

**QUESTIONNAIRE SUR LA RECONNAISSANCE ET L'EXÉCUTION DES ORDONNANCES
DE PROTECTION RENDUES PAR DES JURIDICTIONS CIVILES ÉTRANGÈRES :
RÉSUMÉ DES RÉPONSES ENVOYÉES PAR LES MEMBRES ET SUITES ENVISAGEABLES**

établi par le Bureau Permanent

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**QUESTIONNAIRE ON THE RECOGNITION AND
ENFORCEMENT OF FOREIGN CIVIL PROTECTION ORDERS:
SUMMARY OF MEMBER RESPONSES AND POSSIBLE WAYS FORWARD**

drawn up by the Permanent Bureau

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INTRODUCTION

1. In April 2011 the Council on General Affairs and Policy of the Hague Conference on Private International Law (the "Council") added to the Agenda of the Conference "the topic of the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases".¹ The Permanent Bureau was requested to prepare "a short note on the subject to assist the Council in deciding whether further work on this subject is warranted".²

2. At Part I of the Sixth Meeting of the Special Commission on the practical operation of the 1980 Child Abduction Convention³ and the 1996 Child Protection Convention⁴ (1-10 June 2011) it was concluded that:

"The Special Commission welcomes the decision of the 2011 Council on General Affairs and Policy of the Hague Conference 'to add to the Agenda of the Conference the topic of the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases, and ... [to instruct] the Permanent Bureau to prepare a short note on the subject to assist the Council in deciding whether further work on this subject is warranted.' The Special Commission recommends that account should be taken of the possible use of such orders in the context of the 1980 Convention."⁵

3. The Permanent Bureau presented to the Council in April 2012 Preliminary Document No 7, "Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note"⁶ in fulfilment of the previous year's mandate. Preliminary Document No 7 principally provided comparative information on national legislation in this field, based on best available information from a variety of sources, and presented a description of existing or planned national and regional projects which address the cross-border recognition and enforcement of protection measures.⁷ Preliminary Document No 7 noted significant contemporary national and regional policy attention to this area of law based on a growing awareness of "[t]he ease of international cross-border travel

¹ Conclusion and Recommendation No 23 of the Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (5-7 April 2011) (available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "General Affairs").

² *Ibid.*

³ The *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the "1980 Child Abduction Convention").

⁴ The *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (the "1996 Child Protection Convention").

⁵ Conclusion and Recommendation No 43 of the Conclusions and Recommendations of Part I of the Sixth Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention (1-10 June 2011) (available on the Hague Conference website at < www.hcch.net > under "Specialised Sections" then "Child Abduction").

⁶ Prel. Doc. No 7 of March 2012 for the attention of the Council of April 2012 on General Affairs and Policy of the Conference (available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "General Affairs").

⁷ The terms "protection order", "protection measure" or other similar general terminologies are used in various jurisdictions and under various national or regional legal instruments, denoting legal regimes which seek to protect victims or potential victims of domestic violence and / or other types of harmful interpersonal behaviour. Additionally under various national legal regimes, specific types of protection orders may include "restraining orders", "stay away" or "no contact" orders, "barring orders", types of "preventive or precautionary measures" (*medidas cautelares / preventivas*), other types of civil or criminal injunctions, etc. which in general fall under the encompassing term of "protection order" or "protection measure". For examples of common protection order legal regimes and variations of these regimes in a variety of jurisdictions, please see Prel. Doc. No 7, *ibid.*

combined with the severe risk to an individual who cannot obtain immediate recognition and enforcement of a foreign protection order”.⁸

4. In April 2012 the Council concluded that:

“[T]he Permanent Bureau should circulate a Questionnaire to Members in order to assess the need and feasibility of an instrument in this area, and to obtain further information on existing legislation. The Permanent Bureau shall report to the Council in 2013.”⁹

5. Such a Questionnaire was circulated to Members of the Organisation in November 2012,¹⁰ and the current document presents information from the 24 Members (representing 39 States)¹¹ from which the Permanent Bureau received individual responses before 28 February, 2013 (the individual responses to the Questionnaire, including responses received after 28 February, are posted on the Hague Conference website¹²). The text of this Report follows the lay-out of the Questionnaire.

6. Several short annexes are also attached to this Report, namely: Annex I, summarising relevant work currently or recently undertaken at regional or international organisations (the Council of Europe, the United Nations Office on Drugs and Crime (UNODC) and the European Union); and Annex II, summarising input principally from international non-governmental organisations and academic institutes responding to an informal consultation.¹³

⁸ *Foreign Protection Orders: Joint ULCC/CCSO Working Group Report With Draft Act and Commentaries*, Uniform Law Conference of Canada, Civil Law Section, 7-11 August 2011 (Winnipeg, Manitoba), effective 30 November 2011, p. 3, quoted in *supra*, note 6, at p. 5.

⁹ Conclusion and Recommendation No 22 of the Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (17-20 April 2012) (available on the Hague Conference website at < www.hcch.net > under “Work in Progress” then “General Affairs”).

¹⁰ “Questionnaire on the Recognition and Enforcement of Foreign Civil Protection Orders,” Prel. Doc. No 4 A of November 2012 for the attention of the Council of April 2013 on General Affairs and Policy of the Conference, hereinafter “the Questionnaire” (available on the Hague Conference website at < www.hcch.net > under “Work in Progress” then “General Affairs”).

¹¹ Argentina, Australia (Australian Capital Territory (ACT), federal government (Fed.), New South Wales (NSW), the Northern Territory (NT), Queensland (Qld.), South Australia (SA), Tasmania (Tas.), Victoria (Vic.), Western Australia (WA)), Austria, Belarus, Bulgaria, Canada (Alberta (AB), British Columbia (BC), Manitoba (MB), Newfoundland and Labrador (NL), Northwest Territories (NWT), Nova Scotia (NS), Ontario (ON), Prince Edward Island (PEI), Quebec (QC), Saskatchewan (SK), Yukon Territory (YT)), Czech Republic, Estonia, European Union, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Portugal, Romania, Serbia, Slovakia, Sweden, Switzerland, Turkey and United States of America.

¹² At < www.hcch.net > under “Work in Progress” then “General Affairs” and “Individual responses to the Questionnaire on the Recognition and Enforcement of Foreign Civil Protection Orders”.

¹³ A copy of a short questionnaire distributed to non-governmental actors is available on the website of the Hague Conference at < www.hcch.net > under “Work in Progress” then “General Affairs” and “Recognition and Enforcement of Foreign Civil Protection Orders: Questionnaire for Non-Governmental Organisations,” Info. Doc. No 6. See Annex II for a description of the distribution methodology of this questionnaire.

Part I. Civil protection order regimes and types of orders available

A) Existing or planned civil protection order regimes (Question 1)

7. Twenty-one¹⁴ out of the 23 Members responding to this question reported the existence of a protection order regime in force in their State which is considered to be of a civil law character, while two Members (and one territorial sub-unit of a Member) reported that they do not have such a regime at present.¹⁵ One Member and one territorial sub-unit of a Member that do not currently have a civil protection order regime reported that there are plans to legislate in this area.¹⁶ One Member¹⁷ noted that it did not have plans to legislate in this area, and employs protection measures which have a criminal law character, applicable only in the context of criminal proceedings.

8. Ten Members¹⁸ with existing civil protection order regime(s) reported that modifications to the existing regime(s) are contemplated or have recently been made, while 14 Members¹⁹ reported that modifications are currently not contemplated. Planned or recent modifications include improvements in "emergency protection order processes",²⁰ amendments to "provide better solutions for problems encountered by [...] courts in practice",²¹ the development of a new type of restraining order "to reduce the likelihood of serious violent or sexual offenders coming in contact with their victims" (applying indefinitely, if the court considers necessary),²² improvements in risk assessments for domestic exclusion orders,²³ and provisions allowing for electronic monitoring in connection with protection orders.²⁴ One Member²⁵ noted that "[t]hese regimes are frequently modified [...] [f]or example, U.S. states have been modifying the regimes as they have become more aware of forced marriages",²⁶ and another noted that

¹⁴ Argentina, Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden, Switzerland, Turkey and United States of America. It should be noted that Sweden submitted two Questionnaire responses in relation to two legal regimes, the first considered to have a civil law character under Swedish law, and the second considered to be a part of "public / administrative law and with elements of criminal law" (the two Questionnaire responses are noted in the below footnotes, with the first regime designated as "Sweden (I)" and the latter as "Sweden (II)").

¹⁵ Belarus, Canada (QC) and Portugal.

¹⁶ Belarus noted that a draft of a new version of the *Law on the Framework for Crime Prevention Activities*, which includes provisions for protection orders in cases of domestic violence, has been submitted to Parliament and is under consideration. Canada (QC) noted that a 2012-2017 Government Action Plan on Domestic Violence sets out the following commitment: "Examine the possibility of introducing legislative measures regarding the civil protection order for victims of domestic violence as well as the recognition or such orders granted elsewhere in Canada and abroad."

¹⁷ Portugal.

¹⁸ Australia (ACT, NSW, NT, Tas., WA), Canada (BC, NWT, ON), Czech Republic, New Zealand, Slovakia, Sweden (II), Romania, Switzerland, Turkey and United States of America.

¹⁹ Argentina, Australia (Qld., SA, Vic.), Austria, Bulgaria, Canada (AB, MB, NL, NS, ON, PEI, SK, YT), Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, Serbia and Sweden (I).

²⁰ Canada (NWT).

²¹ Czech Republic.

²² New Zealand.

²³ Sweden (II).

²⁴ Sweden (II) and Switzerland.

²⁵ United States of America.

²⁶ The issue of "forced marriage" has come to light as an issue of concern in a number of jurisdictions worldwide, in which an individual, generally within the family, is through violence, threats of violence or other coercive means, forced into an unwanted marriage. It may include an individual being lured to the country of origin of the family, with the aim of forcing the individual into a marriage in that country. For recent protection order legislation addressing this issue, see, for instance, in the United Kingdom the *Forced Marriage (Civil Protection) Act 2007* (England and Wales and Northern Ireland).

its relevant regime is “under constant review” / “always monitored in case modifications are required”.²⁷ One Member²⁸ reported that policy work regarding “automatic recognition” of orders from other national jurisdictions is underway, as well as consideration of enforcement issues.

9. The civil protection order regimes listed by Members included those found in specific family violence, or domestic violence legislation,²⁹ legislation on protection from violence and stalking,³⁰ restraining order or harassment legislation,³¹ enforcement or civil procedure codes,³² specific civil code provisions or those dealing with family law, divorce and parental authority,³³ the inherent jurisdiction of a court to provide injunctive relief in civil matters,³⁴ and / or other legal bases.

B) Behaviours prohibited by civil protection orders (Question 2)

10. With respect to the substance of the reported civil protection order regimes, prohibitions found in the orders include: communicating with or contacting the protected person (19 Members³⁵); approaching or being in physical proximity to the protected person (21 Members³⁶); general harassment of the protected person (17 Members³⁷); molestation / annoyance of the protected person (18 Members³⁸); frequenting or coming near a certain place (20 Members³⁹); and possession of weapons (10 Members⁴⁰). Fourteen Members⁴¹ reported that prohibitions on other behaviours (or other measures) included in a protection order are at the discretion of the judge or other competent authority in an individual case.

11. Eighteen Members⁴² noted other specific provisions that can be included in protection orders, including: the exclusion or expulsion of the offending person from a shared residence (and / or an occupancy order in favour of the applicant)⁴³; a prohibition

²⁷ Australia (Vic., WA).

²⁸ Australia (NT, Tas.)

²⁹ *E.g.*, Argentina, Australia (ACT, NSW, NT, Qld., Tas., Vic.), Bulgaria, Israel and Turkey.

³⁰ *E.g.*, Germany.

³¹ *E.g.*, Finland and New Zealand.

³² *E.g.*, Austria, Czech Republic and Estonia.

³³ *E.g.*, Monaco and Slovakia.

³⁴ *E.g.*, Canada (AB).

³⁵ Australia (ACT, NSW, NT, Qld., SA, WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Slovakia, Sweden (I and II), Switzerland, Turkey and United States of America.

³⁶ Argentina, Australia (ACT, NSW, NT, Qld., SA, WA), Austria, Bulgaria, Canada (AB, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (I and II), Switzerland, Turkey and United States of America.

³⁷ Argentina, Australia (ACT, NSW, NT, Qld., SA, WA), Bulgaria, Canada (AB, MA, NL, NWT, PEI, SK, YT), Czech Republic, Estonia, Israel, Japan, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (II), Switzerland, Turkey and United States of America.

³⁸ Argentina, Australia (NSW, NT, Qld., SA, WA), Austria, Bulgaria, Canada (MB, NL, NWT, PEI, SK, YT), Czech Republic, Estonia, Israel, Japan, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (II), Switzerland, Turkey and United States of America.

³⁹ Argentina, Australia (ACT, NSW, NT, Qld., SA, WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Lithuania, New Zealand, Romania, Serbia, Slovakia, Sweden (I and II), Switzerland, Turkey and United States of America.

⁴⁰ Argentina, Australia (ACT, NSW, Qld., SA, Tas., WA), Canada (BC, MB, NL, NS, NWT, SK, YT), Estonia, Israel, New Zealand, Romania, Slovakia, Turkey and United States of America.

⁴¹ Argentina, Australia (NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Slovakia, Sweden (I and II), Switzerland, Turkey and United States of America.

⁴² Argentina, Australia (NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MA, NL, NWT, YT), Estonia, Finland, Germany, Israel, Japan, Lithuania, New Zealand, Romania, Serbia, Slovakia, Sweden (I), Switzerland and United States of America.

⁴³ Argentina, Australia (NT, Qld., Tas.), Canada (AB, BC, MB, NL, NS, NWT, YT), Czech Republic, Estonia, Finland, Germany, Lithuania, Romania, Serbia and Switzerland.

on encouraging others to engage in behaviour against the protected person where, if the behaviour was undertaken by the respondent, would be prohibited by a protection order⁴⁴; a prohibition on forwarding or dissemination of personal data or photos of the protected persons, ordering goods or services by using personal data of the protected person, or causing a third person to get into contact with the protected person⁴⁵; a requirement that the individual against whom the order is made report "to the court or a person named by the court"⁴⁶; "a guarantee for good behaviour or to ensure the safety and the security of a family member"⁴⁷; and, security measures on the residence of the victim.⁴⁸

12. One Member clarified that in relation to prohibitions on the possession of weapons, surrender by the respondent of weapons or firearms (including ammunition and explosives, and any document which authorises the respondent to own such an item), or search of premises, seizure and storage of weapons by a peace officer may be involved.⁴⁹ Another Member noted that with the issuing of a domestic or family violence order the person against whom the order is issued becomes a "prohibited person" ineligible for a firearms licence, or will otherwise have their firearm licence, permit or certificate of registration automatically suspended or revoked.⁵⁰

C) Supplementary matters which may be included in a protection order (Question 3)

13. Fifteen Members⁵¹ responded affirmatively and seven Members⁵² in the negative that supplementary matters, which may or may not be directly related to the immediate safety of the protected person, can be included in civil protection orders.⁵³

14. A number of Members reported that provisions awarding temporary care or custody of a child, or specifications for other arrangements or prohibitions on contact with a child

⁴⁴ Australia (Tas.) and New Zealand.

⁴⁵ Austria.

⁴⁶ Canada (BC).

⁴⁷ Israel.

⁴⁸ Argentina.

⁴⁹ Canada (AB, BC, MB, YT).

⁵⁰ Australia (NT, Tas., Vic.)

⁵¹ Argentina, Australia (ACT, NSW, NT, Qld., SA, Tas., WA), Austria, Bulgaria, Canada (AB, MB, NL, NS, NWT, PEI, YT), Germany, Israel, Lithuania, Monaco, New Zealand, Romania, Slovakia, Switzerland, Turkey and United States of America.

⁵² Canada (BC, ON, SK), Czech Republic, Estonia, Finland, Japan, Serbia and Sweden (I and II). Canada (ON) noted that "restraining orders are stand alone orders, but other relief such as custody or child support can be granted as part of the same hearing". Canada (SK) noted that under its Victims of Domestic Violence Act these orders are restricted to protection matters, but that under family law statutes, protection orders can be included with broader status determinations.

⁵³ Australia (WA) and New Zealand noted that special conditions generally may be added to protection orders. Austria noted that in theory other matters may be added to protection orders according to the judgment of the court, e.g., in the context of divorce proceedings, but in practice this is unusual. Canada (AB) clarified that although rare, supplementary matters may be added, based on certain courts' inherent authority, including *parens patriae* jurisdiction. Germany noted that outside of its Act on Protection Against Violence, proceedings for the placement of the respondent in a psychiatric hospital and for determination of rights of access to children are possible (in such cases it is also possible to take urgent measures / issue interim orders).

from the relationship,⁵⁴ could be included in a civil protection order, as could provisions for mandatory or recommended counselling for the perpetrator, or attendance at specialised programmes.⁵⁵

15. A number of Members also listed a range of specific provisions which could be included in a protection order relating to the property or finances of the protected person, including stipulations to pay mortgage or rent, to refrain from terminating utilities,⁵⁶ for replacement tenancy agreements for the benefit of the protected person,⁵⁷ provisions granting the applicant temporary, exclusive use of or control over specified personal property (e.g., a motor vehicle, cheque book, children's clothing, bank card, medical insurance card, identification documents, keys, utility or household accounts or other personal effects) / property in the matrimonial home⁵⁸ or the restitution of the protected person's property,⁵⁹ provisions restraining the respondent from taking, converting, damaging or otherwise dealing with property in which the applicant has an interest or "preventing or hindering use of an asset which a family member uses",⁶⁰ the removal of personal effects from a shared residence supervised by an enforcement officer,⁶¹ the payment of maintenance,⁶² and monetary reimbursement of damages to the victim (and child of the victim) as a result of the domestic violence or stalking (e.g., medical and dental costs, loss of earnings, moving and accommodation expenses, legal expenses).⁶³

16. Three Members also noted that in the context of marital or divorce proceedings, in addition to protection measures related to personal safety, a range of interim, provisional or protective measures may be taken, which may include division of property, maintenance, parental authority and child custody,⁶⁴ determination of residence of minor children, seizure of property or a prohibition on interference with property for the benefit of one spouse,⁶⁵ and other additional measures the court deems necessary (including payment of court fees).⁶⁶

17. One Member⁶⁷ noted that the seizure of any personal property of the respondent used in furtherance of the domestic violence or stalking could be authorised, and where the respondent has operated a motor vehicle to further the domestic violence or stalking, a provision suspending the respondent's driver's licence and disqualifying him or her from applying for or holding a driver's licence and operating a motor vehicle could be included in a protection order. Under this Member's Child Sexual Exploitation and Human Trafficking Act, a protection order may include a provision requiring the respondent to

⁵⁴ Argentina, Australia (Vic.), Bulgaria, Canada (NL, NS, PEI), Israel, New Zealand, Romania and Turkey. Australia (SA, Tas.) noted that Federal Family Court orders (e.g., regarding child custody) may be changed to reflect a protection order.

⁵⁵ Australia (NT, Qld.), Bulgaria, Canada (AB, MB, NWT, YT), Israel and Romania. Australia (SA) noted that an order may require the defendant to undergo an assessment or to participate in an "intervention program," as appropriate.

⁵⁶ Canada (NL, NWT, PEI) and Romania.

⁵⁷ Australia (NT, Tas.).

⁵⁸ Argentina, Australia (SA, Vic.), Canada (MB, NL, NS, NWT, PEI, YT).

⁵⁹ Argentina and Australia (Qld., SA).

⁶⁰ Argentina, Australia (SA), Canada (MB, NL, NS, NWT, YT), Israel and New Zealand.

⁶¹ Australia (SA) and Canada (BC, MB, YT).

⁶² Argentina and Turkey.

⁶³ Canada (MB, NWT, YT).

⁶⁴ Switzerland.

⁶⁵ Lithuania.

⁶⁶ Monaco. Monaco also noted the powers provided for a guardianship judge (Civil Code Art. 303), with respect to children, to take necessary measures relating to parental responsibility and protective measures required of the situation, based on a request by a parent or another person or government ministry.

⁶⁷ Canada (MB).

return specified personal effects or personal documents to the protected person such as a passport, driver's licence or other forms of identification.

18. One Member⁶⁸ reported that the protected person may request that the protection order judgment be communicated to others or published.

D) Persons for whom civil protection orders are available (Question 4)

19. Concerning for whom civil protection orders are available (*i.e.*, the intended protected persons), Members specified as follows: married persons (19 Members⁶⁹); formerly married persons (18 Members⁷⁰); divorcing persons (19 Members⁷¹); women only (three Members⁷²); unmarried couples (17 Members⁷³); family members (18 Members⁷⁴); roommates / housemates (13 Members⁷⁵); children of the intended protected person (17 Members⁷⁶); other relatives of the intended protected person (15 Members⁷⁷); persons who are not in any kind of intimate or cohabitation relationship (*e.g.*, in some cases of stalking) (12 Members⁷⁸); and, other individuals (13 Members⁷⁹).

20. A number of Members specified that their civil protection order regimes (or types of protection order regimes available in their jurisdiction) are available for all persons and are not reserved for specific categories of persons or victims.⁸⁰

21. A number of Members specified that their civil protection order regime (or types of protection order regimes available in their jurisdiction) were available based on shared

⁶⁸ Switzerland.

⁶⁹ Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (I and II), Switzerland, Turkey and United States of America. Japan noted that "*de facto*" married couples could also benefit from protection orders.

⁷⁰ Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Estonia, Finland, Germany, Israel, Japan, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (II), Switzerland, Turkey and United States of America.

⁷¹ Australia (NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (I and II), Switzerland, Turkey and United States of America.

⁷² Argentina, Estonia and Romania.

⁷³ Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Estonia, Finland, Germany, Israel, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (II), Switzerland, Turkey and United States of America.

⁷⁴ Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, MB, NS, NWT, PEI, SK, YT), Estonia, Finland, Germany, Israel, Japan, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (II), Switzerland, Turkey and United States of America.

⁷⁵ Australia (NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Canada (NS, ON, SK, YT), Estonia, Finland, Germany, Israel, New Zealand, Slovakia, Sweden (II), Switzerland, Turkey and United States of America.

⁷⁶ Argentina, Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, PEI, SK, YT), Estonia, Finland, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Slovakia, Sweden (II), Turkey and United States of America. Australia (Tas.) noted that Family Violence Orders can also be issued for the protection of children being exposed to family violence.

⁷⁷ Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (MB, NS, NWT, PEI, YT), Estonia, Finland, Israel, Japan, Monaco, New Zealand, Romania, Slovakia, Sweden (II), Turkey and United States of America.

⁷⁸ Australia (ACT, NSW, NT, SA, Tas., Vic., WA), Austria, Canada (AB, MB, NS, YT), Estonia, Finland, Germany, Israel, New Zealand, Sweden (II), Switzerland, Turkey and United States of America.

⁷⁹ Australia (NSW, NT, Qld., WA), Austria, Canada (AB, BC, MB, NS, ON, SK), Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, Sweden (I and II), Switzerland and United States of America.

⁸⁰ Australia (SA, Tas., WA), Austria, Czech Republic, Estonia, Finland, Germany and Switzerland. Germany, for example, clarified that "anyone who is injured, threatened or harassed intentionally by another person" may seek a protection order and "[n]o particular close relationship is required between the persons concerned". Australia (SA) noted that an intervention order may be issued for the protection of "any person against whom it is suspected the defendant will commit an act of abuse, or any child who may hear or witness, or otherwise be exposed to the effects of an act of abuse committed by the defendant against a person" (where "abuse" is defined broadly).

residence requirements⁸¹ or on certain family relationships.⁸² One Member noted that certain types of protection orders were available for “paid and unpaid carers” or in the context of “informal care relationships”.⁸³

E) Persons against whom civil protection orders are available (Question 5)

22. Twenty Members⁸⁴ reported that civil protection orders were available against an individual perpetrator or potential perpetrator, five Members⁸⁵ reported that they were available against family members of the principal perpetrator or potential perpetrator, and four Members⁸⁶ indicated that they would also be available against other individuals. Several Members specified that protection orders were available against “an associate of the respondent” in some circumstances,⁸⁷ or an instigator, accomplice and any other person who contributed to the commission of the violent, threatening or harassing acts.⁸⁸

F) Application for civil protection orders (Question 6)

23. As to who is able to apply for / initiate the institution of a civil protection order, 19 Members⁸⁹ indicated that the intended protected person (*i.e.*, the victim or potential victim who will be protected by the order) would apply, seven Members⁹⁰ indicated that family member(s) of the protected person could also make an application, seven Members⁹¹ indicated that police officials could apply or initiate the putting in place of a protection order, 11 Members⁹² indicated that another kind of public authority or official could apply for a protection order for an individual, and 10 Members⁹³ reported that a judge *ex officio* could institute an order.

24. A number of Members also reported other persons and types of advocates of the intended protected person who could make an application on his or her behalf, including a lawyer or another person designated by the protected person,⁹⁴ a sibling or other

⁸¹ Australia (NSW) and Finland. In Finland, for the application of an “inside-the-family restraining order” the persons in question must live permanently in the same residence.

⁸² *E.g.*, Israel and Serbia. Israel noted, for example, that “[t]he Prevention of Family Violence Act defines a family member by marriage or common law marriage and including former family members: spouse, parent or spouse of a parent, a parent of a spouse or partner of a parent, grandparent, child or descendant of a spouse, brother or sister, brother or sister in law, uncle or aunt, nephew or niece”.

⁸³ Australia (NSW, Qld.).

⁸⁴ Argentina, Australia (ACT, NSW, NT, Qld., Tas., Vic., WA), Austria, Bulgaria, Canada (BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (I and II), Turkey and United States of America.

⁸⁵ Australia (Qld., WA), Canada (AB, NS), Monaco, New Zealand and Turkey.

⁸⁶ Australia (NT, SA, Vic.), Canada (NS), Sweden (II) and Switzerland.

⁸⁷ Australia (Vic.).

⁸⁸ Switzerland.

⁸⁹ Argentina, Australia (ACT, NSW, NT, Qld., Tas., WA), Austria, Bulgaria, Canada (AB, NL, NS, NWT, ON, SK, YT), Czech Republic, Estonia, Germany, Japan, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (I and II), Switzerland, Turkey and United States of America.

⁹⁰ Australia (ACT, NT, Tas., Vic., WA), Canada (AB, MB, NWT, YT), Israel, Lithuania, Monaco, Slovakia and Turkey.

⁹¹ Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Canada (AB, MB, NL, PEI, SK, YT), Finland, New Zealand, Sweden (II), Turkey and United States of America.

⁹² Australia (NT, Qld., Tas., WA), Austria, Bulgaria, Canada (AB, YT), Finland, Lithuania, Monaco, Serbia, Sweden (II), Turkey and United States of America.

⁹³ Australia (NT, Qld., Tas., WA), Canada (BC), Czech Republic, Estonia, Lithuania, Monaco, New Zealand, Serbia, Slovakia and Turkey.

⁹⁴ Australia (NT, Qld., Vic.), Canada (BC, MB, NL, SK) and Israel. Canada (NS, NWT, SK, YT) specified any other person on behalf of the victim with leave of a judge of the Supreme Court or of a designated justice of the peace.

“direct kin” of the victim,⁹⁵ a designated peace officer (with the victim’s consent),⁹⁶ a public prosecutor,⁹⁷ the Attorney General or his representative, a police prosecutor or a social worker,⁹⁸ victim services or case workers,⁹⁹ legal representatives,¹⁰⁰ and, in the case where a child is to be protected by an order, parents or guardians,¹⁰¹ another adult,¹⁰² the child protection agency or officers,¹⁰³ or the public prosecutor with responsibility for minors.¹⁰⁴

G) Criminal and other harmful behaviour addressed by civil protection order regimes (Question 7)

25. Members reported a variety of behaviours or potential behaviours in response to which civil protection orders are put in place, including: domestic and family violence (20 Members¹⁰⁵); sexual assault (16 Members¹⁰⁶); dating violence (14 Members¹⁰⁷); stalking (14 Members¹⁰⁸); forced marriage (8 Members¹⁰⁹); so-called “honour crimes” (10 Members¹¹⁰); human trafficking (eight Members¹¹¹); and, other general criminal or harmful behaviour (12 Members¹¹²).

26. Other Members clarified that protection orders could address situations involving mental, psychological or emotional abuse,¹¹³ intimidation, threats or other coercion,¹¹⁴ financial or economic abuse,¹¹⁵ forcible confinement or restrictions on an individual’s autonomy or liberty,¹¹⁶ other behaviour which does not allow a family member “a reasonable or proper ability to manage [one’s] life”¹¹⁷ and other types of abuse, broadly defined.¹¹⁸ Several Members specified that child abuse¹¹⁹ and direct or indirect exposure

⁹⁵ Bulgaria.

⁹⁶ Canada (NS).

⁹⁷ Finland, Serbia, Sweden (II) and United States of America.

⁹⁸ Israel.

⁹⁹ Canada (NS, PEI, SK).

¹⁰⁰ Argentina, Bulgaria and Romania (e.g., in some cases of disability / incapacity).

¹⁰¹ Australia (NSW, Tas., Vic.), Canada (MB, NWT (also including grandparents)) and Monaco. Canada (ON) specified “a person seeking the restraining order on behalf of a child as part of a custody or access application”.

¹⁰² Australia (SA, Vic.) and Canada (MB)

¹⁰³ Australia (NT, SA) and Canada (NS).

¹⁰⁴ Monaco.

¹⁰⁵ Argentina, Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (II), Turkey and United States of America.

¹⁰⁶ Argentina, Australia (NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Canada (AB, MB, NL, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Israel, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (II), Turkey and United States of America.

¹⁰⁷ Argentina, Australia (ACT, NSW, NT, SA, Tas., WA), Austria, Canada (AB, MB, PEI, SK, YT), Czech Republic, Estonia, Finland, Japan, New Zealand, Serbia, Slovakia, Sweden (II), Turkey and United States of America.

¹⁰⁸ Argentina, Australia (ACT, NSW, NT, SA, Tas., Vic., WA), Austria, Canada (AB, BC, MB, NL, NWT, PEI, SK), Czech Republic, Estonia, Finland, Germany, New Zealand, Serbia, Slovakia, Sweden (II), Turkey and United States of America.

¹⁰⁹ Australia (SA, WA), Canada (PEI), Estonia, Finland, New Zealand, Sweden (II), Turkey and United States of America.

¹¹⁰ Australia (NSW, NT, SA, WA), Canada (PEI), Estonia, Finland, Israel, New Zealand, Slovakia, Sweden (II), Turkey and United States of America.

¹¹¹ Australia (NSW, SA, WA), Canada (MB, PEI), Estonia, Finland, Slovakia, Sweden (II), Turkey and United States of America.

¹¹² Australia (NSW, NT, SA, Tas., Vic., WA), Austria, Canada (NWT, ON, SK), Czech Republic, Estonia, Finland, New Zealand, Romania, Slovakia, Sweden (II), Turkey and United States of America.

¹¹³ Australia (SA, Tas., Vic.), Canada (BC, NWT), Germany, Israel, Lithuania, Romania, Serbia and Turkey.

¹¹⁴ Australia (SA, Vic.), Canada (BC), Finland, Germany, Romania, Serbia, Switzerland and Turkey.

¹¹⁵ Australia (SA, Tas., Vic.), Canada (BC, NWT), Lithuania, Romania and Turkey.

¹¹⁶ Australia (SA, Vic.), Canada (BC, NWT), Finland, Germany, Romania, Serbia and Turkey.

¹¹⁷ Israel.

¹¹⁸ E.g., racial or other derogatory taunts, threatening to withhold medication, driving a vehicle in a reckless or dangerous manner when the person is a passenger, etc. (Australia (SA)).

¹¹⁹ United States of America.

of children to violence would be considered as falling under the definition of domestic and family violence,¹²⁰ and others noted that child sexual exploitation, abuse or inappropriate contact / communication with children could be addressed by a protection order.¹²¹ One Member¹²² noted that its protection order regime, available only during a divorce proceeding, requires the protected person to be left in peace, and does not necessarily respond to any threatening behaviour of the other party.

H) Availability of interim, temporary or emergency civil protection orders (Question 8)

27. Nineteen Members¹²³ reported that civil protection orders considered to be of an “interim, temporary or emergency” nature are available in their State / jurisdiction(s), while two¹²⁴ said that these types of protection orders are not available. The majority of Members¹²⁵ sharing information on these types of protection orders reported that these orders could, in cases of urgency, be issued in an initial *ex parte* manner without notice to or the presence of the respondent, with, however, safeguards to subsequently review the order, notify the respondent and allow him or her to challenge the order. One Member¹²⁶ noted, for example, that while a court may grant a protection order *ex parte*, “a hearing shall be held in the presence of both parties as soon as possible and not later than seven days after the order was granted” (the court may also extend the order, even if the person to whom the order applies is not present at the hearing). On the other hand, two Members¹²⁷ noted that normally both parties are given notice and an opportunity to be heard before an order is imposed, unless the person against whom the order is to be imposed cannot be reached.¹²⁸

I) Length and renewability of civil protection orders (Question 9)

28. Twelve Members¹²⁹ specified that civil protection orders (which are not considered to be of an interim, temporary or emergency nature¹³⁰) in their State / jurisdiction have a maximum duration and three Members¹³¹ specified that they have a minimum duration. Five Members¹³² reported that civil protection orders are of a fixed duration while 11¹³³ specified that they are of a duration according to judicial / other competent authority’s

¹²⁰ Australia (Vic.) and Canada (BC).

¹²¹ Canada (MB, NS, NWT). Canada (NS) noted that any behaviours causing a child “to be in need of protective services” could be addressed by protection orders.

¹²² Sweden (I).

¹²³ Argentina, Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Monaco, New Zealand, Serbia, Slovakia, Sweden (I and II), Switzerland, Turkey and United States of America. Australia (WA) noted that an application for such an order could be made by “telephone, fax, radio, video conference, electronic mail or any combination of these methods.”

¹²⁴ Lithuania and Romania.

¹²⁵ Australia (NSW, Qld., SA, Tas., Vic.), Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Germany, Israel, Japan, Monaco, New Zealand, Slovakia and Turkey.

¹²⁶ Israel.

¹²⁷ Finland and Sweden (I).

¹²⁸ Finland.

¹²⁹ Australia (Qld.), Bulgaria, Canada (AB, BC, NS, PEI, YT), Czech Republic, Estonia, Finland, Germany, Israel, Romania, Serbia, Sweden (II) and Turkey.

¹³⁰ Austria noted, however, that it considers all Austrian protection orders in question to be of an “interim” nature.

¹³¹ Australia (ACT), Bulgaria and Czech Republic.

¹³² Japan, Lithuania, New Zealand, Romania and United States of America.

¹³³ Argentina, Australia (ACT, NSW, NT, Qld., Tas., Vic., WA), Bulgaria, Canada (AB, MB, NL, NWT, ON, SK, YT), Lithuania, Monaco, New Zealand, Romania, Slovakia, Switzerland and United States of America.

discretion. Eleven Members¹³⁴ reported that civil protection orders are renewable and three¹³⁵ reported that they are not renewable.

29. With respect to the maximum duration of a civil protection order, these limits ranged from 30 days, to three or six months, to one, one-and-a-half, two or three years. One Member¹³⁶ noted that legislation stipulates that a civil protection order generally be imposed for a "limited period," with the length of the period not stipulated by law. The majority of Members reporting that their civil protection orders were of a maximum duration also specified that the orders were renewable.¹³⁷ A number of Members¹³⁸ reported the existence of permanent or "lifetime" protection orders.

Part II. Civil protection order enforcement issues

A) Authorities responsible for the enforcement of civil protection orders (Question 10)

30. Eighteen Members¹³⁹ reported that police officers are responsible for the enforcement of civil protection orders, seven Members¹⁴⁰ additionally reported that bailiffs had this responsibility, and eight Members¹⁴¹ specified that another official would (also) be responsible for enforcement. Several Members¹⁴² clarified that it is the court that "ultimately" enforces these orders with the assistance of other enforcement officers, the latter responding in particular in the event of a violation of an order.¹⁴³

31. A number of Members¹⁴⁴ mentioned criminal sanctions that are or can be applied when there has been a breach of a civil protection order, and / or a monetary fine.¹⁴⁵

32. One Member¹⁴⁶ noted that sheriffs enforce certain provisions of protection orders that relate to the seizure of property other than weapons. Several other Members noted that other bodies / officials will assist with enforcement of a civil protection order, such as the child protection agency in appropriate cases,¹⁴⁷ and social workers / care workers.¹⁴⁸

33. One Member¹⁴⁹ described duties of a law enforcement unit to implement the protection order, ensuring that the residential (or other designated) area around the protected person(s) is protected, and / or assistance with the settlement of the protected person(s), as appropriate, in a shelter provided by and supervised by the Ministry of Family and Social Policies or at another location as requested by other governmental authorities.

¹³⁴ Australia (NSW, NT, Tas., Vic.), Canada (AB, BC, NS, ON, YT), Czech Republic, Finland, Germany, Monaco, Romania, Serbia, Sweden (II), Switzerland and United States of America. Japan noted that under its legislation a victim can file another petition to the court to issue a new civil protection order, rather than renewing the previous civil protection order.

¹³⁵ Canada (NL, NWT, PEI), Japan and Lithuania.

¹³⁶ Germany.

¹³⁷ Israel reported that courts may extend an initial civil protection order of three months first to six months, and then to a maximum of one year (in the latter case special reasons must be explained and listed in the judicial decision. Finland noted that its restraining order is imposed for one year, with renewability for imposition of a maximum length of two years).

¹³⁸ New Zealand and under the law of some states in United States of America.

¹³⁹ Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (I and II), Switzerland and Turkey.

¹⁴⁰ Austria, Estonia, Germany, Israel, Lithuania, Monaco and Slovakia.

¹⁴¹ Australia (WA), Argentina, Canada (MB, NS), Czech Republic, Monaco, Slovakia and United States of America.

¹⁴² Argentina, Canada (NS), Czech Republic and United States of America.

¹⁴³ Several Members (Finland, Serbia) noted that upon issue a restraining order generally does not initially require "enforcement as such," but if infringed the protected person would contact the police to stop the infringement.

¹⁴⁴ Canada (BC), Czech Republic, Finland, Japan and Serbia.

¹⁴⁵ Czech Republic, Finland and Japan.

¹⁴⁶ Canada (MB).

¹⁴⁷ Canada (NS).

¹⁴⁸ Monaco and Slovakia.

¹⁴⁹ Turkey.

B) Liability protection for enforcement officials (Question 11)

34. Fifteen Members¹⁵⁰ reported that enforcement officers have liability protection for good faith actions or omissions taken in furtherance of enforcement of civil protection orders, while three Members¹⁵¹ reported that they did not. Members noted that this liability protection was either under legislation bearing on general police or State liability, or was contained in specific provisions in the protection order legislation. For an example of the latter, the family violence legislation of one Member¹⁵² provides that:

“No action lies against a peace officer, a clerk of a court or any other person by reason of anything done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them in good faith
 (a) pursuant to or in the exercise or purported exercise of any power conferred by this Act or the regulations, or
 (b) in the carrying out or purported carrying out of any decision or order made under this Act or the regulations or any duty imposed by this Act or the regulations.”

C) Technology used for enforcement of civil protection orders (Question 12)

35. Three Members¹⁵³ noted that they employ security bracelets, GPS tracking devices or other technology to assist with the enforcement of civil protection orders, while 19 Members¹⁵⁴ said that they did not. One Member¹⁵⁵ additionally noted that subsequent to parliamentary intervention, the introduction of a legal basis permitting the monitoring of a contact or proximity ban through electronic surveillance joined with a GPS system is under consideration.

D) Use of databases for the registration of civil protection orders (Question 13)

36. Ten Members¹⁵⁶ utilise national, regional or local database(s) which register enforceable civil protection orders for the benefit of law enforcement officials or other authorities, and 12 Members¹⁵⁷ do not.

37. A number of Canadian provinces noted that protection orders are registered in the federal Canadian Police Information Centre (CPIC), with one province¹⁵⁸ additionally noting a provincial database, described as follows:

¹⁵⁰ Australia (NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Canada (AB, BC, MB, NL, NS, NWT, PEI, SK, YT), Estonia, Germany, Israel, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Switzerland, Turkey and United States of America.

¹⁵¹ Australia (ACT), Bulgaria and Japan.

¹⁵² S. 12 of the Protection Against Family Violence Act, Canada (AB).

¹⁵³ Sweden (II), Turkey, United States of America. Turkey specified that the technical means and methods in implementing protection orders are according to judicial decision with, however, the audio-visual monitoring and recording of a person not permitted. The United States of America noted that such technology is used in some of its jurisdictions, and that there are “some legal challenges” to the use of such technology.

¹⁵⁴ Argentina, Australia (ACT, NSW, NT, Qld., SA, Tas., Vic., WA), Austria, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Romania, Serbia, Slovakia, Sweden (I) and Switzerland.

¹⁵⁵ Switzerland.

¹⁵⁶ Australia (ACT, NSW, NT, Qld., SA, Tas., Vic.), Canada (AB, BC, MB, NL, NS, ON, PEI, SK), Estonia, Finland, Japan, Lithuania, Serbia, Sweden (II), Turkey and United States of America.

¹⁵⁷ Argentina, Austria, Bulgaria, Czech Republic, Germany, Israel, Monaco, New Zealand, Romania, Slovakia, Sweden (I) and Switzerland (as well as several jurisdictions in Australia (WA) and Canada (NWT, YT)).

¹⁵⁸ Canada (BC).

"The Protection Order Registry is a confidential database containing all civil and criminal protection orders issued in British Columbia. The goal of the Protection Order Registry is to contribute to the reduction of violence against women, vulnerable adults, youth and children through support of the enforcement of civil and criminal protection orders. Protection orders issued in B.C. courts or by the police are sent to the registry and are entered in the registry database on the same day they are received. The police have 24-hour access to the Protection Order Registry and can obtain a copy of the order within minutes."

38. The United States of America also noted that a national database is used (which, however, not all states utilise) in addition to most states of the United States of America possessing their own databases. Most Australian jurisdictions noted a federal police or criminal justice database system which records protection orders, or local / state-based law enforcement databases, and reported that currently the practice of automatic database registration of all protection orders nationally is under consideration.

39. Turkey reported the establishment of "Violence Prevention and Monitoring Centers" tasked with support and monitoring services to prevent violence and efficiently implement protective and preventive measures, staffed 24 hours a day by appropriately qualified staff. The databank of these centres includes details of existing protection orders and their implementation. Serbia also noted that local "Social Care Centers" in the domicile or place of residence of the protected person are served with the court decision of the protection measures and are obligated to keep a record concerning the protected person and the perpetrator.

40. Other Members noted that civil protection orders are registered with the court¹⁵⁹ or in the public register.¹⁶⁰

E) Enforcement of civil protection orders upon presentation (Question 14)

41. Twelve Members¹⁶¹ reported that civil protection orders can be enforced on the simple presentation of the order to an enforcement officer, while 10¹⁶² reported that they cannot.

Part III. Current national recognition and / or enforcement of foreign civil protection orders and domestic establishment of civil protection orders by foreigners

A) Existing laws for the recognition and enforcement of foreign civil protection orders (Question 15)

42. Eight Members¹⁶³ responded that they did not currently have laws (including rules of private international law) by which civil protection orders from foreign States are

¹⁵⁹ Canada (NS).

¹⁶⁰ Lithuania.

¹⁶¹ Australia (ACT, NSW, Qld., SA, WA), Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, SK, YT), Estonia, Israel, Lithuania, Monaco, New Zealand, Romania, Switzerland, Turkey and United States of America.

¹⁶² Argentina, Australia (NT, Tas., Vic.), Austria, Czech Republic, Germany, Japan, Serbia, Slovakia, Sweden (I and II) and United States of America.

¹⁶³ Belarus, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, YT), Finland, Israel, Japan, Sweden and United States of America.

recognised and / or enforced in their jurisdiction and 16 Members¹⁶⁴ reported that they did currently have such laws.

43. Of those reporting in the affirmative, Members specified that foreign civil protection orders could be recognised under general rules of private international law and / or civil procedure law pertaining to the recognition and enforcement of foreign judgments,¹⁶⁵ and / or under other regional, bilateral or national regimes for the recognition of foreign judgments in general civil and commercial matters.¹⁶⁶

44. New Zealand reported that under its Domestic Violence Act 1995, protection orders from Australia may be registered with a national court, in order that they may be enforced as if they were orders made under the New Zealand Domestic Violence Act 1995. This arrangement may be extended to other specified foreign countries by Order in Council, but to date no Orders in Council have been made to extend this arrangement to any other foreign States. Australian jurisdictions reported similar schemes for the recognition and / or registration and enforcement of protection orders from New Zealand.¹⁶⁷

45. In terms of special features, if any, found in these laws which seek to quickly protect persons at-risk in cross-border settings, Members in general reported no special features in this respect, apart from the ability of courts to take general provisional or emergency measures,¹⁶⁸ "automatic recognition" features under a regional instrument,¹⁶⁹ and the reciprocal relationships between Australian jurisdictions and New Zealand, described above. The territorial sub-unit of one Member, however, reported legislation which allows civil protection orders in particular to be immediately enforceable by law enforcement agencies in the same manner as a local court order, without prior registration of the foreign order.¹⁷⁰

B) Availability of civil protection orders for temporary visitors (Question 16)

46. Nine Members¹⁷¹ reported that an individual in need of protection while temporarily visiting their State / jurisdiction could not easily obtain a civil protection order in their State / jurisdiction for the duration of the visit, while 12 Members¹⁷² reported that, at least theoretically, an individual "could easily obtain a civil protection order" in such circumstances.¹⁷³

47. Of those Members reporting affirmatively to this question, two Members¹⁷⁴ noted that the nationality of the endangered person or his or her habitual residence is not a decisive factor, while others, however, reported that an applicant would still have to

¹⁶⁴ Argentina, Australia (ACT, NSW, NT, Qld., SA, Tas., Vic.), Austria, Canada (QC, SK), Czech Republic, Estonia, Germany, Lithuania, Monaco, New Zealand, Portugal, Romania, Serbia, Slovakia, Switzerland and Turkey.

¹⁶⁵ Argentina, Canada (QC), Czech Republic, Estonia, Germany, Lithuania, Monaco, Portugal, Romania, Serbia, Switzerland and Turkey.

¹⁶⁶ Austria, Canada (SK), Estonia, Germany, Lithuania, Romania and Slovakia.

¹⁶⁷ Australia (ACT, NSW, Qld., Tas., WA).

¹⁶⁸ Canada (QC) and Switzerland. Monaco also noted that *exequatur* of a foreign decision may be given by the tribunal at short notice in cases of emergency.

¹⁶⁹ *I.e.*, Art. 33 of the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I" Regulation).

¹⁷⁰ Canada (SK).

¹⁷¹ Belarus, Canada (AB, YT), Finland, Israel, Lithuania, Monaco, New Zealand, Portugal and Sweden (I).

¹⁷² Australia (NSW, NT, Qld., Tas., Vic., WA), Austria, Canada (BC, MB, NL, NS, NWT, ON, PEI, SK), Czech Republic, Estonia, Germany, Romania, Serbia, Slovakia, Sweden (II), Switzerland and Turkey.

¹⁷³ It should be noted that one Member (Australia (Qld., SA, Vic.)) referred to mechanisms applicable primarily to orders among *national* territorial sub-units.

¹⁷⁴ Australia (NT, Tas.) and Austria.

meet the standard applicable jurisdictional test,¹⁷⁵ the residence of the respondent may be a limiting factor in such cases,¹⁷⁶ or that service to a foreign respondent may be challenging.¹⁷⁷ One Member noted that there could be a delay of up to 30 days upon receipt of a protection order application.¹⁷⁸ In addition to these potential barriers to an individual easily obtaining a civil protection order on a temporary visit, according to information given by Members, it would seem that an individual would in any case have to make a new application or request for a fresh protection order in the foreign jurisdiction through relevant court or other procedures. While in principle available under the law of the foreign jurisdiction, one could imagine how it could prove complicated, impractical, expensive and time-consuming for an individual to obtain a protection order in a foreign jurisdiction, for example, in cases of frequent travel to multiple jurisdictions and travel for short-stays (e.g., for work or to visit family) in countries where one does not speak the language, know the (legal) culture or relevant authorities to contact, and / or for applicants who are impecunious or of modest means.¹⁷⁹

C) Availability of statistics or other information on the recognition and enforcement of foreign civil protection orders (Question 17)

48. Of the 23 Members responding to this question, 22¹⁸⁰ answered that their State / jurisdiction does not collect statistics or otherwise possess information as to instances where persons who benefit from a civil protection order in a foreign State face legal or practical difficulties with the recognition and / or enforcement of the foreign civil protection order in their State / jurisdiction (or vice versa). One Member¹⁸¹ and one territorial sub-unit of a Member¹⁸² reported possessing statistics in this respect, but did not report information in relation to frequency of such cases.

49. In relation to reliable data in this field, it is interesting to note that a new Council of Europe Convention contains an obligation on States Parties to collect data and to undertake research, which may eventually provide some useful statistics or research on this topic.¹⁸³

50. Thirteen Members¹⁸⁴ responded that they did not expect that such difficulties will increase in "frequency or complexity" in the near future (e.g., in the context of

¹⁷⁵ Canada (ON).

¹⁷⁶ Canada (NL) and Germany. Germany noted that under the Brussels I Regulation a precondition for application of the Regulation is that the defendant is domiciled in a European Union Member State.

¹⁷⁷ Canada (PEI).

¹⁷⁸ Slovakia.

¹⁷⁹ One could imagine the same types of barriers presenting themselves to applicants under many of the existing recognition / enforcement mechanisms noted under questions 15 and 18 a).

¹⁸⁰ Argentina, Australia (ACT, Fed., NSW, NT, SA, Tas., Vic., WA), Austria, Belarus, Bulgaria, Canada (AB, BC, MB, NL, NS, NWT, ON, PEI, QC, SK, YT), Czech Republic, Estonia, Finland, Germany, Israel, Japan, Lithuania, Monaco, New Zealand, Portugal, Romania, Serbia, Slovakia, Sweden, Switzerland and United States of America.

¹⁸¹ Turkey, noting that under Law No 6284, "monitoring centers provide a service of building a databank by collecting data regarding the protection and preventive cautionary decisions, the sentences of preventive imprisonment and the implementation of these decisions and acts, and keeping a record of the cautionary decisions".

¹⁸² Australia (Qld.), noting that "[i]nterstate police-made orders and other interstate orders that are not 'made by a court' are not able to be registered in Queensland. There is no reliable information regarding frequency. In addition, there is currently no national database which provides reliable and up-to-date [information] about protection orders across jurisdictions."

¹⁸³ Art. 11 of the *Convention on preventing and combating violence against women and domestic violence* (the "Istanbul Convention"). See Part VII, *infra*, and Annex I, Section A.

¹⁸⁴ Argentina, Australia (ACT, NSW, NT, SA, Tas., WA), Austria, Belarus, Canada (MB, NL, NS, NWT, PEI, YT), Czech Republic, Finland, Germany, Israel, Japan, Lithuania, Portugal and Slovakia.

international parental child abduction), while six Members¹⁸⁵ reported that they did expect that such difficulties would increase.¹⁸⁶

Part IV. Regional and international instruments

A) Regional and international instruments or co-operation mechanisms which address recognition and enforcement of foreign civil protection orders (Question 18 a))

51. One Member¹⁸⁷ noted the *Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* (the “Lugano Convention”) as a general, multilateral regime for the recognition and enforcement of foreign civil and commercial decisions. Another Member noted several regional instruments addressing the recognition and enforcement of foreign judgments and preventive / precautionary measures¹⁸⁸ and a specialised regional instrument on the international traffic in minors.¹⁸⁹ A number of States¹⁹⁰ also noted bilateral agreements which provide general frameworks for the recognition and enforcement of foreign civil decisions, or for broader legal assistance or co-operation in civil, family and criminal cases. With respect to any special features which might be found in these instruments, which seek to quickly protect persons at risk in cross-border settings, no such tailored mechanisms were reported.¹⁹¹

52. The European Union¹⁹² submitted a response to question 18 a) stating:

“The EU is currently negotiating a proposal for a Regulation on mutual recognition of protection measures in civil matters.

This Regulation will, if adopted as it currently stands, ensure that victims of (in particular domestic) violence can rely on restraint or protection orders issued

¹⁸⁵ Bulgaria, Canada (BC, SK), Monaco, Romania, Serbia and United States of America.

¹⁸⁶ It is important to note that Members giving responses to this question also reported that they did not possess statistics on this topic, and therefore it is difficult to assess on what data or experience this response is based. Due to length restrictions of the Questionnaire, comment fields were not included for all questions.

¹⁸⁷ Switzerland.

¹⁸⁸ Argentina, noting the *Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards* (1979), the *Inter-American Convention on the Execution of Preventive Measures* (1979) and the *Mercosur Protocol of Ouro Preto on Preventive Measures* (1994). In previous research, the Permanent Bureau did not find examples of any cases of the latter two instruments being used to secure the recognition and enforcement of a foreign civil protection order issued in the context of domestic, family or other interpersonal violence or harmful behaviour (see Prel. Doc. No 7, *supra*, note 6, at p. 24).

¹⁸⁹ The *Inter-American Convention on International Traffic in Minors* (1994), establishes an international administrative co-operation system, with Art. 16 authorising competent authorities of a State Party to take “immediate measures,” including preventive measures, to protect a trafficked minor found within its jurisdiction (informing the Central Authority of the minor’s previous habitual residence of the measures).

¹⁹⁰ Czech Republic, Lithuania, Monaco and Switzerland.

¹⁹¹ With the exception of those noted between Australia and New Zealand (*supra*, para. 44) and the regional regime for the protection of trafficked minors in particular, with a dedicated administrative co-operation system (*supra*, note 189). It was noted that the Lugano Convention (Art. 31) specifies that provisional, including protective, measures may be requested under the Convention, as available under the law of the State in question, regardless of which State possesses jurisdiction under the Convention. However these measures, of course, would have to be known and applied for “to the courts” in the foreign jurisdiction by the applicant, presumably in most cases involving legal advice, language translation / interpretation support and other barriers preventing swift access to such measures. It was also noted that under a bilateral agreement between Monaco and France on mutual legal assistance (*Convention relative à l’aide mutuelle judiciaire du 21 septembre 1949 entre la France et la Principauté de Monaco*), judgments and arbitral awards which are enforceable in one country will be declared enforceable in the other, after a series of five checks by the trial court where the decision is to be enforced.

¹⁹² The European Union noted that it submitted responses only to questions falling under European Union exclusive competence, *i.e.*, questions 18 and 21.

against the perpetrator in their home country - a Member State of the European Union - when they travel or move to another Member State.

Please find in [Annex I, Section C] explanations on key features of the Regulation. This Regulation will supplement Directive 2011/99/EU of 13 December 2011 on the European protection order, which applies to protection measures adopted in criminal matters. Due to separate legal bases in EU law for mutual recognition of civil law measures and criminal law measures, two separate instruments were required. The two instruments together will ensure the free circulation of the most common types of protection measures within the EU.

The proposed Regulation is part of a legislative package to strengthen the rights of victims in the EU. The main other element of this package is Directive 2012/29/EU 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 on minimum standards on victims' rights (see under question 18 b))."

B) Regional and international instruments or co-operation mechanisms which deal more generally with civil protection orders (Question 18 b))

53. A number of Members responded that they are bound (or will be bound in the future) by regional and international instruments or co-operation mechanisms which may deal more generally with civil protection orders. Six Members¹⁹³ noted that they had signed or ratified the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (see Part VII and Annex I, Section A, below), two Members¹⁹⁴ noted that they had ratified both the *1989 United Nations Convention on the Rights of the Child* (the CRC) and the *1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), and one Member¹⁹⁵ noted that it was also bound by the *1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms* and the *1993 United Nations General Assembly Declaration on the Elimination of Violence against Women* (Resolution 48/104).

54. In addition, the European Union responded to question 18 b), as follows:

"1. Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime provides that every victim is offered protection measures during criminal proceedings in accordance with their needs. Under this new instrument, all victims (and to a certain extent also their family members) will have an individual assessment to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings. In particular:

Article 4 requires that Member States shall ensure that victims are offered, without unnecessary delay and from their first contact with a competent authority, information about how and under what conditions they can obtain protection, including protection measures.

¹⁹³ Finland, Germany, Monaco, Serbia, Sweden and Turkey.

¹⁹⁴ Israel and Serbia. These two international instruments address obligations of States Parties to protect, respectively, children and women from various forms of violence, including violence within the family (the former explicitly in the text of the Convention (Art. 19), and the latter in Committee on the Elimination of Discrimination against Women commentary on the Convention (e.g., General Recommendation No 12, Eighth Session, 1989)).

¹⁹⁵ Serbia.

Article 18 requires that Member States shall ensure that 'measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members'.

Member States have to comply with this Directive by 16 November 2015 by adopting the necessary national provisions.

2. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) provides for recognition and enforcement of judgments with the exception of *ex parte* measures which have not been served on the defendant. A judgment can be enforced once it has been declared enforceable ('*exequatur* procedure'). A recently adopted recast of the Brussels I Regulation (Regulation (EU) No 1215/2012 of 12 December 2012, which applies from January 2015) has abolished the *exequatur* procedure.

Some of the civil law protection measures at issue may fall under the Brussels I Regulation. The Brussels I Regulation may remain applicable for recognition and enforcement of civil protection measures also after the entry into force of the Regulation on the mutual recognition of civil law protection measures, since the latter is allowing for time-limited recognition only.

3. Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II a) provides in a similar way, as a rule, that a judgment taken in the area covered can be enforced once it has been declared enforceable ('*exequatur* procedure'). However, certain judgments concerning rights of access and certain judgments which require the return of the child following abduction benefit from the abolition of the *exequatur* procedure.

Some civil law protection measures may fall under the Brussels II a Regulation. Chapter II of this Regulation contains a number of uniform grounds of jurisdiction which designate the competent court in matrimonial matters and matters of parental responsibility. Additionally, Article 20 of this Regulation enables a court to take provisional, including protective, measures in accordance with its national law in respect of a person on its territory even if a court of another Member State has jurisdiction as to the substance of the matter."

Part V. Civil protection orders in the context of the 1980 Child Abduction Convention and the 1996 Child Protection Convention

A) Civil protection orders under the operation of the 1980 Child Abduction Convention (Question 19)

55. Of Members responding to the Questionnaire that are Parties to the 1980 Child Abduction Convention, seven¹⁹⁶ reported the use of mirror orders,¹⁹⁷ 10¹⁹⁸ reported the use of voluntary undertakings,¹⁹⁹ five²⁰⁰ reported the recognition and enforcement of

¹⁹⁶ Argentina, Australia (Fed.), Austria, Canada (AB, BC, NS, ON and PEI only), Czech Republic, Germany and New Zealand.

¹⁹⁷ This is an order made by the courts in the requesting State that is identical or similar to an order made in the requested State.

¹⁹⁸ Argentina, Austria, Canada (AB, BC, MB, NS, ON, PEI, QC, SK), Czech Republic, Germany, Lithuania, Monaco, New Zealand, Portugal and Slovakia.

¹⁹⁹ That is, specific promises or assurances given to a court by a litigant.

²⁰⁰ Argentina, Czech Republic, Estonia, Portugal and Slovakia.

foreign civil protection orders under another international instrument, 16²⁰¹ reported recognition and enforcement of foreign civil protection orders under domestic law (including rules of private international law), and six²⁰² reported the use of other mechanisms or no mechanisms in their State to recognise and enforce a civil protection order made in a foreign State to protect an accompanying parent upon the return of a child under the 1980 Child Abduction Convention.

56. One Member²⁰³ noted that “[t]here is no special mechanism to recognise a foreign civil protection order as such [...]. However, a solution is found case by case in co-operation with the central authority and the local social welfare authorities and / or child welfare authorities”. Several Members²⁰⁴ noted that courts could make, or applicants could apply for, new orders for protection under the law of their jurisdiction. One Member²⁰⁵ noted that the ability of a court to recognise and enforce a foreign civil protection order in this context would depend on the applicable state or tribal law, and noted that voluntary undertakings “that are not outside of the scope of the Convention or contrary to the best interests of the child should be enforceable” in most national jurisdictions. Another Member²⁰⁶ noted that there would likely be problems in this context with recognition and enforcement of foreign protection orders rendered *ex parte*.

B) The 1996 Child Protection Convention and the operation of the 1980 Child Abduction Convention (Question 20)

57. Of Members responding to the Questionnaire that are Parties to the 1996 Child Protection Convention, two²⁰⁷ indicated in the affirmative and 11²⁰⁸ responded in the negative that provisions of this Convention (*e.g.*, Art. 11 relating to necessary measures of protection in cases of urgency) are utilised in order to protect an accompanying parent when a return order of a child is issued under the 1980 Child Abduction Convention.

Part VI. Views on a potential future international instrument in the area of civil protection orders (Questions 21 and 22)

58. In question 21 of the Questionnaire, Members were asked which general features *may* be desirable to include in a potential new international instrument on the recognition and enforcement of foreign civil protection orders. A total of 36 States²⁰⁹ provided a response to question 21.

59. Four Members²¹⁰ were of the view that immediate, *prima facie*, enforceability of foreign civil protection orders by enforcement officials would be a desirable feature. Five Members²¹¹ were of the view that an international civil protection order multilingual certificate which must be applied for in the State of origin in order to be internationally enforceable may be desirable. Seven Members²¹² were of the view that co-operative mechanisms, including an international database registering enforceable civil protection

²⁰¹ Argentina, Australia (Qld.), Austria, Canada (QC, YT), Czech Republic, Estonia, Germany, Israel, Lithuania, Monaco, New Zealand, Portugal, Romania, Serbia, Switzerland and Turkey.

²⁰² Belarus, Bulgaria, Canada (BC, NT), Finland, Monaco and United States of America.

²⁰³ Finland.

²⁰⁴ Canada (BC, NT) and Monaco.

²⁰⁵ United States of America.

²⁰⁶ Serbia.

²⁰⁷ Austria and Monaco.

²⁰⁸ Australia (Fed.), Bulgaria, Czech Republic, Finland, Germany, Lithuania, Portugal, Romania, Slovakia, Switzerland and Turkey. Sweden noted that it has very recently joined this Convention and thus could not give an appropriate answer at this time.

²⁰⁹ Argentina, Australia, Canada, European Union (27 States), Israel, Monaco, New Zealand, Switzerland, Turkey and United States of America.

²¹⁰ Argentina, Australia (ACT, NT, Tas.), Monaco and Canada.

²¹¹ Argentina, Australia (NT, Tas., Vic.), Monaco, Serbia and Switzerland.

²¹² Argentina, Australia (NT, Tas., Vic.), Israel, Monaco, Serbia, Switzerland and Turkey.

orders, may be desirable to include. Six Members²¹³ were of the view that a Convention which covers civil protection orders issued by courts and by administrative and other competent authorities could be desirable. Three Members²¹⁴ were of the view that a Convention that provides that enforcement officers have liability protection for good faith actions may be desirable. Three Members²¹⁵ supported the possible inclusion of jurisdiction rules for the taking of civil protection orders and four Members²¹⁶ the possible inclusion of applicable law rules. Five Members²¹⁷ supported the possible inclusion of a broad array of types of civil protection orders (*e.g.*, including variations such as those listed in questions 2 and 4-9 of the Questionnaire) in any new instrument. (See also the below response from the European Union to this question, which references new European instruments in this field, the features of which might provide models for global work in this area.)

60. One Member²¹⁸ stated a view as to a principal policy element that any future instrument should include:

“A key element of a global instrument should be the emergency recognition and enforcement of foreign civil protection orders without formality and with full liability protection for police agencies acting in good faith. There are multiple alternatives to a domestic or foreign victim (or potential victim) in the light of day when time is not a factor and there is no immediate threat. Such instrument must fill the gap that occurs in an emergency situation without requiring formalities that will effectively leave the police unable to act in a preventative proactive manner and leave the victim exposed to immediate physical danger.”

61. The same Member specified another feature which may be desirable in a future instrument in the area, namely the “[a]bility for the person against whom the order is made to substantially challenge the order or to seek to change the order”.

62. The European Union submitted the following response to question 21:

“The EU has as its policy goal to strengthen the rights and protection of victims and has put considerable efforts into adopting relevant legislation to that end. The intention is to put in place a common legal framework which will ensure that as many protection orders as possible can circulate and be recognised throughout the EU Member States.

In the course of recent legislative activity by the EU in this area it became clear that the legal framework for national protection orders largely differs from one Member State to another. In some legal systems protection measures are of civil law nature, while in others they are criminal or administrative in nature.

For this reason the EU legal framework will consist of several instruments, a Regulation for civil law protection measures and a Directive for criminal law protection measures supplemented by existing Regulations with a more general scope (see information given under question 18).

The EU welcomes initiatives aimed at strengthening the rights and protection of victims and would like to see such initiatives being adopted at [the] international

²¹³ Argentina, Australia (NT, Tas.), Israel, New Zealand, Serbia and Turkey.

²¹⁴ Australia (NSW, NT, Tas.), Canada and Monaco.

²¹⁵ Argentina, Israel and Switzerland.

²¹⁶ Argentina, Australia (NT, Tas.), Switzerland and Turkey.

²¹⁷ Argentina, Israel, New Zealand, Serbia and Switzerland.

²¹⁸ Canada.

level. However, the EU has concerns about the utility of working on a global instrument that would not tackle protection measures in a comprehensive way. Any instrument which would exclude from its scope criminal law protection measures would leave an important number of victims without protection when they travel or move.

Should the Hague Conference decide to engage in the preparation of a global instrument on the recognition of protection measures, the EU instruments in this field (see question 18) could perhaps constitute a testing ground and the evaluation of the functioning of these instruments in practice could serve as a source of inspiration for any work at [the] international level in this area.”

63. One Member²¹⁹ commented that it may be advisable that:

“a new Hague Convention regulates only matters concerning recognition and enforcement based on [a] multilingual certificate, adaptation of foreign protection measures and co-operation mechanisms. From the perspective of the victim, it is of most importance to achieve prompt enforcement of [a] civil protection order abroad [...] this type of convention would be adopted relatively quickly because it would be acceptable for different legal systems. On the other hand, if it includes matters of international jurisdiction for the taking of civil protection orders and conflict rules, it would probably lead to some reluctance or abstention and uncertainty in terms of reaching [...] consensus on this type of convention.”

64. Another Member commented:

“The United States supports inclusion of this topic on the agenda of the Hague Conference. However, we believe that, before there can be a meaningful discussion about any international instrument, we need to have a better understanding of the civil protection regimes in other [S]tates. For example, we would want to understand how civil protection orders are issued and enforced in these [S]tates. We would also want to get a better understanding of the issues associated with the recognition and enforcement of foreign orders. With such information we can more thoroughly consider what action, if any, by the Hague Conference would be appropriate.”²²⁰

65. With respect to question 22, two Members responded to this question, giving views on existing models in this field. One Member²²¹ commented that the concept of “adaptation” of a foreign measure, proposed within the frame of a new European Regulation²²² may be a valuable principle, but that the grounds for refusal of recognition under this model might be made more precise. Another Member²²³ commented that “[t]he effective cross-border protection of victims of violence makes it necessary to allow the authorities to rapidly identify a ‘history of violence’ both for the perpetrator and for the victim—restraining orders issued in the past, how they were respected, etc.”<http://www.hcch.net/>.

²¹⁹ Serbia.

²²⁰ Several territorial sub-units of one Member (Australia (NSW and Qld.)) also noted that they desire further information before commenting on possible features of a potential new instrument described in question 21.

²²¹ Serbia.

²²² See Prel. Doc. No 7, *supra*, note 6, Section 4, and Annex I, Section C of this note.

²²³ Romania.

Part VII. Additional information from international organisations

Council of Europe

66. The recent Council of Europe *Convention on preventing and combating violence against women and domestic violence* (the "Istanbul Convention"), adopted 7 April 2011, creates obligations on States Parties to establish protection orders in connection with all forms of violence covered by the Convention and, moreover, requires co-operation for the purpose of enforcement of protection orders (and other relevant decisions) among States Parties.²²⁴

67. In relation to the desirability and feasibility of a potential new international instrument on the recognition and enforcement of civil protection orders, the Council of Europe Secretariat²²⁵ suggested that it would be desirable if any new international instrument in the field of recognition and enforcement of foreign civil protection orders covered or targeted the forms of violence covered by the Istanbul Convention,²²⁶ and additionally noted that:

"[S]ituations [where international co-operation mechanisms may be useful in a potential new international Convention] would include women and girls who are being lured to a country other than that of their habitual residence to be married against their will. Many cases of forced marriage or attempted forced marriage include the luring of a daughter, niece, or cousin to the country of origin of the family with the aim of forcing her into a marriage in this country. [...] Any type of cross-border co-operation on civil protection orders or sharing of information would be helpful in cases of forced marriage that have a cross-border element. [...] Another situation would include women and girls at risk of being forced to undergo female genital mutilation if they travel abroad, usually to the country of origin of their ancestors. Cross-border co-operation to help ensure a civil protection order would be extremely helpful in this case, especially once the requirement of the Istanbul Convention to offer protection orders in these cases comes into force and is applied throughout states parties to the Convention."

68. Please see Annex I (Section A) and Annex II for a more detailed summary of relevant Istanbul Convention features and for further feedback from the Council of Europe Secretariat with respect to the possible development of a new international instrument on the recognition and enforcement of civil protection orders.

²²⁴ Art. 53(1) of this Convention requires that all States Parties "ensure that appropriate restraining orders or protection orders are available to victims of all forms of violence covered by the scope of [the] Convention", Art. 52 requires that "emergency barring orders" are also available, and Art. 62 mandates international co-operation for the enforcement of protection orders among States Parties.

²²⁵ The Council of Europe Secretariat (Directorate General of Human Rights and Rule of Law, Gender Equality and Violence against Women Division) submitted information to the Permanent Bureau on the Istanbul Convention, and also input in relation to a potential new global instrument on the recognition and enforcement of foreign civil protection orders. It should be noted that all information submitted was based on the expertise of the Secretariat, and does not represent the views of the Member States of the Council of Europe. The response to a short informal questionnaire submitted by the Secretariat of the Council of Europe is available in full on the Hague Conference website < www.hcch.net > under "Work in Progress" then "General Affairs" and "Individual responses to the Questionnaire on the Recognition and Enforcement of Foreign Civil Protection Orders".

²²⁶ The Council of Europe Secretariat also gave views as to which general features may be desirable in a new international instrument, namely, those described in letters a, b, c, d, e and h in question 21 of the Questionnaire.

United Nations Office on Drugs and Crime

69. The United Nations Office on Drugs and Crime (UNODC) conducts on-going “capacity-building” work with Member States of the United Nations to share information and best practices in the area of crime prevention and the prevention of violence against women, including in the area of protection orders. The UNODC work is set within the normative framework of principles adopted by the General Assembly of the United Nations (citing the human rights *acquis* in this area in a variety of international instruments and documents) which clearly reference the use and desirability of protection orders, and set out specific standards and suggestions for their effective use, accessibility to victims and proper implementation. Please see Annex I (Section B) for a more detailed summary of UNODC work in this area.

Part VIII. Informal NGO consultations

70. For a summary of responses to the informal questionnaire circulated to non-governmental organisations and other expert institutes²²⁷ see Annex II, below.

71. Respondents to this questionnaire were unanimous in the view that “the Hague Conference should develop a new international Convention (or other mechanisms) for the recognition and enforcement of foreign civil protection orders”. A range of respondents gave examples from their professional experience whereby, in their view, such an instrument would be practically helpful.

72. One respondent summarised that:

“there is obviously the need to create and adopt a worldwide Convention that would regulate this issue, having in mind that regional documents that now exist are not unified and connected [...]. The new Convention should take into consideration vulnerability of the victims and their need for immediate protection in every country, based on a decision from the authority from one country, regardless of the issuing authority”.²²⁸

Part IX. Possible ways forward and further work

73. The 2012 Council concluded that a Questionnaire should be circulated among Hague Conference Members in order to, among other things, “assess the need and feasibility of an instrument in this area”.²²⁹ Within the frame of this mandate, the following general and preliminary thoughts are offered.

74. Based on Member responses to the Questionnaire, it seems that the availability and efficacy of protection orders, in circumstances of domestic violence and in the context of other harmful or criminal behaviour,²³⁰ is or has been a priority within many States and among groups of States, as well as within the legislative frame of a number of international and regional organisations (see Annex I, below). The legislative focus on this area has included the development of specific regional instruments for the cross-border recognition and enforcement of protection orders,²³¹ and several national legislative endeavours which recognise the importance of the rapid and / or tailored

²²⁷ See para. 6, *supra*.

²²⁸ Autonomous Women's Centre (AWC) (Serbia).

²²⁹ See *supra*, note 9.

²³⁰ See, for example, the harmful and / or criminal behaviours noted in responses to question 7 of the Questionnaire.

²³¹ See the response of the European Union to question 18 a) and Annex I, Section C.

enforcement of foreign protection orders.²³² However, there is at present no global instrument in this field.

75. As evidenced in Questionnaire responses, regional or national instruments or legislation which address the enforcement of foreign decisions in the *general* area of civil and commercial matters, where existent, may be useful in some circumstances but, by their nature, are not tailored to quickly respond to the unique and often urgent needs of victims or potential victims protected by these orders, and may involve additional (court) procedures in the foreign jurisdiction by applicants who wish to have their order recognised and enforced.²³³ These instruments or legislation, furthermore, are of course of only a national, bilateral or regional nature.

76. As evidenced by the feedback of a number of Members,²³⁴ mechanisms to ensure the rapid enforcement of protection orders are likely particularly important to fulfil their preventive purpose, as they have as their object the protection of persons who are vulnerable to certain harmful behaviours, including cases where they may be subject to imminent danger or harm. Due to cross-border movement of persons globally, including the reality of trans-national families, global migration and short-term travel, it would follow that persons protected by these orders in one State will find themselves in foreign States where their order may have uncertain or no effect,²³⁵ or where they will have to apply for a new protection order through court-based or other procedures in what will in some cases be an unknown legal environment.²³⁶

77. With respect to the operation of the 1980 Child Abduction Convention (including the potential combined application of the 1996 Child Protection Convention), it would appear from Questionnaire responses that there is irregularity in the way at-risk parents (and their children) might be effectively protected upon a return order to a foreign State, if they have been subject to or are at risk of being subject to the harmful behaviours generally covered by protection orders, in particular in cases of urgency where the life or safety of the returning persons may be at risk.²³⁷

²³² See the responses of Australia (ACT, NSW, Qld., Tas.), Canada (SK) and New Zealand to question 15.

²³³ See Questionnaire responses to questions 15 and 18 a).

²³⁴ See *supra*, para. 60 and para. 63, Members responding affirmatively to question 21 a) and b), and also Annex I, Section C, describing a key feature of a proposed new European Union Regulation in this area which provides for an international certificate whereby "the protection measure is [automatically] recognised and can be enforced without the need for any special procedures upon simple presentation of the certificate to the competent authority of the Member State of recognition".

²³⁵ In Member responses to question 15, over one third of respondents reported that they did not have *any* existing laws whereby foreign civil protection orders could be recognised and enforced.

²³⁶ See *supra*, paras 46 and 47, summarising Member responses to question 16.

²³⁷ See Member responses to question 19, noting an array of mechanisms that may be employed or that are formally available. Voluntary undertakings in particular in this context have been shown in research to be infrequently adhered to by those who have agreed to undertakings (see research cited at para. 145 and note 129 of "Domestic and Family Violence and the Article 13 'Grave Risk' Exception in the Operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*: a Reflection Paper", Prel. Doc. No 9 of May 2011 for the attention of the Special Commission of June 2011 (available on the Hague Conference website at < www.hcch.net > under "Specialised Sections" then "Child Abduction Section" and "Sixth Special Commission Meeting" then "Preliminary Documents"). See also Member responses to question 20, where the majority of Members report that they are not using the 1996 Child Protection Convention in this context (see also commentary on the possible limitation of such use of the 1996 Child Protection Convention, at p. 32, para. 129, of Prel. Doc. No 9, *ibid.*).

78. Responses to the Questionnaire confirm that, while there is a great diversity in types of prohibitions and supplementary matters which may be included in protection orders in various jurisdictions, there is a core commonality among Members in both types of protection orders available²³⁸ and reasons for which protection orders are put in place (e.g., domestic violence, stalking, harassment, etc.).²³⁹ This commonality is an important finding with respect to an assessment of the feasibility of a new global instrument in this area.

79. As to types of features which may be included in any new instrument in this area, it is not clear from Questionnaire responses which general features may be most desirable if a new instrument were to be developed. If further work in this area is decided upon, the examination of the combination of the broad features set out in question 21 of the Questionnaire would constitute an important part of the work ahead. The need to supplement any such features with other mechanisms, in order to provide for swift recognition and enforcement of foreign protection orders while making certain that important safeguards concerning the rights of all parties²⁴⁰ are addressed, for example, would also have to be examined. At this point, it would not be necessary to rule out the potential utility of some mechanisms of international administrative co-operation, such as the availability of national focal or contact points.

80. As to the issue of the area of law on which protection orders are based in national legal systems (e.g., civil law, administrative law, and criminal law), and the possible inclusion of varieties of protection orders in a new instrument, it would appear from some Member feedback²⁴¹ and from a number of examples of regional or national schemes in this area that it may be possible to find a pragmatic and workable solution in this respect.²⁴²

81. Questionnaire responses received and research to date show that it may be desirable (and indeed would be feasible) to develop within any instrument a standard form which could be recognised by State Parties and available in a multilingual format to ensure its free circulation.²⁴³ In the light of the many existing domestic registries, it would also appear that it may be possible to develop an international electronic

²³⁸ For example, the great majority of Members responding to question 2 noted that their protection orders included the prohibitions described in letters a, b, c, d and e. An iteration of these common protection order provisions is generally found among the core prohibited behaviours addressed by recent regional / national conflicts of law instruments in the area of protection orders (see instruments or legislation cited in Section 4 of Prel. Doc. No 7, *supra*, note 6, including initiatives in Canada, Europe and the United States of America; see also Annex I, Section C, for a description of the most recent status of the proposed European Regulation on civil protection orders and core prohibited behaviours which will be addressed).

²³⁹ However, while this latter general commonality seems to exist from a policy perspective (in order to more effectively target particularly vulnerable groups of persons), there would be no need to narrow the availability of such orders to particular behaviours in a possible future instrument (indeed, protection orders are broadly available under a number of national legal regimes; see *supra*, para. 20). As noted in the response of the European Union with respect to a new European Regulation in this area (see Annex I, Section C): "The Regulation will not enumerate the actions or harmful behaviours covered by the scope (as domestic violence, stalking, traffic in human beings, etc.) but will generally refer to all measures 'with a view to protecting a person when there exist serious grounds for considering that that person's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk'."

²⁴⁰ See *supra*, para. 61.

²⁴¹ See, for example, *supra*, para. 62 and Member responses to question 21 d).

²⁴² For example, see Annex I, Section C, below, which describes a key feature of the proposed European Union Regulation in this area, namely, the "complementarity and crossover between civil and criminal systems of protection measures." See also Section 4 C (1) of Prel. Doc. No 7, *supra*, note 6, citing United States of America federal legislation in this area which covers orders issued by both civil and criminal courts.

²⁴³ See Member responses to question 21 b) and also Annex I, Section C, with respect to the use of such a document in the frame of a regional instrument.

registration system for such orders to ensure that their authenticity / enforceability could be quickly verified.²⁴⁴ Furthermore, based on experience with other Hague Conventions and analysis to date, it would seem useful that some information on national law, procedures and contact information of relevant authorities necessary for enforcement purposes, for example, be made publicly available and accessible in cross-border circumstances. This may invite the development of a Country Profile on national law and other information in this area, in order to minimise as much as possible burdens placed on national authorities.

82. As noted in and evidenced by Member responses to the Questionnaire, recent regional European legislative endeavours in this field, as well as the systems of federal States like Australia, Canada and the United States of America, may be instructive for the purpose of devising optimal solutions at the global level if further work in this area is desired.

²⁴⁴ See Member responses to question 13 and see also the principle / best practice supported by the United Nations General Assembly with respect to registration systems for protection orders, *infra*, Annex I, Section B, at para. 10.

ANNEXES

Annex I: Additional information from international organisations and Regional Economic Integration Organisations (REIOs)

A) The Council of Europe Convention on preventing and combating violence against women and domestic violence

1. The recent Council of Europe *Convention on preventing and combating violence against women and domestic violence* (the “Istanbul Convention”, adopted 7 April 2011) requires States Parties to introduce a comprehensive regime of protection orders for a range of forms of violence against women. The Convention is open for signature and ratification by non-Member States of the Council of Europe which participated in its elaboration and by the European Union, and also for accession by other non-Member States of the Council of Europe.

2. At present, 26 States have signed the Istanbul Convention, and an additional three have completed ratification.¹ Twenty-eight of the 29 States that have signed or ratified the Istanbul Convention are also Members of the Hague Conference on Private International Law. It is anticipated by the Council of Europe Secretariat² that the obligations enshrined in this new Convention will lead to legal reforms in the area of protection orders in many States.

3. Article 53 of the Convention requires a regime of long-term restraining or protection orders for victims of all forms of violence covered by the Convention, including for victims of domestic violence, stalking and sexual harassment, and also for women and girls exposed to the risk of sexual violence, female genital mutilation, forced marriage or forced abortion / sterilisation. The purpose of the provision is to offer a fast legal remedy to protect persons at risk by prohibiting, restraining or prescribing certain behaviour(s) by the perpetrator.

4. Article 53 establishes a number of criteria for such orders, including: availability of orders without undue financial or administrative burdens on the victim; orders which may be issued for a specified period or until modified or discharged; the possibility of issuing an order on an *ex parte* basis with immediate effect; allowing the existence of a protection order to be introduced as evidence in subsequent legal proceedings; availability of orders irrespective of, or in addition to, other legal proceedings; and making the breach of such an order a criminal offence or subject to other effective, proportionate and dissuasive legal sanctions. The Convention does not, however, specify whether restraining or protection orders should be based on civil law, criminal procedural law and / or administrative law, or a combination thereof, and this is left to the national legal system.

5. Article 52 of the Istanbul Convention also requires the introduction of a regime of emergency “barring orders” in States Parties, requiring a perpetrator of domestic violence to vacate the residence of the victim or person at risk, for immediate protection of domestic violence victims.

6. Importantly, conscious of the need to ensure the cross-border enforcement of such protection orders, the drafters of the Istanbul Convention also introduced, in Article 62(1) d), the obligation to co-operate “through the application of relevant

¹ Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, Sweden, The former Yugoslav Republic of Macedonia, Turkey, Ukraine and United Kingdom. Albania, Portugal and Turkey have already ratified the Convention. (Council of Europe website < <http://conventions.coe.int/> > last consulted: 14 March 2013.) The Convention requires 10 ratifications (including eight Member States) to enter into force.

² See *supra*, note 225.

international and regional instruments on co-operation in civil and criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, for the purpose of" [...] "enforcing relevant civil and criminal judgments issued by the judicial authorities of Parties, including protection orders". This obligation is complemented by more general obligations to co-operate for the purpose of "preventing, combating and prosecuting all forms of violence covered by the scope of the Convention" (Art. 62(1) a)).

B) United Nations Office on Drugs and Crime

7. The United Nations Office on Drugs and Crime (UNODC)³ carries out various activities to strengthen the capacity of Member States of the United Nations to prevent and respond to violence against women.

8. The normative basis and framework within which UNODC carries out this work is the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice ("Updated Model Strategies and Practical Measures"), adopted by the General Assembly of the United Nations with its Resolution 65/228.

9. On the issue of "protection orders", primarily from a criminal law perspective, UNODC undertakes work in this area by "assisting countries in implementing the [...] Updated Model Strategies and Practical Measures which contain several provisions related to protection orders as well as to strengthening international co-operation among countries, [to] promote their use and information [sharing]".⁴

10. The Updated Model Strategies and Practical Measures urge Member States of the United Nations to:

- "review, evaluate and update their criminal and civil laws [...] including measures aimed at preventing violence against women[...]" (para. 14 b));
- "[e]nsure that [...] [p]olice and courts have the authority to issue and enforce protection and restraining or barring orders in cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile; to issue and enforce child support and custody orders; and to impose penalties for breaches of those orders. If such powers cannot be granted to the police, measures must be taken to ensure timely access to court decisions in order to ensure swift action by the court. Such protective measures should not be dependent on the initiation of a criminal case" (para. 15 h));
- "establish a registration system for judicial protection, restraining or barring orders, where such orders are permitted by national law, so that police or criminal justice officials can quickly determine whether such an order is in force" (para. 16 h));
- "provide efficient and easily accessible procedures for issuing restraining or barring orders to protect women and other victims of violence [and] that

³ Information provided in this section is based on information provided by the Justice Section, Division for Operations, UNODC.

⁴ *Ibid.*

women subjected to violence have full access to free legal aid, where appropriate, court support and interpretation services" (para. 18 *f*) and *h*));

- "co-operate and collaborate at the bilateral, regional and international levels with relevant entities to prevent violence against women" (para. 25 *b*)).

11. The Updated Model Strategies and Practical Measures, within the framework of United Nations human rights instruments and documents, including the General Assembly *Declaration on the Elimination of Violence against Women*,⁵ recall that:

"States have the obligation to promote and protect the human rights and fundamental freedoms of all people, including women, and that they must exercise due diligence and take relevant measures to prevent [...] violence against women, to eliminate impunity and to provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of women's human rights and fundamental freedoms" (para. 12).

C) European Union: key features of the proposed Regulation on mutual recognition of protection measures in civil matters

12. The below summary information on the European Union proposed Regulation on mutual recognition of protection measures in civil matters was submitted by the European Union:

• **Automatic recognition based on the presentation of a certificate** -

On substance, the Regulation is based on the procedures commonly used in other EU instruments on the mutual recognition of judicial and extrajudicial decisions in civil and commercial matters as well as in family law, such as Regulation (EC) No 44/2001 (Brussels I)⁶ and Regulation (EC) No 2201/2003 (Brussels IIa)⁷. A key element of the Regulation will be an EU-wide standard certificate, containing all necessary information so that the protection measure is recognised and can be enforced without the need for any special procedures upon simple presentation of the certificate to the competent authority of the Member State of recognition.

- **Scope and closed list of measures** - The Regulation will apply to three types of protection measures obliging the perpetrator to refrain from or regulating the following behaviours: (a) entering the place where the protected person resides, works or stays regularly; (b) contacting, in any form, the protected person, including by phone, electronic or ordinary mail, fax or any other means; (c) approaching the protected person closer than a prescribed distance.

It will not provide for the recognition of orders prohibiting other specific behaviours provided in national legislations or by discretion of the judge (e.g. dissemination of information or images of a person at risk) neither to supplementary matters relating to safety (mandatory counselling or therapy, protection of property of the protected person or possession of weapons). Since it appeared that the type and scope of protection measures vary considerably in the Member States, to facilitate quick and speedy circulation, only the three above types of measures which are known in all Member States and, presumably, cover

⁵ Resolution 48/104, 20 December 1993.

⁶ OJ L 12, 16.1.2001, p. 1.

⁷ OJ L 338, 23.12.2003, p. 1.

most of the situations will be covered by the Regulation. The same approach was already chosen by Directive 2012/29/EU dealing with protection orders in criminal matters.

The Regulation will apply to protection orders existing under national law to protect individual persons at risk against individual perpetrators regardless of their civil status or degree of relationship. However, the recognition of protection measures issued between parents and their children is excluded from the scope of the Regulation in order to preserve the *acquis* of Regulation (EC) 2201/2003 (Brussels IIa).

The Regulation will not enumerate the actions or harmful behaviours covered by the scope (as domestic violence, stalking, traffic in human beings etc.) but will generally refer to all measures "with a view to protecting a person when there exist serious grounds for considering that that person's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk".

The Regulation also applies to orders issued in ex-parte procedures.

As the nature of the authority is concerned, the Regulation will cover protection orders issued by judicial and non-judicial authorities (e.g. mayor), provided that certain guaranties to satisfy the fundamental rights' requirements are met (particularly impartiality of the authority and possibility to appeal to a judicial authority).

- **Concept of "Adjustment" of certain orders by the authority of the Member State of recognition** - The competent authority in the Member State of recognition will be allowed to adjust the factual elements of the protection order (such as the specific address of the place of residence or work or the distance the perpetrator must keep from the protected person) where such adjustment is necessary for the practical implementation of the order.

- **Procedural safeguards, simplified notifications and concentration of procedures in the issuing Member State** - The Regulation balances the efficiency of procedures for mutual recognition with procedural safeguards for the person causing the risk (the potential perpetrator) by providing the following procedural elements: notification of the protection measure to the perpetrator as a condition for issuing a certificate, simplified methods of notification of the certificate and of any adjustment, procedure to rectify or withdraw a certificate which contains factual errors or which has been clearly wrongly granted having regard to the requirements provided for in the Regulation, appeal against the recognition in case of violation of public policy or irreconcilability of decisions.

To ensure that recognition is simple, rapid and not obstructed by appeals in the Member State of enforcement, most of above procedures take place in the Member State of origin.

- **Limitation in time of the effects of recognition** - The duration of protection measures varies considerably in the legal systems of the Member States: from 48 h measures taken by the mayor to judicial decisions which are

unlimited in time. This divergence has called for an innovative concept of recognition. For the first time in an EU instrument on mutual recognition the effects of recognition will be limited in time.

- **Limited grounds for the refusal of recognition** - In line with other EU instruments in civil matters, a limited number of grounds for refusal will be provided (public policy and irreconcilability with another judgement).

The Regulation will not allow for an appeal against the issuing of a certificate and will not allow for a review as to the substance of the protection measure in the Member State of recognition.

- **No need for translation** - With a view to avoiding the need of translation, the Regulation will provide for the use of a standardised multilingual certificate which will contain as few as possible free text fields.

- **Respect of the autonomy of the protected person** - The Regulation will not provide for a centralised/EU-wide database of the enforceable protection orders or issued certificates but will foresee that the relevant information on legislation and procedures concerning national protection measures and on the type of competent authorities will be made publicly available in the portal of EU judicial cooperation networks. With a view to preserving the autonomy of the victims, the Regulation will neither provide for a direct transmission of the enforceable protection order between the authorities concerned but will rather leave it entirely to the victim whether or not to present the certificate to the authority in the Member State of recognition thereby invoking the protection there.

- **Complementarity and crossover between civil and criminal systems of protection measures** - EU national legal systems provide for a variety of civil protection orders, there are civil protection measures issued in civil proceedings as well as measures which arise from criminal proceedings or are enshrined in criminal law or even measures having a hybrid nature. To assure that all persons at risk in possession of an enforceable protection order benefit from protection throughout the Union, the EU intends to have a legal framework which addresses the recognition of all kinds of protection orders, irrespective of whether they are civil, criminal or administrative in nature. Due to constraints resulting from a separate legal basis in the field of civil and criminal matters, the EU framework will consist of two separate legislative acts: the Regulation and the recently adopted Directive 2011/99/EU on the European Protection Order. These two legislative acts are intended to be complementary but mutually exclusive.

This complementarity of legal acts allows that a protection order issued under the jurisdiction of a Member State which provides for purely criminal measures is recognised in another EU jurisdiction which knows only protection measures of civil nature and vice versa.

The limitations of the legal basis in civil matters have consequences on the scope of the instrument: the Regulation deals only with the recognition of the obligation imposed by the protection measure. It does not regulate the procedures for implementation or enforcement of the measure, nor does it cover any potential sanctions that might be imposed in case of a breach of the protection measure in the Member State of recognition. Both enforcement and possible sanctions are left to the law of that state. In accordance with the general principles of Union law, [that] Member State has to ensure that recognised protection measures can take full effect in its territory."

Annex II: Informal non-governmental organisation, academic and international organisation feedback

1. The Permanent Bureau distributed a short questionnaire¹ to international non-governmental organisations (NGOs) and other institutes principally working in the area of family and domestic violence (and / or private international law), for informal consultations to gain further information on national civil protection order legislation, and to seek any preliminary views as to the need and desirability of a new international instrument in this area (see Section B, below, describing distribution methodology of the questionnaire). Fifteen NGOs or academic institutions / experts from 13 jurisdictions² submitted responses to the short questionnaire. For a list of the NGOs or institutes that submitted responses, please see Section C, below.³ The Secretariat of the Council of Europe (Directorate General of Human Rights and Rule of Law, Gender Equality and Violence against Women Division) also submitted responses to the questionnaire, and this input on various issues is noted separately in the below text.⁴

A) Summary of input received

2. Respondents provided valuable detailed information as to existing civil protection order regimes in their jurisdictions, and recent or planned legislative reforms in this area. Eleven of the 13 jurisdictions represented in the responses reported that there are currently civil protection order regimes in force in their jurisdiction.

3. As to information on problems of persons who are protected by a civil protection order in one State having the foreign protection order recognised or enforced in another State, most respondents stated that “they were not in a position to know” of such cases, or otherwise did not have data. However, several organisations did share experiences in this respect, including comments that: “protection orders issued in Austria have until now not been recognised by other States”;⁵ “[c]urrently protection orders from other jurisdictions are not recognised in Ireland, nor Irish ones in other jurisdictions [...]. We have come across some women with orders from other countries but they had to reapply for orders here and re-start the whole process [...]. It would be useful if orders were recognised”;⁶ “Americans who have experienced domestic violence in foreign countries have difficulty getting foreign orders of protection recognized in the U.S. state they relocate to from overseas”;⁷ and, civil domestic violence restraining orders and civil harassment orders “are helpful for victims who have experienced domestic violence in one [S]tate and are planning to remain in that [S]tate [but] [t]hese orders can be very

¹ A copy of the questionnaire is available on the Hague Conference website, < www.hcch.net > under “Work in Progress” then “General Affairs” and “Recognition and Enforcement of Foreign Civil Protection Orders: Questionnaire for Non-Governmental Organisations, Info. Doc. No 6”.

² Albania, Armenia, Austria, Germany, Ireland, Kosovo, Luxembourg, Mexico, Portugal, Serbia, United Kingdom - Scotland, United States of America and Uruguay.

³ The full responses to the questionnaire are available on the website of the Hague Conference by way of the following weblink: < http://www.hcch.net/upload/wop/hidden/2013/gap2013resp_ngos.html >.

⁴ It should be noted that all information submitted was based on the expertise of the Council of Europe Secretariat, and does not represent the views of the Member States of the Council of Europe. Full comments submitted by the Council of Europe Secretariat are available on the Hague Conference website at < www.hcch.net > under “Work in Progress” then “General Affairs” and “Individual responses to the Questionnaire on the Recognition and Enforcement of Foreign Civil Protection Orders”.

⁵ Domestic Violence Intervention Centre Vienna – WAVE Focal Point for Austria.

⁶ Women's Aid (Ireland).

⁷ Americans Overseas Domestic Violence Crisis Center (AODVC) (United States of America).

difficult to enforce for victims who have experienced abuse in a different country than where they are going to reside".⁸

Comments on desirability of a new international Convention / mechanisms for the recognition and enforcement of foreign civil protection orders

4. All 15 organisations or individual experts who responded to this question answered affirmatively that "the Hague Conference should develop a new international Convention (or other mechanisms) for the recognition and enforcement of foreign civil protection orders". One respondent noted that this support "is firmly subject to the caveat that any unforeseen consequences for the persons protected must be identified and rectified, [that is,] technical and legal issues or recognition and implementation that may compromise or diminish the safety and security afforded by their order if it was implemented subject to the domestic laws of another county".⁹

5. As to views on types of behaviours to be covered by a possible international Convention, 12 respondents indicated that in their view domestic violence should be addressed, 11 specified sexual assault, 10 dating violence, 12 stalking, 11 forced marriage, eight so-called "honour-crimes," 11 human trafficking and 12 all of these behaviours. Several respondents additionally indicated that they thought that sexual abuse, mistreatment and violence against children should be covered by such an instrument. The Secretariat of the Council of Europe also noted that female genital mutilation, forced sterilisation, forced abortion and sexual harassment should be included, in accordance with the Istanbul Convention (see Annex I, Section A, above), and drew attention to the 16 May 2005 *Council of Europe Convention on Action against Trafficking in Human Beings* which also requires international cooperation for the purpose of protecting victims, noting that civil protection orders would be an effective tool in this respect.

6. As to views on desirable features of an international Convention in this area, 14 respondents supported immediate, *prima facie*, enforceability of foreign civil protection orders by enforcement officials, 15 supported an international civil protection order multilingual certificate which must be applied for in the State of origin in order to be internationally enforceable, 14 supported co-operative mechanisms including an international database registering enforceable civil protection orders, 12 supported a Convention which covers civil protection orders issued by courts and by administrative and other authorities, 10 supported a Convention that provides that enforcement officers have liability protection for good faith actions and 14 supported a Convention which addresses a broad scope of types of civil protection orders.

7. The Council of Europe Secretariat also gave views as to which features would be most desirable in a new international instrument, namely, designating all of those features listed above (*i.e.*, those described in letters a, b, c, d, e, and h in question 21 of the Questionnaire).

8. A number of respondents also suggested exemption of application / court costs for a victim, a "user-friendly," simplified and expedited procedure to obtain an

⁸ *Ibid.*

⁹ Scottish Women's Aid (United Kingdom—Scotland).

(international) protection order / certificate, and appropriate victim-protection safeguards and facilities in the context of any necessary proceedings before a court.

9. One respondent gave the general comment that: "there is obviously the need to create and adopt a worldwide Convention that would regulate this issue, having in mind that regional documents that now exist are not unified and connected [...]the new Convention should take into consideration vulnerability of the victims and their need for immediate protection in every country, based on a decision from the authority from one country, regardless of the issuing authority".¹⁰

10. All respondents save one also noted that an international co-operation system established within an international Convention may be helpful to victims or potential victims protected by civil protection orders, giving the following comments:

- lack of information is currently an obstacle in providing an evidentiary basis for victims of violence in order that they may be assisted with the intervention of the NGO to protect them in co-ordination and collaboration with other social actors;¹¹
- a new international Convention "which includes an international co-operation system would be very helpful for victims of violence to ensure that the problem of violence is recognised and that proper protective and support measures are taken by the authorities in all countries involved [...] such an international Convention is necessary to guarantee the right of victims to the protection of their life, health and freedom. This is especially important in countries which are not Members of the European Union";¹²
- there is a huge fluctuation of foreigners from many countries, and thus the problem of the (cross-border) legal effect of protection measures is of great importance;¹³
- this issue is especially relevant in cases of Mexican immigrants to other countries (e.g., to the United States of America);¹⁴
- "An international co-operation system would be very helpful to Americans who have experienced domestic violence overseas and need to relocate back to the U.S. and for victims of domestic violence in the U.S. who may be traveling and or relocating to a country outside the U.S.". ¹⁵

11. The Council of Europe Secretariat noted in this respect that:

"Additional situations [where international co-operation mechanisms may be useful] would include women and girls who are being lured to a country other than that of their habitual residence to be married against their will. Many cases of forced marriage or attempted forced marriage include the luring of a daughter, niece, or cousin to the country of origin of the family with the aim of forcing her into a marriage in this country. [...] Any type of cross-border cooperation on civil protection orders or sharing of information would be helpful in cases of forced marriage that have a cross-border element. [...] Another situation would include women and girls at risk of being forced to undergo female genital mutilation if they

¹⁰ Autonomous Women's Centre (AWC) (Serbia).

¹¹ Gender Alliance for Development Center (GADC) (Albania).

¹² Domestic Violence Intervention Centre Vienna – WAVE Focal Point for Austria.

¹³ *Femmes en détresse a.s.b.l.* (Luxembourg).

¹⁴ *Instituto Investigaciones Jurídicas, Universidad Nacional Autónoma* (UNAM) (Mexico).

¹⁵ Americans Overseas Domestic Violence Crisis Center (AODVC) (United States of America).

travel abroad, usually to the country of origin of their ancestors. Cross-border cooperation to help ensure a civil protection order would be extremely helpful in this case, especially once the requirement of the Istanbul Convention to offer protection orders in these cases comes into force and is applied throughout states parties to the Convention.”

B) NGO questionnaire distribution methodology

12. The questionnaire was distributed by e-mail with the aim of quickly and informally, within the limited time and resources available, reaching a range of organisations and institutes with specialised knowledge relevant to the present inquiry. The questionnaire was distributed directly or indirectly to a number of civil society and academic / international organisation expert networks, including the WAVE network (a network of European women's NGOs working in the field of combating violence against women and children, including women's refuges, counselling centres, SOS hotlines / help-lines, organisations focusing on prevention and training, etc. (< www.wave-network.org >)), UN Women, the Council of Europe, the Hague Conference Latin American regional office (for regional dissemination), the United States – Mexico Bar Association, and other experts in the field of family law and domestic violence with which the Permanent Bureau has worked.

13. Detailed information as to the specific organisations which responded to the questionnaire, including details as to areas of expertise and operational programmes, funding sources, involvement in governmental legislative activities and other policy work, any official accreditation status (for example, Consultative Status within the Economic and Social Council of the United Nations (ECOSOC)) can be found by way of the organisations' individual websites, listed in Section C, immediately below.

C) List of international NGOs and institutes submitting information

Jurisdiction	Name of NGO / institute	Website
Albania	Gender Alliance for Development Center (GADC)	< www.gadc.org.al >
Armenia	Women's Rights Center NGO	< www.wrcorg.am/en >
Austria	Domestic Violence Intervention Centre Vienna – WAVE Focal Point for Austria	< www.interventionsstelle-wien.at > < www.wave-network.org >
Germany	<i>Berliner Initiative gegen Gewalt an Frauen e.V. (BIG e.V.)</i>	< www.big-koordination.de >
Ireland	Women's Aid	< www.womensaid.ie >
Kosovo	Women Wellness Center Safe House	< www.qmgks.org >
Luxembourg	<i>Femmes en détresse a.s.b.l.</i>	< www.fed.lu >
Mexico	<i>Alternativas Pacíficas A.C.</i>	< www.alternativaspacificas.org >
Mexico	<i>Instituto Investigaciones Jurídicas, Universidad Nacional Autónoma (UNAM)</i>	< www.juridicas.unam.mx >
Portugal	<i>Associação de Mulheres Contra a Violência</i>	< www.amcvorg.pt >; < www.amcv.org.pt/amcv_files/pdfs/outros/AboutAmcv.pdf >
Serbia	Autonomous Women's Centre (AWC)	< www.womenngo.org.rs >
United Kingdom (Scotland)	Scottish Women's Aid	< www.scottishwomensaid.org.uk >
United States of America	Americans Overseas Domestic Violence Crisis Center (AODVC)	< http://www.866uswoment.org >
Uruguay	Uruguayan Institute for Private International Law	