



European Protection Order Directive 2011/99/EU

European Implementation Assessment

STUDY

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Study

On 28 October 2016 the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Women's Rights and Gender Equality (FEMM) jointly requested authorisation to draw up an own-initiative implementation report on Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order (rapporteurs: Teresa Jiménez-Becerril Barrio, EPP, Spain and Soraya Post, S&D, Sweden). Following the authorisation by the Conference of Committee Chairs, the Ex-Post Evaluation Unit (EVAL) of the Directorate for Impact Assessment and European Added Value, Directorate-General for Parliamentary Research Services (EPRS), was asked to produce an assessment of the implementation of the directive to support the forthcoming committee report.

Abstract

This European implementation assessment examines the implementation of Directive 2011/99/EU on the European Protection Order (EPO), a mechanism for the mutual recognition of protection measures of victims of crime, which had to be transposed into the national legislation of the Member States by 11 January 2015. The assessment analyses the practices of the Member States, identifies a number of issues that help to explain why there has been very limited use of the EPO to date, and offers recommendations on how the implementation of the EPO directive might be improved.

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List of abbreviations and acronyms

CoE	Council of Europe
EBM	Emergency Barring Order
EC	European Commission
EIA	European Implementation Assessment
EIGE	European Institute for Gender Equality
EJN	European Judicial Network
EJTN	European Judicial Training Network
EPM	Protection measures in civil matters (EU Regulation 606/2013)
EPO	European Protection Order
EPRS	European Parliamentary Research Service
ERA	Academy of European Law
Eval	Ex-post Evaluation Unit (EPRS)
FEMM	European Parliament's Committee on Women's Rights and Gender Equality
FRA	Fundamental Rights Agency
LIBE	European Parliament's Committee on Civil Liberties, Justice and Home Affairs
TFEU	Treaty on the Functioning of the European Union
WAVE	Women Against Violence Europe Network

Methodology

This European implementation assessment (EIA) is divided in two parts: (1) an opening analysis prepared in-house by the Ex-Post Evaluation Unit (EVAL) within the European Parliamentary Research Service (EPRS), and (2) an outsourced study.

The opening analysis is mainly based on primary sources and EU official documentation. It also reviews the available assessments of the directive.

The accompanying study has been prepared by a research team with solid expertise on the issue under examination.¹ In conducting its research, the selected team took into account a list of specific questions prepared in coordination with EPRS, the LIBE/FEMM secretariats and the co-rapporteurs, covering various aspects of the assessment: on the transposition measures at Member State level and on the practical implementation of the directive, as well as on the challenges encountered.

The study builds both on the literature and reports available and, largely, on the team's own data gathered over the years and through a questionnaire specifically designed for the purpose of the study and sent to all Member States.² 19 Member States replied to the questionnaire,³ which was drafted to assess the current state of the legislation in the Member States and the coherence, relevance, effectiveness, efficiency and EU added value of the European Protection Order (EPO). The aim was to evaluate, two years after the date by which the EPO was to be implemented (11 January 2015), whether the objectives of the directive had been met, if any EPOs had been issued/received, and what were the remaining obstacles. In addition to the analysis across all Member States, the research team undertook an in-depth examination of the issues at stake in the following six Member States: Bulgaria, Germany, Spain, France, the Netherlands and Sweden. Contacts were also made with the European Judicial Network (EJN) to gain further information on the implementation of the EPO.

The EIA was peer-reviewed internally by colleagues from EPRS and submitted for comments to the European Commission (DG JUST).

¹ Almost all members of this team participated in a previous project funded by the DAPHNE Programme of the EU: the EPOgender project (Gender Violence: Protocols for the protection of victims and effectiveness of protection orders - JUST/2012/DAP/AG/3531).

² In most of the Member States, the responding national authorities work under the authority of the Ministry of Justice. In five countries, contacts were made with the EU Affairs Coordinator (Czech Republic, Greece, France, Hungary and Malta). In Bulgaria, contact was made with the Bulgarian Judges' Association, involved in the drafting of the implementation law of the directive.

³ Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Spain, Croatia, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Slovenia, Slovakia, Sweden.

Part I: Opening analysis

Key findings

Since the entry into force of Directive 2011/99/EU on the European Protection Order (EPO) in January 2015, very little data has been collected by the European Commission, EU agencies or NGOs to assess the use of this instrument at EU level.

To date, only seven EPOs have been identified. The very limited use of this instrument is striking given the number of victims who are benefiting from protection measures in criminal matters at the level of Member States – many of whom probably travel/move/commute across the EU on a regular and/or occasional basis. By way of illustration, it has been estimated that in 2010 over 100 000 women residing in the EU were covered by protection measures related to gender-based violence.

Despite the laudable intentions of the EPO Directive – the aim of which is to provide continuous and similar protection of victims when they are moving across Member States – there are many reasons why the EPO remains under-used in practice:

(1) There is a wide variety of protection measures across the Member States, which can be linked to civil, administrative or criminal proceedings. The EPO is thus a complex instrument, which in addition interplays with other EU instruments (such as the regulation on mutual recognition of protection measures in civil matters) and legal acts (such as framework decisions in the area of mutual recognition or decisions on probation and supervision measures).

(2) In addition, some Member States use sophisticated tools to protect victims from the breaching of protection orders (smartphone apps, geolocation devices, etc.), whereas others do not have resources allocated to such monitoring mechanisms. This raises the question of the feasibility, in practice, of an instrument that is intended to guarantee to victims the application of ‘identical’ or ‘equivalent’ protection measures across the EU.

(3) The EPO is not an instrument of harmonisation but rather of mutual recognition. As a result, an EPO can be refused by a Member State on the grounds that it relates to an act that does not constitute a criminal offence under its national law. Even if there is no evidence to date of an EPO being denied at EU level for this reason, this could occur in matters related, for example, to stalking, which is not a recognised offence in all Member States.

(4) There is a general lack of awareness and training, both among justice practitioners likely to come into contact with victims, and among NGOs active in the field of victim support. As a result, it seems that victims benefiting from protection measures at Member State level are not necessarily aware that they have the possibility to request an EPO.

The EPO is part of a comprehensive set of EU legal acts intended to enhance victim protection, which includes the Victims' Rights Directive. Therefore, an all-encompassing interpretation of victims' rights at EU level should help to overcome some of the challenges raised by the EPO. This could be achieved by initiating a recast procedure.⁴

1. Background

1.1. Protection orders at the level of Member States: an overview

Protection orders are meant to protect a person against an act that may endanger their life, physical or psychological integrity, dignity, personal liberty or sexual integrity.⁵ The aim is to avoid contacts between an offender or a potential offender and a victim or an individual at risk of being assaulted. Such protection measures, which can be adopted as part of criminal or civil proceedings, can be provisional or final. They can include prohibiting entry into certain places or defined areas where the protected person resides or visits, forbidding contact in any form, and banning the approach of the protected person within a set distance.

The decision to issue a protection order can be taken at various levels, as part of criminal, civil or administrative proceedings:⁶

- As part of criminal proceedings, a protection order may be issued at the request of a law enforcement body to protect a person deemed to be at risk as the result of a criminal investigation or a victim of a crime. In such cases, it is a coercive measure, or a condition for a suspended detention or prison sentence.
- A civil protection order is a remedy that can be requested in a civil or family law matter.
- Protection orders can also consist of 'emergency barring orders' (EBO) issued by the police as short-term measures imposed in emergency situations, independent of the wishes of the victim and independent of criminal proceedings.

Protection orders as part of criminal proceedings are covered by Directive 2011/99/EU on the European Protection Order (EPO), whereas protection orders adopted as part of civil and administrative procedures are covered by Regulation 606/2013 on mutual recognition of protection measures in civil matters. The scope of each of these EU

⁴ 'Recasting is like codification in that it brings together in a single new act a legislative act and all the amendments made to it. The new act passes through the full legislative process and repeals all the acts being recast. But unlike codification, recasting involves new substantive changes, as amendments are made to the original act during preparation of the recast text.' See European Commission legal service's webpage on the [recasting procedure](#).

⁵ van der Aa S., Niemi J., Sosa L., Ferreira A., Baldry A., [Mapping the legislation and assessing the impact of protection orders in the European Member States](#), Final report of the POEMS Project funded by the DAPHNE Programme of the EU, 2015, p. 22.

⁶ van der Aa S., Niemi J., Sosa L., Ferreira A., Baldry A., [Mapping the legislation and assessing the impact of protection orders in the European Member States](#), op.cit.

instruments is described below (point 2).

Although protection orders could be applied to anyone in need of protection, in practice such measures are mostly applied to protect women in cases related to intimate or domestic violence, harassment, stalking or sexual assault.⁷ In 2010, the Council of the EU estimated that over 100 000 (118 000) women residing in the EU were covered by protective measures related to gender-based violence.⁸ In Spain alone, according to recent statistics presented in the study that appears in Part II of this paper, during the first three months of 2017, a total of 9 438 judicial protection measures were issued by the courts for violence against women. Gender-based violence is a growing concern at EU level and in 2014 the EU Fundamental Rights Agency (FRA) estimated that one in three women in the EU has experienced physical and/or sexual violence since the age of 15 and that one in five women has experienced stalking.⁹

All Member States provide for some form of criminal and/or civil protection orders. However, despite an apparent similarity in the way in which these measures are issued, a wide variety of measures exist across the Member States. Furthermore, the way in which they are applied in practice differs greatly.

In relation to domestic violence, recent findings show that in some Member States, the use of protection measures is mostly linked to criminal proceedings.¹⁰ In others, a mix of civil and criminal measures are available to victims.¹¹ In only a few Member States, emergency barring orders (EBO) are also available.¹² The quasi-exclusive linkage of the issuing of protection orders and criminal proceedings can be problematic, as many women who are victims of domestic violence are reluctant to take part in criminal proceedings. There are indeed various reasons why women can be in fear of leaving a violent partner (or ex-partner) and launching criminal proceedings: strong psychological pressure; fear of retaliation; lack of economic or social support; concern for children, etc.

⁷ Intimate partner violence mostly affects women. Although women can be violent in relationships with men, and although violence sometimes occurs in same-sex partnerships, the most common perpetrators of violence against women are male intimate partners or ex-partners. By contrast, men are far more likely to experience violent acts by strangers or acquaintances than by someone close to them. See: World Health Organization, [Understanding and addressing violence against women: Intimate partner violence](#), 2012; FRA, [Violence against women: an EU-wide survey](#), 2014.

⁸ Council of the EU, [Initiative for a Directive](#) of the European Parliament and of the Council on the European Protection Order, explanatory memorandum, Brussels, 6 January 2010.

⁹ See: FRA, [Violence against women: an EU-wide survey](#), 2014. In addition to questions on domestic violence, the survey also included questions on stalking and sexual harassment.

¹⁰ This is the case in Poland and Portugal. See the WAVE Network, 'SNaP: Special Needs and Protection Orders' – project funded by the DAPHNE Programme of the EU, [International report](#), 2016. The [WAVE Network](#) is an NGO composed of European women's NGOs working in the field of combating violence against women and children. The SNaP report looks into national protection orders in cases related to domestic violence in Austria, Germany, Ireland, Poland and Portugal.

¹¹ Ibid. This is the case in Ireland, Austria and Germany.

¹² Only 12 Member States can apply emergency barring orders: The Netherlands, the Czech Republic, Austria, Luxembourg, Belgium, Italy, Hungary, Germany, Denmark, Finland, Slovenia, and Slovakia. See: van der Aa S. et al., op.cit.

Furthermore, in some Member States, long term and effective protection measures, if available in theory, are often not applied in practice.¹³ Finally, many deficiencies in the monitoring of these measures have been identified across the Member States.¹⁴

In contrast with these shortcomings, good practices in victim protection are also found. In Austria, for instance, a combination of emergency barring orders and civil and criminal protection measures, are available for victims. As part of the State's intervention system in cases of domestic violence, immediately after an emergency barring order is issued, support organisations (state-funded NGOs) must be informed by the police and receive contact details in order to get in touch with the victim and offer support. In addition, barring orders have to be monitored at least once within three days.¹⁵

1.2. The cross-border dimensions of victim protection

In a border-free European Union favouring freedom of movement and residence for persons, there are many situations in which individuals in need of protection require specific attention at EU level. These include individuals under threat of violence and/or victims of crime who travel across EU Member States. Out of the 9 438 judicial protection measures issued in Spain in the first three months of 2017, 28 % concerned non-Spanish citizens. This raises a critical question: if an individual benefiting from protective measures issued in one Member State decides to travel or reside in another Member State, how can it be ensured that those measures are valid and enforced outside the Member State of origin?

Individuals under threat in one Member State may have various reasons or obligations to spend some time in another Member State: to visit family, to travel for holidays, or to work (especially in cross-border areas). A victim might also decide to establish her/himself in another Member State to start afresh. Therefore, there is a strong cross-border dimension in victim protection that needs to be taken into account.¹⁶

This concern is at the origin of the European Protection Order Directive. The two European Parliament co-rapporteurs on the draft EPO directive (Teresa Jiménez-Becerril and Carmen Romero López) argued at the time that, by estimating that at least 1 % of these victims would move, an average of 1 180 individuals would need continuous protection across the EU.¹⁷

¹³ See: 'SNaP: Special Needs and Protection Orders', op.cit. The report notes the very low number of long term or final barring orders in Ireland, Poland and Portugal.

¹⁴ Ibid.

¹⁵ Ibidem, p. 21.

¹⁶ In the externally commissioned study (see Part II), various scenarios involving cross-EU cases are presented (Annex 2).

¹⁷ Jiménez-Becerril T. and Romero López C., 'The European Protection Order', [EUCRIM 2/2011](#), p. 76.

1.3. The genesis of the European Protection Order Directive

In 2009, the entry into force of the Lisbon Treaty marked the genesis of the development of the Area of Freedom, Security and Justice. Article 67(3) of the Treaty on the Functioning of the European Union (TFEU) provides that 'the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws'.

Furthermore, Article 82(2) of the TFEU provides that 'to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules'. These include the rights of victims of crime (Article 82(2) c).

In 2010, as part of new powers conferred under the Lisbon Treaty, whereby legislative proposals can be presented on the initiative of a quarter of the Member States,¹⁸ a group of Member States (Belgium, Bulgaria, Estonia, Spain, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden) led by Spain proposed an initiative for a European Protection Order Directive.¹⁹

As indicated in the explanatory memorandum of the initiative, the call for the establishment of an EPO came in a context where protection of victims had been given further attention at EU level. The 'Stockholm Programme', approved by the European Council in 2009, mentioned in particular the need to offer special protection measures to victims of crime or witnesses at risk.²⁰

The initiative also emerged from increased concern at regional and international level about the issue of gender-based violence, for which restraining and protection orders were increasingly used at the level of individual countries. In 2002, the Council of Europe issued a specific recommendation on the protection of women against violence.²¹ The United Nations also played a key role in acknowledging the need to ensure better protection of victims, especially women.²²

¹⁸ Article 76 TFEU. See: Peers S., [Guide to EU decision-making and justice and home affairs after the Treaty of Lisbon](#), Statewatch, December 2010.

¹⁹ Council of the EU, [Initiative for a Directive](#) of the European Parliament and of the Council on the European Protection Order, explanatory memorandum, Brussels, 6 January 2010

²⁰ The [Stockholm Programme](#), part 3.1.1.

²¹ Council of Europe, [Recommendation Rec\(2002\)5](#) of the Committee of Ministers to Member States on the protection of women against violence, 30 April 2002.

²² See: [United Nations Declaration](#) on the Elimination of Violence against Women, adopted on

The rationale for a dedicated instrument at EU level was as follows:

‘Victims’ freedom of movement and the ease with which aggressors can move around the EU mean that protective measures must not be confined to the territory of the Member State in which they originated. Maintaining a restrictive attitude to protection by limiting it to the territory of the State whose judicial authority initiated it would amount either to limiting protected victims’ freedom of movement or, if they do move away, to forcing them, expressly or tacitly, to forgo the protection which the State provided, thus putting them at increased risk’.²³

Although rather succinct, an ex-ante impact assessment on possible action at EU level to ensure protection continuity across the Member States was carried out. Four options were outlined:²⁴ (A) no additional European Union measures; (B) adoption of non-legislative measures; (C) legislative proposals to amend Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions and Council Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention; (D) legislative proposal for a single text covering all the possibilities for extending victim protection.

Only options C and D were considered. As regard option C (amendment of the above-mentioned framework decisions), a new version could have incorporated a victim protection mechanism to apply in cases where it is the victim who moves to a State other than the one which adopted the initial measure. However, option D (a new legislative proposal focusing on victims) was favoured on the basis that an effective victim protection instrument at European level was needed, and that clarity was required in that field. Indeed, the decisions referred to in option C focused on the offender or the presumed offender as the subject of alternative measures, probation measures or provisional measures – not on their victims.

A new victim protection instrument at EU level was deemed necessary in order to provide ‘a dynamic and effective mechanism far removed from a bureaucratic procedure’.²⁵ The European Protection Order was thus designed to ‘continue to protect persons finding themselves in such circumstances, ensuring that in the Member State to which they move they will receive a level of protection identical or equivalent to the protection they enjoyed in the Member State which adopted the protection measure’.²⁶

20 December 1993; the [UNiTE to End Violence against Women campaign](#) (2008-2015).

²³ Council of the EU, [Initiative for a Directive](#) of the European Parliament and of the Council on the European Protection Order, explanatory memorandum, Brussels, 6 January 2010.

²⁴ Ibid., pp. 10, 11, 12.

²⁵ Ibid, p. 13.

²⁶ Ibidem.

2. The EPO Directive

2.1. Criminal and civil procedures: negotiations and controversies

The EPO Directive²⁷ was adopted in December 2011, following negotiations that opposed, on the one hand, the Council and the Parliament and, on the other, the European Commission.

The legal controversy concerned the scope of judicial cooperation in ‘criminal matters’. As recalled at the time by the co-rapporteurs on the draft directive (Teresa Jiménez-Becerril Barrio and Carmen Romero López), the European Commission wanted to restrict the EPO to purely criminal procedures. This raised concerns in the Parliament and the Council, as such a restriction would have excluded from the scope of the directive civil and administrative procedures imposing protective measures.²⁸

As a result of these negotiations, and to resolve the issue of separate legal bases in EU law for mutual recognition of civil law measures and criminal law measures, the Commission proposed to adopt a package²⁹ consisting of the EPO Directive, dealing with criminal procedures, and a Regulation on a Civil European Protection Order, dealing with civil and administrative procedures (hereafter, the EPM Regulation). This package of measures – meant to work in tandem – was finally adopted, along with the opening of negotiations on a proposal for a horizontal directive on victims’ rights.³⁰

2.2. EPO: An instrument of mutual recognition

As intended by the Member States presenting the initiative, the EPO provides an obligation to recognise protection orders issued by judicial authorities from other Member States. It is thus a mechanism based on mutual recognition, not a harmonisation instrument.³¹ The EPO Directive is the first directive adopted for the purpose of mutual recognition in criminal matters.³² The objective of the European Protection Order was threefold:³³

²⁷ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

²⁸ Jiménez-Becerril T. and Romero López C., ‘The European Protection Order’, op.cit., p. 77

²⁹ [Statement](#) by EU Justice Commissioner Viviane Reding on the European Protection Order, Strasbourg, 13 December 2011.

³⁰ See Commission Staff [Working Paper](#), Impact Assessment accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, and both the proposal for a directive establishing minimum standards on the rights, support and protection of victims of crime and the proposal for a regulation on mutual recognition of protection measures in civil matters, Brussels, 18 May 2011, SEC(2011) 580 final.

³¹ Council of the EU, Initiative for a Directive of the European Parliament and of the Council on the European Protection Order, explanatory memorandum, Brussels, 6 January 2010.

³² Klimek L., ‘European Protection Order’, in: *Mutual Recognition of Judicial Decisions in European Criminal Law*, Springer, p. 494. Similar instruments include the European Arrest Warrant or the European Investigation Order. For a full list of practical tools of judicial cooperation, see the

- to prevent a further offence by the offender or presumed offender in the State to which the victim moves (i.e., the executing State);
- to provide the victim with a guarantee of protection in the Member State to which he/she moves which is similar to that provided in the Member State which adopted the protection measure;
- to prevent any discrimination between the victim moving to the executing State compared with victims enjoying protection measures initiated by that State.

Article 1 of the directive follows these objectives with further details: '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'.

Articles 2-19 provide for the rules allowing a judge or equivalent authority in one EU country to issue a European protection order when the protected person moves to another EU country.

To issue a European protection order, there must be an existing national protection measure in place in that EU country that imposes one or more of the following bans or restrictions on the person causing the protected person danger (Article 5):

- a ban on entering certain places or defined areas where the protected person lives or visits;
- a ban or a limit on contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;
- a ban or restriction on approaching the protected person closer than a set distance.

According to Article 6, the order can be requested in either the EU country where the protected person currently lives or stays (executing country) or the one in which the order will be issued (issuing country). Several conditions for issuing an EPO are set out:

- the protected person decides to live or stay, or already lives or stays, in another EU country;
- the protected person requests the order him/herself;

[European Judicial Network website.](#)

³³ Council of the EU, [Initiative for a Directive](#) of the European Parliament and of the Council on the European Protection Order, explanatory memorandum, Brussels, 6 January 2010.

- the person causing danger has the right to be heard and to challenge the protection measure, if he/she did not have the right to do so before the adoption of the original protection measure.

The form of the order is set out in Annex 1 of the directive. In terms of content, the information that must be provided includes the following (Article 7): the identity and nationality of the protected person, 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); a summary of the facts and circumstances which have led to the adoption of the protection measure in the issuing State; the identity and nationality of the person causing danger, as well as that person's contact details; an indication 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.

The directive also contains provisions in case a protection order issued by a Member State is not recognised by the executing State. The executing State can indeed refuse to recognise an order for a number of reasons, including (Article 10):

- the order is not complete or has not been completed within the time-frame set out by the executing country;
- the protection measure relates to an act which is not a criminal offence in the executing country;
- the protection measure does not impose one or more of the bans or restrictions set out above.

The executing country is responsible for taking and enforcing measures to carry out the order (Article 11). If the order is breached, it can impose criminal penalties, non-criminal decisions, and/or urgent and temporary measures to end the breach prior to any subsequent decision by the issuing country.

The directive furthermore provides for grounds for discontinuation of measures taken on the basis of a European Protection Order (Article 14), the resolution of linguistic issues that could arise in establishing an EPO (Article 17), as well as the bearing of the costs incurred by the enforcement of an EPO (Article 18).

2.3. Victim protection at EU level

The EPO, as well as its complementary counterpart in civil matters, the EPM Regulation, are part of a comprehensive set of EU legal acts intended to enhance victims' protection across the EU.³⁴

³⁴ See 'Mutual recognition of protection measures: Right to continue to benefit from protection measures when moving to another Member State', [European Commission website](#).

The 'Budapest roadmap', adopted in 2011, was aimed at further strengthening the rights and protection of victims, in particular in criminal proceedings. In this resolution, 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.

In addition to the EPO and the above-mentioned EPM Regulation, the EU has adopted the following legal instruments:³⁵

- a specific instrument on financial compensation to victims of crime – Council Directive 2004/80/EC relating to compensation to crime victims;³⁶
- a horizontal instrument – Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime³⁷ (the Victims' Rights Directive);
- two specific directives regarding trafficking in human beings³⁸ and child sexual exploitation.³⁹

2.4. Transposition

The Member States were meant to have transposed the provisions of the EPO Directive in their national laws by 11 January 2015. On the same date, Regulation 606/2013 on mutual recognition of protection measures in civil matters applied. All Member States have introduced legal provisions complying with the EPO Directive, the last being Belgium in 2017.⁴⁰ Denmark and Ireland opted out of the directive.

The directive includes a review clause (Article 23) that states that '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'. This timing was not followed by the European Commission – the publication of a report is planned in 2018.

³⁵ European Commission website, [factsheet on victims](#).

³⁶ [Council Directive 2004/80/EC](#) relating to compensation to crime victims.

³⁷ [Directive 2012/29/EU](#) establishing minimum standards on the rights, support and protection of victims of crime.

³⁸ [Directive 2011/36/EU](#) of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. For information on implementation of this directive, see Scherrer A., Werner H., [Trafficking in Human Beings from a Gender Perspective](#), EPRS study, April 2016.

³⁹ [Directive 2011/92/EU](#) of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA. For information on implementation of this directive, see Scherrer A., van Ballegooij W., [Combating sexual abuse of children](#), EPRS study, April 2017.

⁴⁰ A table of transposition for the EPO Directive can be consulted on the [European Judicial Network Website](#).

3. Role of the European Parliament

The European Parliament has played a significant role in supporting initiatives at EU level to better protect victims.⁴¹ It adopted two resolutions with particular relevance to the EPO – one on the elimination of violence against women (2009),⁴² and another on equality between women and men (2010)⁴³ in which Parliament endorsed the proposal to introduce the EPO (Recital 34).

Parliament strongly supported the establishment of the EPO, seen as an important step for the consolidation of an area of freedom, security and justice, and for the protection of EU citizens.⁴⁴ Parliament favoured the approach chosen by the Council as regards the interpretation of judicial cooperation in ‘criminal matters’ (see the legal controversy presented above in 2.1) and throughout the negotiations sought to improve the directive, notably on the need to improve the rights of the victims and to better inform them of these rights, and on the need better to protect vulnerable victims, in particular children.⁴⁵

As a follow-up, and in line with the European Parliament’s scrutiny role, its Committees on Civil Liberties, Justice and Home Affairs (LIBE) and on Women’s Rights and Gender Equality (FEMM) jointly requested authorisation in 2016 to draw up an own-initiative implementation report on the EPO Directive, to be adopted by the end of 2017. In addition, at the time of writing, the LIBE and FEMM committees are preparing an own-initiative implementation report on the Victims’ Rights Directive, to be adopted in early 2018.⁴⁶

In parallel to these efforts to enhance victim protection across the EU, in February 2014 the Parliament adopted a legislative initiative resolution calling on the Commission to propose an EU-wide strategy on violence against women (who are in practice the primary beneficiaries of protection measures in both civil and criminal matters), including a draft law with binding instruments to protect women against violence.

In addition, the Parliament supports the EU accession to the Council of Europe Convention on preventing and combating violence against women (the ‘Istanbul Convention’, adopted in 2011), the first legally binding instrument at international level in this field.⁴⁷ The Convention was signed by the EU in June 2017. In advance of being

⁴¹ Klimek L., *op.cit.*, p. 464.

⁴² European Parliament [resolution of 26 November 2009 on the elimination of violence against women](#).

⁴³ European Parliament [resolution of 10 February 2010 on equality between women and men in the European Union](#).

⁴⁴ Jiménez Becerril T. and Romero López C., *op.cit.*, p. 76

⁴⁵ *Ibid.*, pp. 77-78.

⁴⁶ For the Victims’ Rights Directive, a European Implementation Assessment (EIA) is currently under preparation by the EVAL Unit of EPRS, in support of the forthcoming implementation report of the LIBE/FEMM Committees. It will be published in November 2017.

⁴⁷ See [CoE website](#) on the Istanbul Convention: to date, half of the EU Member States have ratified the Convention; see also De Vido S., [The Ratification of the Council of Europe Istanbul Convention](#)

requested to consent to the EU's formal accession to the Convention, the Parliament discussed and adopted an interim report⁴⁸ on this issue during its September 2017 plenary session. The report highlights that the EU accession to the Istanbul Convention will provide a coherent European legal framework to prevent and combat violence against women and gender-based violence. The document calls on Member States to enforce the Convention and allocate adequate financial and human resources to preventing and combating gender-based violence and to the protection of victims.

The accession to the Istanbul Convention is an important step, as some of its provisions could mitigate a number of the difficulties raised by the implementation of the EPO (as explained below).

4. Implementation of the directive: State of play

Two research projects were funded in 2012-2014 under the European Commission's DAPHNE Programme⁴⁹ to explore the issue of protection orders at the level of Member States and the potential challenges raised by the implementation of the two mutual recognition instruments (the EPO Directive in criminal matters and the EPM Regulation in civil matters): the POEM Project⁵⁰ and the EPOGender Project.⁵¹

Both research projects underlined many challenges, prior to the effective transposition of the directive into Member States' legal systems. These include challenges related to the interpretation of the instrument and to national differences in protection measures in place across the Member States. Two years after the transposition deadline, the study commissioned for the purpose of this European Implementation Assessment (EIA) (Part II) provides a rather mixed picture that confirms these preliminary findings.

Lack of data

The research team that prepared the study (see Part II of this EIA) could identify only seven EPOs issued since the entry into force of the directive: four of the seven EPOs were issued in Spain, two in the UK and one in Italy (see Annex 1). Given the potential number of victims that could benefit from the recognition of an EPO across the EU (see

[by the EU: A Step Forward in the Protection of Women from Violence in the European Legal System](#), *European Journal of Legal Studies*, Spring 2017, Volume 9, Issue 2.

⁴⁸ [Interim Report](#) on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM(2016)0109 – 2016/0062(NLE)). See Jurviste U. and Shreeves R., [The Istanbul Convention: A tool to tackle violence against women and girls](#), EPRS, September 2017.

⁴⁹ The [Daphne III Programme](#) of the European Commission sought to contribute to the protection of children, young people and women against all forms of violence.

⁵⁰ van der Aa S., Niemi J., Sosa L., Ferreira A., Baldry A., [Mapping the legislation and assessing the impact of protection orders in the European Member States](#), Final report of the POEMS Project funded by the DAPHNE Programme of the European Commission, 2015, pp. 13-14.

⁵¹ [EPOGender](#) (Gender Violence: Protocols for the protection of victims and effectiveness of protection orders. Towards an efficient implementation of Directive 2011/99/EU).

1.2.), this situation points to serious sub-optimal use of the instrument to date. However, the authors of the study note that in most Member States there are no central registry systems for EPO, thus creating difficulties in data collection on the enforcement of the EPO. Such data collection is, however, an obligation of the Member States, according to Article 22⁵² of the directive, and is also essential in view of the Commission's obligation to submit a meaningful report on the application of this directive (Article 23), expected in 2018.⁵³

As underlined earlier, more research is needed across the EU to assess the use and practical challenges of protection orders, not only at domestic level but also from a cross-border perspective. There is a critical need to monitor the implementation of both the EPO Directive and the EPM Regulation. However, delay in the European Commission's reporting duties set out in Article 23 of the directive has postponed an EU assessment of the effectiveness of these instruments (see 2.4).

In addition to this shortcoming, EU agencies active in the field of victims' rights (such as the EU Fundamental Rights Agency - FRA) or gender-based violence (such as the European Institute for Gender Equality - EIGE) have not looked extensively into the EPO. Nor has this knowledge gap been overcome by NGOs. As mentioned earlier, even if some NGOs have focused on the availability and the use of protection orders at national level, no overview of the application of the EPO Directive at European level is available.

As a result of poor data collection at EU level, the legal and practical challenges - both at the level of victims and at the level of authorities - of the implementation of the EPO are difficult to assess.

EPO: a complex instrument

Legal and practical difficulties could partly explain the 'sporadic' use of the EPO. These include a lack of harmonisation of protection measures across Member States, causing difficulties in the process of mutual recognition, as well as a wide margin of interpretation left to the Member States due to a lack of precision in the measures to be taken.

This points to an important limit of the EPO: to what extent can this instrument offer the same level of protection to victims across the EU? Article 9 of the directive provides that 'the measure adopted by the competent authority of the executing State [...] shall, to the highest degree possible, correspond to the protection measure adopted in the issuing State'. However, given the great diversity of protection measures at the level of Member

⁵² 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'.

⁵³ 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'.

States (see 1.1), and the great disparity in the resources allocated to the monitoring of the protection measures,⁵⁴ (such as dedicated apps on smartphones for victims or geolocation devices applied to the aggressor), the question arises whether the EPO is sufficiently robust to prevent any discrimination between victims moving across the EU.

Furthermore, the interplay between various EU legal texts (the EPO Directive, the EPM Regulation covering civil matters, the Council framework decisions on the principle of mutual recognition of decisions on supervision measures as an alternative to provisional detention) can create additional complexities.

As a result of the co-existence of the EPO Directive and the EPM Regulation, two different mechanisms for the recognition of protection measures are currently in place: an EPO (for measures adopted as part of criminal proceedings) and a Certificate (for measures adopted as part of civil proceedings). The fact that most of the Member States have a mix of criminal and civil measures to protect victims – which are not necessarily recognised by other Member States (see 1.1. above) – adds to the difficulties in recognising and applying protection measures across Member States. This dual system is undoubtedly a source of confusion for legal actors intervening in the process of issuing and/or executing protection orders at the EU level, but also for the victims.

As far as the mutual recognition framework decisions are concerned, the EPO Directive acknowledges that a protection measure can have been imposed following a judgment based on these decisions prior to an EPO. In that case, the directive provides the following: ‘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’ (Recital 16). Despite this provision, it is not always clear in which contexts the application of the decisions or of the EPO would be more appropriate for the protection of victims and/or the monitoring of the offenders. The decisions indeed provide for the continuity of probation measures or alternative sanctions in cases where a convicted individual moves across the EU.⁵⁵ These sanctions can include an obligation not to enter certain localities, places or defined areas and/or an obligation to avoid contact with specific persons.⁵⁶

⁵⁴ See Section II.4 of the Study in Part II.

⁵⁵ See [Probation measures and alternative sanctions in the EU](#), an EU co-funded project on the implementation of the Framework Decision 2008/947/JHA.

⁵⁶ [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, see Article 4. [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; see Article 1, which lays down rules according to which one Member State recognises a decision on supervision measures issued in another Member State, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of these measures.

Lack of awareness and training

As regards victims, an important point is the need to provide adequate information to the protected person, including the possibility of requesting an EPO if he/she is moving to another Member State. The authors of the study point to great deficiencies in that regard and underline a general lack of information and awareness campaigns targeted at the victims themselves across the Member States. Furthermore, victims moving across the EU can be confronted with an unknown legal system or language, placing them in a particularly vulnerable situation. In these situations, the lack of access to information is detrimental to victims' protection.

The issue of training of professionals likely to come in contact with victims in need of protective measures appears to be key (and is, in fact, dealt with in Recital 31 of the directive). Very few Member States have organised specific training on the EPO. The Academy of European Law (ERA)⁵⁷ does offer training on access to justice for crime victims in the EU for judges, prosecutors, court staff, lawyers and other professionals providing victims support, as well as summer courses on European criminal justice, but here the EPO is tackled as part of a more general framework on minimum standards for victims. The European Judicial Training Network (EJTN), the principal platform for the training and exchange of knowledge of the European judiciary, could also be engaged further to exchange good practices and information on the EPO.

Creating synergies within the EU overall legal framework and international norms

While examining the deficiencies of the EPO, the synergies between this instrument and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, must be stressed.

Moreover, the EPO as a legal instrument of judicial cooperation, and not only an instrument for victim protection, should be interpreted together with the Victims' Directive to fully guarantee the procedural rights of victims in criminal proceeding. In particular, the study notes that an all-encompassing interpretation of victims' rights at EU level should help to overcome some of the challenges posed by the EPO:

- The protection measures included in Directive 2011/99/EU establish a minimum standard of protection, thus using the lower standards rather than the higher standards of victim protection. Therefore, beyond the three protection measures that the EPO provides, the shortcomings in the protection of the victims of crime could be compensated through the application and the implementation of the Victims' Rights Directive.

⁵⁷ The Academy of European Law was set up in 1992, after the European Parliament recommended that the Commission invest in a centre for the continuing education of lawyers in order to improve the application of European law. The academy is located in Trier in Germany. In 2015, 65 % of ERA budget came from EU project funding and an EU operating grant. See ERA [Annual Report](#), 2015.

- When taking part in legal proceedings, the rights of the victims have to be protected more effectively; this includes having access to interpretation services, which is key in the case of the EPO where a victim moves from one Member State to another. According to the provisions of the Victims' Rights Directive, all Member States should provide interpretation services free of charge.⁵⁸ This provision would complement the EPO Directive. With regard to costs, the EPO Directive should be complemented by Article 7(3) of the Victims' Rights Directive, which grants victims the right to request the translation, free of charge, of information essential to the exercise of their rights in criminal proceedings in case they do not understand or speak the language used.
- Most Member States have not established any specific measures or provisions regarding vulnerable persons. Therefore, the rights of particularly vulnerable victims should be protected according to the provisions of the Victims' Rights Directive that refer explicitly to minors and persons with disabilities.

Similarly to the implementation of the Victims' Rights Directive, the adoption of the Istanbul Convention at EU level, and its ratification across the Member States, could mitigate some of the obstacles that could potentially affect the enforcement of an EPO. For instance, an executing State could deny the execution of a protection order issued by another Member State on the ground that it relates to an act that does not constitute a criminal offence under its national law (principle of double criminality). This could occur in cases related to stalking, which, at the time of writing, is not recognised as an offence in all Member States. The accession to the Istanbul Convention could thus mitigate this risk, as the criminalisation of stalking is covered by Article 34⁵⁹ of the Convention.

Therefore, in addition to the promotion of more efforts in data collection, awareness raising campaigns and training at EU level, the European Parliament could consider, in the framework of the review clause of Article 23 of the directive, drawing the European Commission's attention to the possibility of a recast procedure, whereby minimum standards for victims' protection – in line with the Victims' Directive and the provisions of the Istanbul Convention – could be laid down and could include reinforced provisions related to the EPO.

⁵⁸ Article 7(1) of Directive 2012/29/EU.

⁵⁹ Article 34 of the [Istanbul Convention](#): 'Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised'.

Part II: Assessment of the Implementation of the EPO Directive 2011/99/EU

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EXECUTIVE SUMMARY

To ensure that a person who has been granted protection measures in a Member State continues to benefit from an equivalent protection when moving or travelling to another Member State, the EU put in place Directive 2011/99/EU on the European Protection Order (EPO), a mechanism for the mutual recognition of protection measures in criminal matters. The protection measures covered by the Directive concern situations where victims or potential victims of crime benefit from a prohibition or obligation, which then apply to the offender or the person causing risk, of entering certain places, or approaching or contacting victims. The provisions of the Directive had to be implemented in the national legislation of the Member States by 11 January 2015.⁶⁰

Two and a half years after the date of implementation, there is growing concern on the effectiveness of the EPO. In order to support the upcoming report of the LIBE and FEMM committees on the implementation of Directive 2011/99/EU, this study was commissioned to offer a critical analysis of the implementation in terms of its coherence, relevance, effectiveness, efficiency and the EU added value.

The study was based on the literature and reports available, but above all on our own research, based on a survey and the analysis of the implementation legislation of the Directive. The survey was based on especially drafted questionnaires addressed to the responsible authorities of all Member States; out of a total of 26 Member States, 19 countries responded, and 7 countries did not return the questionnaire.

The study has confirmed the impression that, although the number of protection measures is large throughout the EU, the EPO has had a very limited use: only seven EPOs have been detected (Annex 1). The study analyses the practices of the Member States, identifies a number of issues that contribute to explain the reasons of this scarce use, and offers some recommendations on how to improve this legal instrument.

The protection measures included in EPOs completely depend on the diverse internal national systems and laws on victim protection of the Member States. The Directive has not led to a convergence of this diversity, but has built upon a mechanism of judicial cooperation, which adds great complexity from the perspective of the victims. Therefore, the practical effectiveness of the EPO will greatly depend on the attitude and cooperation between Member States. In the case of victim protection measures, the effectiveness of instruments of mutual recognition of judicial decisions would be considerably improved if there were a previous harmonisation of the national legislation on the matter; otherwise, victims will face a difference in the level of protection that the Directive cannot solve.

⁶⁰ European Commission [fact sheet on victims](#), retrieved in July 2017.

In this regard, there is a great deficit in coordination and communication, not only among the competent authorities within Member States, but also among Member States. This coordination and cooperation is necessary throughout the entire EPO process. Member States should streamline the procedures and clarify the communication channels between States.

The information provided to the protected person is one of the key elements for the effectiveness of the EPO, not only when requesting an EPO, but throughout the entire process. Besides, the EPO implies that victims will be confronted with an unknown legal system or language, placing them in a particularly vulnerable situation. Therefore, this information is essential for ensuring proper access to justice, but it is not adequately provided to victims because of a partial or complete lack of knowledge of this instrument on the part of the stakeholders.

Consequently, victims should benefit from all rights necessary to have an effective right to access to justice, during the entire EPO process, especially legal aid, translation and interpretation services, all free of charge. The shortcomings of Directive 2011/99/EU could be compensated using the Victims' Directive.

Most Member States have not established any special measures or provisions regarding vulnerable persons. Therefore, special measures or provisions should be provided regarding vulnerable persons, in accordance with the Victims' Directive. In the case of EPOs, special attention should be paid to the child victims of crime.

Courses, training activities or information campaigns on the EPO should be addressed not only to the professionals involved, but also to NGOs and other entities working with these vulnerable groups. Victims should also be provided with information on the availability and access to other measures in the executing State that fall outside the scope of the Directive.

The procedure for the adoption and execution of an EPO is complex, and does not end when the protection measures stated in the EPO are adopted in the executing State. The effective protection of the victim requires continuous monitoring of the execution of the EPO, which should be given proper attention. This implies, again, coordination among the Member States and the competent authorities, as well as the provision of adequate information to the parties involved.

I. Introduction: the EPO Directive as an instrument of mutual recognition of judicial decisions in criminal matters

In order to address the research commissioned on the assessment of the implementation of Directive 2011/99/EU on the European Protection Order (EPO), a first section starts by providing a general overview of this instrument of mutual recognition of judicial decisions, its nature and general functioning. The second section then goes into more detailed matters, divided into subsections that deal with the particular questions that have to be answered.

1. The EPO as an instrument of judicial cooperation

The European Protection Order (EPO), as established by the Directive 2011/99/EU⁶¹, is first and foremost an instrument of mutual recognition of judicial decisions in criminal matters in the area of freedom, security and justice.

The principle of mutual recognition involves two judicial authorities in a shared common legal area, that is, the European Area of Freedom, Security and Justice. This principle provides effectiveness to a judicial decision in criminal matters taken by the competent authority in one Member State –the issuing State– in the entire European Area of Freedom, Security and Justice of the Union, so that another Member State –the executing State– is required to recognise 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.

The principle of mutual recognition finds its origins in the case law of the predecessor of the EU Court of Justice, but it is not until the Lisbon Treaty that it is explicitly laid down in the primary law of the Union.⁶² Chapter 4 (Articles 82-86) deals entirely with judicial cooperation in criminal matters, and starts by saying that the 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. It also foresees measures aimed at the approximation of the laws and regulations of the Member States; and thus, to the extent necessary to facilitate mutual recognition, the European Union can establish minimum standards by means of Directives.

⁶¹ [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.

⁶² European Union, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007, 2007/C 306/01.

Therefore, the EPO is 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 measures⁶³, to which we will refer later.

However, until the entry into force of the Lisbon Treaty, all the instruments based on the principle of mutual recognition took the legal form of Framework Decisions. The Directive on the EPO was the first instrument regarding the area of freedom, security and justice that was adopted on the basis of the principle of mutual recognition of judicial decisions in criminal matters.

2. The relation between the national protection measures and the European Protection Order

Technically, the EPO 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”.⁶⁴

From this wording, it should be understood that the requirements for issuing an EPO are: first, a person is in danger in a Member State; second, there is a protection measure or a set of protection measures issued by a judicial or equivalent authority of this State for this person; and third, there is a victim or person in danger moving from his or her original country to another EU Member State. Therefore, the EPO is issued on the basis of pre-existing protection measures, previously adopted and in force in the issuing State, and established according to the internal national legislation of this State.

As a matter of fact, the EPO has a limited scope of measures that can be recognised between EU Member States; these protection measures must necessarily and exclusively be one or more of the three prohibitions or restrictions established in Article 5 of the Directive, which are:

- 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

⁶³ Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, OJ L 337, 16.12.2008, p. 102, and Council Framework Decision 2008/947/JHA 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, in case the offender as well as the victim move to another Member State, OJ L 294, 11.11.2009, p. 20.

⁶⁴ Article 2(1) of Directive 2011/99/EU.

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

Therefore, the EPO should specify and include only those protection measures that match the prohibitions or restrictions already imposed by the national competent judicial authority to protect the victim, based on the national legislation. However, if the national legislation of one Member State allows for the adoption of measures different from these three listed measures, e.g. support measures (such as assistance or family support), their execution cannot be transferred to another Member State based on this instrument of mutual recognition, as they fall outside the scope of the Directive.

As for the State of destination, or executing State (when the EPO is received) the judicial or equivalent competent authority is required to recognise the EPO, that is, the decision previously adopted by the competent judicial authority in the State of origin, and to enforce the protection stated in the EPO, by adopting the equivalent protection measures available in accordance with its internal national legislation. This means that the law applicable to the execution of the EPO will always be the national law of the executing State, related only to the three possible measures that the Directive allows for, even if this entails a certain adaptation of the protection measures as originally adopted during the criminal proceedings in the issuing State.

Therefore, the EPO allows for the direct recognition of the previous protection without the need for the victim or person in danger to start new proceedings or to produce new evidences in the State of destination. However, at the same time, it entails a certain degree of flexibility, since the executing State is not required to take the exact same protection measures as those adopted in the issuing State, but instead to provide for the same level of protection, relying on the measures available under its national law in a similar case, and always confined to the three possible measures listed in article 5 of the Directive 2011/99/EU. If the States wish to improve the victim's protection, including measures beyond the Directive 2011/99/EU and other rights, then it is necessary to resort to another EU instrument, Directive 2012/29/EU, also known as the Victims' Directive.⁶⁵

The EPO is an instrument that completely depends on the internal national legislations of Member States: EPOs are issued on the basis of protection measures previously adopted in the issuing State according to its national legislation; the protection stated in the EPO will be recognised in the State of execution by adopting the protection measures available in accordance with its national legislation.

⁶⁵ 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.

3. The scope of Directive 2011/99/EU

The aim of Directive 2011/99/EU is to ensure that victims of a criminal act, which may endanger his or her life, physical or psychological integrity, dignity, personal liberty or sexual integrity, who have obtained a protection order in one of the EU Member States, continue to receive this protection when they move to another Member State. It should be stressed that the EPO Directive extends the personal scope of the application to all kinds of victims of crime, and it does not limit itself to the victims of crimes committed in the domestic sphere or to victims of a particular gender, as it is clearly stated in recital 9 of the Directive.⁶⁶ In spite of this statement, it appears that the mechanism of the EPO is especially appropriate for victims of gender violence or at least victims of crimes where there is a particular personal implication, such as stalking, since the aggressor has to be perfectly identified.⁶⁷ Besides, the scope of the Directive includes also “possible” victims of crime, so the protection order should also apply to those who are at risk of victimisation.

EPOs are especially appropriate for victims of gender violence or victims of crimes where there is a particular personal implication, such as stalking, since the aggressor has to be perfectly identified.

The principle of flexibility mentioned earlier also applies to the authorities that can adopt the protection measures. The EPO applies only to protection measures adopted in criminal matters, but, as stated in recitals (8), (10) and (20) of the Directive 2011/99/EU, protection orders can be issued by an authority other than a criminal court, since in the Member States different kinds of authorities – civil, criminal or administrative – are competent to adopt and enforce protection measures. Therefore, the criminal, administrative or civil nature of the authority adopting a protection measure is not relevant, as long as the decision concerns criminal matters, and so, the Directive does not cover protection measures adopted in civil or administrative matters.

The three protection measures included in the Directive can be found in the internal legislation of all Member States; however, the legal nature of the measures in the national legislation of the Member States is heterogeneous: they can refer to judicial decisions concerning the pre-trial and trial phase of criminal proceedings, they can refer to judicial decisions that take effect during the execution phase of the sentence, or they can refer to both moments, since they establish protection measures to be applied during the trial, pre-trial or execution phase.

⁶⁶ Recital 9 of Directive 2011/99/EU: “(...). 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”.

⁶⁷ The findings of the research carried out corroborate this statement, since all the EPOs issued were based on internal protection orders issued in matters of intimate partner violence.

It should be kept in mind that, although the EPO provides for only three protection measures, the latter rely on the measures established under national legislation. This means that the different legal nature of the measures also affects its duration, and the possibility of extending, modifying, revoking or withdrawing them varies greatly among Member States. The existing differences between the Member States regarding the duration of 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.

4. The interplay between Directive 2011/99/EU and the Council Framework Decisions

As indicated earlier, in some countries the protection measures have been designed as precautionary measures and in other countries as penalties, sometimes as a probation sentence or as an alternative to imprisonment, i.e. as a condition for the suspension of a prison sentence.

In all these cases, the scope of application of Directive 2011/99/EU should be analysed taking into account the two above-mentioned Council Framework Decisions: first, the Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, and second, the Council Framework Decision 2008/947/JHA 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. In the former case, the decision has been adopted in the course of criminal proceedings; in the latter, the probation decision must have been imposed on the basis of a judgment, meaning it will produce effect during the execution thereof.

These two Council Framework Decisions respectively concern convicted or accused persons on whom the competent judicial authority have imposed a prohibition to contact or approach the victim, or from entering places where the victim lives or goes to visit. The goal of these two instruments of mutual recognition is to secure the proper course of the criminal proceedings, focusing mainly on the aggressor and only indirectly on the protection of the victim.

In such cases, there are two basic different scenarios. On the one hand, when the person in danger and the person causing danger are to move to different Member States, there could be another State involved, apart from the issuing State and the executing State (of the EPO): the supervision measures will have to be transferred where the person causing danger finds himself. On the other hand, if both the person in danger and the person causing danger are to move to the same Member State, the Directive 2011/99/EU explicitly states that these Framework Decisions will have preference over the provisions of the Directive.⁶⁸ This was the case of a judicial resolution adopted by Court for Violence

⁶⁸ Recital 16 and 33, and Article 20(2) of Directive 2011/99/EU.

against Women in Spain in 2016, where a victim of gender violence, the former spouse of the aggressor, regarding whom criminal protection measures had already been adopted, requested an EPO. The judge, knowing that both the protected person and the aggressor were to travel to Germany to spend the Christmas holidays, decided to issue a decision imposing the same three protection measures, but based on supervision measures as alternative measures to provisional detention instead of an EPO. Therefore, one of the objectives of the Directive on the EPO is to allow these protection measures to be recognised 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 him or herself (the State of supervision). In such cases, the protection order exclusively focuses on the victim and only indirectly concerns the offender, except when there is a breach of the protection measures imposed to the aggressor.

When victim and aggressor move from their State of origin, the State of origin becomes the “issuing State” both of a protection order and of the corresponding Framework Decision. If the victim and the aggressor moves to different States, the EPO will be addressed to the “executing State”, and the Framework Decision to the “State of supervision”, so that there will be three Member States involved. However, if they move to the same State, only the Framework Decision will be issued.

5. Civil protection measures: the interplay between Directive 2011/99/EU and Regulation 606/2013

As has been pointed out, the Directive applies to protection measures adopted only in criminal matters, which leaves a legal gap when the internal protection measures for a victim are adopted in civil matters.⁶⁹ This limitation in scope is particularly relevant in some Member States, such as Germany and Austria, where the protection measures to which we refer (prohibition to enter certain places, prohibition to contact or approach the victim) can be adopted in civil proceedings, causing them to be excluded from the scope of application of the Directive, and preventing the authorities from issuing EPOs since they have not been adopted in criminal matters.

This shortcoming led the European Union to draw up another instrument for judicial cooperation that encompassed the protection measures adopted in civil matters. The result was Regulation 606/2013 on mutual recognition of protection measures in civil matters,⁷⁰ which deals with the same protection measures as those established by the Directive (a ban on entering certain localities, places or defined areas where the protected person resides or visits; a ban or restriction of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or a ban or restriction on approaching the protected person closer than a prescribed distance). The

⁶⁹ Recital 10 of Directive 2011/99/EU.

⁷⁰ 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.

Regulation is the civil equivalent of the Directive, but it establishes a different recognition system: a Certificate, which contains all the relevant information for the recognition and the execution of the protection measures, and which must be brought to the attention of the protected person.

However, the national legislation of some Member States, paradigmatically Spain, only allows the adoption of those protection measures in criminal proceedings. Therefore, while Spain will only issue EPOs, never Certificates, it may receive Certificates and will have to execute them. Germany, on the other hand, will issue mainly Certificates, rarely EPOs, yet it will have to execute them. Besides, apart from these two cases (States with only criminal protection measures or States with mainly civil protection measures in their national legislation), the majority of the other Member States have a mixture of national civil or criminal protection measures, depending on the nature of these protection measures, on the type of proceedings and on the moment they are adopted.

In short, as a result, there are now two different legal EU instruments seeking to protect victims by recognising protection measures adopted under national civil or criminal legal proceedings, which provide at the EU level for the same three protection measures, but use different recognition mechanisms: an EPO or a Certificate. As regard the protection mechanisms for victims, these two instruments reflect the choice that the EU is confronted with in the field of judicial cooperation: to seek further harmonisation of the national legislations of the Member States or to enhance mutual recognition without previous harmonisation. This dilemma is particularly pressing when it comes to the EPO and explains some of the deficiencies that mutual recognition without previous harmonisation may lead to.

The protection measures included in Directive 2011/99/EU (and, by extension, in Regulation 606/2013) establish a minimum standard of protection, that is, harmonisation takes place using the lower standards rather than the higher standards of victim protection. Therefore, beyond the three protection measures that both instruments provide, the shortcomings on the protection of the victims of crime could be compensated through the application and the implementation of the Victims' Directive (Directive 2012/29/EU).

6. Implementation of Directive 2011/99/EU: the national laws

As regards the implementation of Directive 2011/99/EU and the protection measures for victims of crime, implementation of the EPO involves an interplay of three layers of legislation: first, the national legislation of the Member States on protection measures; second, the EU legal instruments of judicial cooperation; and third, the national legislation on the transposition or implementation of the EU legal instruments. The differences between the legislations of the Member States on protection measures constitute one of the main obstacles for the practical application of this Directive. The approximation of the national legislation of the Member States is not required by the Directive 2011/99/EU; on the contrary, the Directive specifically states that it "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”.⁷¹ Thus, the implementing legislation of the Directive is mainly confined to procedural matters, such as how to apply for an EPO, which are the competent authorities to issue an EPO or which are the contact authorities, etc., but it will not openly require to approximate the national laws and regulations on the subject of the protection measures. At present, all Member States have passed laws implementing the Directive, the last being Belgium.⁷²

In short, with regard to this three-layer legislation, the effectiveness of the EPO as far as the protection of victims is concerned depends mainly on the national legislation on protection measures rather than on the implementing legislation of Directive 2011/99/EU. Given the diversity of criminal regulations in the Member States and the complexity of the mutual recognition procedure established by the Directive, it seems likely that the practical effectiveness of the EPO will greatly depend on the attitude and cooperation between Member States, and on the coordination by the European Union.

II. The European Protection Order

The following sections deal with the more specific questions this investigation had to address. The findings of the research may at first sight seem rather theoretical or too focused on the legal interpretation of the provisions of the EU legislative instruments, and therefore not addressing the final goal of the research, which is the actual implementation of the Directive 2011/99/EU. In this regard, it should be pointed out that it is difficult to analyse the effectiveness of a legal instrument when only seven protection orders have been issued.⁷³ This scarce use is already an evidence to be assessed. Currently not enough data are available in order to calculate in a reliable way the number of victims of violence that move across the European Union. According to recent statistics, this situation is likely to occur quite frequently. For example, during the first three months of 2017, in Spain a total of 9.438 judicial protection measures were issued by the Courts for Violence against Women. Of these, 6.769 (72%) concerned Spanish women and 2.669 (28%) concerned foreign women. It would seem reasonable to assume that some of these victims have moved or will move to another EU Member State, e.g. for holidays or family visits, for professional reasons or educational purposes. These movements are likely to entail a proportional number of EPO requests. However, up until now this has not been the case. Spain has issued 4 of the 7 EPOs detected, 1 in 2015 and 3 in 2016.⁷⁴

⁷¹ Recital 8 of Directive 2011/99/EU.

⁷² *Loi relative à la décision de protection européenne*. *Moniteur Belge*; Publication of 18/05/2017; pp. 57542-57557.

⁷³ See attached map in the annexes.

⁷⁴ [Quarterly statistical reports](#) elaborated and published by the Spanish Observatory on Domestic and Gender Violence of the General Council for the Judiciary.

Until now, only seven EPOs have been detected. In proportion to the number of victims in the European Union and the possibilities of them moving between Member States, the limited number of EPOs requested is quite surprising.

1. Request for an European Protection Order

1.1. Legal standing to request an EPO and the needs of particularly vulnerable victims

Article 1 of the Directive states that the protection measures are intended to protect a person against the criminal conduct of another person that may endanger his or her life, physical or psychological integrity, dignity, personal liberty or sexual integrity. Recital 11 of the Directive includes in the scope of the protected persons all victims, even possible victims of crime.⁷⁵ This extension of the personal scope of application is consistent with the objective of the EPO to apply to protection measures that aim to prevent further acts of violence and not just to respond to them. The category of “possible victims” of recital 11 of the Directive is limited to cases where a person is protected by precautionary measures, yet could also include persons at risk, such as in forced marriages or female genital mutilation.

Having said that, two issues should be addressed: a) who may apply for an EPO, and b) to whom the protection measures included in an EPO apply.

In relation to the question about who may apply for the issuing of an EPO, the Directive is clear in that it is only for the protected person to do so.⁷⁶ This means that although the process to request protection measures depends upon the domestic legal frameworks, the EPO can only be requested by (all kind of) victims. In this regard, the criterion of the Directive presents a substantial difference from the criterion established in the regulations of the national legal systems of the Member States as for who can request (national) protection measures. Under these regulations, victims are generally involved and can request these protection measures: victim are involved in this process in Austria, Czech Republic, Germany, Spain, Hungary, Malta, the Netherlands, Poland, Sweden, Slovenia and Slovakia, while they are not involved in the decision-making process to adopt a protection measure in Belgium, Bulgaria, Estonia, Greece, Croatia, Lithuania and Latvia. In Belgium, where protection measures may be adopted at the request of the victim or *ex officio*, or even against the will of the victim, it is at the sole discretion of the authority to determine any protection measure deemed to be the most appropriate, depending on the facts of the case. In the Netherlands, there are 14 types of national protection measures which can provide a basis for the issuing of an EPO. Each type of measure has its own procedure, but sometimes the position or opinion of the victim is taken into account, e.g. regarding the conditional release of her/his aggressor in case of pre-trial detention. In this procedure the public prosecutor can bring the risk for the victim to the attention of the judge. In Sweden, the victim is always heard following a request. At that point, the victim can share relevant information. Furthermore, the victim

⁷⁵ Recital 11 of Directive 2011/99/EU.

⁷⁶ Article 6 of Directive 2011/99/EU.

has to be notified of information that has been supplied by the other party and has the right to give his or her opinion concerning such new information before the trial.

Most Member States' legislation allows for other people and even public authorities to ask for protection measures, apart from the victim, whereas the Directive only allows for the adoption of the EPO at the request of the victim. Therefore, regardless of the legal capacity to request the protection measures, Member States should inform the protected person on the possibility of requesting an EPO when (s)he expects to travel to another Member State and should warn his/her that only the victim can ask for the adoption of an EPO.

Regarding the persons requesting an EPO, according to Recital 15, when issuing and recognising an EPO, the competent authorities should give appropriate consideration to the needs of victims, including particularly vulnerable persons, such as minors and persons with disabilities. There are no other provisions in Directive 2011/99/EU that deal with minors and legally incapacitated persons except Article 7(a), which concerns the form and content of the EPO.⁷⁷ However, the rights of these particularly vulnerable victims should be protected according to the Victims' Directive that refers specifically to minors and persons with disabilities as well as other kinds of disabilities.⁷⁸

Most Member States have not established any special measures or provisions regarding vulnerable persons. However, the Czech Republic, Slovakia, Spain and Sweden do include in their national regulation some kind of provisions related to this issue.

In Sweden, the Swedish social welfare committee is always informed if the victim has children with the aggressor. In the Czech Republic, minors as a category of victims are granted more extensive rights in comparison to other victims with regard to their specific protection needs: such as the right to be interviewed in an especially considerate manner, and with regard to the specific circumstances making the person particularly vulnerable; the right to be interviewed by a person with the relevant training; the right to avoid contact with the offender; the right to prevent immediate visual contact with the

⁷⁷ In this regard, we should refer to Article 20(1) Directive 2011/99/EU, which states that "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". Although these documents are mainly related to procedural and civil and family-related issues, Article 36 of the 1996 Hague Convention establishes that "In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration".

⁷⁸ According to its Recital 38 of the Victims' Directive, those "persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection".

offender, etc. In Hungary, the Victim Support Service, as member of the warning system for child protection, contacts the competent child protection service or, if necessary, the guardianship authority to take the necessary steps for prevention and reduction of vulnerability. During all stages of the criminal proceedings, special criminal procedural guarantees are applied to particularly vulnerable persons (e.g. person under 18 years of age, persons with disabilities etc.). The court, the public prosecutor and the investigating authority shall during the whole criminal proceedings continuously examine if the victim is a person in need of special treatment in view of his/her personality, life circumstances, the nature of the offence, etc.

As far as minors are concerned, they can be victims directly or indirectly; that is, they can be affected because the violence is directed directly at them or because the violence is part of their parents' relationship.

In any case, it should be stressed that both the protection measures and the EPO are granted individually to the person in need of protection. Nevertheless, there are cases where various persons are simultaneously being protected from the same person causing danger, who are part of the same nuclear family and who are moving together to another Member State, for instance, children. Following the provisions of Directive 2011/99/EU, each EPO should have its own procedure. In these cases, there should be as many procedures as persons protected and in need of the EPO. On the contrary, the grouping or accumulation of EPOs for the different members of the same family is highly advisable, because it would avoid, for example, a time lag in issuing and executing the EPO, it would allow the same competent authority to adopt the different orders, and would allow to keep one single record providing a general overview of the situation of risk. In short, it would avoid procedural duplicity and guarantee the principle of procedural economy.

None of the Member States apply any special procedure to deal more efficiently with those cases where more than one member of the same family need protection or more than one EPO is issued regarding a single family (i.e., when there are children).

1.2. Information on the EPO to the victim

Generally, information to the victim about the legal proceedings in which he or she is involved is provided by public authorities in all the Member States, in accordance also with the sense and aims of the Directive 2012/29/EU, the Victims' Directive. Particularly, and given the novelty and specificity of the EPO, information about it should be provided directly when protection measures are adopted. This is provided by Article 6(5) of the Directive, which states that when a measure of protection is adopted, the authority should inform the protected person of the possibility to adopt an EPO in case he or she decides to move to another Member State.

Providing information to the protected person is an essential element for the effectiveness of the EPO, and it is clear that this information is not adequately provided to victims. Allegedly, in most Member States, public authorities, specifically judges, are in charge of providing information about EPO to the victims. In some of them, such as the Netherlands or Hungary, Victim Support Offices also have a leading role in this regard. It should be noted that in Greece the lawyers are those who provide this information, and in Poland, Sweden and Lithuania the police is responsible.

In Estonia, judges, lawyers, public prosecutors, police and others (victim support workers) provide information to victims based on a case-by-case assessment. For example, if the judge does not have information about the victim's decision to move abroad, (s)he does not know that (s)he has to inform the victim about the EPO. The same applies to lawyers, public prosecutors, police and victim support workers. In situations where it is known that the victim is planning to move abroad, the relevant authorities inform the victims about their possibilities based on the specific circumstances.

Moreover, the executing State is also obliged to inform the aggressor, the issuing State and the victim⁷⁹ of the measures adopted according to its internal law, of the rejection of the recognition of the EPO and of its possible consequences for the protected person⁸⁰. In this latter case, the information will allow both parties of the process to exercise the right to appeal in the executing State: both aggressor and victim, depending upon their own interests and the measures adopted in the executing State. Providing information to victims is also relevant in relation to the breach of protection measures and consequently to the EPO.⁸¹

The information provided should be explicit, clear and easily understandable, not because Directive 2011/99/EU contains such a requirement, but because Article 3(2) of the Victim's Directive explicitly states that information should be given in an easy understandable language for victims, promoting their right to understand and to be understood. Thus, Member States should provide information to victims on the legal remedies available in their internal legislation following those terms. If the victim requests an EPO because he or she considers that the situation of risk on the basis of which specific protection measures were adopted continues to exist, he or she should have access to the legal means and resources available to challenge a decision denying an EPO. Since the legal remedies against 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 country of origin. As said earlier, part of this information should relate to the different processes needed to request different EPOs if there are two or more victims in a same case of aggression.

⁷⁹ Article 9(3) of Directive 2011/99/EU.

⁸⁰ Article 10(2)(c) of Directive 2011/99/EU.

⁸¹ Again, Article 9(3) of Directive 2011/99/EU.

Some Member States rely on brochures, flyers and other printed materials, and also on online information to inform the victims of their rights.

In Bulgaria, brochures, flyers and other printed materials are provided in police stations and courts which have been elaborated in the framework of various projects or programs to promote victims' rights. Online information about these rights can be found on the webpages of the Prosecutor's Office, the Ministry of the Interior, and the Ministry of Justice. In the Czech Republic, information is provided in brochures to the victim by police authorities or the public prosecutor, even without his or her request. Police authorities provide two flyers to victims: 1) a flyer informing about victim's rights, and 2) a flyer providing information about the right to financial assistance. In Romania, information concerning the possibility to request an EPO is always included in the information that is sent to the victim following a decision regarding a national restraining order.

1.3. Legal Counsel and Free Legal Aid

The Directive does not provide that legal assistance is a condition for requesting an EPO, which means that the protected person may submit the request or participate in the process without being assisted by legal counsel.

None of the Member States requires legal assistance to request an EPO, although it is highly advisable to ensure the adequate counselling on the enforcement of the protection measure in the executing State. However, in most Member States victims can benefit from free legal aid.

The only reference to this issue, and also the only reference in the Directive to free legal aid, is Article 7. According to this provision, one of the pieces of information that should be filled out on the EPO form is whether the protected person and/or the person causing danger have been granted free legal aid in the issuing State. Besides, according to Article 13 (right to legal aid) and Article 14 (right to reimbursement of expenses) of the Victim's Directive, the requirements to have access to these two rights should be determined by Member States. However, following the logic and aims of the Victim's Directive, legal aid should generally be a right free of charge for victims in a situation of risk. In this regard, in most Member States victims can benefit from free legal aid. There is no provision in this regard in Sweden, Croatia, Malta or Belgium.

The relevance of legal aid to request and process EPOs may not be underestimated. In particular, the participation of legal professionals ensures that the victim receives adequate counselling on the enforcement of the protection measures in the executing State.

1.4. Translation and interpretation

The Directive does not contain specific provisions to ensure that the victim understands the legal proceedings when she or he (the victim) does not speak the language of the issuing country. Article 17(1) of the Directive 2011/99/EU merely states 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”. However, this article only refers to the translation of the EPO, as will be dealt with later.

The need of interpretation in order to let victims know how they can request protection measures and inform them that they are entitled to request an EPO should specifically be addressed when these victims are not nationals or permanent residents in the issuing country. All Member States provide free of charge interpretation services.

In this sense, when taking part in legal proceedings their rights should be protected, which means having access to interpretation services. At this point the Victims’ Directive comes into play.⁸² According to its provisions, all Member States should provide free of charge interpretation services, and they actually do.

As a good practice, it should be mentioned the case of Estonia. According to the Estonian legal framework, the Ministry of Justice shall translate the EPO certificate into the language determined by the executing State and communicate it to a competent authority of the executing State. In addition, according to its law, if a victim is a person not proficient in the Estonian language, the text should be translated into his or her native language or a language in which he or she is proficient, and this may be requested in ten days. A victim may also request the translation of other documents which are essential for ensuring his or her procedural rights. If the body conducting the proceedings finds that the request for translating other documents is not justified, such body shall formalise the refusal by a ruling.

The complex situations that might arise in the above-mentioned cases should draw the attention to the costs of the notifications and other costs related to different procedural moments or phases. At this point, it should be reminded that article 18 contains a general reference to the distribution of costs.⁸³

1.5. The participation of the victim in the process

As indicated, the Directive does not deal with the right of the victim to be heard. It does not provide a phase in which parties involved in the procedure leading to the issuing of an EPO should be heard, except in the case referred in Article 6(4) that focuses on the

⁸² Article 7(1) of Directive 2012/29/EU.

⁸³ Article 18 of Directive 2011/99/EU states that ‘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’.

aggressor's right.⁸⁴ With regard to the participation of the victim, Directive 2011/99/EU only refers to the information to be provided on the possibility of requesting an EPO according to Article 6(5). It is highly recommended, however, that the victim be heard in order to let the authority know about the persistence of the risk when he/she moves to another Member State, which is also in accordance with the provisions of the Victims' Directive.

The Directive does not contain a right of the victim to be heard, but the victim should indeed be heard in order to let the competent authority know about the persistence of the risk when he/she moves to another Member State. Although most of the countries provide for a hearing of the victim during the procedure leading to the issuing of protection measures, little is specifically said about the exact procedure leading to the issuing of an EPO.

In this regard, in Austria, Germany, Spain, Poland, Sweden and Slovakia, apart from what it has been said on the right to request the (domestic) protection measures, in practice the victim is heard at the moment the EPO is adopted. In Spain, when the victim requests adoption of execution measures before the competent judge or court for recognition and execution in Spain, these shall be transmitted to the competent authority of the issuing State without delay. In Malta, national law related to protection orders provides that before adopting an order, the court shall take into account: 'the need to ensure that the injured person or other individual specified in the order is protected from injury or molestation; the welfare of any children or any dependents who may be affected by the order; the accommodation needs of all persons who may be affected by the order, in particular of the injured person, his/her children and his/her other dependents; any hardship that may be caused to the accused or to any other person as a result of making the order; any other matter, considering the circumstances of the case, the court considers relevant. Through these legal provisions, the victim is invariably granted a voice and is duly heard during such criminal proceedings should he/she make it a point to be present in such proceedings. The victim's opinions are also duly considered during the hearing of an application for the extension, variation or revocation of a protection order'.⁸⁵

1.6. Form and content of the European protection order

According to Article 7, there are some pieces of information that the EPO form should include, among others: (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. For this reason, Annex 1 of the Directive includes an EPO

⁸⁴ According to Article 6(4) of Directive 2011/99/EU the person causing danger shall be given the right to be heard if he or she has not been granted this right in the procedure leading to the adoption of the protection measure.

⁸⁵ Article 412C(4) of the Criminal Code (Chapter 9 of the Laws of Malta)

form with the information required in the aforementioned article, yet leaving the elaboration of the request form in the hands of the Member States.

The description of the facts giving rise to the adoption of the protection measures according Article 7(e) is of great importance; and, even though only referred to as optional, just as vital is the information of the circumstances, because, as stated in Article 7(j), this information will be used to assess the danger that might affect the protected person.

Thus, the Member States are obliged to prepare this form (which should preferably be similar in all Member States), and guarantee its availability in the relevant centers in order to facilitate the process of requesting an EPO and the corresponding translation.

None of the Member States have foreseen or prepared a form with which victims can request an EPO; it is advisable that this form is drafted using a similar format.

2. Issuing of a European Protection Order

2.1. Competent authority

According to Article 6(3) of Directive 2011/99/EU, the request of an EPO can be submitted either to the issuing State or to the executing State; however, if the request is submitted in the executing State, it will be transferred “as soon as possible” to the issuing State.⁸⁶ It is preferable to do so in the issuing State, as recognised in article 6(5), since 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 which are the prerequisite for the EPO were adopted.

As stated above, the nature of the authority adopting the protection measure is not relevant (recitals 8-10 of the Directive); article 1 of the Directive seems to express a preference for judicial bodies when it states that EPOs may be issued by ‘a judicial or equivalent authority in a Member State’, but does not exclude other authorities. The main problem arises when the executing State has to recognise an EPO imposing protection measures that originally were adopted by non-criminal authorities or even non-judicial agents or bodies of the issuing State. Thus, States such as Spain or Portugal, where protection measures are exclusively adopted by judicial organs in criminal matters with all the guarantees of due process, under observation of the principle of hearing both parties and the rights of the accused, must recognise decisions adopted by (non)jurisdictional bodies that lack this type of guarantees. That’s why Directive 2011/99/EU establishes that the issuing authority, before adopting an EPO, must grant

⁸⁶ Article 6(3) of Directive 2011/99/EU: “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”.

the person causing danger the right ‘to be heard’ and ‘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.⁸⁷

The guarantees of due process are the minimum guarantees that the competent issuing authority must apply in order to ensure an equal or balanced defence of the parties, regardless of whether the authorities adopting the protection measures are jurisdictional in nature or not.

For the purpose of security, the Member States must communicate to the Commission the judicial or equivalent authority competent under their national law to issue and execute an EPO.

Member States have tended to designate as competent authorities either the judicial bodies that have competence under national law to adopt protection measures, or the Public Prosecutor’s Office.

This is the case of France, Sweden and Italy, who have designated the Public Prosecutor’s Office as the authority for issuing and executing EPOs. In Italy, article 3 of the Legislative Decree transposing Directive 2011/99/EU also includes the Ministry of Justice, albeit in this case as the central authority responsible for transferring and receiving EPOs.

2.2. Time limit for issuing an EPO

The Directive does not provide details on the time limit for the adoption of an EPO, nor do the national legislations implementing the Directive, which to a considerable extent have merely copied the provisions of the Directive. This may cause certain legal insecurity to the victim of an aggression, who needs to use this mechanism in order to guarantee his or her safety after moving to another Member State.

The Bulgarian implementation law is an exception to the general criterion as it establishes that ‘the issuing court shall render its judgment regarding the issuing of the EPO within

The speed with which the EPO is adopted will depend on the individual competent authority, although it ought to do so “without delay”, as established expressly with regard to the recognition of EPOs in the executing State.⁸⁸

3-days period after the request has been made’. In Sweden, the law does not lay down a deadline, but stipulates that EPO matters are to be handled with haste.

⁸⁷ Article 6(4) de la Directive 2011/99/EU.

⁸⁸ Article 9(1) of Directive 2011/99/EU.

2.3. Appraisal: elements to be assessed when issuing and EPO

While an important aim of Directive 2011/99/EU is to provide automaticity for issuing an EPO, in practice it is clearly not. The competent authority must examine three elements: one objective element, viz. the extraterritoriality of the protection, and two more: on the one hand, the duration of the period the protected person intends to stay in the executing State, and on the other hand, the seriousness of the need for protection, both of which are referred to in Article 6(1) of Directive 2011/99/EU as part of a non-exhaustive list that might also include other circumstances.

Thus, a prerequisite for the adoption of an EPO is that the protected person decides to reside or stay, or is already residing or staying in another Member State, given that the victim may also request the issuing of an EPO in the executing State. In this case, Directive 2011/99/EU requires the request to be transferred “as soon as possible” to the issuing State.⁸⁹

The implementing legislation does not translate the requirement of a “certain prospect of permanence” into a precise time period; besides, this criterion should be interpreted in combination with other criteria in cases of cross-border victims, where EPOs are a very useful instrument. The forms used to issue the EPO should indicate the cross-border nature of the protection. Although the Directive does not refer to cases where the victim successively moves to different Member States, this possibility is contemplated by some Member States in their national laws of implementation. One of the criteria used to assess the vulnerability of the victim is the involvement of minors.

Secondly, for an EPO to be issued, a “certain prospect of permanence” in the executing State would be required, though none of the examined implementing laws translates this requirement into a precise period of time. This criterion should not be applied rigidly, but in combination with other criteria, such as the need for protection of the victim, in cases where victims travel to another country on a daily basis for reasons of work or family. In these cases of cross-border victims, in which EPOs can be very useful, the specific circumstances and the need for protection of the victim should allow for protection to be adopted without recourse to the criterion of a minimum period of stay. In such cases, there will be protection measures in force simultaneously in the issuing State and in the executing State, and the forms used to issue the EPO should indicate the cross-border nature of the protection, so that both authorities (in the issuing and the executing State) are aware of the need of closer coordination and of the continuing supervision of the protection measures in both States. This situation is reflected in the EPO issued by a Criminal Court in Spain (2016). The protected person, a victim of intimate partner violence, travelled on a weekly basis from Spain to Portugal, and thus, the protection measures were to be applicable both in Spain and in Portugal.

⁸⁹ Article 6(3) of Directive 2011/99/EU.

A small group of Member States considers the possibility of simultaneously issuing an EPO to different States when the victim expresses the intention to stay in all of them. This is the case of Poland, Spain and the Netherlands. Nonetheless, the majority of Member States has not yet expressly considered this possibility, among them Croatia, the Czech Republic, Estonia, Lithuania, Latvia and Slovakia. Nonetheless, the Czech Republic, Estonia, Croatia, Latvia and Slovakia do not exclude the possibility either. The case of Sweden is worth mentioning, as it recognises the possibility of issuing an EPO “in relation to one other Member State at the time, to a Member State in which the victim will stay for a while”. However, although “nothing prevents the victim from requesting a new EPO if the person leaves that Member State and needs protection in another Member State”, when this happens “the first EPO will in that case be revoked”. The practical application of this possibility is an EPO issued by the Court for Violence against Women in Spain in 2016, which extends its protection to Portugal and Romania.

Finally, the need for protection of the victim should be assessed, as well as the specific circumstances of the case, such as its urgency, the expected date of arrival of the protected person in the executing State and the seriousness of the risk to which the victim is exposed.⁹⁰

For example, in an EPO adopted by the Court for Violence against Women in Spain in 2016, in which the whereabouts of the victim were unknown, the judge considered that the risk in the State of destination would increase as the aggressor knew the family address of the victim and could easily find her.

Along the same lines, the vulnerability of the victim should also be taken into account, for instance, in the case where minors are involved, as was the case in two of the EPOs issued in Spain in 2015 and in 2016.

2.4. The right to be heard and to challenge the protection measures in the issuing State

The hearing of the person causing danger (the aggressor) is a delicate matter that involves the right to his/her defense, but also the correction of any shortcomings in the issuing of protection measures in cases where the competent authorities are non-jurisdictional.

In order to guarantee these rights, before adopting the EPO the issuing State should make sure that the person causing danger, as a party to the procedure, has been allowed to exercise the right to be heard and the right to challenge the protection measures adopted by the competent authority. This will not be necessary if the aggressor has had the opportunity to do so during the previous procedure for the adoption of the protection measure.⁹¹ These are the minimum guarantees, inherent to any criminal procedure that should be applied when issuing an EPO.

⁹⁰ Recital 13 of Directive 2011/99/EU.

⁹¹ Article 6(4) of Directive 2011/99/EU.

2.5. Issuing language: linguistic barriers and costs

One of the difficulties which authorities may encounter is the language in which an EPO is issued. The Directive aims to solve this by establishing that the issuing State must translate the protection order into one of the official languages of the executing State⁹². Any Member State may however state in a declaration, to be transferred to the European Commission, that it will accept translations in one or more other official languages of the Union.⁹³ This favourable provision may help to reduce the translation cost of EPOs.

It would facilitate the EPO issuing procedure if Member States, in addition to their official language (or any other official language in the EU) would accept also translations of the EPO into English, the language most frequently used by the EU Member States⁹⁴. This has been done, for example, in Bulgaria, Cyprus, Croatia,⁹⁵ Estonia, Latvia and the Netherlands.⁹⁶ By contrast, Member States such as Germany, Italy, and Spain only accept EPOs that have been translated into their own language.

Apart from the matter of language, there are other costs generated by the application of an EPO, which may include, besides translation expenses, the cost of notifications served to the parties, the costs of procedures initiated due to the non-recognition of an EPO, or even the cost of electronic monitoring devices. Under Article 18 of Directive 2011/99/EU the major part of these costs are borne by the executing State, as it will pay most of the cost of execution of the judicial decisions adopted in other Member States, except for costs arising exclusively within the territory of the issuing State, which include the costs of issuing EPOs.

With regard to costs, Directive 2011/99/EU should be complemented by Article 7(3) of the Victims' Directive, which grants victims the right to request the translation, free of charge, of information essential to the exercise of their rights in criminal proceedings in case they do not understand or speak the language used.

2.6. Renewal, review, modification, revocation and withdrawal of the protection measures

Following the logic of the EPO, any changes in the initial protection measures, such as decisions regarding their renewal, review, modification, revocation or withdrawal, are the exclusive competence of the issuing State,⁹⁷ and, thus, the law of the issuing State applies to these decisions. When the issuing State modifies the initial protection measures, naturally it should inform without delay the competent authority in the

⁹² Article 17(1) of Directive 2011/99/EU.

⁹³ Article 17(3) of Directive 2011/99/EU.

⁹⁴ See: [Eurobarometer](#) 243: The Europeans and their languages, 2006

⁹⁵ Croatia only admits English in urgent cases. See also: European Judicial Network,

⁹⁶ As shown by the information on the European Judicial Network - see: [Belgian information sheets](#)

⁹⁷ Article 13(1)(a) of Directive 2011/99/EU.

executing State. The executing State must consequently decide on the possible breaches of the measures adopted to execute the EPO. This distribution of competencies derives from the subsidiarity of the EPO in relation to the protection measures on which it is based.

3. EPO Recognition and the adoption of protection measures in the Executing State

3.1. The recognition of EPOs

Executing States must recognise EPOs immediately to guarantee the effectiveness of the protection measures. Directive 2011/99/EU only establishes that the executing State must recognise the EPO and adopt the relevant protection measures “without undue delay”.⁹⁸ This unspecific time limit might leave the victim unprotected at the beginning of her/his stay in the executing State. For this reason, Member States ought to respect the spirit of the Directive, which aims to provide protection to the victim as soon as possible, and recognise the protection measures immediately.

Some national implementing laws have used similar formulas as in the Directive. For example, the Czech Republic and Greece provide for recognition “without delay”; Estonia and Hungary “immediately”; and Austria states that the decision must be made taking into account the urgency of the matter. Other States have gone further, though, and have provided for specific time limits for the recognition of EPOs, which is a recommendable practice.

In Bulgaria the executing court shall render its judgment for recognition of the EPO within a 3-days period after receiving of the order and in the Netherlands recognition should take place within 28 days after receipt of the EPO. In Spain, EPOs shall be recognised “without delay” after hearing the Public Prosecutor within three days, as well as ‘with the same priority’ as given to equivalent measures under the Spanish legislation. The French legislator has specified the exact time limits within which the *Procureur de la République* must request the recognition and execution of EPOs to the court, viz. seven working days after receiving the EPO, after which the court shall take a decision within a further period of ten days. The Portuguese implementing law is much stricter: it gives the competent court two days to recognise an EPO.

In Member States that have appointed a central authority, the transfer and recognition of EPOs will suffer slight delays, as they must subsequently be forwarded to the competent judicial authority for recognition or the adoption of the protection measures. The speed in adopting and executing EPOs does not merely depend on the diligence of the competent judicial authority, but also on the administrative services involved in the processing the EPO and the accompanying documents.

⁹⁸ Article 9(1) of Directive 2011/99/EU.

In Italy, the implementing law establishes that the Ministry of Justice (central authority) must forward the EPO without delay to the judicial authority, which shall recognise it within ten days.

3.2. Grounds for refusal or non-recognition of an EPO

The recognition of an EPO in the executing State is not necessarily automatic: the Directive includes a long list of reasons why it may be refused.⁹⁹ This list is exhaustive and has been incorporated in the majority of national legal systems.¹⁰⁰ These grounds include the failure to meet certain formal requirements, such as the fact that the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State (principle of double criminality), that recognition would contravene the *ne bis in idem* principle, or that the person causing danger cannot be held criminally responsible because he is under age. In any case a restrictive interpretation of these grounds for non-recognition is generally applied, taking into account the victim's need for protection.

Although until today there is no evidence of any EPO being refused, it would seem reasonable to expect that one of these grounds will be used in the future considering the lack of criminal harmonisation in the EU. Examples of these differences are the varying minimum age of criminal responsibility¹⁰¹ and the lack of penalisation of certain offences, e.g. stalking, in some Member States.

In case the recognition of an EPO is refused, the executing State must inform both the issuing State and the protected person, who additionally should be informed of any applicable legal remedies that are available under its national law, as well as about the available protection measures under its national law. The latter provision, though recommendable, can hardly be considered compatible with the principles of Directive 2011/99/EU, which seeks to avoid that the protected person is obliged to initiate new proceedings or present new evidence in the executing State, as if no previous decision existed in the issuing State. This does not preclude the victim from directly requesting the adoption of protection measures in accordance with the national law of the executing State. In this way, (s)he could enjoy protection based on measures adopted in two EU Member States, without the existence of an EPO.

⁹⁹ The full list of grounds for non-recognition, as established in Article 10 of the Directive 2011/99/EU.

¹⁰⁰ With some significant exceptions such as Sweden which only recognizes grounds a) and b), or Germany which provides for grounds a), b) and e), adding as a ground for refusal when "the debtor has not been granted a legal hearing prior to the adoption of the European Protection Order or if he has not had the right to challenge the protection provided that he has not already been granted such rights in the procedure leading to the adoption of the safeguard measure".

¹⁰¹ The legal age of majority for criminal responsibility in the Member States varies from 8 to 18 years. For example, in France the criminal age of majority is 13 years (as stated in art. 696-100 of the implementing law) and in Spain 14 years.

3.3. The adoption of measures ensuring equivalent protection

Once the EPO is recognised, the executing State must adopt the relevant available measures under its internal law in order to maintain the protection of the victim. The time limits for its adoption are therefore the limits established under the applicable national law. As for the duration of the protection measures adopted in the executing State, Member States have applied a great diversity of measures across the EU. In some of them, there are not any provisions regarding their duration.

According to recital 18, the recognition of an EPO implies that the competent authority of that State “accepts the existence and validity of the protection measure adopted in the issuing State, acknowledges the factual situation described in the EPO, and agrees that protection should be provided and should continue to be provided in accordance with its national law”. Given the fact that the relevant criterion is not that the executing State applies identical protection measures as the ones adopted by the issuing State, but measures offering an equivalent level of protection, the executing State is obliged to inform the person causing danger, the protected person and the competent authority of the issuing State about the specific measures that have been adopted.¹⁰² Obviously, the notification to the person causing danger will not contain any information on the address or other contact details of the protected person, unless they are necessary for the implementation of the protection measure.

Thus, the executing State has a certain discretionary margin to decide which are the equivalent measures available under its national law. The relevant criterion therefore is not the identical nature of the protection measures, but the ability to guarantee a protection that is “equivalent” to the one provided to the protected person in the issuing State, based on national provisions intended for a “similar case”.¹⁰³

The executing State should provide the victim an equivalent protection for analogous cases according to its internal law. For this reason, it is highly recommendable for the EPO to be accompanied by the maximum information available regarding the facts and circumstances that justified the protection measures adopted by the issuing State. In this respect, the Directive even considers that if this information is incomplete, the authority of the executing State may request the missing information from the issuing State.¹⁰⁴

The adoption of similar protection measures excludes *a priori* all other measures that have been granted to the victim under the law of the issuing State, e.g. assistance or family support measures.¹⁰⁵ Therefore, there could be deemed some discrimination between the victim moving to the executing State compared with victims enjoying protection measures initiated by that State, in relation to supplementary assistance measures.

¹⁰² Article 9(3) of Directive 2011/99/EU.

¹⁰³ Article 9(1) of Directive 2011/99/EU.

¹⁰⁴ Article 9(4) of Directive 2011/99/EU.

¹⁰⁵ In Spain and France, for instance, comprehensive protection orders are used in cases of gender violence where the victim can also benefit from this complementary protection.

4. Application of the protection measures adopted following the recognition of an EPO

The responsible authorities for the application of these protection measures are the competent authorities in the executing State.¹⁰⁶ In most cases, the authority that monitors the execution of the protection measures is the same as the one that adopts the protection measures,¹⁰⁷ although in some Member States these are either the police (Belgium, the Czech Republic, Estonia, Malta, the Netherlands, Sweden), the Probation Officer (the Czech Republic, Estonia, Hungary), the Ministry of the Interior (Bulgaria) or different judicial authorities from the one who adopted the EPO (Lithuania).

The adequate enforcement of the protection measures is essential for the effectiveness of the EPO. The police is the primary body responsible for the supervision of protection measures, as this task is part of their 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 most basic instruments are emergency phone lines with short numbers that are easy to remember, which can be reached 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 him/herself. These phone services are frequently used and often constitute the first channel through which victims seek help. Currently, Belgium, the Czech Republic, Spain, Croatia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Sweden, Slovenia and Slovakia offer these services.

New technologies are very useful to monitor the execution of the protection measures. For example, applications for smartphones have been introduced that allow for the communication of an offence or a situation of risk. The advantage of these systems, such as AlertCops¹⁰⁸ and My112,¹⁰⁹ implemented in Spain, is that they provide a direct connection with the police and use very efficient geolocation systems to locate the victim in case of emergency. Moreover, they offer channels in different languages and they are accessible for persons with communication disabilities.

These applications also include specific resources for particularly vulnerable victims. My112, for example, uses pictograms to facilitate the communication with foreign victims and includes videos in sign language for persons with hearing impairment. In the case of victims of gender violence with high risk it allows for the individual identification of the victim by means of a single phone call and an automatic warning to six selected persons closest to the victim.

¹⁰⁶ Article 11 of Directive 2011/99/EU.

¹⁰⁷ For example AT, BE, EL, ES, HR, HU, LV, PL, SI, SK.

¹⁰⁸ State Police and Security Forces, Ministry of the Interior, Spain.

¹⁰⁹ Emergencias 112, Department of the Interior, Government of Catalonia, Spain.

The Directive also allows for the use of electronic devices to ensure the application of the protection measures.¹¹⁰ These can include electronic monitoring of the potential victim/offender (i.e., Radio Frequency to monitor the location of the individual within the established areas; RF-systems to supervise the distance between the individual and the protected person; or GPS-systems to prevent the individual from approaching the protected person or certain restricted areas). In case they are used in the issuing State, they should be included in the information provided through the form used to issue the EPO.¹¹¹ These instruments are particularly effective, yet they pose new challenges, such as their considerable cost, their territorial scope of application and the technical compatibility of the various monitoring systems used by the Member States.

The use of electronic monitoring mechanisms by the Member States, at this point in time, continues to be limited. For example, Bulgaria, the Czech Republic, Estonia, Spain, Hungary, Lithuania, the Netherlands, Poland and Slovakia use them for monitoring the potential perpetrator. 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.

Neither the supervision of the protection measures, nor the coordination of all the authorities involved in this phase (judges, state police, local police, the Ministry...) is a simple matter. For this reason, the existence of comprehensive monitoring and coordination systems such as VioGén¹¹² or SIAV¹¹³ must be positively valued. These ICT systems bring together the various authorities and include all the relevant information on each case. It allows for risk prediction, coordinates the protection of the victim in the entire territory, and generates notifications and warnings in case of incidents that may put the victim at risk.

5. Breach of a protection measure adopted following the recognition of an EPO

Given that the protection measures that derive from an EPO are established by the executing State, the Directive provides that breaches of these measures must be initially resolved according to the relevant legal provisions of the executing State, leaving the

¹¹⁰ This can be gathered from recital 25 in combination with Article 7(g) of the Directive.

¹¹¹ Annex I of Directive 2011/99/EU.

¹¹² Comprehensive Monitoring System for Gender Violence of the Secretariat of State for Security of the Ministry of the Interior, which has been operational in Spain since 2007 in the field of gender violence.

¹¹³ Comprehensive Online Monitoring of Victims by the *Mossos d'Esquadra* [Catalan police] of the Government of Catalonia, operational since 2012. With this system, the police are able to link, in a single program, all the current police and judicial data on the victim and his/her social situation. In this way, with complete information about the relevant complaints, court orders and hearings, the police are able to perform a proper risk assessment and establish monitoring guidelines. This system is used not only for victims of gender violence, but also for victims of other crimes motivated by hate or discrimination.

issuing State in a clearly residual position.¹¹⁴ On the one hand, the executing State will notify the issuing State or the State of supervision of the breach;¹¹⁵ on the other hand, it will adopt the applicable measures under its national law. All this information must be provided by means of a specific form included in Annex II of the Directive.¹¹⁶ Until today, only one case has been detected regarding the breach of a prohibition of contact adopted in recognition of an EPO.¹¹⁷

In case of breach of protection measures by the aggressor, the national law of the executing State must be applied. Again, the national legal systems provide very different solutions in this respect. In most Member States the response is criminal in nature, mostly taking the form of prison terms (Belgium, Bulgaria, Germany, Estonia, Greece, Spain, Croatia, Hungary, Lithuania, Malta and Sweden) and fines (Belgium, Bulgaria, Germany, Estonia, Spain, Croatia, Hungary, Lithuania, Malta and Sweden). In spite of this, several national legal systems also provide for quicker sanctions, such as the possibility to provisionally detain the aggressor when the breach of the protection measure represents a serious risk for the victim (Croatia, Lithuania and the Netherlands) or the physical protection of the victim by the police, for example, in Poland. In other cases, the sanctions consist of an extension of the duration of the protection measure (Hungary and Lithuania).

A problematic aspect which is not addressed by the Directive is the determination of the person causing the breach. It could be assumed that it is the aggressor; however, the breach of the protection measure may also be caused by the protected person, for example when allowing or convincing the person causing danger to contact her/him. The response in these cases will have to be found in the application of the national law of each Member State; with regard to the EPO, however, a possible response could be its discontinuation.

6. Termination/Discontinuation of the protection measures adopted following the recognition of an EPO

The decision to discontinue or terminate protection measures adopted following an EPO depends on the competence of the executing State in the cases foreseen in the Directive, among others when the protected person no longer resides or stays in the territory of the executing State or where, according to its national law, the maximum term of duration of the measures adopted in execution of the EPO has expired.¹¹⁸ In any case, the executing State must communicate this decision to the issuing State and where possible to the protected person, and it may ask the competent authority in the issuing State whether it

¹¹⁴ Article 11(2) of Directive 2011/99/EU.

¹¹⁵ Article 12 of the Directive 2011/99/EU.

¹¹⁶ The standard form "Notification of a breach of the measure taken on the basis of the European protection order", included in Annex II of the Directive.

¹¹⁷ EPO issued by the United Kingdom in 2016 and executed by Sweden (see Annex EPOs).

¹¹⁸ Article 14(1) of Directive 2011/99/EU.

considers continuation of the protection measures to be necessary.¹¹⁹ The executing State also has competence to discontinue measures adopted following the recognition of an EPO in cases where the issuing State has revoked or withdrawn them.¹²⁰

7. Communication among Authorities

Since the EPO is a mechanism for judicial cooperation in criminal matters, the judicial authorities of the Member States are key to their effective functioning. Given the diversity and plurality of authorities, it would be more helpful if they had direct communication and consultations among them in order to facilitate the application of the Directive.

7.1. Central Authorities

Along the same lines, Directive 2011/99/EU foresees the possibility of designating a central authority in order to coordinate and centralise the processing of EPOs.¹²¹ 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 be very useful also when the measure imposed is extended, modified or suspended in the issuing State.

Most Member States have preferred to appoint the Ministry of Justice as the central authority (Estonia, Greece, Italy and Spain) and the Public Prosecutor's Office (France, Luxembourg, the Netherlands and Portugal).

In the case of Latvia, the central authority is the Legal Assistance Request Unit of the International Cooperation Department of the Central Criminal Police Department of the State Police of the Ministry of Interior of the Republic of Latvia. As for Malta, the designated authority is the Department of International Cooperation in Criminal Affairs, Office of the Attorney General.

The other Member States have opted for not establishing a central authority. Poland states that the transferring of EPOs is done in a fully decentralised way.

¹¹⁹ Article 14(3) of Directive 2011/99/EU.

¹²⁰ Article 13(6) of Directive 2011/99/EU.

¹²¹ Article 4 of Directive 2011/99/EU.

The coordination and communication deficit between competent and central authorities proves detrimental to the protection of the victims and to the effectiveness of the EPO. Therefore, all Member States should designate a central authority in charge of assisting the competent national authorities of both the issuing and executing States and coordinating the transmission of the EPO in order to streamline the EPO process. Hence, those who have not done so should be encouraged to use the existing mechanisms and channels for European police and judicial cooperation.

7.2. EPO's Central Registry System

In the light of the Directive's aim to monitor, at least, the number of EPO's issued and/or recognised,¹²² Member States should have some kind of control mechanism that provides information on the requested and adopted protection measures according to its national legislation.

Despite the fact that most Member States have created public registers in which the adopted protection measures are recorded, they do not have any Central Registry System for EPOs and EPO breaches.

However, four exceptions can be underlined:

On the one hand, Estonia states that there is no specific register for the registration of EPOs - they however have the Court Information System (KIS), which is an information management system for Estonian courts offering a single information system for all types of court cases, hearings and judgments. This way, protection orders may be reflected in several databases, e.g. documents of civil, administrative and criminal procedure (including protection orders) are kept in the E-Toimik ("Electronic File") database; this register includes EPO breaches.

On the other hand, in Lithuania and Sweden, the registers do not include EPO breaches. As for Lithuania, although there is no specific register for EPO's requests received, requested and issued EPOs are registered in the Lithuanian Judicial Information System (LITEKO), which contains information on all decisions issued by Lithuanian courts. As for Sweden, the register includes the kind of restraining order that is adopted in response to the EPO, the scope of the adopted restraining order and the details of what it entails, if appropriate, a defined area that the person causing danger must refrain from visiting, for how long the EPO is supposed to last, the identity of the victim and the time when the

¹²² With a view to evaluating the application of the EPO and Directive 2011/99/EU, on the one hand, Article 22 of Directive 2011/99/EU provides that 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 recognized'. This provision has not been followed by most Member States. On the other hand, under Article 23, it seems that the Commission failed to submit a report to the European Parliament and to the Council on the application on the Directive. Consequently, this makes even more difficult to find data available on the EPOs requested, issued and/or recognised (number, type of victim, type of violence, year, etc.).

person causing danger was notified the decision. Regarding the Netherlands, despite the fact that there is no special provision made for registration of EPOs, they can be registered in the Luris system which is used for MLAT's (Mutual Legal Assistance Treaties),¹²³ but this system does not communicate with other systems. The Luris system includes personal data of the convicted person and of the victim, the protection order and information on the contact points.

None of these four registers is available to the public, although they may be available to the police, prosecutors and courts (for example, in Estonia and Sweden).

Most Member States do not have any Central Registry System for EPOs and EPO breaches, and to gather information about the number of EPOs issued and/or received is a toilsome task. For this reason, it is highly recommended that all Member States have EPO specific registers in place, and considering the fact that some States have set up internal registers for protection measures (for example, Estonia, Spain, Finland, Croatia, Hungary, Lithuania, Luxembourg and Romania), they could use them to this end. The creation of a European Register that centralises all EPOs issued/received and EPOs breaches will be highly recommended and useful.

At present, in the absence of internal records, the existence of Central Authorities would make data collection on this matter easier.

However, those Member States that do not designate central authorities should take advantage of the existing mechanisms and channels for European police and judicial cooperation. Such channels already exist and have proved their effectiveness: the liaison magistrates and the contact points of the European Judicial Network are particularly efficient.

It is worth stressing that Spain has a system of integrated administrative records (SIRAJ)¹²⁴ which enables the connection between various national registries. This tool currently operates in all national judicial authorities of the criminal jurisdiction. There are signed agreements with the Ministry of the Interior in order to guarantee access to the information by authorised units (Police, Public Prosecutor's Office and others).

8. Professional training on measures of protection

Directive 2011/99/EU states that specialised training is necessary to protect victims' rights and to consolidate the EPO procedures.¹²⁵ However, only few Member States have organized courses, training activities or information campaign on the EPO (Austria, Sweden and Poland), and all of them were addressed to the professionals involved.

¹²³ Mutual Legal Assistance Treaties ([MLATs](#))

¹²⁴ *Sistema de Registros Administrativos de apoyo a la Administración de Justicia permite la conexión entre los distintos registros facilitando el trabajo a Juzgados y Tribunales del país* ([SIRAJ](#))

¹²⁵ According to recital 31 of Directive 2011/99/EU "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 recognizing a European protection order to provide appropriate training with respect to the objectives of this Directive".

In particular, Germany has arranged general training concerning protection measures, and the EPO is discussed during the general training of magistrates (European and international cooperation). It is foreseen that information on EPOs shall also be provided in a future explanatory document, which will be communicated to all the magistrates. This training is also addressed to police, prosecutors, judges, lawyers, social workers and others (among them, physicians, psychologists and therapists, nurses and midwives, teachers, government officials/civil servants). In the Czech Republic, seminars on Judicial Cooperation in Criminal Matters, including EPO issues, are regularly organised by the Judicial Academy. In Hungary, there have been specific training campaigns addressed to public authorities.

Furthermore, in Spain and Sweden it is compulsory to involve victims in the training of both judges and police officers; especially, in the Spanish case, if the judge is transferred to a special court for violence against women. This reinforces the hearing of victims and the direct contact between legal authorities and victims, what makes it possible to generate some kind of consideration regarding their needs and circumstances.

Only few Member States have organised courses, training activities or information campaigns on the EPO, all of them addressed to the professionals involved. Direct contact between legal authorities involved and victims improves the consideration regarding their needs and circumstances.

9. Information and awareness campaigns

According to recital 35 of Directive 2011/99/EU “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”, but there is no further obligation in this respect. However, the organisation of campaigns to raise awareness on the issue of victims’ rights is a key element to ensure the effectiveness of the protection measures and of these rights. Portugal, Romania, Sweden and the Czech Republic have organised information campaigns on the EPO. Particularly, Romania has organised one 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. The Swedish Police Authority has conducted an information campaign for awareness-raising on EPO through its internal computer system. Regarding Estonia, there have been no awareness-raising campaigns conducted so far, but the Ministry of Justice is complementing the webpage targeted to the assistance of victims with information regarding EPO.

Member States should, together with the European institutions, organize a pan-European campaign on the EPO to inform citizens on this instrument. So far, hardly any States have organised campaigns on the EPO. Dissemination in all the Member States would bring added value to the campaign.

III. Conclusions and Recommendations

A. THE LACK OF PREVIOUS HARMONISATION AND THE COMPLEXITY OF THE EUROPEAN LEGAL INSTRUMENTS ON VICTIMS PROTECTION

The EPO is a legal instrument of judicial cooperation and not only an instrument for victim protection. As a mechanism of judicial cooperation, the EPO has to be interpreted together with other instruments of judicial cooperation (in particular, Council Framework Decision 2009/829/JHA, Council Framework Decision 2008/947/JHA and Regulation 606/2013), while as a mechanism for victim protection, its shortcomings should be compensated for through the application and the implementation of Directive 2012/29/EU, the Victims' Directive. Therefore, the EPO Directive should be interpreted together with the Victims' Directive to fully guarantee the victims' procedural rights in criminal proceeding and to improve their protection.

The three protection measures included in Directive 2011/99/EU (and, by extension, in Regulation 606/2013), i.e. the prohibition to contact or approach the victim, or from entering places where the victim lives or goes to visit, are found in the national legislation of all the Member States. Their inclusion in the Directive seeks to establish a minimum standard of protection for victims, without modifying the internal legislation of the Member States.

The protection measures included in EPOs completely depend on the internal national legislations of the Member States: EPOs are issued on the basis of protection measures previously adopted in the issuing State according to its national legislation; the protection stated in the EPOs will be recognised in the State of execution by adopting the protection measures available in accordance with its national legislation. Therefore, EPOs will suffer and benefit from the same difficulties and advantages of the legislation on victim protection measures of the Member States, which is complicated further by the lack of harmonisation among the different and diverse national systems and laws on victim protection. The different legal nature of the measures affects their duration, and the possibility of extending, modifying, revoking or withdrawing them varies greatly among Member States. The existing differences between the Member States regarding the duration of 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 guaranteeing a more balanced protection throughout the EU.

The Directive has not led to a convergence/approximation of this diversity: the different national systems for the protection of victims are maintained, the internal legislation on the protection of victims has not been substantially modified, and the implementing laws of the Directive incorporate almost word for word the provisions of the Directive, with hardly any adjustments.

Given the diversity of criminal regulations in the Member States and the complexity of the mutual recognition procedure established by the Directive, it seems likely that the practical effectiveness of the EPO will greatly depend on the attitude and cooperation between Member States, and on the leading coordination at EU level.

Hence, the European Commission's forthcoming report (as foreseen in Article 22 of the Directive and based on data collected across the Member States - see Articles 21 and 22) should present a mapping of the national protection measures and, on this basis, develop legislative proposals that could improve further harmonisation on minimum protection measures for victims.

B. THE INFORMATION TO THE VICTIM AS A VITAL STARTING POINT FOR THE EPO

The information provided to the protected person is one of the essential elements for the effectiveness of the EPO, given that, according to the Directive, only the victim can request it. Thus, the victim will only request it if (s)he knows that it exists. In this respect, the competent authorities of the issuing State should inform the protected person of the possibility of requesting an EPO when (s)he expects to travel to another Member State and should warn him/her that only the victim can ask for the adoption of an EPO.

It is found that this information is not adequately provided to victims because of a partial or complete lack of knowledge of this instrument on the part of the stakeholders. Thus, only a few Member States have organised courses, training activities or information campaign on the EPO, all of them addressed to the professionals involved. It would be recommendable to extend these training and awareness-raising activities to NGOs and other entities working with these vulnerable groups. Hence, the forthcoming European Commission's report should contain an overview of the training activities and the awareness campaigns carried out in the Member States.

Providing information to victims is relevant throughout the process, also in relation to the breach of protection measures and consequently to the EPO. Apart from the information related to the process, it would be interesting to provide the victim with information on the availability and access to the existing resources under the law of in the executing State, e.g. assistance or family support measures, given the fact that these measures are outside the scope of the Directive.

C. THE RIGHT OF ACCESS TO JUSTICE OF VICTIMS REQUESTING AN EPO

As EPOs always imply the moving of a victim from one Member State to another, all victims at some point will be confronted with an unknown legal system or language, placing them in a particularly vulnerable situation. The Member States must therefore ensure that guidance is offered to victims in order to guarantee their effective access to justice, as required by the Victims' Directive.

The EPO Directive does not provide that legal assistance is a condition for requesting an EPO, which means that the protected person may submit the request or participate in the process without being assisted by legal counsel; nor do the Member States' implementing laws of the Directive require legal assistance to request an EPO. However, legal aid is essential to request and process EPOs. The participation of legal professionals ensures that the victim receives adequate counselling on the enforcement of the protection

measures in the executing State. Besides, Member States should ensure that the access to judicial proceedings and legal aid are free of charge. Although legal assistance should not be a formal requirement for requesting an EPO, Member States should facilitate victims' access to legal aid.

The Directive does not contain a right of the victim to be heard, but the victim should indeed be heard in order to let the competent authority know about the persistence of the risk when (s)he moves to another Member State. Although most of the countries provide for a hearing of the victim during the procedure leading to the issuing of the national protection measures, little is specifically said about the procedure leading to the issuing of an EPO.

The Directive does not contain specific provisions to ensure that the victim understands the legal proceedings when she or he (the victim) does not speak the language of the issuing country. The need for interpretation in order to let victims know how they can request protection measures and inform them that they are entitled to request an EPO should specifically be addressed when these victims are not nationals or permanent residents in the issuing country. All Member States provide free of charge interpretation services.

Most Member States have not established any special measures or provisions regarding vulnerable persons. However, the rights of these particularly vulnerable victims should be protected according to the Victims' Directive, which refers specifically to minors and persons with disabilities as well as other kinds of disabilities. In the case of the EPOs, special attention should be paid to children of the victims of crime.

D. PROCEDURE OF ISSUING AND EXECUTION OF AN EPO

The effective protection of the victim requires the procedure for the adoption and execution of an EPO to be quick. The national implementing laws of the Member States have used different formulas to stress the immediacy and urgency of the procedure, and in some cases even establish specific time limits. The fixing of time limits is the best way to guarantee a swift adoption and execution of EPOs, provided they are complied with.

The need for translation of an EPO may lead to delays in the issuing procedure. It would facilitate the issuing procedure if Member States, in addition to their official language(s) (or any other official language in the EU), would also accept translations of EPOs into English, the language most frequently used across EU Member States.

The speed in adopting and executing EPOs does not merely depend on the diligence of the competent judicial authority, but also on the administrative services involved in processing the EPO and the accompanying documents. In this respect, the Member States should streamline the procedures and clarify the communication channels between States.

The competent authorities of the issuing Member States should offer an accurate description of the facts and maximum information on the circumstances giving rise to the

adoption of the protection measures in the issuing State because this information will be used to assess the danger that might affect the protected person, and will also be used in the executing State where the protected person should be granted an equivalent protection for analogous cases under their internal legislation.

None of the Member States has foreseen or prepared a form with which victims can request an EPO; it is advisable that such a form be drafted using a similar format in all Member States.

Although to date there is no evidence of any EPO being refused, it is reasonable to expect that some of the grounds on which an EPO can be refused could be used in the future, especially in view of the lack of criminal harmonisation in the EU. Examples of these differences are the varying minimum age of criminal responsibility and the lack of penalisation of certain offences, e.g. stalking, in some Member States.

Finally, once the protection measures derived from the execution of an EPO have been adopted, the Directive requires them to be monitored by the issuing State and the executing State, as well as a smooth communication between them in case of incidents. This communication between the Member States involved proves to be quite complicated.

E. MONITORING OF THE PROTECTION MEASURES

The emergency phone number is the most generally known and used protection measure among Member States. The use of electronic monitoring mechanisms by the Member States, at this point in time, continues to be limited. Moreover, their use at the European level carries additional problems that currently have no solution, e.g. none of these technologies have 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.

However, new technologies currently offer possibilities that are very useful for monitoring the execution of the protection measures. For example, applications for smartphones have been introduced in Spain that allow for the communication of an offence or a situation of risk. These systems provide a direct connection with the police and use very efficient geolocation systems to locate the victim in case of emergency. An additional advantage is that they offer channels in different languages and are accessible for persons with communication disabilities. They include specific resources for particularly vulnerable victims and for victims of gender violence with a high risk profile. In case of non-compliance with the protection measures, the national law of the executing State must be applied. Again, there is a variety of solutions in the national legal systems: in most Member States the response takes the form of prison terms and fines, but there are other possibilities. The Member States should consider the possibility that the person causing the breach could also be the protected person.

The supervision of the protection measures, and the coordination of all the authorities involved in it (judges, state police, local police, the ministry...) is a difficult matter. The existence of comprehensive monitoring and coordination ICT systems must be positively valued, because it allows for risk prediction, coordinates the protection of the victim in the entire territory.

F. COMMUNICATION AMONG AUTHORITIES AND EPO REGISTRATION

Coordination and communication among the competent and central authorities proves essential to the protection of the victims and to the effectiveness of the EPO. The deficit in this regard is obvious, but could be improved if all Member States would clearly identify the unit or organ that centrally processes EPOs, creating a directory with their contact details. The existing mechanisms and channels of the European police and judicial cooperation could also prove very useful, such as the liaison magistrates and the contact points of the European Judicial Network.

The existence of internal EPO registry systems in the Member States would facilitate this coordination, as well as the compliance with the Directive, which requires the Member States to record the number of EPOs issued and recognised. However, most Member States do not have such Central Registry Systems for EPOs and EPO breaches, and the collection of information on EPOs issued and/or received is a heavy task. If all Member States were to have such a register, this information could be brought together in a unified database at the European level, allowing the European Commission to draft the report on the application of this Directive (as stated in Articles 22 and 23 of the Directive). This report should include a roadmap on how to achieve an optimal use of the EPO.

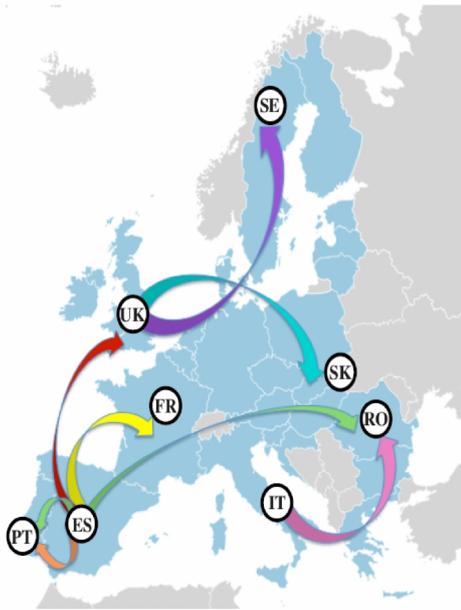
G. TYPOLOGY OF EPOS ISSUED

Although the scope of the Directive covers all victims of crime, the need to identify the person causing danger makes EPOs particularly useful for those cases in which a personal and close relationship exists between victim and aggressor. The three types of protection measures laid down in the Directive specifically imply this proximity, as its purpose is to create distance between victim and offender. Therefore, the most common type of violence requiring the use of EPOs is gender violence, and more specifically intimate partner violence, as corroborated by the practical use of EPOs so far, and also stalking or trafficking.

Until now, only seven EPOs have been detected (see Annex 1). In proportion to the number of victims in general in the European Union and the possibilities of them moving between Member States, the limited number of EPOs requested is quite dramatic, which may be explained by several of the issues identified in this study, that confirm the analyses provided in the specialised literature.

Annex 1: EPOs Map

European Protection Orders Issued and received



- Issuing State: SPAIN / Executing State: UNITED KINGDOM
 - 2015
 - Type of violence: Intimate partner violence
 - Victim: Female
- Issuing State: SPAIN / Executing State: PORTUGAL
 - 2016
 - Type of violence: Intimate partner violence
 - Victim: Female
- Issuing State: SPAIN / Executing State: FRANCE
 - 2016
 - Type of violence: Intimate partner violence
 - Victim: Female
- Issuing State: SPAIN / Executing State: PORTUGAL and ROMANIA
 - 2016
 - Type of violence: Intimate partner violence
 - Victim: Female
- Issuing State: UNITED KINGDOM / Executing State: SLOVAKIA
 - 2016
 - Type of violence: domestic common assault
 - Victim: Female
- Issuing State: UNITED KINGDOM / Executing State: SWEDEN
 - 2016 (?)
 - Type of violence: -
 - Victim: -
- Issuing State: ITALY / Executing State: ROMANIA
 - 2016 (?)
 - Type of violence: family ill-treatment and rape
 - Victim: Female

Source: Prepared by the authors based on the research paper up to 2017.

Annex 2: case law examples

EPO's case law examples

Hypothetical cases built on the EPOgender team research findings

Factual scenario

 ESTONIA →  LATVIA

An Estonian woman living in Valga (Estonia) has been granted protection measures by Estonian authorities. She finds a job in Valka (Latvia), 5 km away from her house. She requests a cross-border EPO in order to maintain her protection in Latvia.

 FRANCE →  GREECE

A Belgian girl residing in France, with protection measures adopted in this State, decides to start a new life in Greece and moves there definitively.

Notes

- Protection measures should be in force in both States.
- The cross-border nature of the protection should be indicated in the EPO.
- Coordination and communication between competent authorities of the two States should be further increased.
- Both authorities must be aware of the supervision of the protection measures in both States.

- In case that the victim wants to flee and the perpetrator could not know it in any way, the request of an EPO could be evidence of her escape.
- In order to guarantee the best possible and enduring protection for the victim, the victim could request both: the issuing of an EPO in France and the adoption of protection measures in Greece, once she arrives there.
- If children are involved, the victim should request an EPO for them as well.

Source: Prepared by the authors based on the research paper up to 2017.

Factual scenario

 HUNGARY →  POLAND

A couple from Poland goes on holiday to Hungary for one week, where he beats her. She receives protection measures in Hungary and requests for the issuing of an EPO in order to extend her protection to Poland when they both go back to Poland.

 SPAIN →  BULGARIA

A young man breaks up with his boyfriend, both living in Spain. The latter starts stalking the former (constantly calling and texting him). The victim requests protection measures in Spain. In particular, a prohibition is imposed on the stalker to contact the protected person, in any form. The victim requests an EPO because he decides to do an Erasmus course in Bulgaria.

 CZECH REPUBLIC →  NETHERLANDS

A Dutch woman living in the Czech Republic has protection measures granted in the Czech Republic. Due to the seriousness of her need of protection, her whereabouts in Czech Republic are unknown. She wishes to return to her country of origin for a period of time, and consequently, she requests an EPO.

 **Notes**

- If both go back to Poland, the Framework Decisions have preference over the provisions of the Directive, and no EPO would be issued.
- If the aggressor decides to stay in Hungary while the victim returns to Poland, then an EPO should be requested.

- A prohibition or regulation of contact, in any form, with the protected person, can be breached either in the issuing State or in any other State.
- Considering the omnipresence of electronic means, the monitoring and sanctioning of the breaching of the measures is becoming more difficult.
- Communication via the Internet allows tracing and identifying the source of a message, e-mail, etc. (IP-address).

- The risk increases in the State of origin if the person causing danger knows or is likely to know where the victim would stay (family home and social circles).
- If children are involved, the victim should request an EPO for them as well.

Source: Prepared by the authors based on the research paper up to 2017.

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