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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

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

1. INTRODUCTION

1.1. Background

Directive 2011/99/EU on the European protection order ('the Directive') constitutes the first mutual recognition directive adopted under Article 82(1) (a) and (d) TFEU after the entry into application of the Lisbon Treaty.

The Directive was proposed in 2010 on the initiative of 12 Member States (Belgium, Bulgaria, Estonia, Spain, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden). It was adopted on 13 December 2011. Together with Regulation 606/2013 on mutual recognition of protection measures in civil matters¹ ('the Regulation') and with Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime² ('the Victims' Rights Directive') it formed a package of measures aimed at strengthening the rights and protection of victims of crime in the EU. More concretely, the Directive and the Regulation deal with the recognition of protection orders in criminal and civil matters and aim at strengthening the protection of persons in need (victims and potential victims) when they travel or move to another Member State.

The Directive is binding on all Member States with the exception of Ireland and Denmark.

In 2018 the European Parliament published a report on the implementation of the Directive³, based on a study from 2017⁴. In addition, the European Parliament looked into the functioning of the European protection order in the context of a general study on criminal procedural law in the EU published in 2018.⁵

1.2. Purpose and main elements of the Directive

The objective of the Directive is to ensure that a person who benefits from a protection measure in one Member State can continue to rely on such protection when moving or traveling to another Member State.

The Directive sets out rules enabling competent authorities to ensure such continuous protection throughout the Union.

¹ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, p. 4–12.

² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57–73.

³ Report on the implementation of Directive 2011/99/EU on the European protection order (2016/2329(INI)), 14 March 2018), https://www.europarl.europa.eu/doceo/document/A-8-2018-0065_EN.html

⁴ European protection order Study, EPRS, PE 603.272, September 2017, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603272/EPRS_STU\(2017\)603272_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603272/EPRS_STU(2017)603272_EN.pdf)

⁵ Criminal procedural laws across the European Union — A comparative analysis of selected main differences and the impact they have over the development of EU legislation, PE 604.977, August 2018, [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604977/IPOL_STU\(2018\)604977_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604977/IPOL_STU(2018)604977_EN.pdf)

The Directive requires the competent authorities in the issuing State to issue, on the basis of a national protection order, a separate instrument, the European protection order ('EPO'), and transmit it to the competent authorities in the executing Member State for recognition and execution. The executing authority can adopt any measure, available under their national law in a similar case, in order to provide continued protection to the protected person. Based on this instrument the competent executing authority can continue protecting the protected person in its own territory.

The Directive is applicable to national protection measures which aim at protecting a person against criminal acts which may endanger their life, physical, psychological or sexual integrity, dignity or personal liberty. It is applicable to the three most common types of national protection measures:

- a prohibition from entering places where the protected person resides, works, regularly visits or stays;
- a prohibition or regulation of contact, in any form, with the protected person;
- a prohibition or regulation on approaching the protected person closer than a prescribed distance.

In practice, protection measures are mostly applied to protect women in cases of intimate partner or domestic violence, harassment, stalking or sexual assault. This is because victims of such crimes are particularly exposed to secondary and repeated victimisation, intimidation and retaliation.

1.3. Objective and scope of the report

This report assesses the application of the Directive, as required by its Article 23. The assessment is based on an analysis of the national measures transposing the Directive that were notified to the Commission and of additional data that Member States communicated to the Commission (in accordance with Articles 21 and 22 of the Directive respectively).

This report focuses on provisions which form the core of the Directive and are crucial for the smooth functioning of the EPO. These provisions include: designation of the competent authorities; the need for an existing protection measure under national law; issuance and recognition of a EPO; consequences of a breach of the measures taken based on a EPO; and the obligation to inform the parties about their rights and relevant decisions.

The report covers all Member States bound by the Directive⁶.

⁶ The report includes the UK as the assessment covers both the time when it was an EU Member State and part of the transition period during which the Directive applies in the UK.

2. GENERAL ASSESSMENT

At the expiry of the transposition period on 11 January 2015 (Article 21(1)), 14 Member States had not communicated the necessary measures to the Commission: Belgium, Bulgaria, Czechia, Greece, France, Cyprus, Latvia, Lithuania, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden.

In March 2015, the Commission launched infringements under Article 258 TFEU against all these Member States for failing to communicate their transposition measures. In December 2015, the Commission sent reasoned opinions to Greece and Romania and in July 2016 to Belgium. By 4 October 2017, all Member States bound by the Directive had notified to the Commission their national transposing measures. The prima facie analysis of the notified measures has not shown missing elements. Infringement proceedings for incomplete transposition were closed. This does not preclude however that the Commission may open further infringements for incorrect transposition of the Directive.

All Member States informed the Commission about judicial or equivalent authorities that are competent to issue and execute EPOs. Some Member States did not communicate relevant data on the application of the instrument required by Article 22 of the Directive.

The analysis shows that one Member State has not set up the structures necessary for issuing and recognising EPOs. The Commission is currently working with this Member State to resolve the issue. If necessary, the Commission may take legal action.

3. SPECIFIC POINTS OF ASSESSMENT

3.1. Competent authorities (Article 3 and Article 4)

Article 3 requires that Member States inform the Commission about which judicial or equivalent authorities are competent to issue and recognise EPOs.

For a majority of Member States, the authorities competent to issue EPOs are courts, public prosecutors or examining magistrates. Police authorities have been designated in one Member State. A Member State in which EPOs in criminal matters cannot be issued has designated civil courts for the receipt, as executing State, of requests to issue EPOs and their transfer to the issuing State in accordance with Article 6(3).

As a competent executing authority, a large majority of Member States have designated geographically competent judicial authorities. One Member State has designated the police. For cases with unknown residence of the protected person, two Member States have additionally designated the courts in their capitals.

Article 4 provides a possibility for Member States to designate one or more central authorities that assist the competent authorities. More than half of Member States have designated a central authority (Ministry of Justice in a majority of cases).

The information about competent authorities was gathered mostly through the e-Justice portal. However, only half of the Member States responded to the e-Justice request and a small number of them communicated information directly in a separate document to the database of national execution measures. In the absence of communication from the remaining Member States, information about competent authorities had to be identified and extracted from the national legislative measures notified to the database of national execution measures. The information received is available on the website of the European Judicial Network⁷.

3.2. Language regime (Article 17)

A EPO must be translated by the competent authority of the issuing State into the official language(s) of the executing State (Article 17(1)). Member States may declare that they will accept a translation in one or more other official languages of the Union (Article 17(3)).

Only a few Member States have informed the Commission that they accept other languages than their own. Several Member States accept the English language. A small number of Member States accept incoming EPOs in additional languages on a reciprocal basis.

3.3. Issuance of a European protection order (Article 5 and Article 6)

Under the Directive, a EPO is not issued automatically at the request of the protected person. The competent judicial authority must verify whether the conditions for issuing a EPO laid down in Article 5 are fulfilled and take into account the length of the intended stay and the seriousness of the need for protection.

Some Member States formalise the conditions in their legislation. For instance, one requires the description of the reasons for moving to another Member State. Another Member State requires the duration of the stay to be longer than 3 months.

The Directive requires that the request for the issuance of a EPO should be treated with appropriate speed, taking into account the specific circumstances of the case (Recital 13). In this regard, it is worth mentioning that a few Member States have laid down deadlines for taking a decision on a EPO of 3, 10 or 15 days. One Member State specifies that a EPO can be issued at the same time as the national protection measure is imposed.

⁷ <https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=85>

The Directive also provides that the protected person may submit a request for the issuance of a EPO to the competent authority of the issuing State or the executing State. The latter is obliged to transfer the request as soon as possible to the competent authority of the issuing State (Article 6(3)). A significant number of Member States have enabled such a transfer of the requests to take place.

Nonetheless, in a few Member States the Commission has not identified such provisions enabling the transfer of requests.

3.3.1. Procedural guarantees for the person causing danger (Article 6(4))

The Directive requires that before the issuance of a EPO, the person causing danger has the right to be heard and to challenge the national protection measure if that person has not been granted these rights in the procedure leading to the adoption of the national protection measure (Article 6(4)).

More than half of the Member States have transposed this provision. Some of them are going beyond the minimum requirement laid down in Article 6(4) of the Directive. For instance, in one Member State a person causing danger who was not heard in the proceedings in which the national protection measure has been adopted is called to a hearing within 72 hours of the request to issue a EPO. In another Member State, the issuing authority has to verify whether the national protection measure has been adopted in an adversarial procedure. If this is not the case, it notifies the person causing danger of the decision containing the national protection measure. Another Member State requires that a hearing of both the protected person and the person causing danger take place unless these two parties agree to a written procedure.

3.3.2. Obligations to inform the protected person (Article 6(5) and (7))

According to the Directive, upon adoption of a national protection measure the competent authority should inform the protected person about the possibility of requesting a EPO, in accordance with the procedures under its national law (Article 6(5)).

A number of Member States have transposed this obligation by imposing an explicit obligation on the competent authorities to inform the protected person upon adoption of a national protection measure.

Furthermore, the Directive lays down that if the request to issue a EPO is rejected, the competent authority of the issuing State must inform the protected person of any applicable legal remedies that are available under its national law against such a decision (Article 6(7)).

The obligation to inform the protected person has been transposed by the Member States in different ways. In several, national law obliges the authority refusing the

request to issue a EPO to inform the protected person of the legal remedies available. In a small number of Member States, the decision on refusing to issue a EPO is notified to the protected person, or the protected person is informed about the decision and its reasons. However, it is not clearly stated in the transposing laws that the protected person is also informed about existing legal remedies.

In a few Member States, no provision for informing the protected person about the remedies has been identified.

3.4. Recognition of a European protection order (Article 9, Article 10 and Article 15)

3.4.1. Procedure for recognition and adoption (Article 9(1)–(2))

Upon receipt of a EPO the executing State must, without undue delay, recognise it and adopt a relevant protection measure that is available under its national law in a similar case (Article 9(1) and (2)). The competent authority of the executing State has a degree of discretion in determining such a measure.

The above-stated mechanism of adaptation is available in almost all Member States. Only one has not informed the Commission about its national measures transposing the procedure for issuing and recognising EPOs.

In the national legislation of a few Member States, it is explicitly stated that the adopted measure cannot be more stringent or stricter than the original measure, that it should be equivalent or milder or that any differences should be considered in favour of the person causing danger.

In one Member State, the transposing provision states that if the executing authority considers the protection measure, as reflected in the EPO, to be not sufficient and appropriate to ensure continued protection, it may request a panel of three judges to adjust the measure or impose any other measure provided for under its national law.

As to the duration of the new protection measure, one Member State's national law expressly allows the adoption of a national protection measure of the same duration as that of the one adopted in the issuing State. In two other Member States it is required that the new protection measure does not exceed a specified duration – 180 days in one of these States and a year in the other.

3.4.2. Time frame for recognition and priority in recognition (Article 15)

The Directive does not provide for a mandatory deadline for the recognition of a EPO or for the adoption of a national protection measure on the basis of a EPO. Nonetheless, a few Member States have introduced specific deadlines for executing a EPO, obliging their competent authorities to recognise a EPO or take another decision on the measure. Depending on the Member State, the deadline is 2 days, 3

days, 10 days, 15 days, 7 + 10 days, or 28 days. These Member States have introduced a possibility to extend the deadline if their competent authorities need to consult the competent authorities of the issuing State due to incomplete information contained in the EPO (procedure laid down in Article 9(4)).

Article 15 of the Directive states that a EPO must be recognised with the same priority as a national protection measure in a similar case. A few of the Member States have literally transposed the wording of Article 15. Several Member States require the decision on recognition to be taken without delay, immediately or urgently.

3.4.3. Obligation to inform the protected person, the person causing danger and the competent authority of the issuing State about the measures adopted and the consequences of their breach (Article 9(3))

The Directive imposes an obligation on the competent authority of the executing State to inform the protected person, the person causing danger and the competent authority of the issuing State of any measures adopted on the basis of a EPO. It must also inform them of the possible legal consequence (e.g. sanctions) of a breach of such a measure provided for under national law, and in accordance with Article 11(2).

The degree of transposition of this obligation varies among the Member States. Most have transposed the obligation to provide information on the measures adopted on the basis of a EPO in relation to all three parties. Several Member States have limited the scope of this obligation and have addressed the information only to:

- the issuing State and the person causing danger;
- the protected person and the person causing danger and, in a few Member States, additionally to the authorities in the protected person's vicinity in the executing State, such as prosecutor or police;
- the competent authority of the issuing State, with the expectation that its competent authorities will forward the information to the protected person.

In a few Member States, the relevant provisions could not be identified.

Moreover, information about the possible legal consequences of a breach of the protection measure adopted on the basis of the EPO is not provided in some of the Member States. One provides it only to the person causing danger, and another only to the competent authority of the issuing State and the person causing danger.

3.4.4. Grounds for non-recognition (Article 10(1))

The Directive provides for nine grounds for non-recognition of a EPO (Article 10(1)). The executing authorities may refuse to recognise a EPO on the basis of these

grounds. Several Member States have transposed the grounds as optional and one has introduced them as mandatory. In a few other Member States most of the non-recognition grounds are introduced as mandatory and a small number as optional. Two have used both approaches (mandatory and optional) in transposing these grounds almost on an equal basis.

A few other Member States have transposed most of the grounds for non-recognition (as optional), but at the same time they have not introduced one of the grounds for non-recognition. A few have not transposed the non-recognition grounds at all.

Such approaches to implementation can lead to discrepancies between the different legal orders and it can potentially make the application of the Directive more difficult in practice.

Apart from the grounds for non-recognition laid down in Article 10 of the Directive, a few Member States have set out additional grounds for non-recognition of EPOs in their national legislation, related to a possible violation of the fundamental rights of the person causing danger.

3.4.5. Obligations to inform the protected person and the issuing State about the non-recognition of the European protection order (Article 10(2))

The Directive imposes a number of information obligations on the competent authority of the executing State which refuses to recognise a EPO. This competent authority must inform the issuing State and the protected person of this refusal and of the grounds for it without undue delay. Almost all the Member States concerned have transposed this obligation. However, in a few the implementing provisions oblige their competent authorities to inform only the issuing State, not the protected person.

Furthermore, the competent authority of the executing State must, where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure in accordance with its national law. A number of Member States have transposed this obligation but several have not.

The Directive stipulates that the protected person is also to be informed by the competent authority of the executing State of any applicable legal remedies available under this State's national law against the decision on non-recognition. Several Member States have not transposed this obligation.

3.5. Adoption of protection measures on the basis of a European protection order, breach of the measures and its consequences, and obligation to notify related to the breach (Article 11 and Article 12)

3.5.1. Procedures for the adoption and enforcement of the protection measures (Article 11(1))

According to the Directive, the executing State must be competent to adopt and enforce protection measures on its territory following the recognition of a EPO and the law of that State shall apply to such decisions (Article 11(1)).

In all Member States but one, the transposing provision recalls that the national law applies to the adoption and enforcement of protection measures. One Member State has specified that a hearing of the person causing danger is required upon adoption of a national protection measure. In another, such a hearing is required unless both the protected person and the person causing danger agree to a procedure in writing instead. In a few other Member States such hearings are to be conducted if possible. There is also a Member State that provides explicitly in the transposing law that the recognition of a EPO and the adoption of an appropriate protection measure are made without the person causing danger having been heard.

The law of the executing State must also apply to the legal remedies against decisions adopted in that State in relation to the EPO (Article 11(1)). The Directive does not provide for a self-standing legal remedy for the person causing danger, should this person wish to challenge the protection measure adopted in the executing State. In this regard, the Directive refers to the national procedures, if they exist in the domestic law of that State. It should be noted that the Directive does not provide for an obligation to inform the person causing danger of the remedies available.

A small number of Member States have explicitly provided in their transposing law that the person causing danger has a right to challenge the recognition of a EPO and/or the adoption of a national protection measure based on it. Available legal remedies vary from a complaint (with or without a suspensive effect) to the same authority which has recognised the EPO and has adopted the national protection measure, to an appeal to a higher authority on grounds of law or facts or in order to dispute admissibility.

3.5.2. Consequences in the event of a breach of the protection measure (Article 11(2))

The Directive deals with sanctions and other legal consequences in the event of a breach of one or more of the measures taken by the executing State following the recognition of a EPO (Article 11(2)).

The Directive allows the executing State to impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under the law of that State (Article 11(2)(a)).

This State is also allowed to take any non-criminal decisions related to the breach (Article 11(2)(b)) and any urgent and provisional measure to put an end to the breach pending, where appropriate, a subsequent decision by the issuing State (Article 11(2)(c)).

Several Member States have transposed these provisions almost literally. Some have specified in their transposing provisions the consequences of non-compliance with the measure taken by their competent authorities in recognition of a EPO. The national legislation of a small number of Member States provides for imprisonment and/or a fine for non-compliance with the obligation or prohibitions imposed by a EPO. A couple of Member States envisage only financial penalties. A few others have referred to taking a 'stronger' or 'harsher' measure or a 'measure of other type of protection or assistance' by the competent judicial authority.

National provisions transposing Article 11(2) of the Directive have not been identified in a small number of Member States.

3.5.3. Obligation to notify the competent authority of the issuing State in case of a breach of the protection measure (Article 12)

The Directive obliges the executing State to notify the issuing State or the State of supervision⁸ of any breach of the measure or measures taken on the basis of a EPO (Article 12). The purpose of this notification is to enable the competent authority of the issuing State to promptly decide on any appropriate response with respect to the protection measure imposed in that State on the person causing danger (Recital 26).

To facilitate the notification, the Directive provides a uniform standard form in Annex II and obliges the competent authority of the executing State to use it (Article 12). The form should contain standard information on the persons concerned, details on the EPO and the competent authorities.

One Member State has not transposed this obligation.

⁸ This applies in case of a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA on probation measures and alternative sanctions, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA

4. DATA COLLECTION

To facilitate the evaluation of its application, the Directive provides that Member States must communicate to the Commission relevant data related to the application of national procedures on the EPOs, at least on the number of EPOs requested, issued and/or recognised (Article 22). In addition, Member States are invited to provide other types of data, such as, for example, the types of crimes concerned (Recital 32).

Two questionnaires were sent to Member States requesting the above-mentioned information, respectively by 1 September 2017 (for the years 2015 to mid-2017⁹) and by 11 March 2019 (for the years 2015-2018).

19 Member States replied to the questionnaire sent in 2017 and/or to the one sent in 2019. 3 of the 19 replied only to the questionnaire sent in 2017. The other 16 Member States provided updated information in 2019.

Statistics provided by Member States and compiled for the years 2015-2018 record a total of 37 EPOs issued. According to the questionnaire replies, the majority of reported EPOs were issued by a single Member State (27 out of 37). Two other Member States also reported having issued EPOs. From the information available, only 15 EPOs were recognised and led to the adoption of protection measure(s) in the executing State (4 in 2015, 5 in 2016, 3 for the first half of 2017, and 3 in 2017-2018). Finally, 10 Member States reported that they have neither issued nor recognised any EPOs.

A few Member States have examples of good practices of case management systems, some of which include registration of EPOs.

5. CONCLUSION

The national implementing provisions received from all the 26 Member States bound by the Directive seem to be satisfactory overall, especially regarding the mechanism for recognising EPOs. Transposing provisions are sufficient to enable the issuance and recognition of EPOs in all Member States but one.

The analysis of the practical application of the Directive shows however that it has not yet reached its full potential, as shown by the low number of EPOs issued and executed. According to the information available to the Commission, only 37 EPOs were issued and only 15 were executed. The national authorities competent for issuing EPOs are not fully aware of the possibilities for doing so. Moreover, persons in need of protection may not be fully aware of the possibility to request a EPO.

⁹ 30 June 2017

The implementation of some provisions of the Directive, such as the obligation to inform, should be improved in some Member States.

Some Member States do not envisage any sanctions for a breach of a measure adopted in recognition of a EPO. This may have a deterrent effect on potential requests for this form of cross-border protection.

The wide variety of protection measures available in the Member States (under civil, administrative or criminal proceedings) may be another reason why the EPO remains under-used.

The Commission will continue to assess Member States' compliance with the Directive and will take appropriate measures to ensure conformity with its provisions throughout the Union. If necessary, the Commission will open infringement proceedings against Member States which are not in compliance with the Directive.

At the same time the Commission is working closely with Member States to overcome the difficulties in implementing the Directive. In particular, the Commission is promoting, notably through financial support the effective application of national protection orders, by raising awareness and stressing the need to train practitioners about the availability of the EPO¹⁰.

¹⁰ Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020, OJ L 354, 28.12.2013, p. 73–83