation continues to be applicable when the procedures that the social care centres follow are carried out at the instructions of the police or the public prosecutor. The healthcare institutions keep permanently in contact with the social care centres and the police. All the centres and organisations involved are further obliged to follow the instructions of the police and the Public Prosecutor's Office. As for the judicial authorities, these are required to inform the social care centres and the police about the progress of the case and the state of the proceedings. Moreover, the local and regional authorities have the interinstitutional obligation to cooperate with the NGOs that participate in the victim support programmes, especially for the purpose of exchanging information on their experiences and to identify good practices. At the moment, this protocol is being amended in order to adapt it to the new

[94] http://www.indre-et-loire.pref.gouv.fr/Politiques-Publiques/Droits-des-femmes-et-egalite-entre-femmes-hommes/Prevention-et-lutte-contre-les-violences-faites-aux-femmes (accessed on 20/10/2014).

[95] http://www.justice.gouv.fr/art_pix/protocole_OP_professionnel_2011.pdf (accessed on 20/10/2014).

[96] Available at: http://www.ured-ravnopravnost.hr/site/preuzimanje/dokumenti/nac_strat./protokol_o_postupanju_u_slucaju_nasilja_u_obitelji.pdf (accessed on 20/10/2014, en croata únicamente).

Act on Protection from Domestic Violence from 2009 and the new Criminal Code from 2011. The Protocol on Rules of Procedure in Cases of Violence against Children and the Protocol on Rules of Procedure in Cases of Sexual Violence, adopted on 29 November 2011, also contain certain provisions relating gender violence, even though they are not specifically intended for cases of gender violence[97].

Hungary has adopted a protocol by means of the Police guidelines on domestic violence and their application, which were developed by the National Council on the Prevention of Crime and the Victim Protection Unit in 2007 and 2009[98]. These guidelines regulate the participation of the police when they are required to intervene in a case of domestic violence, as well as the information and assistance there are expected to provide to the victim.

In the case of Luxemburg, no information was found on any general action protocols in the field of gender violence. Nonetheless, according to the information from the questionnaire returned by the national authorities some of the organs that intervene in this area, such as the police and the support services for the victims of gender violence do have internal action protocols.

In Malta, Police Circular 55/07 on the procedure for handling cases of domestic violence established a police action protocol to deal with this kind of cases.

In the Netherlands an Obligatory Reporting Procedure for domestic violence and child abuse was introduced by law on 1 July 2013[99]. The protocol establishes five phases (identification of the symptoms, advice from experts, interviews with the persons affected, assessment of the different alternatives, and decision on the steps to take) which are to be followed by the professionals in healthcare centres, educational centres, day-care centres, social services and centres for juvenile offenders. Each of these has developed a specific protocol for their specific sector. As a result of this legislation, the two main assistance networks in this field have also created their own action pro-

---

[97] *Protocol on the Rules of Procedure in Cases of Sexual Violence*, of 29 November 2011. Available at: http://www.ured-ravnopravnost.hr/site/images/pdf/protokol%20o%20postupanju%20u%20sluaju%20seksualnog%20nasilja_final.pdf (accessed on 20/10/2014, only in Croatian).

[98] *National Police Guidelines on police responsibilities in relation to domestic violence and protection of minors*, 32/2007 (OT 26), http://archive.police.hu/data/cms536519/32_2007_orfk_ut.pdf. *National Police Guidelines on the Implementation of Temporary Preventive Restraining Orders,* 37/2009 (OT 22) http://archive.police.hu/data/cms647433/37_09_orfkut.pdf (accessed on 15/11/2014).

[99] See the Obligatory Notification Procedure regarding Gender Violence: https://zoek.officielebekendmakingen.nl/stb-2013-142.html (accessed on 20/10/2014). This law modifies various existing laws; the procedure concerns all types of violence, not just gender violence.

tocols[100]. It is also important to note that based on these protocols the Support Centres for domestic violence are now authorized to receive and draw up crime reports regarding this kind of violence.

In Poland there are currently two protocols in force. On the one hand, the so-called «Blue Card», a controlled procedure carried out by the police that may constitute important proof in criminal proceedings. Through this procedure the representatives of centres for social welfare, the municipal committees against alcohol abuse, educational centres and healthcare institutions, as well as the police, can take specific measures regarding both victims and the persons suspected of aggression. On the other hand, the Charter on the Rights of persons affected by domestic violence adopted by the Ministry of Justice in collaboration with the National Police and NGOs establishes action procedures for different institutions and organisations.

In Portugal, for the purpose of helping women who cannot return to their homes, the government signed a protocol with the National Association of Portuguese Municipalities establishing a network of supporting municipalities to improve their access to housing.

In Slovenia, the «Rules on restraining orders regarding particular locations or persons» were adopted, which started to be applied by the police at the national level in 2004[101].

In the United Kingdom, lastly, there is a long list of protocols which have been adopted at the national, local and sector level. One of the most relevant for the purpose of this study is the Croydon Protocol, aimed at providing an operational guide for the Criminal Justice Agencies and the organisations appearing before the courts specialized in domestic violence. Mention should also be made of those protocols that provide for cooperation between the Public Prosecutor's Office and specialized units of the police, which establish good practices to be used in relation to the criminal courts[102].

---

[100] See the protocol of the Centre for Advice and Reporting on Domestic Violence and Child Abuse at http://www.vng.nl/files/vng/nieuws_attachments/2014/201470730-am-hk-veilig-thuis-protocol-concept-webversie.pdf. See also the protocol of the Support Centres for Domestic Violence at http://www.ggdkennisnet.nl/?file=13757&m=1373987550&action=file.download (accessed on 20/10/2014).

[101] The source quoted in the report is the reply of the Slovenian governments to the 2010 Survey on gender violence, addressed to the United Nations, which is included in the database of the Secretariat General on domestic violence.

[102] The text of all these protocols can be found on the website of the British Crown Prosecution Service: http://www.cps.gov.uk/Publications/agencies/dv/index.html (accessed on 07/11/2013).

6.3. Action plans against gender violence and similar instruments

Without pretending to be exhaustive, based on the national reports and the questionnaires returned by the national authorities formal action plans on domestic violence and/or gender violence have been identified in various Member States of the European Union. Some of these plans also include action protocols in this field. These plans have been found to exist in BE, BG, CY, EE, ES, FI, LV, PT, RO, SE, SK and UK.

In Belgium, the National Action Plan on combating partner violence and other forms of intrafamily violence 2010-2014[103] focuses on carrying out awareness building campaigns, prevention and victim support, laying particular emphasis on the protection of migrant women. Various protocols established by means of administrative circulars regulate the steps to be followed for the protection of victims of gender violence.

In Bulgaria, according to the replies of the national authorities to the Epogender questionnaire, the State is responsible for the implementation of programmes for the prevention of domestic violence and the support to victims, the selection and training of the persons responsible for providing protection, the cooperation with non-governmental agents and support organisations, the development of a programme for the prevention and protection against domestic violence, and providing assistance to municipalities and NGOs in creating services for the implementation of protection measures.

Cyprus as well has a National Action Plan for preventing and fighting domestic violence.

In Estonia various national action plans have been approved, e.g. the Development Plan for Reducing Violence 2010-2014[104]. In addition, a National Cooperation Network against gender violence has been set up, in which various ministries and specialized organizations participate[105].

Spain has also adopted action plans to fight domestic violence and gender violence. At present, the National Strategy for the Eradication of Violence against Women is being applied, which was adopted on 26 July 2013[106], in the framework of which the «Proposed guidelines for the comprehensive and

---

[103] Information available at: http://igvm-iefh.belgium.be/fr/binaries/101123-PAN%20FR_tcm337-113078.pdf (accessed on 20/10/2014).

[104] Käsper, K.; Meiorg, M. *Human Rights in Estonia 2010, Annual Report of the Estonian Human Rights Centre.* Foundation Estonian Human Rights Centre, 2011, p. 10.

[105] Information available at: http://sgdatabase.unwomen.org/searchDetail.action?measureId=17831&baseHREF=country&baseHREFId=493 (accessed on 20/10/2014).

[106] See the «National Strategy for the Eradication of Violence against Women 2013-2016». Spain. Ministry of Health, Social Services and Equality, 2013. Available at: http://www.msssi.gob.es/ssi/violenciaGenero/EstrategiaNacional/pdf/EstrategiaNacionalCastellano.pdf (accessed on 20/10/2014).

individualized care for women victims of gender violence, their children and other dependent persons» were adopted in 2014[107], which contain instructions on how to adopt personalized measures depending on the circumstances of each case.

As for Finland, information was found on the Action Plan and the recommendations to extend the joint action protocols to all the entities involved in the fight against gender violence[108].

In Latvia National Action Plans have been adopted as well[109]. In 2008, the first National Action Plan on Combating Domestic Violence (2008-2011) was established. However, its effectiveness is not clear as the amount of money allocated was allegedly not enough to put effective measures into practice.

Portugal has adopted a national action plan to implement Resolution 1325 of the UN Security Council, which includes as a special objective to increase the participation of Portuguese women in peacekeeping operations and to guarantee the training of those who work in peace consolidation processes, both with regard to gender equality and gender violence[110].

Romania has adopted an Operational Plan for the application of the 2013-2017 National Strategy on Preventing and Combating Domestic Violence, which aims to reduce family violence, to alleviate the victim's sense of insecurity, to reduce the risk of recurrence and to facilitate the social reintegration of persons who have committed crimes of domestic violence. Moreover, the Strategy will also promote cross-sectoral cooperation, including partnerships with civil society and the private sector[111].

In Sweden, the government in 2012 designated a National Coordinator for Domestic Violence in order to bring together and give support to the authorities, municipalities, county councils and relevant organisations to increase the effectiveness, quality and sustainability of the action against violence in intimate relationships. In addition, the government is adopting measures to prevent and fight sexual violence, for example by creating a unit at the Centre for Andrology and Sexual Medicine to treat persons who commit, or at prone to commit sexual violence. The National Police Board is

---

[107] Available at: https://www.msssi.gob.es/ssi/violenciaGenero/Documentacion/medidas-Planes/DOC/Punto5PropuestaPAI.pdf (accessed on 20/10/2014).

[108] Finland. Ministry of Social Affairs and Health (2010): *Action Plan to Reduce Violence against Women*. Publications of the Ministry of Social Affairs and Health, No. 15.

[109] WAVE Country Report on Violence against migrant and minority women – 2010.

[110] With regard to Portugal, see: http://www.unwomen.org/es/what-we-do/ending-violence-against-women/take-action/commit/government-commitments#P (accessed on 20/10/2014).

[111] With regard to Romania, see: http://www.unwomen.org/es/what-we-do/ending-violence-against-women/take-action/commit/government-commitments#R (accessed on 20/10/2014).

conducting an information campaign on intimate partner violence and honour crimes and the National Centre for Knowledge on Men's Violence Against Women (Uppsala University) has been tasked with developing a national telephone support line to assure the quality of the support it provides and to reach out to more women who are subjected to threats, violence and/or sexual abuse[112].

In the case of Slovakia, a National Action Plan 2013-2015 has been adopted, although we have not been able to access the document.

In the United Kingdom, since 2011 the Home Office has elaborated and published various national Action Plans as part of the strategy «Ending Violence against Women and Girls in the UK, of which the latest version dates from 3 April 2013[113].

TABLE 8
Action instruments against domestic violence and gender violence in the EU Member States

MS	Protocols	Plans and other instruments	No information available
AT			X
BE	X	X	
BG		X	
CY	X	X	
CZ			X
DE			X
EE		X	
EL			X
ES	X	X	
FI	X	X	
FR	X		
HR	X		
HU	X		
IT			X
LT			X

[112] With regard to Sweden, see: http://www.unwomen.org/es/what-we-do/ending-violence-against-women/take-action/commit/government-commitments#S (accessed on 20/10/2014).

[113] The Action Plan of the United Kingdom is available at: https://www.gov.uk/government/publications/ending-violence-against-women-and-girls-action-plan-2013 (accessed on 07/11/2013).

MS	Protocols	Plans and other instruments	No information available
LU	X		
LV		X	
MT	X		
NL	X		
PL	X		
PT	X	X	
RO		X	
SE		X	
SI	X		
SK		X	
UK	X	X	

SOURCE: Elaborated by Epogender.

CHAPTER III

TRANSPOSITION OF DIRECTIVE 2011/99/EU

1. CURRENT STATE OF TRANSPOSITION OF DIRECTIVE 2011/99/EU*

Pursuant to article 21 of Directive 2011/99/EU, the latter must be transposed by 11 January 2015. As of November 2014, no Member State has transposed the Directive[1]. On different occasions, the national authorities have emphasized that the deadline for the transposition was on 11 January 2015, which implies that in many of the examined cases, the States wait until the last moment to effectively implement the Directive. It should be noted that the results presented in this work are based on the responses provided by the national authorities to the questionnaire sent by the Epogender team.

Despite this lack of transposition, as of today, several States (BE, BG, EL, ES, FR, HR, LU, NL, SE and UK) indicate that the transposition is in process: some of them are still drafting the bill, others only have a preliminary draft, while in some other countries, a bill is being discussed before in Parliament. Without being exhaustive, the following paragraphs describe the status of the transposition in the different Member States.

Thus, in Belgium, a bill that has not yet been ratified by the Government is being drafted. Bulgaria created an experts working group within the Ministry of Justice to find the best way to transpose the Directive[2]. Croatia intends to transpose the Directive in the Act on judicial cooperation in criminal matters with the Member States of the European Union, whose scope is to establish the mechanisms of judicial cooperation in criminal matters between the national competent judicial authorities and the other EU Member States' competent judicial authorities. As for Greece, it has a preliminary draft approved by the Government that has not yet been transferred to the Parliament. In France, the transposition act is being drafted and should be ap-

* By Teresa Freixes, Professor in Constitutional Law, UAB and Jean Monnet Chair.

[1] It should be noted however that some States, such as CY, HU, IT and MT have not provided information in this respect.

[2] The Bulgarian experience is presented as an example in the following section of this report.

proved shortly[3]. Luxembourg intends to adopt a unique legal instrument to transpose both Directive 2011/99/EU and Regulation 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters. Sweden plans to adopt the transposition act before the end of 2014. Finally, the United Kingdom briefly indicates that the Directive will be transposed before the deadline.

It should be noted that two Member States already have bills[4]. In Spain the transposition of the Directive is done through the draft Act on mutual recognition in criminal matters, currently being processed before the Senate[5]; upon modification by the Government to adapt it to the Council of State's opinion, the Netherlands transferred the bill to Parliament (see both bills in the Annex)[6].

Most of the Member States do not clearly indicate whether they will transpose the Directive through a single instrument or by modifying the existing legislation; only BG, NL, SE and SK indicate that they will create a specific instrument for this purpose. Nevertheless, the analysis of the national reports shows that most of the States will need to amend their legislation insofar as almost all of them already have some regulations on this matter that must be adapted to the European Directive.

Concerning the competent authorities to issue an EPO and in relation with article 3 of Directive 2011/99/EU, hardly any of the Member States have decided which will be such authority, as they have not yet transposed the Directive. Five States (BE, CY, ES, PT and SE) indicate that the authorities competent to adopt protection measures will assume this role, even though no definitive decision has been adopted yet. In Sweden, the Public Prosecutor's Office will be the competent authority[7].

Finland created a working group in charge of transposing the Directive. Even though it has not yet been legally established, the transposition bill foresees that districts courts would have a competence to issue European protection orders. A European protection order could be issued by the court

---

[3] The national authority indicated that the bill should be transmitted and voted during the fall 2014.

[4] Both bills are reproduced and translated in the annexes.

[5] This draft Act transposes the content of the Directive in its Title IV «European Protection Order» (arts. 130 to 142). The bill is available at the following address: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-86-1.PDF#page=1 (last consulted on 20/10/2014).

[6] The bill implementing the Directive is the following: «Implementation of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order (*OJEU* L 338)». This Act will modify the Code of Criminal Procedure.

[7] http://www.regeringen.se/content/1/c6/23/19/52/0538ee92.pdf (last consulted on 20/10/2014).

that has imposed a restraining order determined in the Act on Restraining Orders or that would have a competence for imposing a restraining order. In addition, the Court of Appeals would have a competence for issuing European protection orders.

In Estonia, the competent authority to issue an EPO will be the tribunal closest to the victim's place of residence.

In Spain and pursuant to article 131.1 of the draft Act on mutual recognition in criminal matters in the European Union, the competent authorities to issue and transmit an EPO are the judges and tribunals that heard the case where the protection measure was adopted.

There is no information available regarding EL, IT, LV, MT and the UK.

Concerning the competent authorities to enforce an EPO and in relation with article 3 of the Directive, in the same way as before, almost no Member State has decided this aspect due to the lack of transposition of the Directive.

Some States, such as Belgium and Cyprus indicate that even though they have not adopted a definitive decision in this regard, the competent authorities should be the same as those that currently have the competence to do so.

In Estonia, the competent authority to execute an EPO should be the tribunal closest to the place of residence of the victim.

In Spain, according to article 131(2) of the draft Act on mutual recognition in criminal matters within the European Union, the competent authorities to recognize and execute an EPO are the examining magistrates or the courts dealing with violence against women where the victim resides or intends to reside. Nonetheless, it also provides that in case of issuance of decisions granting conditional release or alternatives measures to custody, the competent authority shall be the one that already recognized and enforced such decisions.

Even though Finland has not yet decided it, its criminal legislation provides that if one does not comply with a protection order, a court may convict him or her to a custodial sentence of up to one year; the bill implementing the Directive suggests that this clause could apply to European protection orders too.

In the Netherlands, article 5(4)(4) of the bill provides that the Public Prosecutor's Office should be the authority competent to execute European protection orders. There is no information available regarding EL, IT, LV, MT and the UK.

Finally, concerning the existence of a central authority in charge of coordinating protection orders matters and assisting the competent authorities as provided by article 4 of Directive 2011/99/EU, almost no Member State has established this yet due to the lack of transposition of the Directive.

Estonia says that the central authority in charge of coordinating all the matters relating to the EPO and of supporting the competent authorities will be the Ministry of Justice.

In the Spanish case and in accordance with its draft Act on the mutual recognition of criminal decisions within the European Union, the Ministry of Justice will be the central authority in charge of assisting the judicial authorities.

Although Finland has not definitively decided it, it indicates that the Ministry of Justice will assist the judicial authorities in these aspects. It seems the Public Prosecutor's Office will assume this role in the Netherlands.

There is no information available regarding EL, IT, LV, MT and the UK.

The fact that no Member State has currently transposed Directive 2011/99/EU indicates that, generally speaking, they transpose directives at the last moment and do not implement them in a systematic manner by repealing the incompatible legislation and creating clear and specific rules. Conversely, in most States legislation is partially modified, which may in turn hinder legislative clarity. This late transposition may be interpreted in several ways: as a lack of interest, a lack of capacity or the consequence of the technical complexity of Directive 2011/99/EU, especially if one also takes into account the existence of Regulation 606/2013 on mutual recognition of protection measures in civil matters, which will be applicable starting from 11 January 2015.

Moreover, due to the lack of clarity regarding the authorities competent to issue and execute European protection orders, this late transposition may be problematic at the practical level insofar as the mechanisms of judicial cooperation cannot be identified or implemented, which could in turn postpone the effective application of the Directive.

2. THE EUROPEAN PROTECTION ORDER AND MECHANISMS FOR ITS TRANSPOSITION IN THE BULGARIAN LEGISLATION*

2.1. Introduction

On 13 December 2011, the European Parliament adopted Directive 2011/99/EU on the European protection order (EPO). Bulgaria is one of the 12 countries which took the initiative for its adoption. The Directive is part of the legal instruments through which guarantees are provided to protect the rights of victims of crime in accordance with the Stockholm Programme — «An open and secure Europe serving and protecting the citizens»[8]. It applies

* By Atanas Atanasov, Emil Dechev and Svetla Margaritova Voutchkova. Atanas Atanasov and Emil Dechev are judges at the Sofia City Court. Assoc. Prof. Dr. Svetla Margaritova Voutchkova is Professor of Criminology and «Legal protection under the European Convention on Human Rights» at the Burgas Free University, Chairman of the Foundation «Bulgarian Lawyers for Human Rights» and the Bulgarian Association of Criminology.

[8] *OJ* C 115, 4.5.2010, p. 1. For its implementation the Minimum standards on the rights, support and protection of victims of crimes were adopted under Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012. The Directive replaced Framework Decision 2001/220/JHA Council - *OJ*, L. 315, 14.11.2012, p. 57.

to protection measures taken in criminal matters and does not include measures to protect witnesses and measures in civil matters[9]. Although it aims at protecting all victims of crime, not just victims of gender-based violence, the Preamble of the Directive explicitly invokes several European Parliament resolutions on combating all forms of violence against women and the need for the use of preventive measures to restrict it[10]. Particular emphasis is placed on the protection of vulnerable groups such as minors and persons with disabilities[11].

The adopted Directive concerns the mutual recognition by Member States of decisions regarding measures to protect a person against a criminal act of another person. It sets out the basic rules and conditions under which the existence of protection stemming from a protection measure adopted under the law of a State («the issuing State») can be extended to other state («executing State»), in which the endangered person intends to reside or stay. According to article 21 the Directive must be transposed in the national legislations of the Member States by 11 January 2015. The Commission shall be immediately notified of the transposition. One year later, the Commission is obliged to submit a report to the European Parliament and the Council on the application of the Directive by the individual states, which will be based on information submitted by them about the national procedures applied concerning EPO, including data on the number of requested, issued and recognized protection orders.

This article seeks to present the views of the authors on the necessary legislative changes for its transposition in the national legislation and their opinion regarding a Bill on the Recognition and Enforcement of the European protection order.

2.2. Necessary steps to transpose the Directive in national law

The authors of this article argue that the effective transposition and execution of the basic objectives of the Directive will require the introduction of certain amendments to the Bulgarian Code of Criminal Procedure and the Penal Code on the one hand, and to adopt a special law for the issuance and execution of European protection orders on the other. Transposition cannot

[9] The rules concerning the creation of a simpler and faster mechanism for the recognition of measures for protection laid down in civil matters are covered by Regulation (EU) no. 606/2013 of the European Parliament of 12 June 2013 - *OJ* L 181, 29.6.2013.

[10] European Parliament resolution of 26 November 2009 on the elimination of violence against women and its resolution of 10 February 2010 on equality between women and men in the European Union - 2009, which approved the proposal to introduce the European protection order for victims (see point 4 of the Preamble to the Directive).

[11] See point 15 of the Preamble to the Directive.

be done by amending the Law on Protection against Domestic Violence to meet the objectives of Directive 2011/99/EU.

2.2.1. *Changes in the Code of Criminal Procedure*

The analysis of the conditions under which an EPO may be requested, shows that a prerequisite is the decision of a national authority imposing protection measures. The proceedings for establishing the protective measures should follow the rules of the Code of Criminal Procedure because the objective of the Directive is to protect individuals from different criminal acts.

With regard to their nature, they can be classified as coercive measures when they are used in the course of ongoing criminal proceedings. A review of the measures regulated under articles 67-71 of the Code of Criminal Procedure shows that in the current procedural law only the measure referred to in article 5(c) of the Directive is included. This gap could be filled by amending article 67 of this Code by including the other measures provided for in article 5(a) and (b) of the Directive.

In Chapter VII, Section II of the Code of Criminal Procedure, «Remand and other coercive measures», the legislator expressly states that remand measures apply to persons who have committed criminal offences of a general character (The Bulgarian Penal Code distinguishes between crimes of a general nature and crimes of a private nature. All crimes for which the prosecutor is obliged to open preliminary investigation are crimes of a general nature. All crimes for which only the victim has the right to submit a complaint and on the basis of which criminal proceedings will be instituted at the court of first instance without pre-trial proceedings are crimes of a private nature). The types of measures are set out in detail in article 58 and in article 66 (the consequences of non-compliance). Concerning the other coercive measures under article 68 and article 69 there are explicit regulations that are applicable to defendants for crimes of a general nature. Therefore, based on an *argumentum a contrario* it could be concluded that the measure «prohibition to approach the victim» stipulated in article 67 is relevant and applicable to both types of crimes, those of general and private nature. Here a problem arises, however, as there is no tradition in the case law to apply this kind of measures to crimes of a private nature. Therefore, to avoid discussions and doubts, and so as not to create controversial case law, it should be expressly specified that these protection measures apply during ongoing criminal proceedings to both crimes of general and private character. Another reason could be the wide range of antisocial acts regarding which protection measures should be adopted as contained in point 9 of the Preamble to the Directive, in which it is noted that they «expressly aim the protection of a person

from criminal conduct of another person who may in any way endanger the life or physical, psychological and sexual inviolability, e.g. by preventing any form of harassment, as well as the dignity and liberty of the person, for example by preventing kidnapping, stalking and other forms of indirect coercion».

A review of the legal provisions about different types of crimes in the Special Part of the Criminal Code indicates that it includes a wide range of socially dangerous acts, mostly in Chapter II[12], as well as some crimes of Chapter III[13] and IV[14]. For a large part of them criminal prosecution can be initiated only by the victim[15]. If in case of complaints regarding such crimes it would not be possible to implement protection measures, the scope of the Directive would be unduly limited, which would be contrary to its purpose. Therefore, the protective measures must be applied to all categories of criminal cases, to both crimes of a general and a private nature.

The current legislation is characterized by the absence of any sanction mechanism that ensures the implementation of the ban on approaching the victim under article 67 of the CCP when the defendant violates that prohibition. In the above legal regulation, in its current version, the consequences of a failure to impose a protection measure are not laid down, unlike breaches of remand measures such as bail, house arrest and remand in custody. The lack of rules governing the imposition of sanctions for a person's failure to comply with the measure would make it doomed to fail. In this regard, it would be appropriate that the transposition in the national legislation of the other two protection measures mentioned in article 5(a) and (b) of the Directive (ban on visiting the places and areas where the protected person resides and a ban on contact with the protected person) were accompanied by an adjustment of these sanctioning mechanisms — either through an amendment of the provisions of article 66 of the CCP[16] by establishing that the legal

---

[12] Article 115-130, 143, 144, 146, 147, 148.149 to 157, 159a-159c.

[13] Article 170 for example.

[14] Article 181, 187-193.

[15] Article 161. (1) (amend. – Official Journal (*OJ*) 28 of 1982, suppl., *OJ* 89 of 1986, amend., *OJ* 50 of 1995, SG. 21 of 2000 previous text of article 161, iss. 92 in 2002, amend., *OJ* 26 of 2004) for light bodily injury under articles 130 and 131, para. 1, paragraphs 3-5, light and moderate injury of article 132 crimes under article 144, para. 1, article 145, articles 146 - 148a, and injury under articles 129, 132, 133 and 134 caused to the ascendant, descendant, husband, brother or sister, prosecution is initiated by a complaint of the victim.

(2) (New - *OJ* 92 of 2002) For offenses under article 133, article 135, para. 1, 3 and 4 and articles 139-141 prosecution of a general nature shall be initiated by a complaint of the victim to the prosecution office and may be terminated at his request.

See also article 170, para. 1 and para. 4 in conjunction with article 175, para. 1.

[16] This rule regulates the consequences of non-compliance associated with the measures of remand.

grounds for aggravating the remand measure include the breach of the imposed protection measure, or by supplementing article 296(1) of the Criminal Code so as to criminalize the violation of the protection measure imposed during criminal proceedings or imposed after recognition and acceptance of an EPO issued in another EU Member State.

Except by effective sanctioning mechanisms, triggered in case of infringement of the imposed protective measures, the transposition of Directive 2011/99/EU should be accompanied by rules on the jurisdiction and powers of the authorities which have to supervise the implementation of these measures. At present, the current legislation does not contain rules on these aspects of the execution of the prohibition under article 67 of the Code of Criminal Procedure. This also presupposes an ineffective protection of the protected person as far as no mechanism is provided to establish the infringement of the imposed protection measure by the accused, nor to exercise state coercion in due time so as to prevent his behaviour from causing irreparable damage to the protected person. We see two possible solutions: one is to provide competences to the probation services to implement and supervise compliance with the prohibitions resulting from the imposed protective measures as far as some of the probation measures are similar to the measures provided in article 5 of Directive 2011/99/EU. Another possible solution is to adopt the mechanism set out in article 21 of the Law on Protection against Domestic Violence, according to which the police authorities have to monitor the implementation of protection measures, as they are also competent to assist the protected person in case of non-compliance by the accused of the prohibition to reside in the places where the protected person resides or which she/he visits, and obliged to arrest the offender and notify the Public Prosecutor's Office when it has established a breach of the protection order.

2.2.2. *Changes in the Criminal Code*

As far as article 5 of the Directive sets out in detail the types of protection measures for which the issuance of EPO may be requested, the possibility and the need should be considered to extend the scope of the restrictive measures included in the punishment «Probation». This is necessary since the coercive measures are only applicable until the completion of the criminal proceedings. After the entry into force of the sentence their action is suspended by the imposition of the criminal sanction. In cases where the execution of the imposed sentence of imprisonment is suspended under article 66 of the Criminal Code or the court decides on probation as punishment, it cannot go beyond article 42a of the Criminal Code, which specifies in detail the types of probation measures. Among these probation measures there is some similarity between the

one in point 3 («restrictions on the freedom of movement») to the measure of article 5(a) of the Directive, which is much more specific, though. The other two measures – the prohibition or regulation on approaching the protected person closer than a prescribed distance and the prohibition or regulation of contact in any form[17] – do not appear in article 42a of the Criminal Code and therefore cannot be applied by the Bulgarian courts. This creates obstacles of a legislative nature for the effective transposition of the Directive. Therefore the provision of article 42a of the Criminal Code should be amended in order to include all the measures listed in article 5 of the Directive. At the same time, article 296(1) of the Criminal Code should also provide for the punishment «Probation» along with imprisonment and a fine.

2.2.3. *Adoption of the Law on the European protection order*

The legislative practice of recent years has confirmed the trend of transposing Framework Decisions and Directives of the European Union in the field of criminal law by special laws in which the specific procedures for recognition and issuance of the relevant decisions are laid down[18]. Perhaps at some point in the future it may become necessary to recodify and unify to a certain extent of this rapidly growing new legislation. At present, however, the option to adopt a special law seems the quickest and most feasible taking into consideration the shortage of time.

The structure of that law shall follow, to a great extent, the structure of the Directive itself – general provisions (objective, definitions); competent authorities to issue and to recognize a European protection order; preconditions, procedure, grounds for non-recognition and for discontinuation of execution, etc.

Regarding the competent authority to recognise and issue European protection orders, we would like to point out some arguments related to the possible competences to be given to various institutions.

According to the Bulgarian legislative tradition and the ban promulgated by the Constitution to create out-of-court jurisdictions, we think there will be no discussion about giving the competence to recognize and execute European protection orders exclusively to the courts, especially to the criminal

[17] In fact the last of these measures is not regulated in the Law on Protection against Domestic Violence either.

[18] See the Law on Extradition and European Arrest Warrant; Law on recognition, execution and transmission judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions; Law on recognition, execution and transmission confiscation or forfeiture and decisions imposing financial penalties; Law on recognition, execution and delivery of instruments for freezing property or evidence.

courts. Regarding the issuing of European protection orders, it should be considered whether in all cases courts need to be entrusted with this competence or whether in certain cases public prosecutors might be left in charge of issuing them. Another question subject to discussion is whether the material competence to issue and recognize European protection orders should be limited to the same courts. There are two different approaches to regulation of these matters. The first one is to determine the courts competent to both issue and to recognize European protection orders for measures issued in another EU Member State and to specify which cases will be tried by district courts and which by regional courts. The other possible approach is to distinguish jurisdictions not only depending on whether a European protection order will be issued or recognized but also depending on whether the protection measures are imposed in the context of ongoing criminal proceedings or together with a final decision regarding conviction.

A comparative analysis of some of the above-mentioned laws for transposition of different EU framework decisions and directives shows that according to the Bulgarian legislation not only courts are competent to issue and to recognize mutual recognition instruments. Differences in the competence of courts and public prosecutors offices exist depending on whether a judgment issued in other EU Member State must be recognized and executed in Bulgaria or whether a judicial decision rendered by Bulgarian authorities has to be implemented elsewhere in the EU. In the first case the legislative approach is common – always competent to recognize a judgment from other EU Member State is the regional court in whose jurisdiction the requested person finds him/herself (in case of execution of a European arrest warrant) or where the convicted or affected person is residing (in case of execution of probation decisions or confiscation orders). Only when the place of residence of the affected person is unknown the Sofia City Court is competent.

Regarding the issuance in Bulgaria of judicial decisions subject to recognition and execution in another EU Member State there are differing solutions. According to the Law on Extradition and the European Arrest Warrant a public prosecutor is competent to issue an arrest warrant with a view to the arrest and surrender of a requested person who is sought for an ongoing investigation or who is convicted to imprisonment; on the other hand, the courts issue European arrest warrants against accused persons for trying them. The approach used by the Law on Recognition, Execution and Issuing of Orders Freezing Property or Evidence is similar. It attributes competence to the respective Court of First Instance to issue orders freezing property at the request of the public prosecutor and at the request of any of the parties in cases for securing evidence. According to the other two laws for mutual recognition – the Law on Recognition, Execution and Transmission of Judgments and Probation Decisions with a view to the Supervision of Probation Mea-

sures and Alternative Sanctions and the Law on Recognition, Execution and Transmission of Confiscation Orders and Decisions Imposing Financial Penalties, the Court of First Instance is competent to issue decisions regarding probationary measures and confiscation orders. A comparison between the legislative approaches used in the above-mentioned laws is made in the table below:

TABLE 9
Methodology of instruments for mutual recognition in Bulgaria

Law	Competent authority to recognize	Competent authority to issue/transmit
European arrest warrants	The regional court in whose territorial jurisdiction the requested person finds him/herself – Art. 38	1. The respective public prosecutor – regarding defendants in pre-trial procedures or regarding persons convicted to imprisonment 2. The respective trial court – regarding an accused – Art. 56
Probationary measures	The regional court in whose territorial jurisdiction the sentenced person resides – Art. 8 (1) The Sofia City Court – when the residence of the sentenced person is unknown – Art. 8 (2)	The court that rendered the sentence – Art. 9
Confiscation orders	The regional court in whose territorial jurisdiction the sentenced person resides – Art. 15 (1) The Sofia City Court – when the residence of the sentenced person is unknown – Art. 15 (5)	The court that rendered the sentence – Art.7 (1)
Freezing assets evidence	The Sofia City Court – Art. 6	The respective first-instance court at the request of: 1. The public prosecutor for freezing property – Art. 19 (1.1) 2. The public prosecutor, the defendant, the victim, the private prosecutor, the private complainant for securing evidence – Art. 19 (1.2)

SOURCE: Elaborated by Epogender.

Our opinion is that it would be appropriate that the public prosecutor were to be entrusted by the relevant law to issue European protection orders during the pre-trial phase of criminal proceedings as he/she will be involved

in requests for imposing protection measures. In cases where such measures are imposed during a trial, the court should issue the European protection order as before that court the relevant evidence justifying the need for protection will be presented.

Regarding guarantees of the rights of the person causing danger on whom prohibitions and restrictions may be imposed and against whom a European protection order may be issued, he/she should be heard either during the procedure regarding the imposition of protection measures or during the procedure regarding the issuing of the order. Otherwise his/her right to a fair trial as protected under article 6 of the European Convention on Human Rights would be jeopardized. In any case, the competent authority must consider the interests of the protected person and not disclose her/his address or other contact details unless that information is included in the content of the order imposing the protection measures.

2.3. The participation of the Bulgarian team in the Epogender project regarding the transposition of the Directive 2011/99/EU

In June 2014, the members of the Bulgarian team of the project sent a letter to the Directorate International Legal Cooperation and European Affairs of the Ministry of Justice. In the letter the activities of the Epogender project were presented and the Ministry of Justice was asked to inform the Bulgarian Judges Association whether the activities for transposition of the Directive 2011/99/EU had started, and if so, what the status of these activities was. In the same letter on behalf of the Bulgarian Judges Association a readiness was expressed to participate in the working group that responsible for elaborating the legislative amendments needed for the transposition of the Directive.

On 1 July 2014, the Bulgarian Judges Association received a letter in which an expert from the Ministry of Justice informed them a working group on the implementation of Directive 2011/99/EU was being set up at the Ministry and that the association was invited to participate in the activities of the working group.

The president of the managing board of the Bulgarian Judges Association informed the Minister of Justice that judges Emil Dechev and Atanas Atanasov were appointed to represent the organization in the working group.

On 10 July 2014, the Minister of Justice issued a decree for the creation of a working group at the Ministry responsible for analyzing the conformity of the current Bulgarian legislation with the provisions of Directive 2011/99/EU and to elaborate proposals for necessary legislative amendments due to the implementation of the Directive. The members of the working group in-

clude a judge from the Supreme Court of Cassation, a prosecutor from the Supreme Public Prosecutors Office, officials from the directorates of International Legal Assistance in Criminal Matters and Legislative Drafting at the Ministry of Justice.

On 21 July 2014, judges Emil Dechev and Atanas Atanasov, on behalf of the Bulgarian Judges Association, presented to the other members of the working group a statement in which they expressed their opinion that the best approach would be to merge in one common law all special national legal acts regulating proceedings for mutual recognition of judicial decisions within the EU. Considering there is not enough time to elaborate such a code before the deadline established for the implementation of Directive 2011/99/EU, judges Dechev and Atanasov proposed the working group to prepare a draft for a separate Law on Recognition, Execution and Issuing of European Protection Orders. In that statement the view was also expressed that for a proper implementation of the Directive the existing Bulgarian legislation needs to be amended, especially by including in the Code of Criminal Procedure the three protection measures provided by article 5 of Directive 2011/99/EU, as at present only a prohibition to approach the victim is included in this Code.

On 12 September 2014, a meeting of the working group was held, during which the members of the group agreed with the proposal of the judges Emil Dechev and Atanas Atanasov to elaborate a draft for a particular law on recognition, execution and issuing of European protection orders and their proposals for amending the Code of Criminal Procedure with a view to the implementation of the protection measures indicated in article 5 of Directive 2011/99/EU.

On 17 October 2014, the members of the working group received a draft of the Law on Recognition, Execution and Issuing of European protection orders. On behalf of the Deputy-Minister of Justice a term for recommendations was set until 27 October 2014. Within this term the members of the Bulgarian team of the Epogender project Svetla Margaritova, Emil Dechev and Atanas Atanasov presented another statement containing some critical remarks regarding the draft based on the arguments set out in this article.

CHAPTER IV

INDICATORS FOR THE TRANSPOSITION OF DIRECTIVE 2011/99/EU*

1. PRESENTATION

The indicators' objective is to present criteria to the Member States to correctly transpose Directive 2011/99/EU on the European Protection Order. A variety of elements were used to elaborate them: not only the analysis of the comparative study of the country reports, and in particular, the conclusions drawn from this analysis, but also the contributions of the different professionals who have participated in the Epogender project through workshops and seminars, or via direct consultations.

The indicators are grouped together depending on the items that were established in the questionnaire sent to the national authorities and that, in our view, reflect the main issues that the Directive must address. We also include recommendations that cannot properly be considered as indicators on the transposition of the Directive insofar as they refer to aspects which are not foreseen in this European instrument. We consider that these aspects are important and act as indicators with regard to possible tools to fight gender violence. Without strictly speaking affecting the objectives of the Directive, we consider that they could be taken into consideration in the measures adopted by the Member States bound by the Directive in the interpretation of its objectives. This is why they were included in this document.

2. PROTECTION MEASURES AVAILABLE FOR GENDER VIOLENCE VICTIMS

Member States should check their legislation on the protection measures for victims of gender violence in order to guarantee that their legal orders include, at least, the three measures included in the Directive, namely: the prohibition on approaching the protected person closer than a prescribed distance; the prohibition of contact, in any form, with the protected person, in-

* By Epogender team.

cluding by phone, electronic or postal mail, fax or any other means; and the prohibition from entering certain localities, places or defined areas where the protected person resides or visits frequently. Even though the Directive does not oblige the Member States to modify their internal legislation but rather to provide an equivalent protection by adopting the necessary protection measures already foreseen in their legal systems, the substantial inclusion of these three measures will contribute to facilitate the enforcement of the European protection order throughout the European Union territory, and consequently, to provide the necessary protection to the persons that were awarded such protection by a tribunal.

Member States should take into account the diversity of the nature and purpose of the protection measures at the moment of the transposition of the Directive.

Civil protection measures set aside, as they do not fall within the scope of application of the Directive, Member States should distinguish between short-term measures, i.e. the barring orders imposed by the Police and other equivalent measures, and the other measures that may be imposed by the judge as precautionary measures during the criminal trial or as a part of a conviction. The necessity to establish this distinction derives from the fact that the measures adopted by the Police and other equivalent measures are imposed in order to immediately protect the victim in a moment of crisis with the utmost emergency, and they often are of a very short duration so that their application within the framework of the European protection order is limited. Conversely, the other measures combine the objectives of protecting the victim and ensuring the proper functioning of the judicial proceedings or enforcing the penalty that put an end to the trial and whose duration is generally much longer. However, the possibility that these barring orders or equivalent measures may be confirmed and extended by judges should be taken into consideration, thus transforming them into precautionary measures that could indeed fall within the scope of the Directive.

Member States should regulate the three protection measures included in the Directive in at least two respects: with regard to criminal precautionary measures, i.e. as protection measures taking place during the criminal proceedings, and with regard to criminal sanctions, be it as the main penalty, as alternative penalty, or a rule of conduct in granting conditional release.

The Directive itself explicitly mentions both aspects when it refers to the Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation deci-

sions with a view to the supervision of probation measures and alternative sanction and to the Council Framework Decision 2009/829/JHA of 23 October 2009 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. We consider that the cases where precautionary measures and criminal sanctions are adopted are the most important ones to ensure the criminal protection of victims through a protection order. In this regard, protection orders adopted as precautionary measures should be regulated insofar as the beginning of the preliminary proceedings may constitute an indicator of the gravity of the acts suffered by the victim and the risk of reoffending. It is thus recommended to introduce protection measures in the field of criminal sanctions too, be it when the sanction imposed consists of community service or of imprisonment in which case the protection of the victim must be dealt with during furloughs or when the convicted person is granted parole; in this way the exercise of the rights of the convicted person and the safety of the victim are reconciled.

The Member States which do not provide any of the three protection measures included in the Directive should clearly indicate the possibility of adopting an equivalent protection measure to that imposed in the issuing State in their transposition instrument.

The State must take into account that this objective of the Directive, as established in its article 9(2), refers both to the nature of the protection measure and to the procedural context in which it is adopted. That is, according to the wording of the Directive, if the executing State does not offer a protection measure of the same nature as that of the issuing State, the former shall apply the mechanisms foreseen in its legal order to ensure the application of one of the other protection measures that do exist in its legislation. In the same way, if a protection measure was ordered as a precautionary measure and must be enforced in a Member State that considers this measure only in the area of criminal sanctions, it will have to offer the same mechanisms of protection to the protected person as those offered to national victims when such a measure applies to them in the area of criminal sanctions. Ultimately, the Directive pursues the objective of providing the victim with the same level of protection in the issuing and executing States.

Member States should align the protection measures' duration.

The duration of the measures is longer when they are adopted as precautionary measures or as criminal sanctions than when they are imposed by police officers as an immediate response to a situation of risk (barring or-

ders). Nonetheless, even in the case of precautionary measures or criminal sanctions, the existing differences between the Member States regarding the duration of the protection measures may lead to a differential treatment of the victims when they move to another Member State. A more homogeneous duration would contribute to guarantee a more balanced protection throughout the European Union.

Member States should establish a mechanism allowing the victim to request protection in more than one Member State, be it successively or simultaneously.

The different approaches to the EPO's application may lead to very diverse results, but it seems that one of the most useful cases is that of victims residing in a cross-border territory who frequently move from one to one or more Member States for work, family or any other purpose. Hence we consider that the establishment of procedures simplifying the request of simultaneous or successive protection orders is advisable in such cases.

3. PROCEDURE FOR THE ADOPTION AND ENFORCEMENT OF THE EUROPEAN PROTECTION ORDER

The European legislator opted in favour of an open and flexible regulation of the EPO in order to facilitate the transposition of the Directive and ensure the efficient protection of victims. Directive 2011/99/EU establishes some minimal guidelines on the procedures for the adoption and enforcement of an EPO – for example relating to the capacity to request an EPO or the form necessary for its adoption – but it also lets the States define the procedure in accordance with their internal legislation, so that the issuing and executing States will be able to use their own procedural mechanisms without having to modify them. Nevertheless, this flexibility may also entail practical application problems that might affect the effectiveness of the Directive on questions such as to whom the EPO should be addressed or the terms of adoption of such measures.

Member States should adequately inform the victim on the possibility to request an EPO when she intends to move to another Member State. They should notify them that she will be the only person who may request it, in particular when the protection measures are not granted upon the victim's request.

Most of the national legal systems allow various persons and organs to request the adoption of protection measures so that the request does not ex-

clusively depend on the victim; this situation contradicts the wording of the Directive, as only the victim is allowed to request an EPO. That is why the victim should be informed in a clear and exhaustive manner on the possibility to request an EPO; the victim should understand that she is the only party that may request it, even though the protection measures on the basis of which the EPO is requested were requested by another authorized subject and not directly by the victim.

Member States should provide for the accumulation or grouping of the EPOs of the different members of the same family in order to avoid procedural duplicity and guarantee the principle of procedural economy.

The protection measures and the European protection orders are granted individually for the person in need of protection; nevertheless, there are cases where various persons are being protected from the same person causing danger who form part of the same nuclear family and who are moving together to another State. The grouping or accumulation of EPOs would avoid, for example, a time lag in granting and executing the EPO; it would allow the same competent authority to adopt the different orders and would allow to keep one single record that would provide a general overview of the situation of risk.

Member States should recognize the EPO immediately in order to ensure the effectiveness of the protection measures, especially those of short duration.

Even though the Directive provides that the executing State must recognize the EPO and take a decision adopting the protection measures «without undue delay», the absence of any determined deadline could lead to difficulties regarding the application of protection measures of short duration. If we recommended a determined deadline, however short, it might be unfeasible from a practical standpoint or even counterproductive. We understand that the States should respect the spirit of the Directive, which aims at providing protection to the victim as quickly as possible, in an immediate manner.

Member States should create an EPO request form for victims.

Although the annex of the Directive creates a model of European protection order, it leaves the elaboration of a request form in the hands of the Member States. The States should prepare a form that would be as homogeneous as possible among them and ensure its presence in the relevant centres, thus facilitating the procedure to request an EPO.

Member States should review their mechanisms for appealing the judicial decisions and other equivalent decisions by establishing legal remedies against decisions to reject EPO requests by the issuing State or against any decision adopted in the executing State in relation to a European protection order.

Most Member States provide for legal remedies against the decisions made on the protection measures, so that these should be used to appeal any decisions on the issuing of an EPO or the protection measures adopted to execute an EPO. In the event that they do not exist, it will be necessary to create them to comply with the objectives of the Directive.

Member States should create mechanisms to provide information to victims on the legal remedies available in their internal legislation.

If the victim requests an EPO because she considers that the situation of risk on the basis of which specific protection measures were adopted continues to exist, she should have access to the legal means available to react against a decision denying an EPO. Since the legal remedies against the protection measures adopted on the basis of an EPO are regulated by the executing State's legislation, it is crucial that the victim has knowledge of the legal remedies offered by the latter, a fortiori if this is not the victim's home state.

Member States should designate a central authority in charge of assisting the national authorities of both the issuing and executing States and coordinating the transmission of the EPO.

Even though the nature of the authority that adopts the measure in the issuing State and the authority that adopts the measure in the executing State are not relevant for the Directive, this question raises certain difficulties regarding its practical application. Thus, even when the nature of the competent authority is the same in both States, e.g. judicial, it will be very difficult for the judge that adopts an EPO to know to which concrete judicial authority of the other State (s)he must transmit it. That is why each State should designate a central authority in charge of managing the transmission and issuance of EPOs, which would in turn have a positive effect on the protected person. The figure of the central authority in charge of the questions relating to the recognition and execution of EPOs becomes essential in the cases where the measure imposed is extended, modified or suspended in the issuing State.

4. SUPERVISION OF EXECUTION OF THE PROTECTION MEASURES INCLUDED IN THE EUROPEAN PROTECTION ORDER

States must maximize the mechanisms of supervision to monitor the enforcement of the protection measures. This task falls primarily upon the Police forces, but the use of other mechanisms such as emergency telephone numbers or electronic monitoring devices provide a greater feeling of protection and safety to the victim (subjective security). These mechanisms must necessarily be coordinated with the other authorities/services involved, especially the Police and the emergency health services, and they must complement each other to be truly effective (objective security).

Member States should create a joint emergency hotline to assist the victims of gender violence who are in a situation of risk.

This hotline created by the States should be unique at the European level (a pan-European hotline with a single numerical code). In this case, the telephone number should be short, easy to remember, and should be set up with sufficient guarantees to prevent external parties from establishing the victim's identity, as usually is the case in the Member States that use that kind of telephone services. It should provide personalized assistance 24 hours a day, information on the national protection measures and the EPO, and where necessary access to translation services. The telephone services should work in close cooperation with the Police, social workers, support centres and counselling centres.

The Member States that do not use electronic devices – such as radiofrequency systems or GPS – for monitoring the execution of protection measures should consider using them.

Electronic monitoring devices are not frequently used and their introduction should take into account the difficulties that they entail: possible restrictions of the rights of the aggressor, the technical difficulties relating to the territorial scope of surveillance, and the costs-efficiency of the measures, among others. Nonetheless, they have proven to be of great utility in the States that have adopted them, so that a more general application would be advisable.

At the European level, the viability of the extension of the monitoring electronic devices' scope beyond national borders and the necessity to centralize in some way the data collected through these systems should be assessed.

To this recommendation the same considerations apply as those mentioned in the previous indicator on the extension of the use of electronic devices, in addition to the issue of its limited geographical scope and the necessity of coordination between the different national authorities involved. However, the exercise of the freedom of movement also implies considering the introduction of coordinated instruments among the Member States that would facilitate the supervision of the protection measures' execution.

5. BREACH OF PROTECTION MEASURES

The breach of a protection measure must be punished in any case, as its effectiveness largely relies upon it. However, the concrete penalty depends on the seriousness of the offence and on the type of protection measures breached, so that it varies depending on the legislation of the executing State.

The Member States that do not have sanctions in place to punish the breach of the protection measures in their legal orders should create them as soon as possible.

The Member States that do not provide for sanctions to punish the breach of a protection measure should create them as soon as possible as the Directive obliges them to do. Only a few Member States provide that the breach of a protection measure constitutes a serious crime and even less have established imprisonment as a penalty in such case.

Member States should align their legislation on the criminal punishment deriving from the violation of a protection measure.

Where possible, it is recommended to move towards the harmonization or alignment of the penal system's responses to gender violence. Logically, if the Directive attempts to guarantee a minimal protection to all the victims moving within the Union territory, the same response should be guaranteed in case of breach of a protection measure.

The Member States that have a system of financial sanctions to punish a protection measure's violation should assess their effectiveness as a deterrent system to avoid reoffending.

The effectiveness of fines and other pecuniary sanctions as a system to correct and punish the breach of a protection measure should be evaluated from the perspective of their amount and practical efficiency. Derisory

amounts may endanger the effectiveness of the sanction whereas high amounts may negatively affect the family economy on which the victim herself and her children depend.

6. VICTIMS' RIGHT TO INFORMATION

The Member States that do not provide information on all the aspects regarding the services and support available to victims should introduce the obligation to provide them in their legal systems.

Despite the diversity in the sources and types of information provided to victims, all the Member States provide for the existence of certain information resources on the protection measures available for victims of gender violence. Nonetheless, not all the Member States provide information in a comprehensive manner on all the aspects of the services available: information on the kind of support the victim may receive (financial, health, psychological, labour, legal, etc.); how to report the violence and the consequences, how the proceedings work, how to obtain protection (including the adoption of protection measures); on access to compensation; the right to translation and interpretation as well as the legal remedies available. The provision of these information services is essential not only in cases gender of violence but is also an obligation deriving from article 4 of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

Member States should offer such information services through different means and in an accessible way for victims. The use of internet-based information services is also recommended in order to ensure the widest dissemination and access possible.

It is essential for the victim or possible victim of gender violence to have the widest access possible to the available information in order to learn about the possibilities offered and the possible consequences of her decisions. The use of webpages is encouraged because of their accessibility.

Member States that do not have specialized police units to protect and inform the victims should create them.

In the majority of Member States, the Police provide information services and in many cases they constitute the victim's first institutional contact. The police authorities should be trained in gender violence issues and provide support to victims in a specialized manner. As the first institutional con-

tact with victims, these units should act as coordination points with the other institutions involved in the protection of victims of gender violence.

All the Member States should evaluate the awareness raising campaigns on the protection measures available for victims of gender violence to assess their impact and ensure their effectiveness.

The organization of information and awareness campaigns on gender violence constitutes an important tool to disseminate the protection measures available for victims, as they reach both victims and possible victims and raise awareness among the public at large on gender violence issues. Nonetheless, it is difficult to assess the effectiveness of such campaigns in the majority of States because of the lack of evaluation systems.

Member States should organize together with the European institutions a pan-European campaign on the European protection order to inform citizens on this new instrument.

So far, hardly any States have organized campaigns on the European protection order. Dissemination in all the Member States would bring added value to the campaign.

7. GUARANTEES REGARDING INFORMATION AVAILABLE FOR VICTIMS DURING THE PROCESS OF ISSUING, RECOGNIZING AND EXECUTING THE EUROPEAN PROTECTION ORDER

Member States should establish the obligation to inform the victim about the procedural or criminal status of the offender in their legal orders, which also includes the right of victims to receive information about their case.

The information enabling the victim to have knowledge of the criminal proceedings as provided by article 6 of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime is essential to take the appropriate measures and request, where necessary, a judicial review. Such information is particularly important for victims of gender violence as the procedural or criminal status of the aggressor may constitute an indicator of the victim's level of risk.

Member States should establish translation services in all the European Union official languages to facilitate the access of victims to the European protection order. These services should be free of charge.

Although the right to translation and/or interpretation is ensured for victims of gender violence in almost all the Member States, the availability of translation services in all the EU official languages differs considerably from one State to another. Nevertheless, this right is not only recognized in Directive 2011/99/EU but also in article 7 of Directive 2012/29/EU.

Translators should have access to specialized training in gender violence matters.

The translator is the linguistic mediator between the victim and the corresponding State authority so that (s)he must be familiar with the gender violence context in order to be able to adequately transmit the victim's information without re-victimizing her. He/She should also have knowledge of the legal terms and specific vocabulary that enable him or her to provide the victim with the information needed to make the appropriate decisions.

8. GUARANTEES REGARDING LEGAL ASSISTANCE AND PRIVACY AVAILABLE FOR VICTIMS DURING THE PROCESS OF ISSUING, RECOGNIZING AND EXECUTING THE EUROPEAN PROTECTION ORDER

Directive 2011/99/EU includes objectives to ensure that the victim benefits from certain guarantees throughout the process to obtain a European protection order. Some considerations must be taken into account such as legal aid, the costs of the proceedings and discretion throughout the trial.

Legal aid is essential to request and process European protection orders.

The participation of legal professionals ensures that the victim receives adequate counselling on the enforcement of the protection measures in the executing State.

Member States should ensure that the access to judicial proceedings and legal aid are free of charge.

Legal aid should be a right free of charge for victims of gender violence, regardless of their financial resources.

Member States should ensure the privacy of the victim throughout the proceedings and enforcement of the protection measures, specifically for victims of gender violence, to avoid providing data on the location of the protected person.

The right to privacy should be guaranteed to all the victims pursuant to article 21 of Directive 2012/29/EU but it is even more crucial for victims of gender violence to the extent that the disclosure of their personal data not only infringes upon their right to privacy but may also result in the violation of their right to physical integrity or even their right to life. Hence, the States should be particularly cautious and protect the data that may help to locate the protected person.

9. STATISTICAL DATA ON THE PROTECTION MEASURES

Directive 2011/99/EU refers to the necessity to provide relevant data on the number of European protection orders that are requested, granted or recognized and highlights the usefulness of other types of data, e.g. on the type of crime concerned. In this respect, Member States should establish systems to collect relevant statistical data, which should have a practical utility.

Member States should centralize the statistical data on gender violence and protection orders in one single institution. Moreover, they should be compiled using the same indicators.

The fact that the statistical data relating to gender violence and protection orders are scattered across different organs and are collected using different variables makes it difficult to obtain a general overview of the issue and makes their consultation and treatment more complicated. That is why the ways in which data are currently collected and treated should be revised so as to allow for a proper analysis and guarantee the objectives of the system of victim protection.

Member States should facilitate the access to statistical databases.

Statistical data should be accessible to the public at large while complying with the legislation on data protection and more importantly on the effective protection of victims, as this measure gives more visibility to the issue of gender violence.

10. OTHER SUPPORT SERVICES AVAILABLE TO VICTIMS: TOWARDS THE COMPREHENSIVE PROTECTION OF VICTIMS

Besides the measures provided by the Directive, the States should attempt to meet the financial, health (including psychological support) and

social needs of the victims and their dependents so that they may benefit from a comprehensive protection that helps them to definitely move away from gender violence.

These complementary measures should be immediate and free of charge.

Complementary measures increase their efficiency when they are adopted right after an episode of violence and they should be made available to the victim without requiring her to initiate new proceedings or other processes. The immediate financial support at the victims' disposal is a model to be followed in many cases.

This type of complementary measures should be disseminated and advertised.

The victims' prior knowledge of all the services and benefits at their disposal help them in their decisions to cope with the problem.

This type of support should also apply to the dependent(s) of the victim.

Benefits should apply to the ascendants and descendants of the victim too. Their protection should be reinforced if there are minors or persons with special needs involved.

Member States should move towards a comprehensive protection of victims that would include these complementary measures besides those provided under Directive 2011/99/EU.

The Member States should regulate victims' protection so as to comply with the Union legal framework; this protection should preferably be guaranteed by one single legal instrument, e.g. a comprehensive law or a Victim's Statute.

11. TRAINING OF PROFESSIONALS INVOLVED IN THE PROTECTION OF VICTIMS OF GENDER VIOLENCE

Good training is essential to ensure that the persons responsible for the issuance or recognition of European protection orders can properly implement and recognize them. Moreover, victims must know about the EPO's existence and have knowledge of the information necessary to request it to be able to have access to it.

Member States should extend training courses on gender violence to the public at large and the different educational levels.

The States that already provide training on gender violence issues aimed at the competent authorities and the professionals involved should extend it to the public at large and to the different educational levels, as an early awareness on these issues contributes to the prevention of gender violence.

Member States should organize information campaigns on the European protection order aimed at the persons and professionals involved in the process.

Bearing in mind that all the Member States provide training courses on gender violence to a greater or lesser extent, it would be relatively easy to introduce information on Directive 2011/99/EU and the new legislation deriving from it.

12. COMMUNICATION BETWEEN NATIONAL JUDICIAL AUTHORITIES

Since the European protection order is a mechanism of judicial cooperation in criminal matters, the role of the judicial authorities of the Member States and the collaboration between them are particularly important for its application.

The Member States that do not establish a central authority should take advantage of the existing mechanisms and channels for European police and judicial cooperation.

Such channels already exist; those involving liaison magistrates and the contact points of the European Judicial Network are particularly efficient.

ANNEXES*

1. DIRECTIVE 2011/99/EU ON THE EUROPEAN PROTECTION ORDER

Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011, on the European protection order

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular article 82(1)(a) and (d) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Hungary, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[1],

Whereas:

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.

(2) 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.

(3) According to the Stockholm Programme – An open and secure Europe serving and protecting citizens[2], mutual recognition should extend to all

---

* By Javier Freixes, researcher, IED and Caspar Visser, lawyer-linguist, IED.

[1] Position of the European Parliament of 14 December 2010 (not yet published in the Official Journal) and position of the Council at first reading of 24 November 2011 (not yet published in the Official Journal). Position of the European Parliament of 13 December 2011 (not yet published in the Official Journal).

[2] *OJ* C 115, 4.5.2010, p. 1.

types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative. It also calls on the Commission and the Member States to examine how to improve legislation and practical support measures for the protection of victims. The programme also points out that victims of crime can be offered special protection measures which should be effective within the Union. This Directive forms part of a coherent and comprehensive set of measures on victims» rights.

(4) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women calls on Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures and calls on the Union to guarantee the right to assistance and support for all victims of violence. The resolution of the European Parliament of 10 February 2010 on equality between women and men in the European Union 2009 endorses the proposal to introduce the European protection order for victims.

(5) In its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, the Council stated that action should be taken at the level of the Union in order to strengthen the rights and protection of victims of crime and called on the Commission to present appropriate proposals to that end. In this framework, a mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures for victims of crime. According to that Resolution, this Directive, which concerns the mutual recognition of protection measures taken in criminal matters, should be complemented by an appropriate mechanism concerning measures taken in civil matters.

(6) In a common area of justice without internal borders, it is necessary to ensure that the protection provided to a natural person in one Member State is maintained and continued in any other Member State to which the person moves or has moved. It should also be ensured that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with article 3(2) of the Treaty on European Union (TEU) and article 21 TFEU, does not result in a loss of their protection.

(7) In order to attain these objectives, this Directive should set out rules whereby the protection stemming from certain protection measures adopted according to the law of one Member State («the issuing State») can be extended to another Member State in which the protected person decides to reside or stay («the executing State»).

(8) This Directive takes account of the different legal traditions of the Member States as well as the fact that effective protection can be provided by

means of protection orders issued by an authority other than a criminal court. This Directive does not create obligations to modify national systems for adopting protection measures nor does it create obligations to introduce or amend a criminal law system for executing a European protection order.

(9) This Directive applies to protection measures which aim specifically to protect a person against a criminal act of another person which may, in any way, endanger that person's life or physical, psychological and sexual integrity, for example by preventing any form of harassment, as well as that person's dignity or personal liberty, for example by preventing abductions, stalking and other forms of indirect coercion, and which aim to prevent new criminal acts or to reduce the consequences of previous criminal acts. These personal rights of the protected person correspond to fundamental values recognised and upheld in all Member States. However, a Member State is not obliged to issue a European protection order on the basis of a criminal measure which does not serve specifically to protect a person, but primarily serves other aims, for example the social rehabilitation of the offender. It is important to underline that this Directive applies to protection measures which aim to protect all victims and not only the victims of gender violence, taking into account the specificities of each type of crime concerned.

(10) This Directive applies to protection measures adopted in criminal matters, and does not therefore cover protection measures adopted in civil matters. For a protection measure to be executable in accordance with this Directive, it is not necessary for a criminal offence to have been established by a final decision. Nor is the criminal, administrative or civil nature of the authority adopting a protection measure relevant. This Directive does not oblige Member States to amend their national law to enable them to adopt protection measures in the context of criminal proceedings.

(11) This Directive is intended to apply to protection measures adopted in favour of victims, or possible victims, of crimes. This Directive should not therefore apply to measures adopted with a view to witness protection.

(12) If a protection measure, as defined in this Directive, is adopted for the protection of a relative of the main protected person, a European protection order may also be requested by and issued in respect of that relative, subject to the conditions laid down in this Directive.

(13) Any request for the issuing of a European protection order should be treated with appropriate speed, taking into account 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.

(14) Where information is to be provided under this Directive to the protected person or to the person causing danger, this information should also, where relevant, be provided to the guardian or the representative of the

person concerned. Due attention should also be paid to the need for the protected person, the person causing danger or the guardian or representative in the proceedings, to receive the information provided for by this Directive, in a language that that person understands.

(15) In the procedures for the issuing and recognition of a European protection order, competent authorities should give appropriate consideration to the needs of victims, including particularly vulnerable persons, such as minors or persons with disabilities.

(16) For the application of this Directive, a protection measure may have been imposed following a judgment within the meaning of Council 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[3], or following a decision on supervision measures within the meaning of Council Framework Decision 2009/829/JHA of 23 October 2009 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[4]. If a decision was adopted in the issuing State on the basis of one of those Framework Decisions, the recognition procedure should be followed accordingly in the executing State. This, however, should not exclude the possibility to transfer a European protection order to a Member State other than the State executing decisions based on those Framework Decisions.

(17) In accordance with article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the second paragraph of article 47 of the Charter of Fundamental Rights of the European Union, the person causing danger should be provided, either during the procedure leading to the adoption of a protection measure or before issuing a European protection order, with the possibility of being heard and challenging the protection measure.

(18) In order to prevent a crime being committed against the victim in the executing State, that State should have the legal means for recognising the decision previously adopted in the issuing State in favour of the victim, while also avoiding the need for the victim to start new proceedings or to produce evidence in the executing State again, as if the issuing State had not adopted the decision. The recognition of the European protection order by the executing State implies, inter alia, that the competent authority of that State, subject to the limitations set out in this Directive, accepts the existence and validity of the protection measure adopted in the issuing State, acknowl-

[3] *OJ* L 337, 16.12.2008, p. 102.
[4] *OJ* L 294, 11.11.2009, p. 20.

edges the factual situation described in the European protection order, and agrees that protection should be provided and should continue to be provided in accordance with its national law.

(19) This Directive contains an exhaustive list of prohibitions and restrictions which, when imposed in the issuing State and included in the European protection order, should be recognised and enforced in the executing State, subject to the limitations set out in this Directive. Other types of protection measures may exist at national level, such as, if provided by national law, the obligation on the person causing danger to remain in a specified place. Such measures may be imposed in the issuing State in the framework of the procedure leading to the adoption of one of the protection measures which, according to this Directive, may be the basis for a European protection order.

(20) Since, in the Member States, different kinds of authorities (civil, criminal or administrative) are competent to adopt and enforce protection measures, it is 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 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 in the light of the protection measure adopted in the issuing State as described in the European protection order.

(21) The prohibitions or restrictions to which this Directive applies include, among others, measures aimed at limiting personal or remote contacts between the protected person and the person causing danger, for example by imposing certain conditions on such contacts or imposing restrictions on the contents of communications.

(22) The competent authority of the executing State should inform the person causing danger, the competent authority of the issuing State and the protected person of any measure adopted on the basis of the European protection order. In the notification to the person causing danger, due regard should be taken of the interest of the protected person in not having that person's address or other contact details disclosed. Such details should be excluded from the notification, provided that the address or other contact details are not included in the prohibition or restriction imposed as an enforcement measure on the person causing danger.

(23) When the competent authority in the issuing State withdraws the European protection order, the competent authority in the executing State should discontinue the measures which it has adopted in order to enforce the European protection order, it being understood that the competent authority

in the executing State may — autonomously, and in accordance with its national law — adopt any protection measure under its national law in order to protect the person concerned.

(24) Given that this Directive deals with situations in which the protected person moves to another Member State, issuing or executing a European protection order should not imply any transfer to the executing State of powers relating to principal, suspended, alternative, conditional or secondary penalties, or relating to security measures imposed on the person causing danger, if the latter continues to reside in the State that adopted the protection measure.

(25) Where appropriate, it should be possible to use electronic means with a view to putting into practice the measures adopted in application of this Directive, in accordance with national laws and procedures.

(26) In the context of cooperation among the authorities involved in ensuring the protection 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 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. It is understood that such a decision, since it does not impose *ex novo* a penalty in relation to a new criminal offence, does not interfere with the possibility that the executing State may, where applicable, impose penalties in the event of a breach of the measures adopted in order to execute the European protection order.

(27) In view of the different legal traditions of the Member States, where no protection measure would be available in the executing State in a case similar to the factual situation described in the European protection order, the competent authority of the executing State should report any breach of the protection measure described in the European protection order of which it is aware to the competent authority of the issuing State.

(28) In order to ensure the smooth application of this Directive in each particular case, the competent authorities of the issuing and the executing States should exercise their competencies in accordance with the provisions of this Directive, taking into account the principle of *ne bis in idem*.

(29) 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. When implementing this Directive, Member States should ensure that, after recognition of the European protection

order, the protected person is not required to initiate further national proceedings to obtain from the competent authority of the executing State, as a direct consequence of the recognition of the European protection order, 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.

(30) Bearing in mind the principle of mutual recognition upon which this Directive is based, Member States should promote, to the widest extent possible, direct contact between the competent authorities when they apply this Directive.

(31) Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States should consider requesting those responsible for the training of judges, prosecutors, police and judicial staff involved in the procedures aimed at issuing or recognising a European protection order to provide appropriate training with respect to the objectives of this Directive.

(32) In order to facilitate the evaluation of the application of this Directive, Member States should communicate to the Commission relevant data related to the application of national procedures on the European protection order, at least with regard to the number of European protection orders requested, issued and/or recognised. In this respect, other types of data, such as, for example, the types of crimes concerned, would also be useful.

(33) This Directive should contribute to the protection of persons who are in danger, thereby complementing, but not affecting, the instruments already in place in this field, such as Framework Decision 2008/947/JHA and Framework Decision 2009/829/JHA.

(34) When a decision relating to a protection measure falls within the scope of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[5], Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility[6], or the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children[7], the recognition and enforcement of that decision should be carried out in accordance with the provisions of the relevant legal instrument.

(35) Member States and the Commission should include information about the European protection order, where it is appropriate, in existing edu-

[5] *OJ* L 12, 16.1.2001, p. 1.
[6] *OJ* L 338, 23.12.2003, p. 1.
[7] *OJ* L 48, 21.2.2003, p. 3.

cation and awareness-raising campaigns on the protection of victims of crime.

(36) Personal data processed when implementing this Directive should be protected in accordance with 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[8] and with the principles laid down in the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

(37) This Directive should respect the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in accordance with article 6 TEU.

(38) When implementing this Directive, Member States are encouraged to take into account the rights and principles enshrined in the 1979 United Nations Convention on the elimination of all forms of discrimination against women.

(39) Since the objective of this Directive, namely to protect persons who are in danger, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in article 5 TEU. In accordance with the principle of proportionality, as set out in that article, this Directive does not go beyond what is necessary in order to achieve that objective.

(40) In accordance with article 3 of the Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Directive.

(41) In accordance with articles 1 and 2 of the Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(42) In accordance with articles 1 and 2 of the Protocol (No. 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

---

[8] *OJ* L 350, 30.12.2008, p. 60.

HAVE ADOPTED THIS DIRECTIVE:

Article 1. *Objective.*—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.

Article 2. *Definitions*.—For the purposes of this Directive the following definitions shall apply:

1) «European protection order» means a decision, taken by a judicial or equivalent authority of a Member State in relation to 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 continuing the protection of the protected person;

2) «protection measure» means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the prohibitions or restrictions referred to in article 5 are imposed on a person causing danger in order to protect a protected person against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity;

3) «protected person» means a natural person who is the object of the protection resulting from a protection measure adopted by the issuing State;

4) «person causing danger» means the natural person on whom one or more of the prohibitions or restrictions referred to in article 5 have been imposed;

5) «issuing State» means the Member State in which a protection measure has been adopted that constitutes the basis for issuing a European protection order;

6) «executing State» means the Member State to which a European protection order has been forwarded with a view to its recognition;

7) «State of supervision» means the Member State to which a judgment within the meaning of article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of article 4 of Framework Decision 2009/829/JHA, has been transferred.

Article 3. *Designation of competent authorities.*—1. Each Member State shall inform the Commission which judicial or equivalent authority or

authorities are competent under its national law to issue a European protection order and to recognise such an order, in accordance with this Directive, when that Member State is the issuing State or the executing State.

2. The Commission shall make the information received available to all Member States. Member States shall inform the Commission of any change to the information referred to in paragraph 1.

Article 4. *Recourse to a central authority*.—1. 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.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority or authorities responsible for the administrative transmission and reception of any European protection order, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the designated central authority or authorities of the Member State concerned.

3. Member States wishing to make use of the possibilities referred to in this article shall communicate to the Commission information relating to the designated central authority or authorities. These indications shall be binding upon all the authorities of the issuing State.

Article 5. *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) a prohibition from entering certain localities, places or defined areas where the protected person resides or 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.

Article 6. *Issuing of a European protection order.*—1. 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.

2. 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 the requirements set out in article 5.

3. The protected person may submit a request for the issuing 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.

4. Before issuing a European protection order, the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if that person has not been granted these rights in the procedure leading to the adoption of the protection measure.

5. When a competent authority adopts a protection measure containing one or more of the prohibitions or restrictions referred to in article 5, it shall inform the protected person in an appropriate way, in accordance with the procedures under its national law, 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. The authority shall advise the protected person to submit an application before leaving the territory of the issuing State.

6. If the protected person has a guardian or representative, that guardian or representative may introduce the request referred to in paragraphs 2 and 3, on behalf of the protected person.

7. 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.

Article 7. *Form and 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 identity and nationality of the protected person, as well as the identity and nationality of the guardian or representative if the protected person is a minor or is legally incapacitated;

b) 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;

c) the name, address, telephone and fax numbers and e-mail address of the competent authority of the issuing State;

d) identification (for example, through a number and date) of the legal act containing the protection measure on the basis of which the European protection order is issued;

e) a summary of the facts and circumstances which have led to the adoption of the protection measure in the issuing State;

f) the prohibitions or restrictions imposed, in the protection measure underlying the European protection order, on the person causing danger, their duration and the indication of the penalty, if any, in the event of the breach of any of the prohibitions or restrictions;

g) 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 of enforcing the protection measure;

h) the identity and nationality of the person causing danger, as well as that person's contact details;

i) where such information is known by the competent authority of the issuing State without requiring further inquiry, whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State;

j) a description, where appropriate, of other circumstances that could have an influence on the assessment of the danger that confronts the protected person;

k) an express indication, where applicable, that a judgment within the meaning of article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of article 4 of Framework Decision 2009/829/JHA, has already been transferred to the State of supervision, when this is different from the State of execution of the European protection order, and the identification of the competent authority of that State for the enforcement of such a judgment or decision.

Article 8. *Transmission procedure*.—1. 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 State to establish its authenticity. All official communication shall also be made directly between those competent authorities.

2. If the competent authority of either the executing State or the issuing State is not known to the competent authority of the other State, the latter authority shall make all the relevant enquiries, including via the contact points of the European Judicial Network referred to in Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network[9], the

[9] *OJ* L 348, 24.12.2008, p. 130.

National Member of Eurojust or the National System for the coordination of Eurojust of its State, in order to obtain the necessary information.

3. When an authority of the executing State which receives a European protection order has no competence to recognise it, that authority shall, ex officio, forward the European protection order to the competent authority and shall, without delay, inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Article 9. *Measures in the executing State*.—1. Upon receipt of a European protection order transmitted in accordance with article 8, 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, unless it decides to invoke one of the grounds for non-recognition referred to in article 10. The executing State may apply, in accordance with its national law, criminal, administrative or civil measures.

2. The measure adopted by the competent authority of the executing State in accordance with paragraph 1, as well as any other measure taken on the basis of a subsequent decision as referred to in article 11, shall, to the highest degree possible, correspond to the protection measure adopted in the issuing State.

3. The competent authority of the executing State shall inform the person causing danger, the competent authority of the issuing State and the protected person of any measures adopted in accordance with paragraph 1, as well as of the possible legal consequence of a breach of such measure provided for under national law and in accordance with article 11(2). The address or other contact details of the protected person shall not be disclosed to the person causing danger unless such details are necessary in view of the enforcement of the measure adopted in accordance with paragraph 1.

4. If the competent authority in the executing State considers that the information transmitted with the European protection order in accordance with article 7 is incomplete, it shall without delay inform the competent authority of the issuing State by any means which leaves a written record, assigning a reasonable period for it to provide the missing information.

Article 10. *Grounds for non-recognition of a European protection order*.—1. The competent authority of the executing State may refuse to recognise a European protection order in the following circumstances:

a) 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;

b) the requirements set out in article 5 have not been met;

c) the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State;

d) the protection derives from the execution of a penalty or measure that, according to the law of the executing State, is covered by an amnesty and relates to an act or conduct which falls within its competence according to that law;

e) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt measures on the basis of a European protection order;

f) 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, when the act or the conduct falls within its competence under its national law;

g) recognition of the European protection order would contravene the *ne bis in idem* principle;

h) 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 in relation to which the protection measure has been adopted;

i) 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.

2. Where the competent authority of the executing State refuses to recognise a European protection order in application of one of the grounds referred to in paragraph 1, it shall:

a) without undue delay, inform the issuing State and the protected person of this refusal and of the grounds relating thereto;

b) where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure in accordance with its national law;

c) inform the protected person of any applicable legal remedies that are available under its national law against such a decision.

Article 11. *Governing law and competence in the executing State*.—1. The executing State shall be competent to adopt and to enforce measures in that State following the recognition of a European protection order. The law of the executing State shall apply to the adoption and enforcement of the decision provided for in article 9(1), including rules on legal remedies against decisions adopted in the executing State relating to the European protection order.

2. In the event 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 shall, in accordance with paragraph 1, be competent to:

a) impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under the law of the executing State;

b) take any non-criminal decisions related to the breach;

c) 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.

3. If there is no available measure at national level in a similar case that could be taken in the executing State, the competent authority of the executing State shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware.

Article 12. *Notification in the event of breach.*—The competent authority of the executing State shall notify the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order. Notice shall be given using the standard form set out in Annex II.

Article 13. *Competence in the issuing State.*—1. 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, provided that the protection measure has been applied on the basis of a judgment within the meaning of article 2 of Framework Decision 2008/947/JHA, or on the basis of a decision on supervision measures within the meaning of article 4 of Framework Decision 2009/829/JHA;

2. The law of the issuing State shall apply to decisions adopted in accordance with paragraph 1.

3. Where a judgment within the meaning of article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of article 4 of Framework Decision 2009/829/JHA, has already been transferred, or is transferred after the issuing of the European protection order, to another Member State, subsequent decisions, as provided for by those Framework Decisions, shall be taken in accordance with the relevant provisions of those Framework Decisions.

4. When the protection measure is contained in a judgment within the meaning of article 2 of Framework Decision 2008/947/JHA which has been transferred or is transferred after the issuing of the European protection order to another Member State, and the competent authority of the State of supervision has made subsequent decisions affecting the obligations or instruc-

tions contained in the protection measure in accordance with article 14 of that Framework Decision, the competent authority of the issuing State shall renew, review, modify, revoke or withdraw without delay the European protection order accordingly.

5. The competent authority of the issuing State shall inform the competent authority of the executing State without delay of any decision taken in accordance with paragraph 1 or 4.

6. If the competent authority in the issuing State has revoked or withdrawn the European protection order in accordance with point (a) of paragraph 1 or with paragraph 4, the competent authority in the executing State shall discontinue the measures adopted in accordance with article 9(1) as soon as it has been duly notified by the competent authority of the issuing State.

7. If the competent authority in the issuing State has modified the European protection order in accordance with point (a) of paragraph 1 or with paragraph 4, the competent authority in the executing State shall, as appropriate:

a) modify the measures adopted on the basis of the European protection order, acting in accordance with article 9; or

b) refuse to enforce the modified prohibition or restriction when it does not fall within the types of prohibitions or restrictions referred to in article 5, or if the information transmitted with the European protection order in accordance with article 7 is incomplete or has not been completed within the time limit set by the competent authority of the executing State in accordance with article 9(4).

Article 14. *Grounds for discontinuation of measures taken on the basis of a European protection order*.—1. 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) where, according to its national law, the maximum term of duration of the measures adopted in execution of the European protection order has expired;

c) in the case referred to in article 13(7)(b); or

d) where a judgment within the meaning of article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of article 4 of Framework Decision 2009/829/JHA, is transferred to the executing State after the recognition of the European protection order.

2. 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.

3. Before discontinuing measures in accordance with point (b) of paragraph 1 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 case in question. The competent authority of the issuing State shall, without delay, reply to such an invitation.

Article 15. *Priority in recognition of a European protection order*.—A European protection order shall be recognised with the same priority which would be applicable in a similar national case, taking into consideration any 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.

Article 16. *Consultations between competent authorities*.—Where appropriate, the competent authorities of the issuing State and of the executing State may consult each other in order to facilitate the smooth and efficient application of this Directive.

Article 17. *Languages*.—1. A European protection order shall be translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State.

2. The form referred to in article 12 shall be translated by the competent authority of the executing State into the official language or one of the official languages of the issuing State.

3. Any Member State may, either when this Directive is adopted or at a later date, state in a declaration that it shall deposit with the Commission that it will accept a translation in one or more other official languages of the Union.

Article 18. *Costs*.—Costs resulting from the application of this Directive shall be borne by the executing State, in accordance with its national law, except for costs arising exclusively within the territory of the issuing State.

Article 19. *Relationship with other agreements and arrangements*.—1. Member States may continue to apply bilateral or multilateral agreements or arrangements which are in force upon the entry into force of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate further the procedures for taking protection measures.

2. Member States may conclude bilateral or multilateral agreements or arrangements after the entry into force of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate the procedures for taking protection measures.

3. By 11 April 2012, Member States shall notify the Commission of the existing agreements and arrangements referred to in paragraph 1 which they wish to continue applying. Member States shall also notify the Commission of any new agreements or arrangements referred to in paragraph 2 within three months of the signing thereof.

Article 20. *Relationship with other instruments*.—1. This Directive shall not affect the application of Regulation (EC) No. 44/2001, Regulation (EC) No. 2201/2003, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, or the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

2. This Directive shall not affect the application of Framework Decision 2008/947/JHA or Framework Decision 2009/829/JHA.

Article 21. *Implementation*.—1. Member States shall bring into force the laws, regulations and administrative provisions to comply with this Directive by 11 January 2015. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 22. *Data collection.*—Member States shall, in order to facilitate the evaluation of the application of this Directive, communicate to the 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 recognised.

Article 23. *Review.*—By 11 January 2016, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive. That report shall be accompanied, if necessary, by legislative proposals.

Article 24. *Entry into force.*—This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 25. *Addressees*.—This Directive is addressed to the Member States in accordance with the Treaties.

ANNEX I

European Protection Order referred to in article 7 of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

The information contained in this form is to be treated with appropriate confidentiality

Issuing State:

Executing State:

(a) Information regarding the protected person:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

Has the protected person been granted free legal aid in the issuing State (if information is available without further enquiry)?

☐ Yes.

☐ No.

☐ Unknown.

Where the protected person is a minor or is legally incapacitated, information regarding the person's guardian or representative:

Surname:

Forename(s):

Maiden name or previous name, where applicable:

Sex:

Nationality:

Office/Address:

(b) The protected person has decided to reside or already resides in the executing State, or has decided to stay or already stays in the executing State.

Date from which the protected person intends to reside or stay in the executing State (if known):

Period(s) of stay (if known):

(c) Have any technical devices been provided to the protected person or to the person causing danger to enforce the protection measure:

☐ Yes; please give a short summary of the devices used:

☐ No.

(d) Competent authority which issued the European protection order:

Official name:

Full address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail (if any):

Languages that may be used for communication:

(e) Identification of the protection measure on the basis of which the European protection order has been issued:

The protection measure was adopted on (date: DD-MM-YYYY):

The protection measure became enforceable on (date: DD-MM-YYYY):

File reference of the protection measure (if available):

Authority that adopted the protection measure:

(f) Summary of the facts and description of the circumstances — including, where applicable, the classification of the offence — which have led to the imposition of the protection measure mentioned under (e) above:

(g) Indications regarding the prohibition(s) or restriction(s) that have been imposed by the protection measure on the person causing danger:

— Nature of the prohibition(s) or restriction(s): (more than one box may be ticked):

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

— if you ticked this box, please indicate precisely which localities, places or defined areas the person causing danger is prohibited from entering:

☐ 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;

— if you ticked this box, please provide any relevant details:

☐ a prohibition or regulation on approaching the protected person closer than a prescribed distance;

— if you ticked this box, please indicate precisely the distance which the person causing danger has to observe in respect of the protected person:

— Please indicate the length of time during which the abovementioned prohibition(s) or restriction(s) are imposed on the person causing danger:

— Indication of the penalty (if any) in the event of the breach of the prohibition or restriction:

(h) Information regarding the person causing danger on whom the prohibition(s) or restriction(s) mentioned under (g) have been imposed:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the person (ID card, passport):

Has the person causing danger been granted free legal aid in the issuing State (if information is available without further enquiry)?

☐ Yes.

☐ No.

☐ Unknown.

(i) Other circumstances that could have an influence on the assessment of the danger that could affect the protected person (optional information):

(j) Other useful information (such as, where available and necessary, information on other States where protection measures have been previously adopted with respect to the same protected person):

(k) Please complete:

☐ a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, has already been transmitted to another Member State

— If you ticked this box, please provide the contact details of the competent authority to whom the judgment has been forwarded:

☐ a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA has already been transmitted to another Member State

— If you ticked this box, please provide the contact details of the competent authority to whom the decision on supervision measures has been forwarded:

Signature of the authority issuing the European protection order and/or of its representative to confirm the accuracy of the content of the order:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

ANNEX II

Form referred to in article 12 of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

Notification of a breach of the measure taken on the basis of the European protection order

The information contained in this form is to be treated with appropriate confidentiality

(a) Details of the identity of the person causing danger:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the identity of the protected person:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(c) Details of the European protection order:

Order issued on:

File reference (if any):

Authority which issued the order:

Official name:

Address:

(d) Details of the authority responsible for the execution of the protection measure, if any, which was taken in the executing State in line with the European protection order:

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. No (country code) (area code) (number):

Fax No (country code) (area code) (number):

E-mail:

Languages that may be used for communication:

(e) Breach of the prohibition(s) or restriction(s) imposed by the competent authorities of the executing State following recognition of the European protection order and/or other findings which could result in taking any subsequent decision:

The breach concerns the following prohibition(s) or restriction(s) (more than one box may be ticked):

☐ 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;

☐ a prohibition or regulation on approaching the protected person closer than a prescribed distance;

☐ any other measure, corresponding to the protection measure at the basis of the European protection order, taken by the competent authorities of the executing State following recognition of the European protection order

Description of the breach(es) (place, date and specific circumstances):

In accordance with Article 11(2):

— measures taken in the executing State as a consequence of the breach:

— possible legal consequence of the breach in the executing State:

Other findings which could result in taking any subsequent decision

Description of the findings:

(f) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

2. SPANISH DRAFT BILL OF THE ACT ON MUTUAL RECOGNITION OF DECISIONS IN CRIMINAL MATTERS IN THE EUROPEAN UNION

Spanish draft bill of the act on mutual recognition of decisions in criminal matters in the European Union
(version 7/7/2014, *BOCG*)

.....

TITLE VI

European protection order

CHAPTER I

General provisions

Article 130. *European protection order*.—1. The European protection order is a decision in criminal matters, taken by a judicial or equivalent authority of a Member State in relation to a protection measure, on the basis of which the competent authority of another Member State may take any appropriate measures for the benefit of the victims or potential victims of crimes that may endanger their life, physical or psychological integrity, dignity, personal liberty or sexual integrity, whenever they find themselves in its territory.

2. The protection order may be issued both in relation to provisional measures adopted in criminal proceedings and in relation to rights-depriving penalties, provided they consist of:

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

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

Article 131. *Authorities in Spain with competence to issue and receive a European protection order*.—1. The authorities competent to issue and transmit a European protection order are the judges or courts handling the criminal proceedings in which the decision to adopt the protection measure was issued.

2. The authorities competent to recognize and execute European protection orders are the examining magistrates or the Courts for Violence against Women with jurisdiction in the place where the victim resides or intends to reside, without prejudice to the provisions of the following article.

However, when decisions regarding probation or alternative measures to provisional detention have been taken, the authority competent to recognize and execute the European protection order will be the same judge or court which already recognized and executed those decisions.

Article 132. *Relation of the European protection order to other decisions eligible for mutual recognition*.—When a decision on probation or alternative measures to provisional detention, as established under this act, has been transmitted previously or is transmitted afterwards, the measures for the protection of the victim or the potential victim shall be adopted according to the provisions regulating these decisions by the authority competent to adopt these decisions, without prejudice to the possibility that a European protection order may be transmitted to another, different Member State.

CHAPTER II

Issuing and transmission of a European protection order

Article 133. *Requirements for issuing and transmitting a European protection order*.—The Spanish judge or court may adopt a European protection order taking 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, provided the following requirements are met:

a) a judicial decision in criminal matters has been issued adopting a protection measure, which may consist both of provisional measures and of rights-depriving penalties that because of their analogous content equally pursue the protection of the victim;

b) the victim resides, stays or intends to do so in another Member State of the European Union;

c) the victim requests the adoption of a protection order, personally or through his/her guardian or legal representative.

Article 134. *Procedure for issuing a European protection order*.—1. The Spanish judicial authority which adopts any of the protection measures set out in this Chapter shall inform the protected person or his/her legal representative 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. The authority shall advise the protected person to submit an application before leaving the territory of the issuing State.

2. The victim may submit his/her request in the executing State.

3. Before issuing the European protection order the person causing danger will be heard, without in any case disclosing to him/her the address or other contact details of the protected person, unless this is necessary in view of the enforcement of the adopted measure.

If the accused or convicted person has not previously been heard during the process regarding the adoption of the decision on protection measures, she, the public prosecutor and the other parties must be summoned for a hearing, which shall be held within 72 hours after the request is received. The judge or court will take a reasoned decision.

Article 135. *Documentation of the European protection order*.—The European protection order will be documented in the certificate set out in Annex VIII and will indicate whether a decision regarding probation or alternative measures to provisional detention was transmitted to another Member State, different from the executing State, stating the authority in that State to which the respective certificates were sent.

Article 136. *Transmission of a European protection order to various executing States*.—The European protection order may simultaneously be transmitted to various executing States if the victim expresses his/her intention to stay in several States.

Article 137. *Competences of the Spanish judge or court after transmission of the European protection order*.—1. The Spanish judicial authority which has issued a European protection order will be exclusively competent to adopt, in accordance with the provisions of the Spanish legal order, decisions concerning:

a) the renewal, review, modification, revocation and withdrawal of the protection measure and the European protection order;

b) the imposition of a custodial measure as a consequence of revocation of the protection measure, provided that the protection measure has been adopted on the basis of a decision to adopt rights-depriving or probation measures, according to the present Act.

2. The Spanish judicial authority shall inform the competent authority of the executing State without delay about any decision to modify the European protection order. It shall also respond any information request regarding whether the protection provided for by the European protection order is still needed in the circumstances of the case in question.

3. When the protection measure is included in a judgment or decision on probation, which is modified, the issuing authority will consequently proceed without delay to extend, review, modify or withdraw the European protection order, informing hereof the authority competent for its execution.

CHAPTER III

Execution of a European protection order

Article 138. *Execution of a European protection order*.—1. The judge or court who receives a European protection order to be executed, shall, after hearing the public prosecutor within three days, recognize it without delay and adopt a decision imposing any of the measures available under Spanish law for analogous cases in order to guarantee the protection of the protected person.

A European protection order shall be recognized with the same priority as these measures under Spanish law, taking into consideration any 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.

2. The protection measure adopted by the judge or the court as competent executing authority, as well as the measures taken at a later stage in case of breach, shall be as similar as possible to the protection measure ordered by the issuing State.

3. The judge or court shall inform the person causing danger, the competent authority of the issuing State and the protected persons about the measures it has adopted and the legal consequences of any breach of these measures, according to the provisions of Spanish law and of this Chapter. Neither the address nor any other contact details of the protected person shall be disclosed to the person causing danger, unless this is necessary in view of the enforcement of the adopted measure.

4. The decision on recognition shall include the necessary instructions for the State Security Forces and Bodies regarding the enforcement of the measures contained in the protection order, as well as their registration in the relevant registers.

5. In case the judge or court responsible for execution considers that the information accompanying the European protection order is incomplete, it shall without delay inform the competent authority of the issuing State, assigning a reasonable period for it to provide the missing information.

6. When the victim requests the adoption of enforcement measures to the judge or court competent for their recognition and execution in Spain, it

shall transmit this request without delay to the competent authority of the issuing State.

Article 139. *Breach of protection measure*.—1. In case of breach of any of the adopted protection measures, the Spanish judicial authority will be competent to:

a) impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under Spanish law;

b) take any non-criminal decisions related to the breach;

c) 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.

2. The Spanish judicial authority shall notify the competent authority of the issuing State of any breach of the measures taken on the basis of the European protection order. Notice shall be given using the certificate set out in Annex IX.

Article 140. *Refusal to recognize and execute the European protection order*.—1. The Spanish judicial authority shall refuse to recognize a European protection order when, in addition to any of the reasons provided in article 32, any of the following circumstances occur:

a) the decision does not concern any of the measures foreseen in this Title;

b) the protection measure relates to an act that does not constitute a criminal offence under Spanish law;

c) the protection derives from the execution of a penalty or measure that, according to Spanish law, is covered by an amnesty and relates to an act or conduct which falls within its competence;

d) under Spanish law, the person causing danger cannot, because of that person's age, be held criminally responsible for the act or the conduct in relation to which the protection measure has been adopted.

2. The Spanish judicial authority which refuses to recognize a European protection order shall inform the issuing State and the protected person of this refusal and of the grounds relating thereto, and shall inform the latter, where appropriate, about the possibility of requesting the adoption of a protection measure in accordance with its national law, and of any available legal remedies.

Article 141. *Modification of the European protection order*.—When the competent authority of the issuing State modifies the European protection order, the Spanish judicial authority shall, after hearing the public pros-

ecutor, modify the adopted measures, except when it does not fall within the types of prohibitions or restrictions referred to in this Chapter, or when the information transmitted with the European protection order is incomplete or has not been completed within the assigned time limit.

Article 142. *Discontinuation of measures adopted on the basis of a European protection order.*—1. The Spanish judicial authority may, after hearing the public prosecutor, discontinue the measures adopted in execution of a European protection order:

a) where the competent authority of the issuing State has revoked or withdrawn the European protection order, as soon as the relevant notification has been received;

b) where there is clear indication that the protected person does not reside or stay in Spanish territory, or has definitively left that territory;

c) where, according to Spanish law, the maximum term of duration of the measures adopted has expired;

d) in case the protection measure is not modified for the reasons provided in the previous article;

e) where, after recognition of the European protection order, a decision on probation or alternative measures to provisional detention has been transmitted to the executing State.

2. The Spanish judicial authority shall, in addition to the competent authority of the issuing State, immediately inform the protected person about this decision, where possible.

3. Before discontinuing the protection measures, the Spanish judicial authority may request 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 case in question, assigning it up to one month to do so.

3. DUTCH DRAFT BILL FOR THE IMPLEMENTATION OF DIRECTIVE 2011/99/EU

Implementation of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

DRAFT BILL

Article I. The Code of Criminal Procedure is modified in the following way: «A new title is inserted following Title 3 of Book Five, entitled:

Title 4. European protection order

First section. General provisions

Article 5:4:1. For the purposes of this title the following definitions shall apply:

a) European protection order: an enforceable decision, taken by a judicial or equivalent authority of a Member State in relation to 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 continuing the protection of the protected person;

b) protection measure: a decision in criminal matters adopted in the issuing State in accordance with its national law in order to protect a protected person, as referred to in paragraph *c*), against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity;

c) protected person: a natural person who is the object of the protection resulting from a protection measure adopted by the issuing State;

d) person causing danger: the natural person on whom one or more of the prohibitions or restrictions referred to in article 3(a) have been imposed;

e) issuing State: the Member State of the European Union in which a protection measure has been adopted that constitutes the basis for issuing a European protection order;

f) executing State: the Member State to which a European protection order has been forwarded with a view to its recognition and execution;

g) Council Framework Decision 2008/947/JHA: the Framework Decision of the Council 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 (*OJ* L 337, 16.12.2008).

h) Council Framework Decision 2009/829/JHA: the Framework Decision of the Council of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to deci-

sions on supervision measures as an alternative to provisional detention (*OJ* L 294, 11.11.2009);

i) Directive 2011/99/EU: the Directive of the European Parliament and of the Council of 13 December 2011 on the European protection order (*OJ* L338, 21.12.2011);

a. State of supervision:

— the Member State to which a judgment within the meaning of article 2 of Framework Decision 2008/947/JHA has been transferred;

— the Member State to which a decision on supervision measures within the meaning of article 4 of Framework Decision 2009/829/JHA has been transferred.

Article 5:4:2. 1. The notification of communications to the authority of the issuing State or the executing State, to the protected person or the person causing danger shall be transmitted by registered or ordinary mail, by fax, or by electronic mail. Other means of notification may be used if expressly provided for.

2. The notification of communications to the authority of the issuing State or the executing State shall be done in such a way that the authenticity of the communication can be established by the competent authority.

3. The protected person and the person causing danger shall inform the competent authorities of the issuing State and the executing State of the address to which these authorities must send the notifications. The notification of communications to the protected person and the person causing danger shall be done at the most recent address provided.

Second section. European protection order issued by the competent authority of another Member State of the European Union

Article 5:4:3. A European protection order qualifies for recognition and execution provided:

a) it contains one or more of the following prohibitions or restrictions:

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

2.º 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

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

b) it is issued using the form set out in Annex I of Directive 2011/99/EU and contains all the information required by this form.

Article 5:4:4. 1. The public prosecutor is responsible for the execution of European protection orders and adopts the necessary measures for this purpose.

2. The public prosecutor shall recognize a European protection order within twenty-eight days after its receipt, unless the fourth or fifth paragraph apply.

3. In case the public prosecutor is unable to comply with the term referred to in the second paragraph, he will immediately inform the competent authority of the issuing State, stating the reasons for the delay as well as the expected time needed to make a final decision.

4. In case the public prosecutor considers the information provided regarding the European protection order to be insufficient, he will immediately inform the competent authority of the issuing State. He will establish a reasonable term of up to four weeks within which these authorities will have to provide the missing details. The public prosecutor shall send this notification by any means which leaves a written record.

5. If the European protection order is not done in the Dutch language or, in case the Netherlands have so declared in a statement submitted to the European Commission, in any of the languages mentioned in this statement, the public prosecutor may request the competent authority of the issuing State to translate the European protection order. He will establish a reasonable term of up to four weeks within which the translation must be provided. The public prosecutor shall send this notification by any means which leaves a written record.

6. If a European protection order is not sent to the public prosecutor, the addressed authority shall immediately forward it to the public prosecutor. The addressee shall immediately inform the issuing State hereof by any means which leaves a written record.

7. If the competent authority of the issuing State is not known, the public prosecutor shall make the necessary enquiries using all available channels, including the contact points of the European Judicial Network, the national member of Eurojust, or the national system of the Netherlands for the coordination of Eurojust.

Article 5:4:5. 1. The public prosecutor may refuse recognition if:

a) the European protection order is incomplete or not completed within the term set by the public prosecutor;

b) the conditions of article 5:4:3 are not fulfilled;

c) the facts which have given rise to the protection measures, if committed in the Netherlands, would not qualify as a criminal offence;

d) the person causing danger enjoys immunity in the Netherlands, so that no measures can be adopted based on the European protection order;

e) the right to criminally prosecute the person causing danger on account of the acts or conduct in relation to which the protection measure was adopted, would have prescribed according to Dutch law, if the Netherlands were to have jurisdiction over the acts or conduct in relation to which the protection measure was adopted;

f) execution of the European protection order is incompatible with the principle underlying article 68 of the Criminal Code and article 255(1) of the Code of Criminal Procedure;

g) according to Dutch law, the person causing danger, due to his age, cannot be held criminally liable for the acts or conduct in relation to which the protection measure was adopted;

h) the protection measure concerns a criminal offence that according to Dutch law was committed entirely or for the main part on Dutch territory.

2. If the public prosecutor refuses to recognize the European protection order on the grounds set out in the first paragraph:

a) he shall immediately notify the authority of the issuing State and the protected persons of the refusal and the reasons for the decision;

b) where applicable, he shall inform the protected person of the possibilities to obtain a protection measure under Dutch law.

Article 5:4:6. 1. If the public prosecutor recognizes the European protection order, he shall adopt one or more of the following measures regarding the person causing danger, in accordance with the European protection order:

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

b) a prohibition or regulation of contact, in any form, with the protected person;

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

2. If the protection of the person concerned, the nature of the European protection order, or the enforceability in the Netherlands so require, he will adjust the measures referred to in the first paragraph. The adjusted measures should coincide as much as possible with the protection measures adopted by the issuing State, and upon which the European protection order is based.

3. The decision referred to in the first paragraph applies during the term indicated by the authority of the issuing State on the form mentioned in article 5:4:3(b), with a maximum of one year.

4. The public prosecutor shall notify the person causing danger, de protected person and the competent authority of the issuing State of all the measures adopted under the provisions of the first paragraph, including the possible consequences of non-compliance with these measures. The notification to the person causing danger shall be done in the way established by article 588 of the Code of Criminal Procedure.

5. The public prosecutor shall order the measures to be executed two weeks after sending the notification of the decision as provided in the first paragraph.

Article 5:4:7. 1. The police officers referred to in article 2(a) of the 2012 Police Act are competent, in case of breach or imminent breach of the measures referred to in article 5:4:6(1), to order the person causing danger to observe the measure or measures concerned.

2. The public prosecutor shall notify the following authorities of any breach of the measures adopted on the basis of a European protection order:

a) the competent authority of the issuing State;

b) the competent authority of the Member State which has transmitted a judgment for the purpose of its recognition and execution in the Netherlands within the meaning of article 2 of Framework Decision 2008/947/JHA;

c) the competent authority of the Member State which has transmitted a decision on supervision measures within the meaning of article 4 of Framework Decision 2009/829/JHA for the purpose of their recognition and execution in the Netherlands.

3. The notification referred to in the second paragraph is done using the form set out in Annex II of Directive 2011/99/EU.

4. The public prosecutor shall ensure that the form referred to in the third paragraph is translated into the official language or one of the official languages of the issuing State or into one of the official languages accepted by that Member State according to a statement submitted to the European Commission.

Article 5:4:8. 1. If the competent authority of the issuing State extends or modifies the protection measure, the public prosecutor shall adapt the measures by him accordingly as soon as he has been duly notified of the extension or the modification by the competent authority of the issuing State. The public prosecutor may extend the duration of the adopted measure up to a maximum of one year.

2. If the competent authority of the issuing State modifies the European protection order, and the modified prohibitions or restrictions do not fall within the prohibitions and restrictions referred to in article 5:4:3(a), or if the information provided regarding the European protection order under article 5:4:3(b) is incomplete or has not been provided within the term established by the public prosecutor under article 5:4:4(3), where necessary the public prosecutor will refuse to enforce this prohibition or restriction.

3. If the competent authority of the issuing State withdraws the recognized and executed European protection order, the public prosecutor shall withdraw the measures referred to in article 5:4:6(1) as soon as he has been duly notified of the withdrawal by the competent authority of the issuing State.

4. The public prosecutor shall notify the person causing danger, the protected person, and the competent authority of the issuing State of the refusal referred to in the second paragraph or the withdrawal referred to in the third paragraph.

Article 5:4:9. 1. The public prosecutor may withdraw the measures adopted for the execution of the European protection order:

a) if there are clear indications that the protected person is no longer residing or staying in the territory of the Netherlands or that he has definitively left the territory;

b) if the maximum term of duration of the adopted measures, as established in article 5:4:6(3), has expired;

c) if article 8(2) applies;

d) if, after the European protection order has been recognized, a judgment within the meaning of article 2 of Framework Decision 2008/947/JHA or a decision on supervision measures within the meaning of article 4 of Framework Decision 2009/829/JHA has been transferred to the Netherlands as the executing State.

2. Before deciding on the withdrawal referred to in paragraph 1(b), the public prosecutor may enquire with the competent authority of the issuing State whether the protection provided under the European protection order is still necessary under the given circumstances.

3. The public prosecutor shall immediately notify the competent authority of the issuing State and, where possible, the protected person of his decision to withdraw the measures referred to in the first paragraph.

Third section. European protection order issued by the competent authority of the Netherlands

Article 5:4:10. 1. A person who is protected by a protection measure under Dutch law may request the public prosecutor or the competent authority of the executing State to issue a European protection order.

2. If a person who is protected by a protection measure adopted under the national law of another Member State requests the public prosecutor to issue a European protection order, the public prosecutor shall notify the competent authority of the issuing State and transfer the request for further handling. To this end, the public prosecutor will send this request as soon as possible to the competent authority in the relevant Member State.

3. If the protected person has a legal representative, the latter may submit the request referred to in the first and the second paragraph on behalf of the protected person.

Article 5:4:11. 1. The public prosecutor may issue a European protection order at the request of a protected person provided:

a) a protection measure has been adopted in the Netherlands under the Dutch law in criminal matters; and

b) by virtue of this protection measure one or more of the prohibitions or restrictions referred to in article 5:4:3 are imposed on the person causing danger; and

c) the protected person decides to go and live in another EU Member State or is already living there, or decides to go and stay in another EU Member State or is already staying there.

2. The public prosecutor considering the adoption of a European protection order 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.

3. The public prosecutor shall notify the protected person and the person causing danger of the fact that a request for a European protection order is being considered.

Article 5:4:12. 1. The public prosecutor shall provide the person causing danger the possibility to be heard regarding the request for a European protection order as referred to in article 5:4:11(1) if the right to be heard was not granted to this person during the proceedings leading to the adoption of the protection measure.

2. If the person causing danger was heard during the proceedings leading to the adoption of the protection measure, the public prosecutor may provide this person the possibility to be heard regarding the request referred to in article 5:4:11(1) if he deems this to be necessary for making the decision.

3. The public prosecutor may provide the protected person the possibility to be heard regarding the request referred to in article 5:4.11(1).

4. A written report is made of the hearings held under paragraph 1, 2 or 3.

Article 5:4:13. 1. The public prosecutor shall notify the protected person and the person causing danger of his decision to issue a European protection order. The decision of the public prosecutor must be motivated.

If the public prosecutor refuses a request for a European protection order, he shall notify the protected person and the person causing danger. The decision of the public prosecutor must be motivated.

Article 5:4:14. 1. The public prosecutor shall lay down the European protection order in the form set out in Annex I to Directive 2011/99/EU.

2. The public prosecutor shall send the European protection order in writing to the competent authority of the executing State.

3. If the competent authority of the executing State is not known, the public prosecutor shall make the necessary enquiries using all available channels, including the contact points of the European Judicial Network, the national member of Eurojust, or the national system of the Netherlands for the coordination of Eurojust.

4. The public prosecutor shall ensure that the European protection order is translated into the official language or one of the official languages of the executing State or into one of the official languages accepted by that Member State according to a statement submitted to the European Commission.

Article 5:4:15. If the court or the Public Prosecutor's Office adopts a protection measure which includes one or more of the prohibitions or restrictions referred to in article 5:4:3, the public prosecutor shall inform the pro-

tected person, orally or in writing, about the possibility to request for a European protection order in case this person decides to leave for another Member State, as well as of the basic conditions for such a request. When doing so, the public prosecutor shall advise the protected person to submit an application before leaving the territory of the Netherlands.

Article 5:4:16. 1. If the Public Prosecutor's Office or the court decides to modify or withdraw the protection measure according to Dutch law, the public prosecutor may modify or withdraw the corresponding European protection order.

2. The first paragraph does not apply if the competence to modify or withdraw a protection measure belongs to the competent authority of the executing State on the basis of Framework Decision 2008/947/JHA or Framework Decision 2009/829/JHA, and the legal provisions derived from these framework decisions.

3. If a decision within the meaning of article 2 of Framework Decision 2008/947/JHA or within the meaning of article 4 of Framework Decision 2009/829/JHA has already been transmitted to another Member State, or is transmitted after the European protection order is issued, the subsequent decisions established in these framework decisions are made in accordance with the relevant provisions of these framework decisions and the derived legal provisions.

4. The public prosecutor shall notify the competent authority of the executing State and the protected person of any decision aimed at modifying or withdrawing the European protection order.

Article 5:4:17. Rules may be established by ministerial order regarding the collection and provision of data regarding the implementation of the provisions of this title».

Article II. Article I does not apply to other Member States of the European Union if and to the extent that they have not taken the necessary measures to comply with Directive 2011/99/EU.

Article III. This act will enter into force on the date to be established by Royal Decree.

4. DIRECTORY OF LEGISLATION

AUSTRIA (AT)

- Protection against Violence Act, 01.05.1997.
- Second Protection against Violence Act, 01.06.2009.
- Enforcement Code, 01.01.2004.
- Act on the Security Police, 01.05.1993.
- Criminal Code.
- Code of Criminal Procedure.
- Civil Code.
- Code of Civil Procedure.

BELGIUM (BE)

- Act to fight violence within couples, 24.11.1997.
- Act on the allocation of the family home to the spouse or legal cohabitee as victim of physical partner violence, and amending article 410 of the Criminal Code, 28.01.2003.
- Act on the temporary barring order in cases of gender violence, 15.01.2012.
- Civil Code.
- Code of Civil Procedure.
- Criminal Code.
- Code of Criminal Procedure.

BULGARIA (BG)

- Act 27/2005 on protection from Domestic Violence, with subsequent amendments (December 2009 and December 2010).
- Criminal Code.
- Code of Criminal Procedure.

CZECH REPUBLIC (CZ)

- Act 135/2006 Coll., amending certain Acts in the area of protection against domestic violence, 14.03.2006.
- Act 273/2008 Coll., on the Police of the Czech Republic, 17.07.2008.
- Act 94/1963 Coll., on the Family, 1963 (with amendments).
- Act 108/2006 Coll., on Social Services, 14.03.2006.
- Criminal Code, 08.01.2009.
- Code of Criminal Procedure.
- Code of Civil Procedure.

CYPRUS (CY)

- Act 212(I)/2004 amending the Violence in the Family (Prevention and Protection of Victims) Act 2000 (L.119(I)/2000), 01.03.2005.

GERMANY (DE)

- Act modifying the Act on domestic violence and other acts, 11.12.2001.
- Federal Stalking Act, 22.03.2007.
- Family Procedure Reform Act, 17.12.2008.
- Civil Code.
- Code of Civil Procedure.

ESTONIA (EE)

- Victim Support Act, 17.12.2003.
- Criminal Code, 06.06.2002.
- Code of Civil Procedure, 10.04.2005.
- Code of Criminal Procedure, 01.07.2004.

GREECE (EL)

- Act 3500/2006, for combating domestic violence, 24.10.2006.

SPAIN (ES)

- Organic Act 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence, 28.12.2004.
- Act 27/2003 of July 31st on the protection order for victims of domestic violence, 31.07.2003.
- Organic Act 3/2007 of 22 March for effective equality between women and men, 22.03.2007.
- Act 29/2011, of 22 September, on the recognition and comprehensive protection of the victims of terrorism, 22.09.2011.
- Act 35/1995, of 11 December, on aid and assistance to victims of violent crimes and sexual freedom, 11.12.1995.
- Act 52/2007 of 26 December, by which rights are recognized and extended and measures are set up for those who suffered persecution or violence during the Civil War and the Franco dictatorship, 26.12.2007.
- Organic Act 10/2011, of 27 July, amending Sections 31bis and 59bis of Organic Act 4/2000, of 11 January, on the rights and freedoms of aliens in Spain and their social integration, 27.07.2011.
- Criminal Code.
- Civil Code.
- Criminal Procedure Act.

FINLAND (FI)

- Marriage Act (234/1929; amendments up to 1226/2001 included).
- Child Welfare Act (683/1983), 1983.
- Sex Offence Code (563/1998; included in chapter 20 of the Criminal Code), 1998.

- The Act on Restraining Orders (898/1998), 1998.
- Act on Equality between Women and Men (609/1986; amendments up to 232/2005 included).
- Non-Discrimination Act (21/2004; as amended by Act 50/2006).
- Criminal Code (39/1889; amendments up to 650/2003 as well as 1372/2003, 650/2004 and 1006/2004 included).
- The Constitution of Finland (731/1999), 1999.

FRANCE (FR)

- Act 2010-769 regarding violence committed specifically against women, violence in couples and their impact on children, 09.07.2009.
- Decree 2010-1134 on the civil protection procedure for victims of partner violence, 29.09.2010.
- Act 2006-399 of 4 April 2006 reinforcing the prevention and repression of among couples and against children, 04.04.2006.
- Act 2005-1549 on the treatment of recidivism regarding criminal offences, 12.12.2005.
- Civil Code.
- Criminal Code.

CROATIA (HR)

- Act on the Protection against Family Violence, 30.10.2009.
- Misdemeanour Act, 03.10.2007.
- Act on Free Legal Aid, 23.05.2008.
- Criminal Code, 21.10.2011.
- Code of Criminal Procedure, 18.12.2008.

HUNGARY (HU)

- Act LXXII on Restraining Orders because of Violence between Relatives (Civil Orders), 2009.
- Criminal Code.
- Criminal Proceedings Act, 1998 (amended in 2006).

ITALY (IT)

- Criminal Code, 08.01.2009.
- Code of Criminal Procedure, 29.11.1961.
- Civil Code.
- Code of Civil Procedure, 04.11.1963.

LITHUANIA (LT)

- Special Act on Protection against domestic violence, 26.05.2011.
- Criminal Code, 26.09.2000.

LUXEMBOURG (LU)

- Act modifying the Act on domestic violence and other acts, 30.07.2013.
- Act on domestic violence, 08.09.2003.
- Act on the Police and the General Police Inspection, 31.05.1999.
- Criminal Code.
- Code of Civil Procedure.
- Code of Criminal Procedure.

LATVIA (LV)

- Law on Police, 04.06.1991.
- Criminal Code 26.09.2000.
- Criminal Procedure Law, 14.03.2002.
- Civil Code, 24.04.1997.
- Civil Procedure Law, 14.10.1998.

MALTA (MT)

- Domestic Violence Act, 2006.
- Criminal Code, amended in 2005.

THE NETHERLANDS (NL)

- Act on Conditional Release, 06.12.2007.
- Regulation for the Care of Forensic Psychiatric Interns, 22.05.1997.
- Framework Act on Forensic Psychiatric Internment, 25.06.1997.
- Penitentiary Framework Act, 18.06.1998.
- Regulation on Temporary Penitentiary Leave, 24.12.1998.
- Act on the Temporary Barring Order, 09.10.2008.
- Criminal Code.
- Code of Criminal Procedure.
- Civil Code.
- Code of Civil Procedure.

POLAND (PL)

- Act on Counteracting Domestic Violence, 29.07.1995.
- Family Code.
- Criminal Code, 1997.

PORTUGAL (PT)

- Act 7/2000, 27.05.2000.
- Act 112/2009 of 16 September, establishing the legal regime applicable to the prevention of domestic violence, the protection of and assistance to victims, repealing Act 107/99, of 3 August, 11.09.2009.
- Decree-Law 323/2000, of 19 December, 19.12.2000.

- Order 229-A/2010, regulating the statute of the victims of domestic violence.
- Criminal Code.

ROMANIA (RO)

- Act 217/2003 on the preventing and fighting against family violence, modified by Act 25/2012 amending Law on preventing and combating family violence, into force 05.2012.
- Law 211/2004 on the protection of victims, 2004.
- Act 202/2002 on equal opportunities, 2002.
- Act 272/2004 on the protection and promotion of children's rights, 2004.
- Order 384/306/993/2004 on the approval of cooperative procedures in preventing and monitoring domestic violence cases, 2004.
- Criminal Code (Act 286/2009, 24.06).

SWEDEN (SE)

- Restraining Orders Act 1988/688 (amendments up to 2011).
- Violence against Women Act 1998:393.
- Sexual Harassment Act 1997/98:55.
- Social Services Act 2001:453.
- Criminal Code, 1965.

SLOVENIA (SI)

- Family Violence Protection Act, March 2008.
- Police Tasks and Powers Act, February 2013.
- Criminal Code, 2008.
- Criminal Procedure Act, 1995 (amended in 2006).
- Civil Procedure Act (amended in 2004).

SLOVAKIA (SK)

- Act 491/2008 Coll., Police Forces Act, 2008.
- Act 365/2004 Coll., on Equal Treatment in Certain Areas and Protection against Discrimination (Antidiscrimination Act), 2004.
- Act 2005-300 Coll., Criminal Code, 2005.
- Act 141/1961 Coll., Code of Criminal Procedure.
- Act 1964-40 Coll., Civil Code.
- Act 1963-99 Coll., Code of Civil Procedure.

UNITED KINGDOM (UK)

- Domestic Violence, Crime and Victims Act, 15.11.2004.
- Crime and Security Act, 08.04.2010.
- Protection from Harassment Act, 21.3.1997.
- Family Law Act, 04.07.1996.