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THE EUROPEAN UNION**

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from:	Presidency
to:	Council
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters - General approach

I. INTRODUCTION

1. By letter of 20 May 2011 the Commission submitted to the Council and to the European Parliament a proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters.
2. The United Kingdom and Ireland have made the notification provided for under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and will therefore take part in the adoption and application of the proposed Regulation.

3. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of the proposed Regulation and will not be bound by it or subject to its application.
4. The proposed Regulation is subject to the ordinary legislative procedure. Informal contact have been made with the European Parliament for information purposes with a view to reaching a first-reading agreement.
5. The proposed Regulation is part of a legislative package which aims to strengthening the rights of victims in the European Union. Taking into account the different legal traditions in the Member States in this area, the proposed Regulation, which deals with protection measures in civil matters, is designed to complement Directive 2011/99/EU on the European protection order¹, which covers protection measures in criminal matters. A further element of this package is Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime².
6. The Working Party on Civil Law Matters (Protection Measures) has examined the proposed Regulation at regular meetings since the transmission of the Commission proposal.
7. On 27 April 2012, the Council (Justice and Home Affairs) adopted guidelines on a comprehensive approach and a simplified, quick and efficient mechanism for the recognition of protection measures in civil matters. These guidelines paved the way for further work on the proposed Regulation.

¹ OJ L 338, 21.12.2011, p. 2.

² OJ L 315, 14.11.2012, p. 57.

8. The discussions held during the second semester of 2012 have led to considerable progress on the text. While broad agreement appears to be emerging on the provisions of the text and on the main recitals of the future Regulation, the remaining recitals and the Annexes will be subject to further discussions.
9. In the light of this progress, on 30 November 2012 the Presidency submitted a draft general approach to Coreper, which approved the compromise package to be submitted to the JHA Council on 6 and 7 December 2012.³
10. The Council is invited:
 - (a) to approve the compromise package on the draft general approach set out in the Annex of this note; and
 - (b) to call for the work on the future Regulation to be finalised at technical level.

³ It being understood that the text of the Articles may still undergo minor technical amendments and terminological changes in certain language versions and will, in any event, have to be reviewed by the legal/linguistic experts at a later stage.

Proposal for a

**REGULATION (EU) n .../2012 OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

of ...

on mutual recognition of protection measures in civil matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2)(a), (e) and (f) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

(...)⁴

Acting in accordance with the ordinary legislative procedure⁵.

(1) Whereas:

(...)⁶

⁴ Opinions of bodies that are not listed in the legal basis will be referred to in the recitals.

⁵ Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of

⁶ **The recitals will be finalised at a later stage, except for the ones indicated in the footnotes to the Articles in this text. The Annexes which will contain the certificates will also be examined at a later stage.**

CHAPTER I

Subject matter, scope and definitions (...)

Article 0

Subject matter

The purpose of this Regulation is to establish rules for a simple and rapid mechanism for the recognition of protection measures ordered in a Member State in civil matters.

Article 1

Scope

1. This Regulation **shall apply** to protection measures (...) in civil matters **ordered by an authority as defined in point 4 of Article 2.**⁷

⁷ The following recitals will be inserted:

“The scope of this Regulation is within the field of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty on the Functioning of the European Union.

This Regulation should apply to protection measures ordered in civil matters, and does not therefore cover protection measures adopted in criminal matters, which should be covered by Directive 2011/99/EU on the European protection Order.

The notion of civil matters should be interpreted autonomously, in accordance with the principles of Union law. The civil, administrative or criminal nature of the authority ordering a protection measure should not be determinative for the purpose of assessing the civil character of a protection measure.

This Regulation takes account of the different legal traditions of the Member States, and does not interfere with the national system applicable for ordering protection measures. This Regulation does not oblige the Member States to modify their national laws as to order protection measures in civil matters.

Based on the principle of mutual recognition, protection measures ordered in civil matters in one Member State should be recognised in another Member State as civil measures in accordance with this Regulation.

This 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. This Regulation neither covers any potential sanctions that might be imposed if the obligation ordered by the protection measure is infringed in the Member State addressed. The actual enforcement and any possible sanctions are left to the law of that Member State. However, in accordance with the general principles of EU law and particularly the principle of mutual recognition, the Member States have to ensure that protection measures recognised pursuant to this Regulation can take effect in the Member State addressed.”

2. **This Regulation shall apply to cross-border cases. For the purposes of this Regulation, a cross-border case is one in which the recognition of the protection measure in a Member State other than the Member State of origin is sought.**
3. **This Regulation shall not apply to protection measures falling within the scope of Regulation (EC) 2201/2003.⁸**

⁸ **The following recital will be inserted:**

“This Regulation should not interfere with the functioning of Regulation (EC) 2201/2003 (Brussels IIa Regulation). Decisions taken under the Brussels IIa Regulation should continue to be recognised and enforced under that Regulation.”

Article 2
Definitions

For the purposes of this Regulation, **the following definitions shall apply:**

- (1) 'protection measure' means any decision, whatever it may be called, (...) **ordered by the issuing authority of the Member State of origin** in accordance with its national law **and imposing one or more of the following obligations (...) on the person causing the risk** with a view to protecting **another** person, when (...) **the latter** person's physical (...) or psychological integrity **may** be at risk. (...) ⁹:

(...)

⁹ **The following recital will be inserted in order to give examples:**

"This Regulation should apply to protection measures ordered 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, for example so as to prevent any form of gender-based violence and violence in close relationships, such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion. It is important to underline that this Regulation applies to all victims and not only to victims of gender-based violence."

- (a) a **prohibition or regulation on entering the place** where the protected person resides, works or (...) visits **or stays regularly**; (...) ¹⁰
 - (b) a **prohibition or regulation of contact**, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; (...)
 - (c) a **prohibition or regulation on approaching** the protected person closer than a prescribed distance; (...)
- (...)
- (2) 'protected person' means a natural person who is the object of the protection resulting from a protection measure;
 - (3) 'person causing the risk' means a natural person on whom one or more obligations referred to in point 1 have been imposed;

¹⁰ The following clarifications will be given in the recitals:

“Protection measures covered by this Regulation should provide protection to a person at his or her place of residence, place of work or at another place which he or she visits on a regular basis, such as the residence of close relatives or the school or education establishment attended by his or her child.

Irrespective of whether this place or the extent of the area covered by the protection measure is described in the protection measure by one or more specific addresses or a certain perimeter which the person causing the risk may not enter (or a combination of these two criteria), the recognition of the obligation or regulation imposed by the protection measure relates to the purpose which this place serves for the protected person rather than to the precise address.

In the light of the foregoing and provided that the nature and the essential elements of the protection measure are maintained, the competent authority in the Member State addressed should be allowed to adjust the factual elements of the protection measure, such as the address or the exact magnitude of the perimeter which the person causing the risk is prohibited to enter, where such adjustment is necessary in order for the recognition of the protection measure to be effective in practical terms in the Member State addressed. However, the type and the civil nature of the protection measure may not be affected by such adjustment.

In order to facilitate the adjustment of a protection measure, where necessary, it should be indicated in the certificate whether the address specified in the protection measure constitutes the place of residence, the place of work or a place that the protected person visits on a regular basis. Furthermore, if relevant, the perimeter (approximate radius from the specific address), to which the prohibition imposed by the protection measure on the person causing the risk applies, should also be indicated in the certificate.”

- (4) ¹¹ **'issuing authority' means any judicial authority or any other authority designated by a Member State as having competence in the matters falling within the scope of this Regulation, provided that such other authority offers guarantees to the parties with regard to impartiality and provided that decisions taken by such other authority in relation to the protection measure, under the law of the Member State in which they operate,**
- (a) **may be made subject to review by a judicial authority, and**
- (b) **have similar force and effects as a decision of a judicial authority on the same matter;**
- (5) **'Member State of origin' means the Member State in which the protection measure is ordered;**
- (6) **'Member State addressed' means the Member State in which the recognition and, where applicable, the enforcement of the protection measure is sought.**

Article 3

(...)

¹¹ **The following recital will be inserted to give further clarification:**

"In order to take account of the various types of authorities which issue protection measures in civil matters in the Member States, and unlike other areas of judicial cooperation, this Regulation should apply to the decisions of both courts and administrative authorities provided that the latter offer guarantees with regard, in particular, to their impartiality and to the right of the parties to judicial review. In no event, should police authorities be considered as issuing authorities within the meaning of this Regulation."

CHAPTER II

Recognition and enforcement of protection measures

Article 4

Recognition and enforcement

1. A protection measure **ordered** in a Member State shall be recognised in the other Member States without any special procedure being required (...) **and be enforceable without a declaration of enforceability being required.**
- 1aa. A **protected person** who wishes to invoke in a Member State a protection **measure ordered in another Member State** shall provide the competent **authority** of the Member State **addressed** with (...)
 - (a) **a copy of the protection measure which satisfies the conditions necessary to establish its authenticity;**
 - (b) **the certificate issued in the Member State of origin pursuant to Articles 5; and**
 - (c) **where necessary, a transliteration and/or a translation of the certificate into the official language of the Member State addressed or into another official language of the European Union that that Member State has indicated it can accept.**
- 1a. The certificate shall take effect only within the limits of the enforceability of the **protection measure.**

1b. Irrespective of any longer validity of the protection measure, the effects of recognition pursuant to paragraph 1 shall be limited to a duration of six months , starting from the date of the issuing of the certificate ¹² ¹³.

2. The procedure for the enforcement of protection measures (...) shall be governed by the law of the Member State addressed (...).

Article 5
Certificate

1. *(moved to Article 4(1aa))*

2. The **issuing authority** of the Member State of origin shall, **upon request of the protected person**, issue the certificate using the **multilingual** standard form **established in accordance with Article 18 (...)** and containing the information provided in Article Y.

3. (...)

3c. No appeal shall lie against the issuing of a certificate.

¹² A recital will underscore that this limitation of the effects of recognition is exceptional because of the special nature of the subject matter of this Regulation and that it should not serve as a precedent for other instruments in civil and commercial matters.

¹³ The following clarifications will be inserted in the recitals:

"In accordance with the principle of mutual recognition, the recognition should correspond to the duration of the protection measure.

However, in view of the diversity of the legal situation in the Member States as regards the duration of protection measures and taking into account the fact that this Regulation should typically apply in urgent situations, the effects of recognition under this Regulation should by way of exception be limited to a period of 6 months from the issuing of the certificate, irrespective of whether the protection measure itself (whether provisional, time-limited or indefinite in nature) has a longer duration.

In cases where the validity period of the protection measure goes beyond the 6 months laid down in this Regulation, for the effects of the recognition, this time-limitation should be without prejudice to the right of the protected person to invoke the measure under any other available EU instrument providing for recognition or to apply for a national protection measure in the Member State addressed."

4. **Upon request of the protected person, the issuing authority of the Member State of origin shall provide the protected person with a transliteration and/or a translation of the (...) certificate by making use of the multilingual standard form¹⁴.**

Article 5a¹⁵

Requirements for the issuing the certificate

1. **The certificate may only be issued if the protection measure was brought to the notice of the person causing the risk in accordance with the law of the Member State of origin.**
2. **Where the protection measure was ordered in default of appearance (...), the certificate may only be issued if the person causing the risk had been (...) served with the document which instituted the procedure or an equivalent document or, where relevant, had been otherwise informed of the initiation of the procedure in accordance with national law in sufficient time and in such a way as to enable that person to arrange for his or her defence (...). (...)**
3. **Where the protection measure was ordered under a procedure that does not provide for the prior notice of the person causing the risk ("ex -parte proceeding") the certificate may only be issued if the person causing the risk had the right to challenge the protection measure under the law of the Member State of origin¹⁶.**

¹⁴ **Because the multilingual standard form for the certificate will contain virtually no free text fields, the translation or transliteration could be provided in most cases without imposing the cost on the protected person by simply using the standard form in the relevant language. A recital will indicate that any costs for necessary translation that go beyond the text of the multilingual standard form shall be allocated as provided under the law of the Member State of origin.**

¹⁵ **A recital will explain that the methods used under this Regulation to inform the parties of procedural acts or of other documents, by way of specific notification or other means, should apply only for the purposes of this Regulation due to the special nature of its subject matter and should not serve as a precedent for other instruments in civil and commercial matters.**

¹⁶ **A recital will indicate that this provision does not require the expiration of the appeal period before a certificate may be issued, and that the certificate may be issued as soon as the protection measure is enforceable in the Member State of origin.**

Article 5b

Notification of the certificate to the person causing the risk

1. The **issuing authority** of the Member State of origin shall (...) bring to the notice of the person causing the risk (...) **the certificate and the fact that the issuing of the certificate results in the recognition and, where applicable, the enforceability of the protection measure in all Member States pursuant to paragraph 1b of Article 4.**
- 2.¹⁷ **Where the person causing the risk resides in the Member State of origin, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State of origin or in a third State, this notification shall be effected by registered letter with acknowledgment of receipt or equivalent.**

Situations in which the address of the person causing the risk is not known or in which that person refuses to accept the receipt of the notification are governed by the law of the Member State of origin.

3. **In the notification of the certificate to the person causing the risk, due regard shall be paid to the interest of the protected person in not having his or her whereabouts or other contact details disclosed to the person causing the risk. Such details shall not be disclosed to the person causing the risk unless they are necessary for compliance with or the enforcement of the protection measure.**

¹⁷ See footnote 12.

Article Y
Contents of the certificate

The certificate shall contain the following information:

- (a) the name and address/contact details of the issuing authority;**
- (b) the reference number of the file;**
- (c) the date of issue of the certificate;**
- (d) details of the protected person: name, date and place of birth, where available, and an address to be used for notification purposes, followed by a conspicuous warning that this address may be disclosed to the person causing the risk;**
- (e) details of the person causing the risk: name, date and place of birth, where available, address to be used for notification purposes;**
- (f) all information necessary for enforcement of the protection measure, including, where applicable, the type of the measure and the obligation imposed by it on the person causing the risk and specifying the function of the place and/or the perimeter which that person is prohibited from approaching or entering;**
- (g) duration of the protection measure;**
- (h) duration of the effects of recognition in accordance with paragraph 1b of Article 4;**
- (i) a declaration that the requirements prescribed by Article 5a have been met;**
- (j) an information on the rights granted by Articles 7 and 12 to the person causing the risk;**
- (k) for ease of reference, a notion of the full title of this Regulation.**

Article 6
(moved to Article 4(1a))

Article 7

Rectification or withdrawal of the certificate

- 0. Without prejudice to Article 5(3c) and upon request by either party to the issuing authority of the Member State of origin or on that authority's own initiative, the certificate shall be**
- (a) rectified where, due to a clerical error, there is a discrepancy between the protection measure and the certificate;¹⁸ (...) or**
 - (b) withdrawn where it was clearly wrongly granted, having regard to the requirements provided in Article 5a and the scope of this Regulation.¹⁹**
- 1. The procedure for the rectification or withdrawal of the certificate, including any appeal on the rectification or withdrawal, shall be governed by the law of the Member State of origin.**
- 2. (moved to Article 5(3c))*

Article X

Assistance to the protected person

Upon request of the protected person, the issuing authority of the Member State of origin shall assist the protected person in obtaining information, as made available pursuant to Articles 21 and 22, on the authorities before which the protection measure is to be invoked or enforcement is to be sought in the Member State addressed.

¹⁸ A recital will indicate that rectification applies only to situations where , due to an obvious error or inaccuracy (such as typing errors, errors of transcription or copying), the certificate does not correctly reflect the protection measure.

¹⁹ A recital will give examples of certificates that are “clearly wrongly granted”, such as when they are used for a measure that falls outside the scope of this Regulation but within the scope of other EU instruments).

Article 8
Adjustment of the protection measure

0. **The competent authority of the Member State addressed shall, where and to the extent necessary, adjust the factual elements of the protection measure in order to give effect to the protection measure in the Member State addressed.**

1. **(...)**

2. **The procedure for the adjustment of the protection measure, shall be governed by the law of the Member State addressed.**

- 2a. **The decision adjusting the protection measure shall be brought to the notice of the person causing the risk.**

- 3.²⁰ **Where the person causing the risk resides in the Member State addressed, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State addressed or in a third State, this notification shall be effected by registered letter with acknowledgment of receipt or equivalent.**

Situations in which the address of the person causing the risk is not known or in which that person refuses to accept the receipt of the notification are governed by the law of the Member State addressed.

4. **The adjustment may be appealed by either party. The procedure for the appeal shall be governed by the law of the Member State addressed. However, any appeal shall not have suspensive effect.**

Article 9
Enforcement of certain protection measures

1. *(moved to Article 4(2))*

2. *(moved to Article 4(2))*

²⁰ See footnote 12.

Article 10
Fundamental rights safeguards

1. *(moved to Article 5a(1))*
2. *(moved to Article 5a(2))*
3. *(moved to Article 5a(3))*

Article 11
No review as to substance

Under no circumstances may a protection measure **ordered** in a Member State be reviewed as to its substance in the Member State **addressed**.

Article 12
Refusal (...) of recognition or enforcement

1. **The recognition and, where applicable, the enforcement of a protection measure shall be refused, upon application by the person causing the risk, to the extent such recognition:**
 - (a) **is manifestly contrary to public policy in the Member State addressed; or**
 - (b) **is irreconcilable with a judgment given or recognised in the Member State addressed.**
- 1a. **The application for refusal of recognition or enforcement shall be submitted to the court of the Member State addressed as communicated by that Member State to the Commission in accordance with point (a) (iv) of Article 22(1).**
2. *(moved to new Article 12a)*
3. The recognition of a protection measure may not be refused because the law of the Member State **addressed** does not allow for such a measure based on the same facts.

Article 12a

Suspension or withdrawal of recognition or enforcement

1. If the protection measure is suspended or withdrawn in the Member State of origin **or its enforceability is suspended or limited or if the certificate is withdrawn in accordance with point b of Article 7(1)**, the **issuing authority of the Member State of origin shall, upon request by either party, (...) issue a certificate indicating this modification or withdrawal using the multilingual standard form established in accordance with Article 18.**
2. **Upon submission of the certificate pursuant to paragraph 1 by either party, the competent authority of the Member State addressed shall suspend or withdraw the effects of the recognition and, where applicable, the enforcement of the protection measure.**

Article 13(moved to new Article 5b)

CHAPTER III

Other provisions

Article 14

Legalisation and other similar formalities

No legalisation or other similar formality shall be required **for documents issued in a Member State** in the context of this Regulation.

Article 15

Transliteration or translation

1. **Any** transliteration or translation required under this Regulation (...) shall be into the official language or one of the official languages of the Member State **addressed** or **into** any other language that that Member State has indicated it can accept.
2. **Without prejudice to Article 5(4)**, any translation (...) under this Regulation shall be **made** by a person qualified to do translations in one of the Member States.

Article 16

(...)

CHAPTER IV

General and final provisions

Article 17

Transitional provisions

This Regulation shall apply to protection measures **ordered after** the day of **its application irrespective of when proceedings have been instituted**.

Article 18

Establishment and subsequent amendments to the form

The Commission shall **adopt implementing acts establishing and subsequently amending** the forms **referred to in Articles 5 and 12 a**. Those **implementing acts shall be adopted** in accordance with the **examination** procedure **referred to in Article 19**.

Article 19
Committee procedure

1. **The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.**
2. **Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.**

(...)

Article 20
Review (...)

By [*five years from the date of application in Article 23*](...), the Commission shall submit (...) to the European Parliament, the Council and the European Economic and Social Committee **a report** on the application of this Regulation. **If necessary, the report shall be accompanied** by proposals for **amendments**.

Article 21
Information made available to the public

The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC²¹ (...) **with a view to making the information available to the public**, a description of the national rules and procedures concerning protection measures **in civil matters**, including **information on the type of authorities** competent for recognition and/or enforcement (...)²².

The Member States shall keep **this information up to date**.

²¹ OJ L 174, 27.6.2001, p. 25.

²² **A recital should indicate that the information to be provided in accordance with Articles 21 and 22 will also be accessible via the European e-Justice Portal.**

Article 22

Communication by the Member States

1. By [*six months before the entry into **application** of this Regulation*], (...) Member States shall communicate to the Commission:
 - (a) the **type of authorities which have** competence in the matters falling within the scope of this Regulation, specifying, where applicable,
 - (i) the authorities **which are competent to order protection measures and to issue the certificate in accordance with Article 5;**
 - (ii) **the authorities before which a protection measure ordered in another Member States is to be invoked and/or which are competent to enforce such a measure;**
 - (iii) **the authorities which are competent for the adjustment of the protection measure in accordance with Article 8(0);**
 - (iv) **the courts to which the application for refusal of recognition and, where applicable, enforcement is to be submitted in accordance with Article 12;**
 - (b) the **language or languages** accepted for translations (...) as referred to in **point (c) of Article 4(1aa) and Article 15(1).**
2. The Commission shall make the above information publicly available through any appropriate means, in particular through **the website** of the European Judicial Network in civil and commercial matters (...).

Article 23

Entry into force

The Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [**11 January 2015**]²³.

This Regulation shall be binding in its entirety and directly applicable in **all** the Member States in accordance with the **T**reaties.

Done at [...]

²³ **It is suggested that the date of entry into application of this proposal be correlated with the implementation period of Directive 2011/99/EU on the European protection order (Article 21(1)).**