



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 5 January 2010

17513/09

COPEN 247

Subject:

INITIATIVE FOR A DIRECTIVE OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the European Protection Order

DIRECTIVE 2010/.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

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)(d) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Spain, the Republic of Estonia, 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,

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of ... (not yet published in the Official Journal) and Council Decision of ... (not yet published in the Official Journal).

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, adopted by the European Council at its meeting on 10 and 11 December 2009, mutual recognition could extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative. The programme also points out that victims of crime can be offered special protection measures which should be effective within the Union.

- (4) The resolution of the European Parliament of 2 February 2006 on the current situation in combating violence against women and any future actions recommends that Member States formulate a zero-tolerance policy as regards all forms of violence against women and calls on Member States to take appropriate measures to ensure better protection of and support to actual and potential victims.

- (5) In a common area of justice without internal borders, it is necessary to ensure that the protection provided to a person in one Member State is 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 of the TFEU, does not result in a loss of their security.

- (6) In order to attain these objectives, this Directive should set out rules whereby the protection stemming from a protection measure adopted according to the law of one Member State ("the issuing State") can be extended to another Member State to which the protected person moves ("the executing State"), regardless of the type or duration of the obligations or prohibitions contained in the protection measure concerned.
- (7) In order to prevent a new crime being committed against the victim in the executing State, that State should be given a legal basis 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 the evidence in the executing State again as if the issuing State had not adopted the decision.

- (8) This Directive should be applied and enforced in such a way that the protected person receives the same or equivalent protection in the executing State as he would have received if the protection measure had been issued in that State *ab initio*, thus avoiding any discrimination.
- (9) Given that this Directive deals with situations in which the protected person moves to another Member State, executing its provisions does 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 issued the protection measure.

- (10) 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.
- (11) Since the objective of this Directive, namely to protect persons who are in danger, cannot be sufficiently achieved by the Member States acting unilaterally, given the cross-border nature of the situations involved, and could instead, due to the scale and potential effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to in Article 5(3) of the TEU. In accordance with the principle of proportionality, as set out in Article 5(4) of the TEU, this Directive does not go beyond what is necessary to achieve that objective.

- (12) This Directive should contribute to the protection of persons who are in danger, thereby complementing the instruments already in place in this field, such as 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 sanctions¹, and 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 detention²,

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ L 337, 16.12.2008, p. 102.

² OJ L 294, 11.11.2009, p. 20.

Article 1
Definitions

For the purposes of this Directive the following definitions shall apply:

- 1) "European protection order" means a judicial decision relating to a protection measure issued by a Member State and aiming at facilitating the taking by another Member State, where appropriate, of a protection measure under its own national law with a view to the safeguard of the life, physical and psychological integrity, freedom or sexual integrity of a person.
- 2) "Protection measure" means a decision adopted by a competent authority of a Member State imposing on a person causing danger one or more of the obligations or prohibitions referred to in Article 2(2), provided that the infringement of such obligations or prohibitions constitutes a criminal offence under the law of the Member State concerned or may otherwise be punishable by a deprivation of liberty in that Member State.

- 3) "Protected person" means the person whose life, physical and psychological integrity, freedom, or sexual integrity are the object of the protection stemming from a protection measure adopted by the issuing State.
- 4) "Person causing danger" means the person on whom one or more of the obligations or prohibitions, referred to in Article 2(2), have been imposed.
- 5) "Issuing State" means the Member State in which a protection measure has been originally adopted, constituting 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, as defined in Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as defined in Article 4 of Framework Decision 2009/829/JHA, has been transferred.

Article 2

Scope of the European protection order

1. A European protection order may be issued at any moment when the protected person intends to leave or has left the issuing State for another Member State.
2. The European protection order shall only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following obligations or prohibitions:
 - (a) an obligation not to enter certain localities, places or defined areas where the protected person resides or that he visits;
 - (b) an obligation to remain in a specified place, where applicable during specified times;
 - (c) an obligation containing limitations on leaving the territory of the issuing State;

- (d) an obligation to avoid contact with the protected person; or
- (e) a prohibition on approaching the protected person closer than a prescribed distance.

Article 3

Obligation to recognise the European protection order

1. Member States shall recognise any European protection order in accordance with the provisions of this Directive.
2. This Directive shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU.

Article 4
Designation of competent authorities

1. Each Member State shall inform the General Secretariat of the Council which judicial authority or authorities are competent under its national law to issue a European protection order and to recognise such an order, in accordance with this Directive, when that Member State is the issuing State or the executing State.
2. By derogation from paragraph 1, Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Directive, provided that such authorities have the competence to take decisions of a similar nature under their national law and procedures.
3. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Article 5

Issue of a European protection order

1. On the basis of a protection measure adopted in the issuing State, a judicial authority of that State, or another competent authority referred to in Article 4(2), shall, only at the request of the protected person, issue a European protection order, after verifying that the protection measure meets all the requirements set out in Article 3(1).
2. The protected person or his legal representative may submit a request for the issuance of a European protection order either to the competent authority of the issuing State or to the competent authority of the executing State.

If such a request is submitted in the executing State, its competent authority shall transfer this request as soon as possible to the competent authority of the issuing State in order, where appropriate, to issue the European protection order.

3. The authority which adopts a protection measure containing one or more of the obligations referred to in Article 2(2) shall inform the protected person about the possibility of requesting a European protection order when he intends to move to another Member State. The authority shall advise the protected person to submit the application before leaving the territory of the issuing State.

Article 6

Form and content of the European protection order

The European protection order shall be 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 person's legal representative if the protected person is a minor or is legally incapacitated;
- (b) the use of any technological instruments, if any, that have been provided to the protected person to carry out the immediate enforcement of the protection measure, where appropriate;

- (c) the name, address, telephone and fax numbers, and e-mail address of the competent authority of the issuing State;
- (d) the identification of the protection measure on the basis of which the European protection order is adopted;
- (e) a summary of the facts and circumstances which have led to the imposition of the protection measure in the issuing State;
- (f) the obligations or prohibitions imposed in the protection measure underlying the European protection order on the person causing danger, their length and the express indication that their infringement constitutes a criminal offence under the law of the issuing State or may otherwise be punishable by a deprivation of liberty;

- (g) the identity and nationality of the person causing a danger;
- (h) where appropriate, other circumstances that could have an influence on the assessment of the danger that confronts the protected person;
- (i) the express indication, where applicable, that a judgement, as defined by Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as defined by Article 4 of Council Framework Decision 2009/829/JHA, has already been transferred to another Member State and the identification of the competent authority for the enforcement of such a judgment or decision.

Article 7
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 Member State to establish its authenticity.
2. If the competent authority of either the executing 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 created by the Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network¹, the National Member of Eurojust or the National System for the coordination of Eurojust of its State, in order to obtain the required 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.

¹ OJ L 191, 7.7.1998, p. 4.

Article 8
Measures in the executing State

1. The competent authority of the executing State shall:
 - (a) upon receipt of a European protection order transmitted in accordance with Article 7, recognise that order and take, where appropriate, all measures 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 9;
 - (b) inform the person causing danger, where appropriate, of any measure taken in the executing State;
 - (c) take any urgent and provisional measure needed in order to ensure the continued protection of the protected person;

- (d) immediately notify the competent authority of the issuing State and, if the issuing State is different from the State of supervision, the competent authority of the State of supervision, of any breach of the protection measure underlying the European protection order and described therein. Notice shall be given using the standard form set out in Annex II.
2. The competent authority of the executing State shall inform the competent authority of the issuing State and the protected person about the measures adopted in accordance with this Article.

Article 9

Grounds for non-recognition of a European protection order

1. Grounds shall be given for any refusal to recognise a European protection order.
2. 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 2(2) have not been met;
 - (c) the protection derives from the execution of a penalty or measure that is covered by amnesty according to the law of the executing State and relates to an act which falls within its competence according to that law;

(d) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt the protection measures;

3. In the cases referred to in points (a) and (b) of paragraph 2, and before deciding not to recognise the European protection order, the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and, if necessary, request the latter to supply, without delay, any additional information required.

Article 10

Subsequent decisions in the issuing State

1. The competent authority of the issuing State shall have jurisdiction to take all subsequent decisions relating to the protection measure underlying a European protection order. Such subsequent decisions shall concern notably:

(a) the renewal, review and withdrawal of the protection measure;

- (b) the modification of the protection measure;
 - (c) the issuing of an arrest warrant or any other enforceable judicial decision having the same effect;
 - (d) the initiation of new criminal proceedings against the person causing the danger.
2. The law of the issuing State shall apply to decisions taken pursuant to paragraph 1.
 3. Where a judgment, as defined in Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as defined in Article 4 of Council Framework Decision 2009/829/JHA, has already been transferred to another Member State, subsequent decisions shall be taken in accordance with the relevant provisions of those Framework Decisions.

Article 11

Grounds for revoking the recognition of a European protection order

The competent authority of the executing State may revoke the recognition of a European protection order where there is evidence that the protected person has definitively left the territory of the executing State.

Article 12

Time limits

1. The European protection order shall be recognised without delay.
2. The competent authority of the executing State shall decide without delay on the adoption of any measure under its national law further to the recognition of a European protection order, in accordance with Article 8.

Article 13

Governing law

Decisions made by the competent authority of the executing State under this Directive shall be governed by its national law.

Article 14

Obligations of the authorities involved

1. Where, in application of Article 10(1)(b), the competent authority of the issuing State has modified the protection measure underlying the European protection order, it shall without delay inform the competent authority of the executing State of such modification.
Where appropriate, the competent authority of the executing State shall take the necessary measures in order to give effect to the modified protection measure, if those measures would be available under its national law in a similar case, informing the competent authority of the issuing State, the protected person and, where appropriate, the person causing danger, when the latter is in the territory of the executing State.
2. The competent authority of the issuing State shall without delay inform the competent authority of the executing State and the protected person of the expiry or revocation of the protection measure underlying the European protection order that was issued in the issuing State and, subsequently, of the revocation of the order.

Article 15

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 16

Languages

The European protection order shall be translated into the official language or one of the official languages of the executing State.

Any Member State may, either when this Directive is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council, that it will accept a translation in one or more other official languages of the institutions of the Union.

Article 17

Costs

Costs resulting from the application of this Directive shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

Article 18

Relation to 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, insofar 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, insofar 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...^{*}, Member States shall notify the General Secretariat of the Council and 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 General Secretariat of the Council and the Commission of any new agreements and arrangements as referred to in paragraph 2, within three months of signing such an agreement.

^{*} OJ: please insert date 3 months after the entry into force of this Directive

Article 19
Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Directive by ...^{*}
2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

^{*} OJ: please insert date 2 years after the entry into force of this Directive

Article 20

Review

1. By^{*}, the Commission shall draw up a report based on the information received from the Member States under Article 19(2).
2. On the basis of this report, the Council shall assess:
 - (a) the extent to which the Member States have taken the necessary measures in order to comply with this Directive, and
 - (b) the application of this Directive.
3. The report shall be accompanied, if necessary, by legislative proposals.

^{*} OJ: please insert date 4 years after the entry into force of this Directive

Article 21
Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Done at,

For the European Parliament
The President

For the Council
The President

ANNEX I

EUROPEAN PROTECTION ORDER

referred to in Article 6 of

**DIRECTIVE 2010/.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
OF... ON THE EUROPEAN PROTECTION ORDER***

Issuing State :

Executing State:

* OJ: please insert the number and date of this Directive.

(a) Information regarding the protected person:

Surname:

Forename(s):

Maiden 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):

If available, please provide the following information:

- Type and number of the identity document(s) of the person (ID card, passport):
- Type and number of the residence permit of the person in the executing State:

Where the protected person is a minor or is legally incapacitated, information regarding the natural person's legal representative :

Surname:

Forename(s):

Maiden name, where applicable:

Sex:

Nationality:

Office address:

(b) Have any technological instruments been provided to the protected person to carry out the immediate enforcement of the protection measure :

- Yes; please give a short summary of the instruments used:
- No.

(c) 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:

(d) Identification of the protection measure on the basis of which the European protection order has been issued:

The protection measure was issued 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:

(e) Summary of the facts and description of the circumstances which have led to the imposition of the protection measure mentioned under (d) above:

- (f) Indications regarding the obligation(s) or prohibition(s) that have been imposed by the protection measure on the person causing danger:
- Nature of the obligation(s): (you can tick more than one box):
 - an obligation on the person causing danger not to enter certain localities, places or defined areas, in particular relating to the residence of the protected person or the places the protected person visits;
 - if you ticked this box, please indicate precisely which localities, places or defined areas the person causing danger is prohibited from entering:
 - an obligation on the person causing danger to remain at a specified place, where applicable during specified times;
 - if you ticked this box, please indicate precisely which specified place and specified times are meant:
 - an obligation on the person causing danger containing limitations on leaving the territory of the executing State;
 - if you ticked this box, please indicate precisely which are the limitations imposed:

- an obligation on the person causing danger to avoid contact with the protected person;
 - if you ticked this box, please provide any relevant details:
- a prohibition on the person causing danger to approach 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 obligation(s) are imposed on the person causing danger:
- I confirm that the infringement of the above obligation(s) or prohibitions constitutes a criminal offence under the law of the issuing State or may otherwise be punishable by a deprivation of liberty

Indication of the penalty that could be imposed:

(g) Information regarding the person causing danger on whom the obligation(s) mentioned under (f) have been imposed:

Surname:

Forename(s):

Maiden 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):

(h) Other circumstances that could have an influence on the assessment of the danger that could affect the protected person (optional information):

(i) Please tick the box where appropriate and complete:

a judgment, as defined by Article 2 of Council 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, as defined by Article 4 of Council 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 8(1)(d) of

**DIRECTIVE 2010/.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
OF... ON THE EUROPEAN PROTECTION ORDER***

REPORT OF A BREACH OF THE PROTECTION MEASURE UNDERLYING AND
DESCRIBED IN THE EUROPEAN PROTECTION ORDER

(a) Details of the identity of the person causing danger

Surname:

Forename(s):

Maiden 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):

* OJ: please insert the number and date of this Directive.

(b) Details of the identity of the protected person:

Surname:

Forename(s):

Maiden 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.: (country code) (area code) (number)

Fax: (country code) (area code) (number)

E-mail:

Languages that may be used for communication:

(e) Breach of the obligation(s) described in the European protection order and/or other findings which could result in taking any subsequent decision:

The breach concerns the following obligation(s) (you can tick more than one box):

- an obligation on the person causing danger not to enter certain localities, places or defined areas, in particular relating to the residence of the protected person or the places the protected person visits;
- an obligation on the person causing danger to remain at a specified place, where applicable during specified times;
- an obligation on the person causing danger containing limitations on leaving the territory of the executing State;
- an obligation on the person causing danger to avoid contact with the protected person;
- an obligation on the person causing danger not to approach the protected person closer than a prescribed distance;

Description of the breach(es) (place, date and specific circumstances):

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):
