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from: Belgian House of Representatives

dated: 13 April 2010

to: Council of the European Union

Subject: Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Hungary, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden for a Directive of the European Parliament and of the Council on the European Protection Order [PE-CONS 2/10 COPEN 23 CODEC 42]

- Reasoned opinion in accordance with Article 6 of Protocol 2 on the application of the principles of subsidiarity and proportionality

Delegations will find attached a copy of the letter referred to above.

DOC 52 2544/001

BELGIAN HOUSE OF
REPRESENTATIVES

8 April 2010

INITIATIVE

**for a Directive of the European Parliament
and of the Council on the
European Protection Order (2010/0802 COD)**

OPINION ON SUBSIDIARITY

REPORT
FOR THE COMMITTEE ON JUSTICE
ISSUED BY
Ms Valérie DEOM

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Composition of the Committee on the date of submission of the report

Chairperson: Sonja Becq

A. – Members:

CD&V	Sonja Becq, Mia De Schamphelaere, Raf Terwingen
MR	Olivier Hamal, Olivier Mangain, Marie-Christine Margham
PS	Valérie Déom, André Perpète
Open VLD	Sabien Lahaye-Battheu, Carine Van Cauter
VB	Bart Laeremans, Bert Schoofs
Sp.a	Renaat Landuyt, Ludwig Vandenhove
Ecolo-Green!	Stefaan Van Hecke
cdH	Coltilde Nyssens
N-VA	Els De Rammelaere

B. Deputies:

Gerald Kindermans, Lieve Van Daele, Liesbeth Van der Auwera, Servais Verherstraeten
David Clarinval, Denis Ducarne, Carine Lecomte, Eric Libert
Thierry Giet, Karine Lalieux, Guy Milcamps
Mathias De Clerq, Herman De Croo, Roland Defreyne
Alexandra Colen, Peter Logghe, Bruno Stevenheydens
Maya Detiège, Magda Raemaekers, Bruno Tobback
Juliette Boulet, Fouad Lahssaini
Christian Brotcome, Joseph George
Peter Luykx, Sarah Smeyers

<p>cdH : centre démocrate Humaniste CD&V : Christen-Democratisch en Vlaams Ecolo-Green! : Ecologistes Confédérés pour l'organisation de luttes originales – Groen FN : Front National LDD : Lijst Dedecker MR : Mouvement Réformateur N-VA : Nieuw-Vlaamse Alliantie Open Vld : Open Vlaamse liberalen en democraten PS : Parti Socialiste sp.a : socialistische partij anders VB : Vlaams Belang</p>	<p>Afkortingen bij de nummering van de publicaties: DOC 52 0000/000: Parlementair document van de 52^e zittingsperiode + basisnummer en volgnummer QRVA: Schriftelijke Vragen en Antwoorden CRIV: Voorlopige versie van het Integraal Verslag (groene kaft) CRABV: Beknopt Verslag (blauwe kaft) CRIV: Integraal Verslag, met links het definitieve integraal verslag en rechts het vertaald beknopt verslag van de toespraken (met de bijlagen) (PLEN: witte kaft; COM: zalmkleurige kaft) PLEN: Plenum COM: Commissievergadering MOT: Moties tot besluit van interpellaties (beigekleurig papier)</p>	<p>Abréviations dans la numérotation des publications: DOC 52 0000/000: Document parlementaire de la 52^{ème} législature, suivi du n° de base et du n° consécutif QRVA: Questions et Réponses écrites CRIV: Version Provisoire du Compte Rendu intégral (couverture verte) CRABV: Compte Rendu Analytique (couverture bleue) CRIV: Compte Rendu Intégral, avec, à gauche, le compte rendu intégral et, à droite, le compte rendu analytique traduit des interventions (avec les annexes) (PLEN: couverture blanche; COM: couverture saumon) PLEN: Séance plénière COM: Réunion de commission MOT: Motions déposées en conclusion d'interpellations (papier beige)</p>
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LADIES AND GENTLEMEN,

Pursuant to Article 37a of the Rules of Procedure, your committee devoted its meeting on 17 March 2010 to the discussion of a possible opinion on subsidiarity as regards the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Hungary, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden for a Directive of the European Parliament and of the Council on the European Protection Order – 2010/0802 (COD).

I. PROCEDURE

By letter dated 1 February 2010 the Secretary-General of the Council of the European Union sent the initiative to the Speaker of the House. The letter stated inter alia that *"within eight weeks from date of signature of this communication (...) you may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why you consider that the draft in question (...) does not comply with the principle of subsidiarity"*.

II. BACKGROUND

In point 2.3.4 the Stockholm Programme lays down that *"Those who are most vulnerable or who find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents, are in need of special support and legal protection"*.

The European Protection Order is not a harmonisation instrument but a mechanism based on mutual recognition. The objective of the European Protection Order is threefold:

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

In practical terms, the European Protection Order is described in Article 1 of the draft Directive as *"a judicial decision relating to a protection measure issued by a Member State and aiming at facilitating the taking by another Member State, where appropriate, of a protection measure with a view to the safeguarding of the life, physical and psychological integrity, freedom or sexual integrity of a person."*¹

III. DISCUSSION

A. Questions and comments by the members

Ms Valérie Déom (PS) did not think that this initiative contravened the subsidiarity and the proportionality principle. After all, European protection of victims required the introduction of a mechanism based on mutual recognition.

The member wished to be informed whether it was known which Belgian judicial authorities would be designated for the purpose of issuing a European Protection Order and recognising such an order pursuant to this Directive where the Member State in question was the issuing State or the executing State (Article 4 of the draft Directive)? How would this be worked out in practice in Belgium?

Ms Mia De Schamphelaere (CD&V) focused attention on the importance of this Directive, which was aimed mainly at victims of gender-based violence. From the available figures it transpired that, as regards gender-based offences alone, over 100 000 women resident in the EU enjoyed various kinds of protection measure. The initiative for a European Protection Order (EPO) was intended to introduce rules so that a victim of violence who was entitled to protection – on the basis of, for example, a ban on contact or from a particular area – could lay claim to similar protection if resident in another Member State, since victims must benefit from protection that was the same as or similar to the protection measures they enjoyed in the Member State that had taken the measure, wherever they went.

¹ Analysis of the European Analysis Cell of the House of Representatives.

This initiative was not a harmonisation instrument but a mechanism based on mutual recognition. The introduction of this Directive would require a campaign to inform victims how they could benefit from this protection measure in the territory of other Member States, as the victims themselves had to approach the executing State on this point.

The speaker concluded that this Directive met with the approval of the CD&V.

Ms Sabine Lahaye-Battheu (Open Vld) wished to be informed of what, in the light of the free movement of persons within the European Union, the situation was as regards those currently enjoying protection measures.

The member mentioned in passing that under Belgian law the victim already occupied an important position. She referred in particular to the law of 17 May 2006 on the external legal position of persons sentenced to imprisonment and the rights accorded to the victim in the framework of arrangements for the enforcement of sentences. Hence this Directive was an extension of the Belgian legal system. However, considerable work would still be required to provide victims with equivalent protection throughout the European Union. The transfer of information would have to be swifter and more structured.

The speaker concluded that the Open Vld group was favourably disposed to the objective of the Directive of providing the victim with equivalent protection throughout Europe.

Mr Stefan Van Hecke (Ecolo-Green!) endorsed the observations of the previous speakers. However, he called attention to the consequences of this Directive for Belgium. Given the presence of a large number of international institutions in Brussels, had the figures been worked out?

Mr Renaat Landuyt (Sp. a) observed that no problems arose regarding subsidiarity. In matters such as these, it was natural for action to be taken at European level.

As regards proportionality, the speaker took the view that the methodology applied was the most appropriate.

The question arose of whether and the extent to which Belgian national law had to be amended as a result of this Directive. In the context of the criminal law as it applied to the perpetrator, numerous measures were taken that were not expressly defined as protection measures with regard to the victim.

The speaker was pleased that Belgium was one of the countries behind this initiative. He therefore believed that he was correct in assuming that legislative proposals intended to protect victims, such as the proposal for residence bans for persons convicted of certain sexual offences (DOC 52 1509/001) could count on the support of the majority parties.

Ms Clotilde Nyssens (cdH) pointed out that violence against women was one of the priorities of the Spanish Presidency of the European Union.

The speaker wished to be informed as to the general framework within which this Directive should be placed. She believed that it was aimed not only at gender-based crimes.

She also assumed that protection measures also included the conditions imposed in connection with conditional release, and not only those that formed the subject of a sentence or a judgment.

B. Replies from the Minister's representative

The Minister of Justice's representative replied that the Directive applied to all victims benefiting from a protection measure and thus not only to those who were the victims of domestic violence. Member States applied different systems with regard to the protection measures. They might be at the level of criminal law or civil or administrative law. The measures could also be interim ones. Given this diversity and following an opinion on the subject from the Council Legal Service, it was considered that the draft Directive, which had to protect victims throughout the European Union, could and must apply not only to measures in criminal-law cases but also to measures in other procedures that were aimed at protecting a person's life, physical or psychological integrity, personal freedom or sexual integrity. Article 2 of the draft Directive defined the scope of the European Protection Order in this regard.

As regards Article 4 of the draft Directive, the designation of competent authorities, in the context of Belgium, the representative replied that no decision had yet been taken on the matter. This would await the further progress of the Directive. However, in view of existing practices regarding other forms of mutual recognition, in cases of extreme urgency the Public Prosecutor or the examining magistrate, with the criminal court as the appeal body, would appear to be most appropriate authorities.

It should also be pointed out that Article 5(3) of the draft Directive provided for information to be mandatory. The article read as follows:

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

As regards the current situation of a victim who moves to another Member State, the representative replied that for the moment there was no instrument that provided for cooperation at this level between the EU Member States. The victim had to approach the authorities of the Member State and, if necessary, institute an entirely new procedure if he wished to benefit from protection measures.

The Minister's representative pointed out that no figures were available on the consequences of applying this Directive. Although Spain had endeavoured to organise a survey on this question in the Member States, it had produced no reliable data.

As regards the potential consequences of this Directive for Belgian national law, she noted that this instrument would not oblige Belgium to introduce new measures. In Belgium, the protection measures referred to by the Directive were taken rather in the context of probation or conditional release. Protection measures could also be taken in summary proceedings in divorce cases. Provision would have to be made for a system that enabled a protection measure adopted in another State to be complied with in Belgium.

C. REJOINDERS

Mr Renaat Landuyt (Sp.a) noted that the Directive introduced a system that enabled a victim, before moving to another Member State, to request the competent authorities in that State to ensure that the perpetrator did not come to live in his area. Under the Belgian system, however, the conditions imposed were often linked to the perpetrator. Hence the Directive could not be fully applied to the advantage of the victim. It should therefore be determined what was to be regarded as a punitive

measure on the one hand and a protection measure on the other.

Ms Mia De Schamphelaere (CD&V) noted that contravention of a protection measure could entail a penalty payment or even a custodial sentence. She therefore believed that, in imposing penalties, the executing State must apply the law of the State of the victim.

Ms Clotilde Nyssens (cdH) agreed that Belgian law had no equivalent of the said "protection measure" with a subjective right for the victim.

The Minister of Justice's representative explained that a European protection order should always be issued at the request of the victim.

Mr Renaat Landuyt (Sp.a) did not understand why the present government endorsed this Directive while opposing the introduction of, for example, a residence ban in Belgian national law.

Ms Clotilde Nyssens (cdH) wished to know whether a victim could take steps to ensure that a Belgian decision could acquire the status of a European protection order in another EU Member State.

This was confirmed by the *Minister of Justice's representative*.

Ms Valérie Déom (PS) explained that while Belgium did not have to amend its national law, it did have to be able to apply a protection measure existing in another Member State to legal subjects of that State if the latter resided in Belgium and so requested. In practice, this could lead to Belgian legal subjects not enjoying the same protection as other EU nationals.

IV-OPINION

The Committee is unanimously of the opinion that, as regards subsidiarity, there are no comments to be made on this initiative for a Directive.

Rapporteur,

Chairperson,

Valérie DÉOM

Sonja BECQ
