

**Draft Country Profile – National and foreign protection orders: legislation,
recognition and enforcement and other resources**

Revised draft reply of the European Union to specific questions

- **Question 8.1.** Please list any additional bilateral, regional, and international instruments or co-operation mechanisms that currently or will in the future bind your State or jurisdiction, which cover the *recognition and enforcement of foreign protection orders* (in addition to legislation listed in Part IV, Section 1):

To reflect the differences in the Member States' national protection measures, which can be of civil, criminal or administrative law nature, the EU legal framework consists of several instruments: a **Regulation for civil law protection measures** and a **Directive for criminal law protection measures**. Due to separate legal bases in EU law for mutual recognition of civil law measures and criminal law measures, two separate instruments were required. This framework is supplemented by existing Regulations with a more general scope. Together these instruments will ensure the free circulation of the most common types of protection measures within the EU.

Regulation (EU) 606/2013 on mutual recognition of protection measures in civil matters ("the Regulation") has been adopted in 2013. It provides for a mechanism, by which persons at risk of (in particular domestic) violence can rely on restraining or protection measures issued against the person causing the risk in their home country - a Member State of the European Union - when they travel or move to another Member State. The Regulation is a legal act of the European Union that becomes directly applicable as law in all Member States on 11 January 2015. Thus the provisions of Regulation (EU) 606/2013 do not need to be transposed into national law by means of implementing measures and upon its date of coming into application it will override national laws dealing with the same subject matter.

Regulation (EU) 606/2013 supplements **Directive 2011/99/EU of 13 December 2011 on the European protection order**, which applies to protection measures adopted in criminal matters. This Directive needs to be transposed into national law by 11 of January 2015. This means that by this date the EU Member States should give force to its provisions by passing appropriate implementation measures.

- **Question 8.2. Please comment on special features, if any, found in these instruments or co-operation mechanisms which seek to quickly protect persons at risk in cross-border settings:**

1. Regulation (EU) 606/2013:

- **Automatic recognition based on the presentation of a certificate** — On substance, Regulation (EU) 606/2013 is based on the procedures commonly used in other EU instruments on mutual recognition of judicial decisions in civil and commercial matters as well as in family law, such as Regulation (EC) No 44/2001 (Brussels I)¹/ Regulation (EC) No 1215/2012 (Brussels I recast)² and Regulation (EC) No 2201/2003 (Brussels IIa)³. It provides for automatic recognition based on the presentation of a certificate. A key element of the Regulation is the EU-wide standard certificate, adopted by the Commission on 2 September 2014⁴, 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 (EU) 606/2013 applies to three types of protection measures obliging the person causing the risk 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.

¹ OJ L 12, 16.1.2001, p. 1

² OJ L 351, 20.12.2012, p.1

³ OJ L 338, 23.12.2003, p.1

⁴ OJ L 263, 03.09.2014, p. 10

It does not provide for the recognition of measures 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 most of the situations will be covered by the Regulation. The same approach was already chosen by Directive 2011/99/EU dealing with protection orders in criminal matters.

The Regulation applies to protection measures existing under national law to protect an individual person at risk against an individual person causing the risk regardless of their civil status or degree of relationship. However, the recognition of protection measures falling within the scope of a separate Regulation - Regulation (EC) 2201/2003 (Brussels IIa) - such as protection measures issued between parents and their children, is excluded from the scope of the Regulation in order to preserve the *acquis* of Brussels IIa.

The Regulation does not enumerate the actions or harmful behaviours covered by the scope (as domestic violence, stalking, trafficking in human beings etc.) but generally refers 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 protection measures issued in ex-parte procedures, provided that the person causing the risk is informed of the measure issued so that he can arrange for his defence.

As far as the nature of the authority is concerned, the Regulation covers protection measures issued by judicial and non-judicial authorities, provided that, for the latter, the decisions have similar force and effects to those of a judicial authority on the same matter and provided that certain guarantees 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 protection measures 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 measure (such as the specific address of the place of residence or work or the distance the person causing the risk must keep from the protected person) where such adjustment is necessary for the practical implementation of the measure.
- **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 by providing the following procedural elements: notification of the protection measure to the person causing the risk 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 and application for refusal of recognition or enforcement on a limited number of grounds (see below).
- **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 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 are limited in time to period of 12 months counting from the moment of the issuance of the certificate..
- **Limited grounds for the refusal of recognition or enforcement** - In line with other EU instruments in civil matters, a limited number of grounds for refusal are provided (public policy and irreconcilability with another judgment).

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

- **Minimising the need for translation** - With a view to minimising the need for translation, the Regulation provides for the use of a multilingual standard form for the certificate that contains only very few free text fields and that will be available online in a dynamic form. This standard form was adopted in September 2014 and provides an efficient and user-friendly tool for practitioners and protected persons, which also takes into account the urgency in which most of the protected persons may find themselves when asking for the certificate. The dynamic and multilingual version of the certificate will be operational on the EU judicial cooperation networks (European e-Justice Portal) from January 2015 (a non-dynamic version of the certificate is published in OJ L 263, 03.09.2014, p. 10–20).
- **Respect of the autonomy of the protected person** - The Regulation does not provide for a centralised/EU-wide database of the enforceable protection measures or issued certificates but foresees 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. Likewise, with a view to preserving the autonomy of the protected persons, the Regulation does not provide for a direct transmission of the enforceable protection measure between the authorities concerned but leaves it entirely to the protected person 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** - The national legal systems of the EU Member States provide for a variety of civil protection measures. There are civil protection measures which are issued in civil proceedings as well as measures which arise from criminal proceedings or are enshrined in criminal law. There are even measures that have a hybrid nature.

To assure that all persons at risk who are in possession of an enforceable protection measure in one Member State benefit from protection throughout the Union, the EU needed to have a legal framework which addresses the recognition of the most common types of protection measures, irrespective of whether they are civil, criminal or administrative in nature. However, due to constraints resulting from a separate legal basis for the field of civil matters and the field of criminal matters and with a view to respecting the wish of the Member States to maintain their well-working national instruments, the EU framework for the recognition of protection measures will consist of two separate legislative acts: the Regulation and 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 measure issued under the jurisdiction of a Member State that provides for purely criminal measures is recognised in another EU jurisdiction even if the latter in its national law 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, each Member State has to ensure that recognised protection measures can take full effect in its territory.

2. Directive 2011/99/EU on the European Protection Order

Like Regulation 606/2013, Directive 2011/99/EU applies to **three types of protection measures** obliging the (potential) 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.

In order to be considered a protection measure "in criminal matters" and to fall within the scope of the Directive, the original measure has to be adopted in accordance with the national law of the issuing Member State with a view to protecting a person against a **criminal act** by another person which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, following criminal conduct, or alleged **criminal conduct**.

The **mechanism of recognition is different** from the civil law Regulation since, instead of two steps, it involves a three-step procedure: (i) issuing of a national protection measure in the victim's home country; (ii) the protected person requests the home Member State to issue a "European Protection Order"; (iii) the Member State which receives the European Protection Order (transmitted by a competent authority), instead of simply recognising and executing the foreign protection measures, adopts a new national protection measure which corresponds to the best extent to the protection granted in the victim's home Member State. To this end, the second Member State can use all types of measures available domestically: criminal, civil or administrative.

The Directive also contains provisions to ensure the respect of the procedural rights of the person causing the danger. It requires that this person causing danger should be given the *right to be heard* and the *right to challenge the protection measure* before issuing the European Protection Order.

As other criminal law instruments, the Directive provides for a number of grounds that can constitute a basis for refusing recognition of European Protection Order.

In case of breach, the second Member State applies the sanctions attached to its national protection measure adopted on the basis of the European Protection Order.

- **Question 10.1. Please list any bilateral, regional, and international instruments or co-operation mechanisms that currently or will in the future bind your State or jurisdiction, *which address protection orders generally*:**

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.

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 and may continue to do so 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 IIa) provides for as a rule, enforcement of a judgment 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.

Civil law protection measures taken in a parent-child relationship may fall under the Brussels IIa 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.