Deutscher Bundestag **Drucksache 17/1461**

17. Wahlperiode 21. 04. 2010

Beschlussempfehlung und Bericht

des Rechtsausschusses (6. Ausschuss)

zu der Unterrichtung durch die Bundesregierung – Drucksache 17/720 Nr. A.7 –

Initiative für eine Richtlinie des Europäischen Parlaments und des Rates über die europäische Schutzanordnung (inkl. 17513/09 ADD 1 und 17513/09 ADD 2) (ADD 1 und ADD 2 in Englisch)

Ratsdok. 17513/09

A. Problem

Zwölf Mitgliedstaaten der Europäischen Union haben eine Initiative für eine Richtlinie des Europäischen Parlaments und des Rates über die europäische Schutzanordnung vorgelegt, deren Ziel es ist, den grenzüberschreitenden Schutz von Personen, die durch eine andere Person gefährdet werden, innerhalb des europäisches Raumes der Freiheit, der Sicherheit und des Rechts zu verbessern. Hierzu soll das Instrument einer europäischen Schutzanordnung dienen, mit der Maßnahmen, die zum Schutz der gefährdeten Personen in einem Mitgliedstaat (Anordnungsstaat) getroffen wurden, auf andere Mitgliedstaaten (Vollstreckungsstaat) ausgeweitet werden können, wenn die gefährdete Person sich in einen anderen Mitgliedstaat begibt. Die Schutzanordnung soll im Anordnungsstaat mit der Folge erlassen werden, dass die in diesem Staat ergangene Entscheidung über eine Schutzmaßnahme im Vollstreckungsstaat anerkannt werden kann, ohne dass die gefährdete Person in jenem Staat ein neues Verfahren anstrengen muss. Die vorgeschlagene Richtlinie soll im Rahmen der justiziellen Zusammenarbeit in Strafsachen auf Grundlage von Artikel 82 Absatz 1 Unterabsatz 2 Buchstabe a und d des Vertrags über die Arbeitsweise der Europäischen Union erlassen werden.

B. Lösung

Kenntnisnahme der Initiative für eine Richtlinie des Europäischen Parlaments und des Rates über die europäische Schutzanordnung und Annahme einer Entschließung. Hierin soll der Deutsche Bundestag die Bundesregierung gemäß Artikel 23 Absatz 3 des Grundgesetzes auffordern, auf europäischer Ebene die von den Initianten gewählte Rechtsgrundlage in Frage zu stellen und im Interesse der Einhaltung der Prinzipien der Verhältnismäßigkeit und der besseren Rechtsetzung Änderungen der Richtlinie anzuregen. Hierzu gehören Ausnahmen vom Anwendungsbereich der Richtlinie, die Beschränkung der europäischen Schutzanordnung auf die Anerkennung mitgeteilter Fakten sowie eine Erweiterung der Gründe, mit denen der Vollstreckungsstaat die Anerkennung ablehnen kann.

Annahme einer Entschließung mit den Stimmen der Fraktionen der CDU/CSU, SPD und FDP bei Stimmenthaltung der Fraktionen DIE LINKE. und BÜNDNIS 90/DIE GRÜNEN

C. Alternativen

Keine

D. Kosten

Wurden im Ausschuss nicht erörtert.

Beschlussempfehlung

Der Bundestag wolle beschließen, in Kenntnis der Unterrichtung durch die Bundesregierung auf Drucksache 17/720 Nr. A.7 folgende Entschließung gemäß Artikel 23 Absatz 3 des Grundgesetzes anzunehmen:

‚I. Der Deutsche Bundestag stellt fest:

1. Am 4. Januar 2010 haben 12 Mitgliedstaaten gemäß Artikel 76 Buchstabe b AEUV dem Rat eine Initiative für eine Richtlinie des Europäischen Parlaments und des Rates über die Europäische Schutzanordnung vorgelegt. Ziel der Initiative ist, den grenzüberschreitenden Schutz von Personen, die durch eine andere Person gefährdet werden, innerhalb des europäischen Raums der Freiheit, der Sicherheit und des Rechts zu verbessern. Dazu sollen nach dem Recht eines Mitgliedstaates (dem „Anordnungsstaat“) zum Schutz einer gefährdeten Person gegen eine gefährdende Person erlassene Verbote oder Verpflichtungen („Schutzmaßnahmen“) auf andere Mitgliedstaaten (die „Vollstreckungsstaaten“) ausgeweitet werden, wenn die gefährdete Person sich in den jeweiligen Vollstreckungsstaat begeben will.

2. Die Initiative sieht insoweit einen Mechanismus der gegenseitigen Anerkennung vor. Nach dem Entwurf in der Fassung des Ratsdok. 6812/10 muss zunächst eine Schutzmaßnahme nach dem nationalen Recht des Anordnungsstaates zugunsten der gefährdeten Person erlassen werden (Artikel 4). Dabei kann es sich auch um Maßnahmen handeln, die von Einrichtungen der Zivilgerichtsbarkeit verhängt werden (Ratsdok. 5677/10, S. 14). Wenn die gefährdete Person den Anordnungsstaat verlassen will oder verlassen hat, kann der Anordnungsstaat auf Grundlage der Schutzmaßnahme auf Antrag der gefährdeten Person – quasi als Zwischenschritt – eine Europäische Schutzanordnung erlassen (Artikel 5) und an den Vollstreckungsstaat übermitteln. Der Vollstreckungsstaat soll die Europäische Schutzanordnung anerkennen und alle Maßnahmen treffen, die sein nationales Recht zum Schutz von gefährdeten Personen vorsieht (Artikel 8). Er kann die Anerkennung einer Europäischen Schutzanordnung jedoch verweigern, wenn einer der in Artikel 9 enumerativ aufgezählten Gründe vorliegt (unter anderem Amnestie, Immunität, Verjährung, Verstoß gegen den „ne bis in idem“-Grundsatz oder fehlende Strafmündigkeit).

3. Die initiierte Richtlinie soll im Rahmen der justiziellen Zusammenarbeit in Strafsachen auf Grundlage von Artikel 82 Absatz 1 Unterabsatz 2 Buchstabe a und d AEUV erlassen werden. Sie reiht sich ein in eine Serie von Rechtsakten zur gegenseitigen Anerkennung gerichtlicher Entscheidungen in Strafsachen, zu denen u. a. die Rahmenbeschlüsse 2008/947/JI des Rates vom 27. November 2008 über die Anwendung des Grundsatzes der gegenseitigen Anerkennung auf Urteile und Bewährungsentscheidungen im Hinblick auf die Überwachung von Bewährungsmaßnahmen und alternativen Sanktionen sowie 2009/829/JI des Rates vom 23. Oktober 2009 über die Anwendung – zwischen den Mitgliedstaaten der Europäischen Union – des Grundsatzes der gegenseitigen Anerkennung auf Entscheidungen über Überwachungsmaßnahmen als Alternative zur Untersuchungshaft gehören. Im Unterschied zur vorgelegten Initiative für eine Richtlinie des Europäischen Parlaments und des Rates über die Europäische Schutzanordnung beschränken diese Rechtsakte ihren Anwendungsbereich jedoch auf die gegenseitige Aner-

kennung strafrechtlicher Maßnahmen und beziehen Entscheidungen der Zivilgerichtsbarkeit nicht mit ein. Zudem werden die nationalen Maßnahmen direkt anerkannt, ohne dass ein Zwischenschritt erforderlich ist, in dem auf der Basis der nationalen Maßnahme eine Europäische „Vollstreckungs"- bzw. „Überwachungs"anordnung erlassen werden müsste, welche erst Gegenstand der Anerkennung im vollstreckenden Mitgliedstaat ist. Schließlich kann der Vollstreckungsstaat die Anerkennung und Vollstreckung – neben den im Richtlinienentwurf genannten Gründen – auch ablehnen, wenn ihr eine Handlung zugrunde liegt, die nach dem Recht des Vollstreckungsstaats keine Straftat darstellen würde (Grundsatz der beiderseitigen Strafbarkeit), oder wenn die Tat zumindest zu einem wesentlichen Teil in dessen Hoheitsgebiet begangen worden ist.

4. Aufgrund der Existenz der genannten Rahmenbeschlüsse sind bei den Verhandlungen im Rat Zweifel aufgetreten, ob Maßnahmen, die mittelbar auch dem Schutz potentieller Opfer dienen können und die im Ermittlungsverfahren als mildere Maßnahme zur Untersuchungshaft bzw. als Weisung im Rahmen einer Bewährungsentscheidung ergehen, nicht bereits auf der Grundlage des Artikels 8 Absatz 1 in Verbindung mit Artikel 12 des Rahmenbeschlusses 2009/829/JI bzw. des Artikels 4 Absatz 1 in Verbindung mit Artikel 8 des Rahmenbeschlusses 2008/947/JI anerkannt werden. Dieselben Zweifel wurden im Hinblick auf Entscheidungen der Zivilgerichtsbarkeit – wie diejenigen nach dem deutschen Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen (Gewaltschutzgesetz – GewSchG) – wegen der Verordnung (EG) Nr. 44/2001 des Rates vom 22. Dezember 2000 über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen geäußert.

5. Problematisiert wurde zudem, ob Artikel 82 Absatz 1 Unterabsatz 2 Buchstabe d AEUV eine ausreichende Rechtsgrundlage für die vorgesehene Richtlinie darstelle, da die als Grundlage der Europäischen Schutzanordnung vorausgesetzten Schutzmaßnahmen nach nationalem Recht nicht nur in strafrechtlichen Verfahren erlassen werden, sondern zum Teil verwaltungsrechtlich bzw. – wie nach dem deutschen Gewaltschutzgesetz – zivilrechtlich zu qualifizieren sind.

6. Der Juristische Dienst des Rates gelangte in seinem zur Frage der Kompetenzgrundlage vom Rat angeforderten Gutachten zu dem Ergebnis, dass Entscheidungen, mit denen spezifische Schutzmaßnahmen, die dem Ziel des Schutzes vor Straftaten dienten, erlassen oder bestätigt würden, ihrem Wesen nach „Strafsachen" im Sinne von Artikel 82 AEUV beträfen. Das gelte zumindest, wenn – wie im Falle der Europäischen Schutzanordnung – das Leben, die physische oder psychische Integrität, die persönliche Freiheit oder die sexuelle Integrität geschützt werden sollten. Diese persönlichen Rechte entsprächen grundlegenden Werten, die in allen Mitgliedstaaten anerkannt seien und denen alle Mitgliedstaaten Geltung verschafften, so dass Handlungen oder Verhaltensweisen, die diese Rechte gefährdeten oder verletzten, in allen Mitgliedstaaten Straftaten darstellten und durch strenge Strafen geahndet würden (Ratsdok. 6516/10, Rn. 15). Die Initiative könne sich jedoch nicht auf Gegenstände erstrecken oder sich auf diese auswirken, die unter die justizielle Zusammenarbeit in Zivilsachen nach Artikel 81 AEUV fielen (Rn. 24).

7. Hinsichtlich der justiziellen Zusammenarbeit in Strafsachen hat das Bundesverfassungsgericht in seinem Urteil zur Verfassungsmäßigkeit des Zustimmungsgesetzes zum Vertrag von Lissabon entschieden, dass wegen der besonders empfindlichen Berührung der demokratischen

Selbstbestimmung durch Straf- und Strafverfahrensnormen die vertraglichen Kompetenzgrundlagen für solche Schritte strikt – keinesfalls extensiv – auszulegen seien. Die demnach zum Schutz des nach dem Verständnis des Grundgesetzes demokratischen Primärraums gebotene enge Auslegung sei auch der Entscheidung des deutschen Vertreters im Rat zugrundezulegen, wenn ein Beschluss im Bereich der gegenseitigen Anerkennung gerichtlicher Urteile und Entscheidungen sowie allgemein des Strafverfahrensrechts gefasst werden solle (Urteil des Zweiten Senats vom 30. Juni 2009, 2 BvE 2/08 u. a., Rn. 358 und 360).

8. Der Bundesrat hat am 26. März 2010 gegen den Richtlinienentwurf Subsidiaritätsrüge nach Artikel 12 Buchstabe b EUV erhoben (Bundesratsdrucksache 43/10(B)).

9. In den Verhandlungen wurden zudem Zweifel an der Geeignetheit und der Verhältnismäßigkeit der Europäischen Schutzanordnung laut. Aufgrund des komplexen, mehrstufigen und zeitaufwändigen Verfahrens – Erlass Schutzmaßnahme, Antrag auf Erlass einer Europäischen Schutzanordnung durch Anordnungsstaat, Erlass der Europäischen Schutzanordnung, Prüfung und Anerkennung im Vollstreckungsstaat und schließlich Ergreifen von Maßnahmen, die in vergleichbaren nationalen Fällen vorgesehen sind – könnten gefährdete Personen durch Erwirkung einer eigenständigen Schutzmaßnahme im jeweiligen Aufenthaltsstaat schneller und effektiver Schutz erlangen.

II. Der Deutsche Bundestag fordert die Bundesregierung gemäß Artikel 23 Absatz 3 Satz 1 des Grundgesetzes auf,

1. auf europäischer Ebene für eine strikte Einhaltung der Kompetenzordnung des AEUV einzutreten und die von den Initianten gewählte Rechtsgrundlage vor dem Hintergrund der Gefahr in Frage zu stellen, dass die europäische Zuständigkeit für die Zusammenarbeit im Rahmen der Strafverfolgung sowie des Vollzugs und der Vollstreckung von Entscheidungen im Rahmen der justiziellen Zusammenarbeit in Strafsachen auf eine Zuständigkeit für den Schutz vor Straftaten erweitert werden könnte;

2. im Interesse der Einhaltung des Verhältnismäßigkeitsprinzips und des Grundsatzes der besseren Rechtsetzung darauf hinzuwirken, dass die Schutzmaßnahmen vom Anwendungsbereich der Richtlinie ausgenommen werden, die bereits auf der Grundlage bestehender Rechtsakte gegenseitig anerkannt werden können;

3. im Interesse der Einhaltung des Verhältnismäßigkeitsprinzips und des Grundsatzes der besseren Rechtsetzung sowie eines schnellen Schutzes für gefährdete Personen darauf hinzuwirken, dass lediglich die mittels einer Europäischen Schutzanordnung mitgeteilten Fakten anerkannt und als Grundlage einer eigenständigen Anordnung nach dem nationalen Schutzrecht herangezogen werden. Dadurch ist der Vollstreckungsstaat in der Lage, nach seinem eigenen Recht, einen ebenso effizienten und schnellen Schutz für die gefährdete Person zu gewährleisten (wie dies im deutschen Recht beispielsweise aufgrund der Regelungen zum Gewaltschutzgesetz der Fall ist). Die Schaffung einer Europäischen Schutzanordnung darf nicht verstanden werden als Übergang in ein System, in dem europäische Anordnungen statt nationaler Entscheidungen Grundlage der gegenseitigen Anerkennung in Strafsachen sind und zudem auf das Erfordernis der beiderseitigen Sanktionierbarkeit einer Handlung ohne Berücksichtigung des im Einzelfall zu schützenden Rechtsguts verzichtet wird;

4. anzuregen, ob ein schnellerer Schutz für gefährdete Personen nicht auf der Grundlage der Artikel 82 Absatz 1 Unterabsatz 2 Buchstabe d bzw. Artikel 87 Absatz 2 Buchstabe a AEUV durch den zügigen Austausch der einschlägigen Informationen als Grundlage für den Erlass einer Schutzanordnung nach dem nationalen Recht des neuen Wohnsitzstaates erreicht werden könnte sowie
5. im Interesse der Einhaltung des Verhältnismäßigkeitsprinzips und des Grundsatzes der besseren Rechtsetzung einzubringen, dass – sofern es bei der Ausgestaltung im Wege der gegenseitigen Anerkennung von Entscheidungen in Strafsachen bleibt – der Vollstreckungsstaat die Anerkennung – neben den im Richtlinienentwurf genannten Gründen – auch dann ablehnen kann, wenn ihr eine Handlung zugrunde liegt, die nach dem Recht des Vollstreckungsstaats keine Straftat darstellen würde oder wenn die Tat zumindest zu einem wesentlichen Teil in dessen Hoheitsgebiet begangen worden ist.‘

Berlin, den 21. April 2010

Der Rechtsausschuss

Siegfried Kauder (Villingen-Schwenningen)
Vorsitzender

Dr. Jan-Marco Luczak
Berichterstatter

Marco Buschmann
Berichterstatter

Dr. Eva Högl
Berichterstatterin

Raju Sharma
Berichterstatter

Ingrid Hönlinger
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Bericht der Abgeordneten Dr. Jan-Marco Luczak, Marco Buschmann, Dr. Eva Högl, Raju Sharma und Ingrid Hönlinger

I. Überweisung

Das Ratsdokument 17513/09 wurde mit Überweisungsdrucksache 17/720 Nr. A.7 vom 15. Februar 2010 gemäß § 93 der Geschäftsordnung dem Rechtsausschuss zur federführenden Beratung und dem Ausschuss für die Angelegenheiten der Europäischen Union zur Mitberatung überwiesen.

II. Stellungnahmen des mitberatenden Ausschusses

Der **Ausschuss für die Angelegenheiten der Europäischen Union** hat die Vorlage auf Ratsdokument 17513/09 in seiner 12. Sitzung am 21. April 2010 beraten und zur Kenntnis genommen. Er hat mit den Stimmen der Fraktionen der CDU/CSU, SPD und FDP gegen die Stimmen der Fraktion DIE LINKE. bei Stimmenthaltung der Fraktion BÜNDNIS 90/DIE GRÜNEN die Annahme der in der Beschlussempfehlung wiedergegebenen, von den Fraktionen der CDU/CSU und FDP beantragten Entschließung empfohlen.

III. Beratungsverlauf und Beratungsergebnis im federführenden Ausschuss

Der **Rechtsausschuss** hat die Vorlage in seiner 10. Sitzung am 21. April 2010 nach vorbereitenden Beratungen im Unterausschuss Europarecht abschließend beraten und einvernehmlich zur Kenntnis genommen. Er hat mit den Stimmen der Fraktionen der CDU/CSU, SPD und FDP bei Stimmenthaltung der Fraktionen DIE LINKE. und BÜNDNIS 90/DIE GRÜNEN beschlossen, dem Bundestag zu empfehlen, die in der Beschlussempfehlung wiedergegebene, von den Fraktionen der CDU/CSU und FDP beantragte Entschließung anzunehmen.

Die **Fraktion der SPD** bedauerte, dass im Ausschuss aufgrund zeitlicher Abstimmungsprobleme keine gemeinsame Entschließung aller Fraktionen beraten werden könne. Es sei ihr ein ernsthaftes Anliegen, bei wichtigen europarechtlichen Fragen, in denen lediglich – wie im vorliegenden Fall – Differenzen im Detail bestünden, die sich durch Kompromisse ausräumen ließen, gemeinsame Anträge zu erarbeiten. Man habe hier den sehr guten Weg einer Stellungnahme nach Artikel 23 Absatz 3 des Grundgesetzes gewählt. Diese Stellungnahmen würden in den Institutionen der Europäischen Union gehört und ihre Bedeutung werde vergrößert, wenn sie auch von den Oppositionsfraktionen SPD, DIE LINKE. und BÜNDNIS 90/DIE GRÜNEN mitgetragen würden. Sie stimme der Entschließung aber zu, da sie in der Sache mit den Forderungen einverstanden sei.

Die **Fraktion der FDP** führte aus, auch sie halte es für wichtig, Positionen in Brüssel gemeinsam vorzutragen. Sie bitte um Verständnis dafür, dass es im Einzelfall Zeitprobleme geben könne. Es sei überlegt worden, die Beschlussfassung zu verschieben, dann jedoch wäre diese erst nach der kommenden Sitzung des zuständigen Rates Justiz und Inneres erfolgt. Auch in Zukunft werde das Gespräch mit den anderen Fraktionen gesucht werden, um eine Stimme des gesamten Hauses zu Gehör zu bringen. Sie freue sich über die Zustimmung der Fraktion der SPD in der Sache, weil es sich um eine fundierte Stellungnahme handele.

Die **Bundesregierung** erklärte, sie sei dankbar für kritische Anmerkungen des Rechtsausschusses, die auch in deutlichen Worten in der Entschließung zum Ausdruck kämen. Der Opferschutz werde allgemein als äußerst bedeutsam angesehen, weshalb die Initiative der spanischen Ratspräsidentschaft durchaus anerkennenswert sei. Die kritischen Stellungnahmen würden beim Rat Justiz und Inneres am 22. und 23. April 2010 gehört, wo das Bundesministerium der Jusiz die Anliegen der Entschließung vortragen werde. Weil die Frage der Rechtsgrundlage vielfach angesprochen worden sei, sei die Behandlung im Rat von einer „allgemeinen Ausrichtung“ zu einer „Orientierungsaussprache“ herabgestuft worden. Dies zeige, dass der Rat die Bedenken, die bezüglich der Rechtsgrundlage auch von der Kommission geteilt würden, ernst nehme. Die Kommission stelle sogar in Aussicht, eine Klärung auf dem Klageweg herbeizuführen, wenn die Richtlinie in dieser Form zustande käme.

Die Fraktion **DIE LINKE.** stimmte den Ausführungen der Fraktion der SPD hinsichtlich der zeitlichen Abstimmung und der Kompromissbereitschaft in inhaltlichen Fragen zu. Sie sei trotz der kurzen Fristen zu einer Zusammenarbeit bereit gewesen. Sie kritisierte, dass die Entschließung fordere, dass mit der europäischen Schutzanordnung die mitgeteilten Fakten anerkannt und als Grundlage einer eigenständigen Schutzanordnung nach dem nationalen Recht herangezogen werden sollten. Dies sei keine verfahrensrechtliche Kleinigkeit, denn die festgestellten Fakten seien in einem rechtsstaatlichen Verfahren ein wesentlicher Kern dessen, was Grundlage der Anordnung sein solle. Über diese Bedenken hätte sie hinwegsehen und die Entschließung unterstützen können, wenn alle Fraktionen die Entschließung hätten einbringen können. Da es keinen gemeinsamen Antrag gebe, werde sie sich der Stimme enthalten.

Die Fraktion **BÜNDNIS 90/DIE GRÜNEN** brachte ihre Freude zum Ausdruck, dass die Bedenken des Parlaments gehört und auf europäischer Ebene noch einmal über diese Vorlage nachgedacht würde. Sie halte es für wichtig zu überlegen, wie Opfer im Anwendungsbereich des Gewaltschutzgesetzes auf deutscher Ebene auch in anderen Mitgliedstaaten besser geschützt werden könnten. Auch sie habe sich eine fraktionsübergreifende Stellungnahme gewünscht, weil eine von allen Fraktionen mitgetragene Entschließung in Brüssel anders wahrgenommen werde und schließe sich den Bemerkungen der Fraktion der SPD an.

Sie könne dieser Entschließung nicht zustimmen, sondern werde sich der Stimme enthalten. Sie wünsche sich ein besser abgestimmtes Verfahren. Inhaltlich spreche gegen ihre Zustimmung, dass sehr stark auf den Bereich des Strafrechts abgestellt werde, obwohl im deutschen Recht das Gewaltschutzgesetz dem Zivilrecht zuzuordnen sei. Des Weiteren würden im Feststellungsteil der Entschließung die Rahmenbeschlüsse über die Bewährungsmaßnahmen und über die

Verhinderung der Untersuchungshaft als Beispiele für Regelungen benannt, dass der Vollstreckungsstaat die gewünschte Handlung ablehnen könne, wenn es an der doppelten Strafbarkeit fehle. Diese Aussage stimme nicht, vielmehr gelte das Gegenteil, was der Rechtsausschuss in der Vergangenheit häufig bedauert habe. In den Rahmenbeschlüssen seien Deliktsgruppen aufgeführt, bei denen der Einwand fehlender doppelter Strafbarkeit ausgeschlossen sei. Im Forderungsteil werde die Bundesregierung aufgefordert, darauf hinzuwirken, dass – wenn die europäische Schutzanordnung schon nicht verhindert werden könne – der Einwand fehlender doppelter Strafbarkeit erhoben werden könne. Diese Forderung sei in sich nicht logisch, weil im deutschen Gewaltschutzgesetz eine Straftat keine Voraussetzung für eine Schutzmaßnahme sei. Vielmehr werde in § 1 Absatz 1 des Gewaltschutzgesetzes auf die Formulierung des § 823 Absatz 1 BGB rekurriert und in § 1 Absatz 2 Nummer 2 Buchstabe b des Gewaltschutzgesetzes auf sonstige Handlungen Bezug genommen, die als so unerträglich bezeichnet würden, dass sie eine Schutzmaßnahme rechtfertigten, aber keine Straftat darstellen müssten.

Die **Fraktion der CDU/CSU** unterstrich, dass auch den Fraktionen der Regierungskoalition daran gelegen sei, gerade bei solchen europäischen Vorlagen, bei denen in Ausschussdiskussionen weitgehender Konsens festgestellt worden sei, die Oppositionsfraktionen einzubeziehen und eine gemeinsame Stellungnahme zu erwirken. Auf die Ausführungen der Fraktion DIE LINKE. erwiderte sie, inhaltlich werde an der vorgeschlagenen Schutzanordnung vor allem die Effizienz kritisiert. Hier sei der Ansatzpunkt der Entschließung sicherzustellen, dass die Fakten möglichst schnell übermittelt würden, so dass die Informationen über eine nationale Schutzmaßnahme im Vollstreckungsstaat ankämen und anerkannt würden. Dies könne unter Umständen schneller und effektiver sein als der in der Richtlinie vorgeschlagene Weg, so dass ein größerer Opferschutz erreicht werden könne. Aus diesem Grund werde hier ein Schwerpunkt gelegt, der auch die Diskussionslage auf europäischer Ebene widerspiegele. Sie sei erfreut, dass die Bedenken Eingang in die europäischen Beratungen gefunden hätten; hier wachse die Sensibilität für Anregungen der mitgliedstaatlichen Parlamente.

Berlin, den 21. April 2010

Dr. Jan-Marco Luczak
Berichterstatter

Marco Buschmann
Berichterstatter

Dr. Eva Högl
Berichterstatterin

Raju Sharma
Berichterstatter

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Anlage

RAT DER EUROPÄISCHEN UNION

Brüssel, den 01 -02- 2010

SGS10 211

Herrn Dr. Norbert LAMMERT
Präsident des Deutschen Bundestages
Bundestag
Platz der Republik 1
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Übermittlung nach Protokoll (Nr. 2) zum Vertrag über die Europäische Union und zum Vertrag über die Arbeitsweise der Europäischen Union betreffend die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit

Betr.: Initiative des Königreichs Belgien, der Republik Bulgarien, der Republik Estland, des Königreichs Spanien, der Französischen Republik, der Italienischen Republik, der Republik Ungarn, der Republik Polen, der Portugiesischen Republik, Rumäniens, der Republik Finnland und des Königreichs Schweden für eine Richtlinie des Europäischen Parlaments und des Rates über die Europäische Schutzanordnung
[Bezug: 2010/0802 (COD) – Dokumente PE-CONS 2/10 COPEN 23 CODEC 42 + 5677/10 (Begründung) + 5678/10 (Vermerk mit detaillierten Angaben)]

Sehr geehrter Herr Präsident,

der Rat beehrt sich, Ihnen hiermit mitzuteilen, dass alle Sprachfassungen des obengenannten Entwurfs eines Gesetzgebungsaktes den nationalen Parlamenten und den Kammern nationaler Parlamente der Mitgliedstaaten zugeleitet wurden.

Das Verfahren nach dem Protokoll (Nr. 2) über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit ist somit eröffnet.

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Sie können binnen acht Wochen ab Datum dieses Schreibens in einer begründeten Stellungnahme an die Präsidenten des Europäischen Parlaments, des Rates und der Kommission darlegen, weshalb der Entwurf Ihres Erachtens nicht mit dem Subsidiaritätsprinzip vereinbar ist.

Es sei darauf hingewiesen, dass sich der Entwurf auf Artikel 82 Absatz 1 Buchstabe d des Vertrags über die Arbeitsweise der Europäischen Union stützt und von einer Gruppe von Mitgliedstaaten unterbreitet wird, die im Einklang mit Artikel 76 Buchstabe b AEUV (mindestens) einem Viertel der Mitgliedstaaten der Europäischen Union entspricht.

Bitte senden Sie Ihre begründete Stellungnahme gegebenenfalls per E-Mail an die Adresse sj6.parlnat@consilium.europa.eu.

Sollte eine elektronische Übermittlung nicht möglich sein, senden Sie Ihre Stellungnahme bitte auf dem Postweg an den Präsidenten des Rates der Europäischen Union am Sitz des Rates; die Anschrift lautet wie folgt:

Rat der Europäischen Union
Rue de la Loi, 175
B-1048 Brüssel

Mit freundlichen Grüßen

Im Auftrag des Generalsekretärs

Jean-Claude PIRIS
Generaldirektor

Anlagen: Dok. PE-CONS 2/10 + 5677/10 + 5678/10 (dieser Text liegt nur auf Englisch vor)

RAT DER EUROPÄISCHEN UNION

Brüssel, den 5. Januar 2010 (OR. en)

17513/09

COPEN 247

GESETZGEBUNGSAKTE UND ANDERE RECHTSINSTRUMENTE

Betr.:	INITIATIVE FÜR EINE RICHTLINIE DES EUROPÄISCHEN PARLAMENTS UND DES RATES über die europäische Schutzanordnung

RICHTLINIE 2010/…/EU
DES EUROPÄISCHEN PARLAMENTS UND DES RATES

vom

ÜBER DIE EUROPÄISCHE SCHUTZANORDNUNG

DAS EUROPÄISCHE PARLAMENT UND DER RAT DER EUROPÄISCHEN UNION –

gestützt auf den Vertrag über die Arbeitsweise der Europäischen Union, insbesondere auf Artikel 82 Absatz 1 Buchstabe d,

auf Initiative des Königreichs Belgien, der Republik Bulgarien, des Königreichs Spanien, der Republik Estland, der Französischen Republik, der Italienischen Republik, der Republik Ungarn, der Republik Polen, der Portugiesischen Republik, Rumäniens, der Republik Finnland und des Königreichs Schweden,

gemäß dem ordentlichen Gesetzgebungsverfahren[1],

[1] Position des Europäischen Parlaments vom … (noch nicht im Amtsblatt veröffentlicht) und Beschluss des Rates vom … (noch nicht im Amtsblatt veröffentlicht).

in Erwägung nachstehender Gründe:

(1) Die Europäische Union hat sich zum Ziel gesetzt, einen Raum der Freiheit, der Sicherheit und des Rechts zu erhalten und weiterzuentwickeln.

(2) Artikel 82 Absatz 1 des Vertrags über die Arbeitsweise der Europäischen Union (VAEU) sieht vor, dass die justizielle Zusammenarbeit in Strafsachen in der Union auf dem Grundsatz der gegenseitigen Anerkennung gerichtlicher Urteile und Entscheidungen beruht.

(3) Gemäß dem Stockholmer Programm, das der Europäische Rat auf seiner Tagung vom 10./11. Dezember 2009 angenommen hat, könnte sich die gegenseitige Anerkennung auf alle Arten von gerichtlichen Urteilen und Entscheidungen erstrecken, seien sie – abhängig vom Rechtssystem – strafrechtlicher oder verwaltungsrechtlicher Art. In dem Programm wird ferner darauf hingewiesen, dass für Opfer von Straftaten besondere Schutzmaßnahmen vorgesehen werden können, die innerhalb der Union wirksam sein sollten.

(4) In seiner Entschließung vom 2. Februar 2006 zu der derzeitigen Lage bei der Bekämpfung der Gewalt gegen Frauen und künftigen Maßnahmen empfiehlt das Europäische Parlament den Mitgliedstaaten, eine Nulltoleranz-Politik gegenüber jeder Form von Gewalt gegen Frauen zu verfolgen, und fordert die Mitgliedstaaten auf, geeignete Maßnahmen zu treffen, um einen besseren Schutz und eine bessere Unterstützung für tatsächliche und potenzielle Opfer zu gewährleisten.

(5) In einem gemeinsamen Rechtsraum ohne Binnengrenzen muss gewährleistet sein, dass der einer Person in einem Mitgliedstaat gewährte Schutz in jedem anderen Mitgliedstaat, in den die betreffende Person umzieht oder umgezogen ist, aufrechterhalten und fortgesetzt wird. Es sollte auch gewährleistet sein, dass die legitime Wahrnehmung des Rechts der Unionsbürger, sich gemäß Artikel 3 Absatz 2 des Vertrags über die Europäische Union (VEU) und gemäß Artikel 21 VAEU im Hoheitsgebiet der Mitgliedstaaten frei zu bewegen und aufzuhalten, nicht zu einem Verlust an Sicherheit für die Unionsbürger führt.

(6) Damit diese Ziele erreicht werden können, sollten in dieser Richtlinie Regeln festgelegt werden, wonach der Schutz aufgrund einer nach dem Recht eines Mitgliedstaats (des "Anordnungsstaats") angeordneten Schutzmaßnahme auf einen anderen Mitgliedstaat, in den die geschützte Person umzieht (den "Vollstreckungsstaat"), ausgeweitet werden kann, und zwar unabhängig von der Art oder der Dauer der in der betreffenden Schutzmaßnahme enthaltenen Verpflichtungen oder Verbote.

(7) Um zu verhindern, dass im Vollstreckungsstaat eine neue Straftat gegen das Opfer verübt wird, sollte für diesen Staat eine Rechtsgrundlage geschaffen werden, damit er die zuvor im Anordnungsstaat zugunsten des Opfers ergangene Entscheidung anerkennen kann, wobei gleichzeitig vermieden werden sollte, dass das Opfer im Vollstreckungsstaat ein neues Verfahren anstrengen oder erneut Beweise erbringen muss, als ob der Anordnungsstaat die Entscheidung nicht erlassen hätte.

(8) Diese Richtlinie sollte so angewendet und durchgesetzt werden, dass die geschützte Person im Vollstreckungsstaat denselben oder einen gleichwertigen Schutz erhält, wie sie ihn erhalten hätte, wenn die Schutzmaßnahme von Anfang an in diesem Staat angeordnet worden wäre, wobei jede Diskriminierung zu vermeiden ist.

(9) Da diese Richtlinie Fälle regelt, in denen die geschützte Person ihren Wohnort in einen anderen Mitgliedstaat verlegt, gehen mit der Durchführung dieser Richtlinie keine Befugnisse auf den Vollstreckungsstaat über, die Hauptstrafen, ausgesetzte Strafen, alternative Strafen, Bewährungsstrafen oder Nebenstrafen bzw. Sicherungsmaßregeln, die gegen die gefährdende Person verhängt wurden, betreffen, wenn die gefährdende Person sich weiterhin in dem Staat aufhält, der die Schutzmaßnahme angeordnet hat.

(10) Gegebenenfalls sollten im Einklang mit den innerstaatlichen Rechtsvorschriften und Verfahren elektronische Mittel genutzt werden können, um die in Anwendung dieser Richtlinie angeordneten Maßnahmen durchzuführen.

(11) Da das Ziel dieser Richtlinie, nämlich der Schutz gefährdeter Personen, angesichts des grenzübergreifenden Charakters der damit verbundenen Situationen auf Ebene der Mitgliedstaaten durch einseitiges Vorgehen nicht ausreichend verwirklicht werden kann und wegen des Umfangs und der potenziellen Wirkungen besser auf Unionsebene zu verwirklichen wäre, kann die Union im Einklang mit dem Subsidiaritätsprinzip gemäß Artikel 5 Absatz 3 TEU tätig werden. Entsprechend dem in Artikel 5 Absatz 4 TEU genannten Grundsatz der Verhältnismäßigkeit geht diese Richtlinie nicht über das zur Erreichung dieses Ziels erforderliche Maß hinaus.

(12) Diese Richtlinie sollte zum Schutz von Personen, die sich in Gefahr befinden, beitragen und dadurch die in diesem Bereich bereits vorhandenen Rechtsinstrumente ergänzen, wie etwa den Rahmenbeschluss 2008/947/JI des Rates vom 27. November 2008 über die Anwendung des Grundsatzes der gegenseitigen Anerkennung auf Urteile und Bewährungsentscheidungen im Hinblick auf die Überwachung von Bewährungsmaßnahmen und alternativen Sanktionen[1] und den Rahmenbeschluss 2009/829/JI des Rates vom 23. Oktober 2009 über die Anwendung – zwischen den Mitgliedstaaten der Europäischen Union – des Grundsatzes der gegenseitigen Anerkennung auf Entscheidungen über Überwachungsmaßnahmen als Alternative zur Untersuchungshaft [2]–

HABEN FOLGENDE RICHTLINIE ERLASSEN:

[1] ABl. L 337 vom 16.12.2008, S. 102.
[2] ABl. L 294 vom 11.11.2009, S. 20.

Artikel 1

Definitionen

Für die Zwecke dieser Richtlinie bezeichnen die folgenden Begriffsbestimmungen:

1. Eine "Europäische Schutzanordnung": eine gerichtliche Entscheidung im Zusammenhang mit einer Schutzmaßnahme, die von einem Mitgliedstaat angeordnet wurde und es einem anderen Mitgliedstaat erleichtern soll, gegebenenfalls nach seinem eigenen Recht eine Schutzmaßnahme zu ergreifen, um das Leben, die physische oder psychische Integrität, die Freiheit oder die sexuelle Integrität einer Person zu schützen.

2. Eine "Schutzmaßnahme": eine von einer zuständigen Behörde eines Mitgliedstaats erlassene Entscheidung, mit der einer gefährdenden Person eine(s) oder mehrere der in Artikel 2 Absatz 2 genannten Verpflichtungen oder Verbote auferlegt werden, sofern der Verstoß gegen diese Verpflichtungen oder Verbote nach dem Recht des betreffenden Mitgliedstaats einen Straftatbestand erfüllt oder anderweitig in diesem Mitgliedstaat durch Freiheitsentzug bestraft werden kann;

3. Eine "geschützte Person": eine Person, deren Leben, physische oder psychische Integrität, Freiheit oder sexuelle Integrität Gegenstand des Schutzes sind, der aufgrund einer durch den Anordnungsstaat erlassenen Schutzmaßnahme gewährt wird;

4. Eine "gefährdende Person": eine Person, der eine(s) oder mehrere der in Artikel 2 Absatz 2 genannten Verpflichtungen oder Verbote auferlegt wurden;

5. "Anordnungsstaat": den Mitgliedstaat, in dem eine Schutzmaßnahme, die die Grundlage für den Erlass einer europäischen Schutzanordnung darstellt, ursprünglich angeordnet wurde;

6. "Vollstreckungsstaat": den Mitgliedstaat, dem eine Europäische Schutzanordnung zum Zwecke der Anerkennung übermittelt wurde;

7. "Staat der Überwachung": den Mitgliedstaat, dem ein Urteil im Sinne des Artikels 2 des Rahmenbeschlusses 2008/947/JI des Rates oder eine Entscheidung über Überwachungsmaßnahmen im Sinne des Artikels 4 des Rahmenbeschlusses 2009/829/JI übermittelt wurde.

Artikel 2

Geltungsbereich der Europäischen Schutzanordnung

(1) Eine Europäische Schutzanordnung kann jederzeit erlassen werden, wenn die geschützte Person den Anordnungsstaat verlassen will oder verlassen hat, um sich in einem anderen Mitgliedstaat aufzuhalten.

(2) Die Europäische Schutzanordnung wird nur dann erlassen, wenn zuvor eine Schutzmaßnahme im Anordnungsstaat angeordnet wurde, mit der der gefährdenden Person eine(s) oder mehrere der folgenden Verpflichtungen oder Verbote auferlegt wurden:

a) eine Verpflichtung, bestimmte Lokalitäten, Orte oder festgelegte Gebiete, in bzw. an denen sich die geschützte Person aufhält oder die sie aufsucht, nicht zu betreten;

b) eine Verpflichtung, sich, gegebenenfalls zu bestimmten Zeiten, an einem bestimmten Ort aufzuhalten;

c) eine Verpflichtung, mit der das Verlassen des Hoheitsgebiets des Anordnungsstaats eingeschränkt wird;

d) eine Verpflichtung, den Kontakt mit der geschützten Person zu meiden; oder

e) ein Verbot, sich der geschützten Person mehr als bis auf eine festgelegte Entfernung zu nähern.

Artikel 3

Pflicht zur Anerkennung der Europäischen Schutzanordnung

(1) Die Mitgliedstaaten erkennen jede Europäische Schutzanordnung gemäß dieser Richtlinie an.

(2) Diese Richtlinie berührt nicht die Verpflichtung zur Achtung der Grundrechte und der allgemeinen Rechtsgrundsätze gemäß Artikel 6 des VEU.

Artikel 4

Benennung der zuständigen Behörden

(1) Jeder Mitgliedstaat teilt dem Generalsekretariat des Rates mit, welche Justizbehörde oder Justizbehörden nach seinem innerstaatlichen Recht für den Erlass einer Europäischen Schutzanordnung und die Anerkennung einer solchen Anordnung gemäß dieser Richtlinie zuständig ist bzw. sind, wenn dieser Mitgliedstaat der Anordnungsstaat oder der Vollstreckungsstaat ist.

(2) Abweichend von Absatz 1 können die Mitgliedstaaten bei der Festlegung der für Entscheidungen nach dieser Richtlinie zuständigen Behörden auch außergerichtliche Stellen benennen, sofern diese nach dem innerstaatlichen Recht und den innerstaatlichen Verfahren für vergleichbare Entscheidungen zuständig sind.

(3) Das Generalsekretariat des Rates macht die erhaltenen Angaben allen Mitgliedstaaten und der Kommission zugänglich.

Artikel 5

Erlass einer Europäischen Schutzanordnung

(1) Auf der Grundlage einer im Anordnungsstaat ergangenen Schutzmaßnahme erlässt eine Justizbehörde dieses Staats oder eine andere zuständige Behörde gemäß Artikel 4 Absatz 2 nur auf Antrag der geschützten Person eine Europäische Schutzanordnung, nachdem sie geprüft hat, dass die Schutzmaßnahme alle Anforderungen nach Artikel 3 Absatz 1 erfüllt.

(2) Die geschützte Person oder ihr gesetzlicher Vertreter können einen Antrag auf Erlass einer Europäischen Schutzanordnung entweder bei der zuständigen Behörde des Anordnungsstaats oder bei der zuständigen Behörde des Vollstreckungsstaats stellen.

Wird ein solcher Antrag im Vollstreckungsstaat gestellt, so übermittelt die zuständige Behörde dieses Staats den Antrag so rasch wie möglich der zuständigen Behörde des Anordnungsstaats, damit der Erlass der Europäischen Schutzanordnung gegebenenfalls in die Wege geleitet wird.

(3) Die Behörde, die eine Schutzmaßnahme erlässt, welche eine(s) oder mehrere der in Artikel 2 Absatz 2 genannten Verpflichtungen oder Verbote enthält, unterrichtet die geschützte Person über die Möglichkeit, eine Europäische Schutzanordnung zu beantragen, wenn sie in einen anderen Mitgliedstaat umziehen will. Die Behörde erteilt der geschützten Person den Rat, den Antrag einzureichen, bevor sie das Hoheitsgebiet des Anordnungsstaats verlässt.

Artikel 6

Form und Inhalt der Europäischen Schutzanordnung

Die Europäische Schutzanordnung wird nach dem Muster in Anhang I ausgestellt. Sie enthält insbesondere folgende Angaben:

a) Identität und Staatsangehörigkeit der geschützten Person sowie Identität und Staatsangehörigkeit ihres gesetzlichen Vertreters, wenn die geschützte Person minderjährig oder geschäftsunfähig ist;

b) Verwendung etwaiger technischer Hilfsmittel, die der geschützten Person gegebenenfalls zum Zwecke der unverzüglichen Vollstreckung der Schutzmaßnahme zur Verfügung gestellt wurden;

c) Name, Anschrift, Telefon- und Faxnummer sowie E-Mail-Adresse der zuständigen Behörde des Anordnungsstaats;

d) Angaben zu der Schutzmaßnahme, die dem Erlass der Europäischen Schutzanordnung zugrunde liegt;

e) Zusammenfassung des Sachverhalts und der Umstände, die zum Erlass der Schutzmaßnahme im Anordnungsstaat geführt haben;

f) Verpflichtungen oder Verbote, die der gefährdenden Person mit der der Europäischen Schutzanordnung zu Grunde liegenden Schutzmaßnahme auferlegt wurden, Dauer dieser Verpflichtungen oder Verbote und ausdrücklicher Hinweis, dass ein Verstoß dagegen nach dem Recht des Anordnungsstaats einen Straftatbestand erfüllt oder anderweitig durch Freiheitsentzug bestraft werden kann;

g) Identität und Staatsangehörigkeit der gefährdenden Person;

h) gegebenenfalls sonstige Umstände, die auf die Bewertung der Gefahr, die der geschützten Person droht, Einfluss haben könnten;

i) gegebenenfalls ausdrücklicher Hinweis, dass ein Urteil im Sinne des Artikels 2 des Rahmenbeschlusses 2008/947/JI des Rates oder eine Entscheidung über Überwachungsmaßnahmen im Sinne des Artikels 4 des Rahmenbeschlusses 2009/829/JI des Rates bereits einem anderen Mitgliedstaat übermittelt wurde, sowie Angabe der für die Vollstreckung dieses Urteils oder dieser Entscheidung zuständigen Behörde.

Artikel 7

Übermittlungsverfahren

(1) Die zuständige Behörde des Anordnungsstaats übermittelt die Europäische Schutzanordnung der zuständigen Behörde des Vollstreckungsstaats in einer Form, die einen schriftlichen Nachweis ermöglicht, damit die zuständige Behörde des Vollstreckungsstaats die Echtheit der Schutzanordnung feststellen kann.

(2) Ist der zuständigen Behörde des Vollstreckungsstaats oder des Anordnungsstaats nicht bekannt, welche Behörde im jeweils anderen Staat zuständig ist, so versucht sie, diese mit allen ihr zur Verfügung stehenden Mitteln – auch über die durch die Gemeinsame Maßnahme 98/428/JI des Rates vom 29. Juni 1998 zur Einrichtung eines Europäischen Justitiellen Netzes[1] eingerichteten Kontaktstellen des Europäischen Justiziellen Netzes, das nationale Mitglied von Eurojust oder ihr nationales Eurojust-Koordinierungssystem – in Erfahrung zu bringen.

(3) Ist eine Behörde des Vollstreckungsstaats, die eine Europäische Schutzanordnung erhält, nicht zuständig, diese Schutzanordnung anzuerkennen, so übermittelt diese Behörde die Schutzanordnung von Amts wegen der zuständigen Behörde.

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[1] ABl. L 191 vom 7.7.1998, S. 4.

Artikel 8

Maßnahmen im Vollstreckungsstaat

(1) Die zuständige Behörde des Vollstreckungsstaats:

a) erkennt eine bei ihr eingegangene, gemäß Artikel 7 übermittelte Europäische Schutzanordnung an und ergreift gegebenenfalls alle Maßnahmen, die nach ihrem nationalen Recht in einem vergleichbaren Fall vorgesehen sind, um den Schutz der geschützten Person zu gewährleisten, es sei denn, sie beschließt, einen der Gründe für die Nichtanerkennung nach Artikel 9 geltend zu machen;

b) unterrichtet die gefährdende Person gegebenenfalls über alle im Vollstreckungsstaat ergriffenen Maßnahmen;

c) ergreift alle dringenden und vorläufigen Maßnahmen, die erforderlich sind, um den weiteren Schutz der geschützten Person zu gewährleisten;

d) meldet der zuständigen Behörde des Anordnungsstaats sowie, falls der Anordnungsstaat ein anderer als der Staat der Überwachung ist, der zuständigen Behörde des Staats der Überwachung unverzüglich jeden Verstoß gegen die der Europäischen Schutzanordnung zugrunde liegende und in derselben beschriebene Schutzmaßnahme. Die Meldung erfolgt unter Verwendung des Formblatts in Anhang II.

(2) Die zuständige Behörde des Vollstreckungsstaats unterrichtet die zuständige Behörde des Anordnungsstaats und die geschützte Person über die gemäß diesem Artikel angeordneten Maßnahmen.

Artikel 9

Gründe für die Nichtanerkennung einer Europäischen Schutzanordnung

(1) Jede Verweigerung der Anerkennung einer Europäischen Schutzanordnung ist zu begründen.

(2) Die zuständige Behörde des Vollstreckungsstaats kann die Anerkennung einer Europäischen Schutzanordnung in folgenden Fällen ablehnen:

a) die Europäische Schutzanordnung ist unvollständig oder wurde nicht innerhalb der von der zuständigen Behörde des Vollstreckungsstaats gesetzten Frist vervollständigt;

b) die Anforderungen nach Artikel 2 Absatz 2 sind nicht erfüllt;

c) der Schutz leitet sich aus der Vollstreckung einer Strafe oder Maßregel ab, die nach dem Recht des Vollstreckungsstaats Gegenstand einer Amnestie ist und sich auf eine Handlung bezieht, für die nach diesem Recht der Vollstreckungsstaat zuständig ist;

d) die gefährdende Person genießt nach dem Recht des Vollstreckungsstaats Immunität, was die Anordnung der Schutzmaßnahmen unmöglich macht.

(3) Bevor die zuständige Behörde des Vollstreckungsstaats in den Fällen nach Absatz 2 Buchstaben a und b beschließt, die Europäische Schutzanordnung nicht anzuerkennen, konsultiert sie auf geeignete Art und Weise die zuständige Behörde des Anordnungsstaats und bittet diese gegebenenfalls um unverzügliche Übermittlung aller erforderlichen zusätzlichen Angaben.

Artikel 10

Weitere Entscheidungen im Anordnungsstaat

(1) Die zuständige Behörde des Anordnungsstaats ist zuständig für alle weiteren Entscheidungen im Zusammenhang mit der einer Europäischen Schutzanordnung zugrunde liegenden Schutzmaßnahme. Zu solchen weiteren Entscheidungen gehören insbesondere:

a) die Erneuerung, Überprüfung und Rücknahme der Schutzmaßnahme;

b) die Änderung der Schutzmaßnahme;

c) die Ausstellung eines Haftbefehls oder der Erlass einer anderen vollstreckbaren gerichtlichen Entscheidung mit gleicher Rechtswirkung;

d) die Einleitung eines neuen Strafverfahrens gegen die gefährdende Person.

(2) Auf die nach Absatz 1 ergangenen Entscheidungen ist das Recht des Anordnungsstaats anwendbar.

(3) Ist ein Urteil im Sinne des Artikels 2 des Rahmenbeschlusses 2008/947/JI des Rates oder eine Entscheidung über Überwachungsmaßnahmen im Sinne des Artikels 4 des Rahmenbeschlusses 2009/829/JI des Rates bereits einem anderen Mitgliedstaat übermittelt worden, ergehen weitere Entscheidungen gemäß den einschlägigen Vorschriften jener Rahmenbeschlüsse.

Artikel 11

Gründe für den Widerruf der Anerkennung einer Europäischen Schutzanordnung

Die zuständige Behörde des Vollstreckungsstaats kann die Anerkennung einer Europäischen Schutzanordnung widerrufen, wenn erwiesen ist, dass die geschützte Person das Hoheitsgebiet des Vollstreckungsstaats endgültig verlassen hat.

Artikel 12

Fristen

(1) Die Europäische Schutzanordnung wird unverzüglich anerkannt.

(2) Die zuständige Behörde des Vollstreckungsstaats beschließt unverzüglich über die Anordnung von Maßnahmen nach ihrem nationalen Recht infolge der Anerkennung einer Europäischen Schutzanordnung gemäß Artikel 8.

Artikel 13

Maßgebliches Recht

Die Entscheidungen der zuständigen Behörde des Vollstreckungsstaats aufgrund dieser Richtlinie richten sich nach dessen innerstaatlichem Recht.

Artikel 14

Pflichten der beteiligten Behörden

(1) Hat die zuständige Behörde des Anordnungsstaats die der Europäischen Schutzanordnung zugrunde liegende Schutzmaßnahme gemäß Artikel 10 Absatz 1 Buchstabe b geändert, so unterrichtet sie unverzüglich die zuständige Behörde des Vollstreckungsstaats über diese Änderung. Die zuständige Behörde des Vollstreckungsstaats ergreift gegebenenfalls die Maßnahmen, die erforderlich sind, um die geänderte Schutzmaßnahme durchzuführen, wenn diese Maßnahmen nach ihrem nationalen Recht in einem ähnlichen Fall vorgesehen sind, und unterrichtet hiervon die zuständige Behörde des Anordnungsstaats, die geschützte Person und gegebenenfalls die gefährdende Person, wenn diese sich im Hoheitsgebiet des Vollstreckungsstaats aufhält.

(2) Die zuständige Behörde des Anordnungsstaats unterrichtet die zuständige Behörde des Vollstreckungsstaats und die geschützte Person unverzüglich über das Auslaufen oder den Widerruf der Schutzmaßnahme, die der im Anordnungsstaat erlassenen Europäischen Schutzanordnung zugrunde liegt, und anschließend über den Widerruf der Anordnung.

Artikel 15

Konsultation zwischen den zuständigen Behörden

Die zuständigen Behörden des Ausstellungsstaats und des Vollstreckungsstaats können einander gegebenenfalls konsultieren, um die reibungslose und effiziente Anwendung dieser Richtlinie zu erleichtern.

Artikel 16

Sprachenregelung

Die Europäische Schutzanordnung wird in die Amtssprache oder eine der Amtssprachen des Vollstreckungsstaats übersetzt.

Jeder Mitgliedstaat kann zum Zeitpunkt der Annahme dieser Richtlinie oder später in einer beim Generalsekretariat des Rates hinterlegten Erklärung angeben, dass er eine Übersetzung in eine oder mehrere andere Amtssprachen der Organe der Union akzeptiert.

Artikel 17

Kosten

Die Kosten, die bei der Anwendung dieser Richtlinie entstehen, werden vom Vollstreckungsstaat getragen, ausgenommen solche, die ausschließlich im Hoheitsgebiet des Anordnungsstaats entstehen.

Artikel 18

Verhältnis zu anderen Übereinkünften und Vereinbarungen

(1) Es steht den Mitgliedstaaten frei, die beim Inkrafttreten dieser Richtlinie geltenden bilateralen oder multilateralen Übereinkünfte oder Vereinbarungen auch weiterhin anzuwenden, sofern diese die Möglichkeit bieten, über die Ziele dieser Richtlinie hinauszugehen, und zu einer weiteren Vereinfachung oder Erleichterung der Verfahren zur Anordnung von Schutzmaßnahmen beitragen.

(2) Es steht den Mitgliedstaaten frei, nach dem Inkrafttreten dieser Richtlinie bilaterale oder multilaterale Übereinkünfte oder Vereinbarungen zu schließen, sofern diese die Möglichkeit bieten, über die Ziele dieser Richtlinie hinauszugehen, und zu einer Vereinfachung oder Erleichterung der Verfahren zur Anordnung von Schutzmaßnahmen beitragen.

(3) Die Mitgliedstaaten unterrichten bis zum …* den Rat und die Kommission über bestehende Übereinkünfte oder Vereinbarungen nach Absatz 1, die sie weiterhin anwenden wollen. Die Mitgliedstaaten unterrichten das Generalsekretariat des Rates und die Kommission auch über alle neuen Übereinkünfte und Vereinbarungen im Sinne des Absatzes 2 binnen drei Monaten nach deren Unterzeichnung.

* ABl.: Bitte das Datum drei Monaten nach Inkrafttreten dieser Richtlinie einfügen.

Artikel 19

Umsetzung

(1) Die Mitgliedstaaten treffen die Maßnahmen, die erforderlich sind, um dieser Richtlinie bis zum …* nachzukommen.

(2) Die Mitgliedstaaten teilen dem Generalsekretariat des Rates und der Kommission den Wortlaut der Bestimmungen mit, mit denen sie die sich aus dieser Richtlinie ergebenden Verpflichtungen in ihr nationales Recht umgesetzt haben.

* ABl.: Bitte das Datum zwei Jahre nach Inkrafttreten dieser Richtlinie einfügen

Artikel 20

Überprüfung

(1) Die Kommission erstellt bis spätestens …* einen Bericht auf der Grundlage der Angaben der Mitgliedstaaten nach Artikel 19 Absatz 2.

(2) Anhand dieses Berichts wird der Rat Folgendes beurteilen:

a) die Frage, inwieweit die Mitgliedstaaten die erforderlichen Maßnahmen getroffen haben, um dieser Richtlinie nachzukommen; und

b) die Anwendung dieser Richtlinie.

(3) Dem Bericht werden erforderlichenfalls Gesetzgebungsvorschläge beigefügt.

* ABl.: Bitte das Datum vier Jahre nach Inkrafttreten dieser Richtlinie einfügen.

Artikel 21

Inkrafttreten

Diese Richtlinie tritt am zwanzigsten Tag nach ihrer Veröffentlichung im *Amtsblatt der Europäischen Union* in Kraft.

Geschehen zu Brüssel am

Im Namen des Europäischen Parlaments	*Im Namen des Rates*
Der Präsident	*Der Präsident*

ANHANG I

EUROPÄISCHE SCHUTZANORDNUNG

nach Artikel 6 der

RICHTLINIE 2010/…/EU DES EUROPÄISCHEN PARLAMENTS UND DES RATES VOM … ÜBER DIE EUROPÄISCHE SCHUTZANORDNUNG[*]

Anordnungsstaat:
Vollstreckungsstaat:

[*] ABl.: Bitte die Nummer und das Datum dieser Richtlinie einfügen

a) Informationen zur geschützten Person:

Familienname:

Vorname(n):

Ggf. Geburtsname:

Geschlecht:

Staatsangehörigkeit:

Kennnummer oder Sozialversicherungsnummer (sofern vorhanden):

Geburtsdatum:

Geburtsort:

Anschriften/Aufenthaltsorte:

– im Anordnungsstaat:

– im Vollstreckungsstaat:

– in sonstigen Staaten:

Sprache oder Sprachen, die die betroffene Person versteht (sofern bekannt):

Sofern vorhanden, bitte Folgendes angeben:

Art und Nummer des Identitätsdokuments/der Identitätsdokumente der Person (Personalausweis, Pass):

Art und Nummer des Aufenthaltstitels der Person im Vollstreckungsstaat:

Ist die geschützte Person minderjährig oder geschäftsunfähig, Informationen zum gesetzlichen Vertreter der natürlichen Person:

Familienname:

Vorname(n):

Ggf. Geburtsname:

Geschlecht:

Staatsangehörigkeit:

Büroanschrift:

b) Wurden der geschützten Person zum Zwecke der unverzüglichen Vollstreckung der Schutzmaßnahme technische Hilfsmittel zur Verfügung gestellt:

Ja; geben Sie bitte eine kurze Beschreibung der verwendeten Hilfsmittel:

Nein.

c) Zuständige Behörde, die die Europäische Schutzanordnung erlassen hat:

Offizielle Bezeichnung:

Vollständige Anschrift:

Tel.: (Ländervorwahl) (Ortsnetzkennzahl) (Nummer)

Fax: (Ländervorwahl) (Ortsnetzkennzahl) (Nummer)

Angaben zu der/den Person(en), die zu kontaktieren ist/sind

Familienname:

Vorname(n):

Funktion (Titel/Dienstrang):

Tel.: (Ländervorwahl) (Ortsnetzkennzahl) (Nummer)

Fax: (Ländervorwahl) (Ortsnetzkennzahl) (Nummer)

E-Mail (sofern vorhanden):

Sprachen, in denen kommuniziert werden kann:

d)	Angaben zu der Schutzmaßnahme, die dem Erlass der Europäischen Schutzanordnung zugrunde liegt: Die Schutzmaßnahme wurde angeordnet am (Angabe des Datums: TT-MM-JJJJ): Die Schutzmaßnahme wurde rechtskräftig am (Angabe des Datums: TT-MM-JJJJ): Aktenzeichen der Schutzmaßnahme (sofern vorhanden): Behörde, die die Schutzmaßnahme angeordnet hat:
e)	Darstellung des Sachverhalts und Beschreibung der Umstände, die zur Anordnung der Schutzmaßnahme nach Buchstabe d geführt haben:

f) Angaben zu der(den) Verpflichtung(en) oder dem(den) Verbot(en), die der gefährdenden Person durch die Schutzmaßnahme auferlegt wurden:

– Art der Verpflichtung(en): (es können mehrere Kästchen angekreuzt werden):

Verpflichtung für die gefährdende Person, bestimmte Lokalitäten, Orte oder festgelegte Gebiete, insbesondere im Zusammenhang mit dem Aufenthaltsort der geschützten Person oder den Orten, die die geschützte Person aufsucht, nicht zu betreten;

– wenn Sie dieses Kästchen angekreuzt haben, geben Sie bitte die Lokalitäten, Orte oder festgelegten Gebiete genau an, die die gefährdende Person nicht betreten darf:

Verpflichtung für die gefährdende Person, sich, gegebenenfalls zu bestimmten Zeiten, an einem bestimmten Ort aufzuhalten;

– wenn Sie dieses Kästchen angekreuzt haben, geben Sie bitte genau an, welcher Ort und welche Zeiten konkret gemeint sind:

Verpflichtung für die gefährdende Person, mit der das Verlassen des Hoheitsgebiets des Vollstreckungsstaats eingeschränkt wird;

– wenn Sie dieses Kästchen angekreuzt haben, geben Sie bitte genau an, welche Einschränkungen auferlegt wurden:

Verpflichtung für die gefährdende Person, den Kontakt mit der geschützten Person zu meiden;

– wenn Sie dieses Kästchen angekreuzt haben, geben Sie bitte alle relevanten Einzelheiten an:

Verbot für die gefährdende Person, sich der geschützten Person mehr als bis auf eine festgelegte Entfernung zu nähern;

– wenn Sie dieses Kästchen angekreuzt haben, geben Sie bitte exakt die Entfernung an, die die gefährdende Person gegenüber der geschützten Person einzuhalten hat:

– Bitte geben Sie den Zeitraum an, für den der gefährdenden Person die genannte(n) Verpflichtung(en) auferlegt wurde(n):

Ich bestätige, dass der Verstoß gegen die oben genannte(n) Verpflichtung(en) bzw. das(die) oben genannte(n) Verbot(e) nach dem Recht des Anordnungsstaats einen Straftatbestand erfüllt oder anderweitig durch Freiheitsentzug bestraft werden kann

Angabe der Strafe, die verhängt werden könnte:

g) Angaben zu der gefährdenden Person, der die Verpflichtung(en) nach Buchstabe f auferlegt wurde(n):

Familienname:

Vorname(n):

Ggf. Geburtsname:

Ggf. Aliasname(n):

Geschlecht:

Staatsangehörigkeit:

Kennnummer oder Sozialversicherungsnummer (sofern vorhanden):

Geburtsdatum:

Geburtsort:

Anschriften/Aufenthaltsorte:

– im Anordnungsstaat:

– im Vollstreckungsstaat:

– in sonstigen Staaten:

Sprache oder Sprachen, die die betroffene Person versteht (sofern bekannt):

Sofern vorhanden, bitte Folgendes angeben:

– Art und Nummer des Identitätsdokuments/der Identitätsdokumente der Person (Personalausweis, Pass):

h)	Sonstige Umstände, die auf die Bewertung der Gefahr, die die geschützte Person betreffen könnte, Einfluss haben könnten (fakultative Angabe):

i) Zutreffendes bitte ankreuzen und ergänzen:

ein Urteil im Sinne des Artikels 2 des Rahmenbeschlusses 2008/947/JI des Rates wurde bereits einem anderen Mitgliedstaat übermittelt

– Wenn sie dieses Kästchen angekreuzt haben, geben Sie bitte die Kontaktdaten der zuständigen Behörde, an die das Urteil übersandt wurde, an:

eine Entscheidung über Überwachungsmaßnahmen im Sinne des Artikels 4 des Rahmenbeschlusses 2009/829/JI des Rates wurde bereits einem anderen Mitgliedstaat übermittelt

– Wenn sie dieses Kästchen angekreuzt haben, geben Sie bitte die Kontaktdaten der zuständigen Behörde, an die die Entscheidung über Überwachungsmaßnahmen übersandt wurde, an:

Unterschrift der die Europäische Schutzanordnung erlassenden Behörde und/oder ihres Vertreters zur Bestätigung der Richtigkeit des Inhalts der Anordnung:

Name:

Funktion (Titel/Dienstrang):

Datum:

Aktenzeichen (sofern vorhanden):

(Gegebenenfalls) Amtlicher Stempel:

ANHANG II

FORMBLATT

nach Artikel 8 Absatz 1 Buchstabe d

DER RICHTLINIE 2010/…/EU
DES EUROPÄISCHEN PARLAMENTS UND DES RATES VOM …
ÜBER DIE EUROPÄISCHE SCHUTZANORDNUNG[*]

MELDUNG EINES VERSTOSSES GEGEN DIE
DER EUROPÄISCHEN SCHUTZANORDNUNG ZUGRUNDE LIEGENDE
UND IN DERSELBEN BESCHRIEBENE SCHUTZMASSNAHME

a)	Nähere Angaben zu der gefährdenden Person:
	Familienname:
	Vorname(n):
	Ggf. Geburtsname:
	Ggf. Aliasname(n):
	Geschlecht:
	Staatsangehörigkeit:
	Kennnummer oder Sozialversicherungsnummer (sofern vorhanden):
	Geburtsdatum:
	Geburtsort:
	Anschrift:
	Sprache oder Sprachen, die die betroffene Person versteht (sofern bekannt):

[*] ABl.: Bitte die Nummer und das Datum dieser Richtlinie einfügen.

b)	Nähere Angaben zu der geschützten Person: Familienname: Vorname(n): Ggf. Geburtsname: Geschlecht: Staatsangehörigkeit: Geburtsdatum: Geburtsort: Anschrift: Sprache oder Sprachen, die die betroffene Person versteht (sofern bekannt):
c)	Nähere Angaben zu der Europäischen Schutzanordnung: Die Anordnung wurde erlassen am: Aktenzeichen (sofern vorhanden): Behörde, die die Anordnung erlassen hat: Offizielle Bezeichnung: Anschrift:

d)	Nähere Angaben zu der Behörde, die für die Vollstreckung der Schutzmaßnahme zuständig ist, die gegebenenfalls im Vollstreckungsstaat im Einklang mit der Europäischen Schutzanordnung erlassen wurde: Offizielle Bezeichnung der Behörde: Name der Kontaktperson: Funktion (Titel/Dienstrang): Anschrift: Tel.: (Ländervorwahl) (Ortsnetzkennzahl) (Nummer) Fax: (Ländervorwahl) (Ortsnetzkennzahl) (Nummer) E-Mail: Sprachen, in denen kommuniziert werden kann:

e) Verstoß gegen die in der Europäischen Schutzanordnung beschriebene(n) Verpflichtung(en) und/oder sonstige Erkenntnisse, die eine weitere Entscheidung nach sich ziehen könnten:

Der Verstoß betrifft die folgende(n) Verpflichtung(en) (Sie können mehr als ein Kästchen ankreuzen):

Verpflichtung für die gefährdende Person, bestimmte Lokalitäten, Orte oder festgelegte Gebiete, insbesondere im Zusammenhang mit dem Aufenthaltsort der geschützten Person oder den Orten, die die geschützte Person aufsucht, nicht zu betreten;

Verpflichtung für die gefährdende Person, sich, gegebenenfalls zu bestimmten Zeiten, an einem bestimmten Ort aufzuhalten;

Verpflichtung für die gefährdende Person, mit der das Verlassen des Hoheitsgebiets des Vollstreckungsstaats eingeschränkt wird;

Verpflichtung für die gefährdende Person, den Kontakt mit der geschützten Person zu meiden;

Verbot für die gefährdende Person, sich der geschützten Person mehr als bis auf eine festgelegte Entfernung zu nähern.

Beschreibung des Verstoßes/der Verstöße (Ort, Datum und nähere Umstände):

Sonstige Erkenntnisse, die eine weitere Entscheidung nach sich ziehen könnten

Beschreibung dieser Erkenntnisse:

f) Nähere Angaben zu der zu kontaktierenden Person, falls zusätzliche Informationen zu dem Verstoß eingeholt werden sollen:

Familienname:

Vorname(n):

Anschrift:

Tel.: (Ländervorwahl) (Ortsnetzkennzahl) (Nummer)

Fax: (Ländervorwahl) (Ortsnetzkennzahl) (Nummer)

E-Mail:

Sprachen, in denen kommuniziert werden kann:

Unterschrift der das Formblatt ausstellenden Behörde und/oder ihres Vertreters zur Bestätigung der Richtigkeit des Inhalts des Formblatts:

Name:

Funktion (Titel/Dienstrang):

Datum:

(Gegebenenfalls) Amtlicher Stempel:

COUNCIL OF THE EUROPEAN UNION

Brussels, 6 January 2010

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COPEN 247

NOTE

Subject:	INITIATIVE FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Protection Order - Explanatory memorandum

Please find attached an explanatory memorandum relating to the initiative by a group of Member States for a Directive of the European Parliament and of the Council on the European Protection Order.

Brussels, 6 January 2010

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

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM

1. BACKGROUND

1.1. Grounds for and objectives of the proposal

Victim protection is a priority objective of any advanced criminal policy. Crime victims not only have a right to respect, reparation of the damage caused and punishment of the offender on the basis of a fair trial fully guaranteeing the rights of all parties, but also have an overriding right not to be the victims of another offence, particularly by the same person.

To that end, victim protection means activating appropriate mechanisms to prevent a repeat offence or a different, perhaps more serious offence, by the same offender against the same victim. Such repeat offences against the same victims are particularly frequent in the case of gender-based violence, although they also occur in other forms of crime such as human trafficking or sexual exploitation of minors, and they can obviously arise in all forms of crime.

All the Member States of the European Union (EU) apply measures to protect victims' lives, their physical, mental and sexual integrity and their freedom, but at present such measures are effective only on the territory of the State which adopted them and they leave victims unprotected when they cross borders. The protection which a Member State affords to crime victims should therefore not be confined to its territory but should apply to victims wherever they go.

There is therefore a need to provide a forceful and effective response to this need to prevent further offences against victims in the State to which they have moved, focusing on their protection.

1.2. General background

In a modern society, in an area such as the EU governed by freedom of movement, people constantly move around from one country to another. And that, of course, includes crime victims who move around for the same reasons as everybody else, and often for an additional reason – to create a new life away from the situation and the place where offences were committed against them.

On the basis of the figures available, purely for gender-based offences, it would seem that over 100 000 women residing in the EU are covered by protective measures of various kinds adopted by Member States in response to gender-based violence. The figures can obviously be multiplied if we include the victims of human trafficking and other offences.

Victims' freedom of movement and the ease with which aggressors can move around the EU mean that protective measures must not be confined to the territory of the Member State in which they originated. Maintaining a restrictive attitude to protection by limiting it to the territory of the State whose judicial authority initiated it would amount either to limiting protected victims' freedom of movement or, if they do move away, to forcing them, expressly or tacitly, to forgo the protection which the State provided, thus putting them at increased risk.

1.3. Existing provisions in the area of the proposal

Under resolution 40/34 of 29 November 1985, the UN General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in which it urges the Member States to take the necessary steps to implement the provisions set out in the Declaration in order to reduce victimisation and apply policies specifically designed to prevent offences and provide assistance for victims who require it, recognising their right to have their physical safety protected and defining as "victims" persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power, since, under this

Declaration, a person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.

The United Nations Declaration on the Elimination of Violence against Women, adopted on 20 December 1993, provides in Article 4 that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: (f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimisation of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions, and (g) endeavour to adopt the appropriate measures to promote their safety.

The United Nations Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women stated that gender-based violence is a breach of the fundamental right to life, safety, freedom, dignity and physical and emotional integrity.

The UNiTE to End Violence against Women campaign (2008-2015) includes the following among the five goals it aims to achieve by 2015: adopt and enforce national laws to address and punish all forms of violence against women and girls, and adopt and implement multi-sectoral national action plans which emphasise the prevention of violence against women.

The Council of Europe Recommendation of the Committee of Ministers to Member States on the position of the victim in the framework of criminal law and procedure, adopted on 28 June 1985, states that it must be a fundamental function of criminal justice to meet the needs and to safeguard the interests of the victim; and recommends that member states review their legislation and practice in accordance with guidelines which include giving the victim and his family effective protection against intimidation and the risk of retaliation by the offender whenever this appears necessary, and especially when organised crime is involved.

The Council of Europe has also expressed its member states' common interest in preventing and combating violence against women and domestic violence in several acts, one of which is Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence which recommends that states exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims.

The European Parliament resolution of 16 September 1997 on the need to establish a European Union-wide campaign for zero tolerance of violence against women calls on the Member States to review the administration of legal procedures and take action to remove barriers which prevent women from obtaining legal protection; the European Parliament returned to this matter in its resolution of 2 February 2006 on the current situation in combating violence against women and any future action (2004/2220(INI)).

On 15 March 2001 the Council of the European Union adopted Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings in order to deal with the issue of victims' procedural rights; that Decision was later expanded by Council Directive 2004/80/EC relating to compensation to crime victims. In the Communication from the Commission to the Council and the European Parliament establishing for the period 2007-2013 a framework programme on Fundamental Rights and Justice (COM(2005)0122), fighting violence against women, children and young people plays a very important role as part of the effort to create an area of freedom, security and justice.

1.4. Consistency with the other policies and objectives of the Union

Victim protection has always been one of the main objectives of the European Union in the area of freedom, security and justice.

The Treaty on the Functioning of the European Union (TFEU) marks a new stage in the construction of the area of freedom, security and justice. Article 67(1) provides that "The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States", and Article 67(3) states that "the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws".

As part of that new impetus, far from overlooking crime victims' situation and problems, Article 82(2) of the TFEU provides that: "2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States. They shall concern: (…) (c) the rights of victims of crime; (…) Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals".

Continuing and reaffirming the victim protection objectives already set out in the Tampere and Hague programmes, the Stockholm Programme relating to the consolidation of freedom, security and justice in the EU, approved by the European Council at its meeting on 10 and 11 December 2009, provides in point 2.3.4 on "victims of crime, including terrorism" 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". In the same point, the European Council calls on the Commission and the Member States, among other things, to examine how to improve legislation and practical support measures for protection of victims and to improve implementation of existing instruments.

In the section of the Stockholm Programme relating to mutual recognition, point 3.1.1, referring specifically to criminal law, states that "victims of crime or witnesses who are at risk can be offered special protection measures which should be effective within the Union".

Combating all forms of gender violence has also been a constant concern of the European Parliament, as demonstrated by its ongoing work on the matter and specifically its resolution of 16 September 1997 on the need to establish a European Union-wide campaign for zero tolerance of violence against women and its resolution of 2 February 2006 on the current situation in combating violence against women and any future action (2004/2220(INI)).

We would also refer to the stand taken by the Commission in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Roadmap for equality between women and men 2006-2010 {SEC(2006) 275}, COM(2006)92 final. The objective pursued in that proposal is consistent with the Communication from the Commission to the Council and the European Parliament establishing for the period 2007-2013 a framework programme on Fundamental Rights and Justice (COM(2005)0122).

Any action of the Union in this field must respect fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms.

This proposal has been presented after thorough checking that its provisions are fully consistent with fundamental rights.

Particular attention has been paid to the right to human dignity, the right to life, the right to physical and mental integrity and the right to effective remedy, as set out in Articles 1, 2(1), 3(1) and 47 of the EU Charter of Fundamental Rights, which require that victims' safety be ensured and that the increased role of the victim in criminal proceedings be recognised.

Particular care will have to be taken to ensure that the increased role of the victim in criminal proceedings does not endanger the defendant's procedural rights, in particular the right to a fair trial (Article 47 of the EU Charter) and the right of defence (Article 48 of the EU Charter). However, the European Court of Human Rights has established clear principles to reconcile the respective rights of the defendant and the victim. Great care has been taken to ensure that this proposal is fully compatible with the rights of defence through meticulous drafting of the legal act, that being the basis for correct implementation by the Member States, and there is nothing in this initiative which is contrary to the procedural rights of the accused, making it an effective mechanism for victim protection at European level.

2. CONSULTATIONS

2.1. Consultations with the Member States

With a view to discussion of this initiative, a questionnaire was sent to the Member States on 23 September 2009 (13577/09 COPEN 176) putting a number of questions and asking them to provide statistics on the number of cases in which they had imposed victim protection measures of the kind envisaged in this proposal.

Of the 18 Member States which replied (5002/10 COPEN 1), 13 provided statistics; account has been taken of both the replies to the questions and the factual information provided in the detailed statement accompanying this proposal.

It emerges from the Member States' replies that they all have victim protection measures of some kind which vary in type and classification and may be adopted under different systems in criminal or civil proceedings or, in some instances, by administrative decision. They also point to the existence of a legal vacuum with regard to the protection of victims moving to another Member State which needs to be filled, and they consider that a legislative act for that purpose could not but improve the situation for victims.

Several meetings were also held with all Member States' Permanent Representations to discuss this issue and also technical questions raised by this proposal.

2.2. Obtaining and using technical expertise

There was no need for external expertise.

3. IMPACT ASSESSMENT

Various policy options have been examined as a means of achieving the objectives of preventing and combating trafficking in human beings more effectively, and better protecting victims.

– Policy option A: No additional European Union measures

The EU would not adopt any victim protection measures.

– Policy option B: Non-legislative measures

Non-legislative measures could be taken in the framework of judicial cooperation and exchange of best practice.

– Policy option C: Legislative proposals to amend Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, and Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

An amended version of those two Decisions could incorporate a victim protection mechanism to apply where it is the victim who moves to a State other than the one which adopted the initial measure. The Decisions referred to both start from the assumption that it is the offender or the presumed offender who is the subject of an alternative measure, a probation measure or a provisional measure imposed by a Member State who has returned or wishes to return to the State of residence, who consents to do so, or who wishes to go to another Member State in which he does not have residence.

– Policy option D: Legislative proposal for a single text covering all the possibilities for extending victim protection

A new directive would be adopted to deal with the problem to be resolved *ex novo*, focusing specifically on victim protection.

In the light of the impact assessment, the repercussions for fundamental rights and the need to have an effective victim protection instrument at European level, options C and D offer the best ways to deal with the issue and could meet the objectives identified in full. The preferred option would be option D in the light of the legislative consequences of existing instruments, the need for clarity when applying new legislative texts and the usefulness of having a legislative text specifically designed to deal with victim protection across borders.

4. OBJECTIVES OF THE EUROPEAN PROTECTION ORDER

The European Protection Order is based on the following assumptions:

– there is a person in danger;

– the danger is such that the Member State in which the person resides has to adopt a protection measure in the context of criminal proceedings;

– the person decides to move to another Member State;

– the person continues to be in danger on the territory of the Member State to which he/she wishes to move.

The European Protection Order is designed to continue to protect persons finding themselves in such circumstances, ensuring that in the Member State to which they move they will receive a level of protection identical or equivalent to the protection they enjoyed in the Member State which adopted the protection measure.

Moreover, the measures included in the European Protection Order, offering the victim a guarantee of safety, are not a novelty in the legal order of the Member States since they are already recognised in Article 4 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, and in Article 8 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

The European Protection Order involves a mechanism based on mutual recognition and, as such, is not a harmonisation instrument. Its objective is not to ensure uniformity as regards the protection measures which each national legislature can adopt in the future but to eliminate existing borders from the point of view of victim protection.

The objective of the European Protection Order is therefore threefold:

1. to prevent a further offence by the offender or presumed offender in the State to which the victim moves, the executing State;
2. 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;
3. preventing any discrimination between the victim moving to the executing State compared with victims enjoying protection measures initiated by that State.

The European Protection Order is therefore intended, by means of some simple implementing measures in the Member States, to provide protection for victims in whichever Member State they move to, by preventing the commission of a new offence against them by the offender or the person causing the danger and providing victims with a level of protection similar to that provided by the State whose judicial authority adopted the initial measure and equivalent to that provided to other victims in the executing State.

In a word, the objective of the European Protection Order is to include victims in the evolving area of freedom, security and justice, an area which should extend not only to offenders but also to victims.

5. LEGAL ELEMENTS OF THE PROPOSAL

5.1. Legal basis

This proposal is for the adoption of a legislative act on the basis of Article 82(1)(d), inter alia, of the Treaty on the Functioning of the European Union (TFEU). The second subparagraph of Article 82(1) provides that "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to: (…) (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions".

The proposal is being presented in accordance with Article 76(b) of the TFEU, on 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.

It is designed to meet the objectives set out in the Stockholm Programme to strengthen freedom, security and justice in the EU (hereafter the "Stockholm Programme") as approved by the European Council at its meeting on 10 and 11 December 2009. It relates in particular to point 3.1.1, which states that "victims of crime or witnesses who are at risk can be offered special protection measures which should be effective within the Union".

This Directive does not take the form of a more traditional judicial cooperation instrument because of the particular features of the need it is intended to meet; the protection of a person in a State other than the one which adopted the initial protection measure requires a dynamic and effective mechanism far removed from a bureaucratic procedure which would stand in the way of an effective response being adopted as swiftly as possible in the executing State.

The adoption of a classic mutual recognition procedure would thus be incompatible with the immediate response required for a victim once again in danger in the executing State.

5.2. Summary of the proposal and explanation of its individual provisions

Article 1: Definitions

This article defines the basic terms used throughout the legislative act, specifying their use and interpretation. It defines the European Protection Order, the protective measure (being the measure which triggers the issue of a European Protection Order), the protected person, the person causing danger, the issuing State, the executing State and the State of supervision; the State of supervision covers cases in which the measure has been transferred in accordance with Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, and Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

Articles 2 and 3: Scope, recognition

– Objective scope: as an instrument of mutual recognition in criminal matters, the European Protection Order relates to the measures adopted during criminal proceedings taken in the broadest sense, i.e. both at the pre-trial stage and during the trial itself and in the execution of judicial decisions taken during the criminal proceedings; it also relates to the measures adopted by civil judicial bodies when a breach of the measure involves criminal liability or means that the offender may be deprived of liberty in some other way, the idea being to extend the benefits of the instrument to the largest possible number of victims, bearing in mind the very different legal systems that exist in the Member States in this area.

On the other hand, the protection offered by the European Protection Order may derive from the imposition of a principal or additional sentence, a suspended sentence or an alternative measure, a probation measure or a security measure since, in each of those cases, the trigger for the European Protection Order is the need to protect a person from an apparent danger, not the judicial decision or measure adopted to prevent the danger or the type of offence which initiated the process; for that reason, the European Protection Order is not based on a list of offences which would have to have been committed to trigger it.

– Subjective scope: the mutual recognition objective of the European Protection Order hinges on the need to protect a person in another Member State. The view is therefore that it must include all victims at risk, such as children in danger, women who are victims of gender-based violence and, in general, any victim against whom the offender may commit another offence.

– Types of measure: the European Protection Order applies to measures imposing on the potential offender an obligation not to reside in or enter places where the protected person is, that is to say an obligation to keep away from the protected person and not to go to certain localities, places or defined areas where the victim resides or which he/she visits, limitations on leaving the national territory or an obligation to remain at a specified place for specified periods.

Article 4: Competent authorities

The European Protection Order is an instrument of mutual recognition of judicial decisions and is, in principle, issued by the judicial authorities to be designated by the Member States.

However, in view of the wide range of legal systems in the European Union and in the light of the reference in Article 82(1)(d) of the Treaty on the Functioning of the European Union to judicial or equivalent authorities of the Member States, Member States may designate other authorities competent to issue such a decision.

Article 5: Issue of a European Protection Order

A European Protection Order is to be issued only at the request of the protected person where he/she has left or intends to leave the territory of the State which issued the protection measure, and this has a twofold purpose: on the one hand, to preclude automatic transmission of this type of instrument and, on the other hand, apart from compliance with the necessary requirements, to make the order dependent on the wishes of the victim, who may prefer, for reasons of his/her own, not to ask for such a mechanism even though he/she has left the territory of the State in which the original protection applies.

There is also a victim information system to make victims aware that they have the option of requesting a protection order when they intend to leave the territory of the State which issued the original measure protecting them and to recommend them to make the application before they leave in order to save time, although they can also apply in the country to which they move.

Article 6: Form and content of the European Protection Order

Article 6 sets out a standard form for the European Protection Order, both to ensure uniformity of content at European level and to make it easier for the authorities responsible for issuing the order. The content comprises the information which is essential for the proper functioning of the system and includes the use of any technological instruments that have been provided to the protected person.

Article 7: Transmission of the European Protection Order

For transmission, Article 7 provides for a simple, dynamic system of direct communication between authorities.

Article 8: Role of the executing Member State: Measures in that State

The European Protection Order mechanism means that the requested State will take the measures that would be available under its national law in a similar case. The objective is, above all, to ensure continued protection of the victim and ensure that he/she is not deprived of equivalent protection in a State purely because the protection measure was not issued by that State. It also means that the protection provided does not have to be the original protection but a level of protection which is equivalent to the level established by the State issuing the European Protection Order and is in compliance with the national law of the State to which the victim moves.

The thinking behind the instrument is not that the executing State has to provide a level of protection which it is unable to provide for its own residents under its national legislation, but rather to ensure that the protected person obtains in a European State the same level of protection as that State stipulates under its own regulations. As a result, the executing State is not required to apply measures which go beyond its own legal system but to choose, from among those established under its legal order, those best adapted to the measures adopted by the issuing State in each individual case, specifically the measures which it would have adopted under its legislation in a similar case.

Article 9: Grounds for non-recognition

The grounds for non-recognition of a European Protection Order are the same as those for European Union instruments of mutual recognition, with only those adjustments necessitated by the specific characteristics of the objective to be met.

Article 10: Role of the issuing State

Since the offender does not reside in the executing State and the European Protection Order is an instrument of protection for the person moving to that State, the executing State does not have jurisdiction to enforce the original sentence or measure requiring protection of the victim; that jurisdiction continues to lie with the issuing State.

The European Protection Order therefore means only that the executing State implements the protection measures already referred to, with the consequences laid down in the legislation of the executing State, if the offender moves to its territory and particularly if the offender infringes the order.

Article 11: Grounds to revoke the recognition of a European Protection Order

The European Protection Order is revoked when the protected person has definitely left the territory of the executing State.

Article 12: Time limits

The system chosen is a flexible one, given the speed with which it is necessary to act in certain cases.

Article 13: Governing law in the executing State

To remove any doubt on the matter, it is specified that decisions made by the authorities of the executing State are to be governed by its national law.

Article 14: Obligations of the authorities involved

This article refers particularly to the information which must be exchanged between the authorities which intervene to execute a European Protection Order, particularly where the original protection measure is modified, has expired or is revoked.

Articles 15, 16, 17 and 18: Consultations between competent authorities; Language; Costs; Relation to other agreements and arrangements

These articles follow the arrangements laid down in other mutual recognition instruments such as Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, and Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

Articles 19, 20 and 21: Implementation; Report; Entry into force

These provisions do not differ in content from those in the instruments already cited.

6. PRINCIPLE OF SUBSIDIARITY

In accordance with paragraphs 1 and 3 of Article 5 of the Treaty on the Functioning of the European Union, Article 69 thereof and Protocol 2 on the application of the principles of subsidiarity and proportionality, the objectives of the proposal cannot be sufficiently achieved by the Member States acting alone for the following reasons:

– There is no other instrument which is sufficient to resolve the problem which this proposal for a Directive is intended to resolve;
– It is clear that the Member States cannot lay down their own rules for the application and validity of their own victim protection measures in another Member State;
– The objective of uniform recognition by each Member State of the effectiveness of the measures adopted by another Member State can only be achieved by a common action, in this case in the form of a Directive, in accordance with the TFEU.

This proposal is therefore in full compliance with the principle of subsidiarity insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States but can be better achieved through this proposal for a Directive at Union level in view of the transnational nature of the problem to be resolved, i.e. extending the effects of a victim protection measure beyond the territory of the Member State which adopted it to the territory of another Member State.

7. PRINCIPLE OF PROPORTIONALITY

In accordance with paragraphs 1 and 4 of Article 5 of the Treaty on the Functioning of the European Union, Article 69 thereof and Protocol 2 on the application of the principles of subsidiarity and proportionality, this proposal for a Directive respects the principle of proportionality in that it does not exceed the strict minimum required to achieve its objective.

In compliance with the principle of proportionality, this proposal for a Directive does not involve harmonisation of the measures it refers to in the EU Member States, since harmonisation is not necessary to achieve its purpose; instead, it introduces a mechanism to facilitate the extension of the protection enjoyed by a person in one Member State to another Member State to which he/she goes, in compliance with the legislation of the latter Member State and with due regard for its legal system. This proposal thus respects the principle of proportionality in that it contains only those provisions which are strictly necessary to achieve its objective and does not exceed the minimum required to achieve the objective laid down in Article 82(1)(d) of the TFEU.

This proposal is also without prejudice to Article 72 of the TFEU which provides that "this Title (Title V of the TFEU, area of freedom, security and justice) shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security".

8. CHOICE OF INSTRUMENT

Proposed instrument: Directive. Other instruments would not be adequate.

The proposal takes the form of a Directive based on Article 288 and Article 296 of the TFEU, in relation to Article 82(1)(d) of the TFEU, since in order to achieve the desired objective and bearing in mind the principles of subsidiarity and proportionality, the Member States must be obliged, as to the result to be achieved, to adopt decisions in their territory extending the protection measure adopted by another Member State, but leaving to each State the choice of form and methods.

9. BUDGETARY IMPLICATIONS

This proposal for a Directive has no implications for the Community budget.

The question of financial implications is dealt with in a separate document. It should be pointed out, however, that this proposal for a Directive will not impose any major additional expenditure on Member States' budgets or, as already stated, on the European Union budget. In the long term, the costs which it may involve, relating mainly to the translation of the European Protection Order, will in many instances represent savings by preventing the commission of new offences against the victim, that being the primary objective of this proposal.

10. ADDITIONAL INFORMATION

The adoption of the proposal will not entail the repeal or amendment of any existing legislation in force.

COUNCIL OF THE EUROPEAN UNION

Brussels, 6 January 2010

17513/09 ADD 2 REV 1

COPEN 247

NOTE

Subject:	INITIATIVE FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Protection Order - Detailed statement

In relation to the initiative by a group of Member States for a Directive of the European Parliament and of the Council on the European Protection Order, please find attached an detailed statement allowing to appraise compliance with the principles of subsidiarity and proportionality, in accordance with Article 5 of Protocol (No 2) to the Lisbon Treaty.

A financial note is set out at the end of the statement.

Brussels, 6 January 2010

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

DETAILED STATEMENT

allowing to appraise compliance with the principles of subsidiarity and proportionality

in accordance with Article 5 of Protocol (No 2) to the Lisbon Treaty

DETAILED STATEMENT

EXECUTIVE SUMMARY

The growing concern in the European Union over the rights of victims reflects the need to change the traditional focus of criminal proceedings with their emphasis on the connection between the punitive power of the State and the alleged offender, leaving the victim of the crime, the aggrieved party, in second place.

Since the end of the 20th century, the victim in the penal system has begun to re-emerge as one of the principal players, with the result that criminal proceedings constitute not only a mechanism for resolving the conflict between the State and the offender, but also an effective way of protecting the rights and interests of the victim.

The victims of domestic violence deserve special consideration, particularly women. Whilst women are not the only victims to be afforded protection under the European Protection Order, they will be the beneficiaries in the majority of cases.

This change in approach has already resulted in some important EU instruments such as Directive 2004/80/EC relating to compensation to crime victims and Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. It has also been reinforced by the initiatives which are already under way, such as the amendment of the Framework Decision on combating the sexual exploitation of children and child pornography and the Framework Decision on combating trafficking in human beings, where the victims take centre stage, as well as by the other instruments planned, such as the amendment of Framework Decision 2001/220/JHA referred to above.

One of the victim's most important rights is the right to be protected against further attacks by the offender. Victims not only have the right to compensation for the consequences of a crime, but above all have the right to avoid being a victim once again. Given that European residents are increasingly mobile, the legislative work of the EU and Member States' efforts to protect the victims of crime would remain incomplete if protection granted to a person by a Member State were limited to the territory of that State.

The victim under threat should as far as possible enjoy the same level of protection throughout EU territory as in the State which adopted the original protection measure, so that a change of residence to another State does not entail any loss of protection. Victims' freedom of movement in the territory of the EU cannot be at the expense of their rights.

On the other hand, the preventive measures or penalties which involve a prohibition on entering certain localities, places or defined areas or involve preventing contact with certain persons entail two aspects: on the one hand, as security measures or penalties, they restrict the rights of the offender; secondly, but of equal importance, they constitute measures to protect the victim against further attacks, that being their *raison d'être*.

However, until now no mechanism has been available enabling a protected person to apply to have protection extended to the State they were moving to, given that a protection measure takes effect only in the territory of the State which adopted it.

It was because they are aware of this loophole that the Member States making this proposal decided to submit it to the European Parliament and the Council to create an EU legislative act to fill the gap. It is significant that the objective of the first legislative initiative submitted by the Member States in the area of freedom, security and justice after the entry into force of the Lisbon Treaty , in accordance with Article 76(b) of the TFEU, is to protect victims and establish a mechanism allowing protective measures adopted by one Member State to be extended beyond the territory of that State.

In order to achieve this goal, various policy options have been examined:

– Policy option A: No new action to be taken in the European Union

The EU would not take any new action: thus the existing situation would continue, with victims unable to have a measure protecting them in one Member State extended to the State they wish to move to.

– Policy option B: Non-legislative measures, whose basic aim would be to establish a mechanism for exchanging information and good practices

A new legislative instrument would not be necessary. Instead, this option could involve putting in place non-legislative measures, Council conclusions for example, which would stimulate exchanges of information between judicial authorities in each specific case on the persons involved (victim and offender), in addition to more general exchanges of experience concerning prosecution, victim protection and crime prevention.

– Policy option C: Legislative proposals to amend Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, and Council Framework Decision 2009/829/JHA on the application between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

Amended versions of those Framework Decisions could incorporate a protection mechanism for those cases where it is the victim who moves to a State other than the one which adopted the measure. The Framework Decisions start from the assumption that it is the offender or alleged offender who is the subject of an alternative measure, a probation measure or a provisional measure imposed by a Member State who has returned or wishes to return to the State of residence, who consents to do so, or who wishes to go to another Member State in which he does not intend to reside.

– Policy option D: Legislative proposal comprising a single text covering all scenarios relating to the extension of victim protection

A new legislative text in this area would entail a single instrument specifically aimed at protecting victims and focusing on their protection needs. It would not be incorporated into a pre-established framework which pursues a completely different goal.

Option A would clearly not improve the current situation, but would maintain the status quo: in order to enjoy protection in the other State, a person would have to be the victim of another offence or attempted offence there, since at present there is no mutual recognition agreement allowing such protection to be extended.

Option B would not be sufficient to improve the situation of victims. as a non-legislative option, it would not solve problems requiring a legal basis, nor would it allow protection granted by one State to be extended, or any preventive measures to be adopted on the basis of the existence of a victim protection decision in another Member State.

Option C would improve the situation of crime victims going to another Member State, but would have to fit into the framework of the two Framework Decisions referred to, one on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, and the other relating to the European supervision order in pre-trial procedures between Member States of the European Union. This would result in two different legislative frameworks for the protection of victims requiring a list of offences, to which a genuine system of protection should not be confined.

Option D would involve an instrument in its own right, specifically geared to protecting victims and adapted to that purpose. For that reason, D is the preferred option and is, in fact, the only truly viable option capable of providing effective protection for victims going to a Member State other than the State which adopted a protection measure.

1. CONSULTATION OF THE MEMBER STATES AND STATE OF PLAY

1.1. Political context and background

The Tampere European Council on 15 and 16 October 1999 and the Hague Programme on strengthening freedom, security and justice in the European Union (2005/c53/01), which was adopted by the European Council on 4 and 5 November 2004, already expressed concern over the situation of victims. In addition, EU Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings defines a victim as "a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State". The Stockholm Programme, adopted by the European Council on 10 and 11 December 2009, also devotes particular attention to the rights of victims and their protection.

EU Member States have singled out combating domestic violence, in particular gender violence, as an issue worthy of special attention. There is no doubt that violence against women acts as an obstacle to the achievement of equality, development and social peace (1995 UN Conference); in relation to victims of domestic violence, Recommendation (85)4 adopted by the Committee of Ministers of the Council of Europe recommends that States "*take steps to ensure (...) that the appropriate measures can be (...) taken (...) to protect the victim and prevent similar incidents from occurring*" and the European Parliament report of 9 December 2005 recommends that Member States adopt an attitude of "zero tolerance" towards all forms of violence against women and *that the appropriate protection measures be taken*.

While the essential aim of criminal law is to penalise typical crimes and it is therefore applied when lawful property has been damaged, it must also provide an immediate response to those situations where an attack on a victim's lawful property involves additional elements which create a risk that the violence will be repeated, with further attempts being made to attack the victim's rights and interests. The victims obviously cannot await a conviction at the end of criminal proceedings to receive protection against such risks, which is why under the rules of criminal procedure measures may be adopted on an interim or provisional basis to protect victims during the course of the proceedings.

The precedent is the *protection order* in the English-speaking world which takes the form of a court order protecting one person from another, is valid for the entire national territory and contains a number of obligations or prohibitions which the person to whom it is directed must observe (prohibition on possessing weapons, approaching or contacting one or more persons, etc.).

Most European legal systems have provision for measures to protect victims (especially victims of domestic and gender violence) and persons closely related to them who are also at risk. However, this protection is only feasible and effective if the victims remain in the State which has granted them protection, as it is not possible at present to extend this protection to other European Union countries.

1. 2. Consultations

The following methods were used to establish the factual and legal state of play:

– Replies to the questionnaire to delegations with a view to a possible submission by Spain and other Member States of an initiative for a Directive of the European Parliament and of the Council on the European Protection Order (the questionnaire is set out in 13577/09 COPEN 176 of 23 September 2009; the replies are set out in 5002/10 COPEN 1).

– Initiative of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences (8662/07 COPEN 49 of 14 May 2007), with the summary of delegations' replies to the questionnaire (7142/07 COPEN 31).

– Initiative of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences and alternative sanctions (14001/07 COPEN 23 of 23 October 2007), with a follow-up to delegations' replies to the questionnaire on "competent authorities" (10891/07 COPEN 96).

1. 2. 1 Factual results of the consultations with Member States

The need for an instrument as described above does not stem from a purely theoretical basis. It is clear that in the EU at present there is no instrument which allows victims to request that measures protecting them in one Member State be applied in another Member State to which they have moved. Moreover, victims can obviously exercise their freedom of movement and, as a consequence of their experiences, they may be more inclined than those fortunate enough not to have had the same experiences to seek a new life by moving to another Member State or by returning to their country of origin, as the case may be.

The harassment of victims, particularly victims of gender violence, has a global dimension, rather than a merely regional one; it concerns all the countries in world, including all EU countries. According to the 2003 UNIFEM (United Nations Development Fund for Women) document, "Not a Minute more", one woman in three across the world will be exposed to gender violence in their lifetime; or will be beaten, raped, assaulted, will be victims of trafficking, bullied or forced to submit to acts which damage their health, such as female genital mutilation. According to Eurostat figures, between 700 and 900 women in the EU die each year as a result of gender violence.

In the discussions prior to the submission of this initiative, a questionnaire was sent to the Member States requesting them to forward statistics on the number of cases in which protection measures had been imposed requiring the offender to avoid contact with the victim and to avoid entering certain localities, places or defined areas in which the victim was living or working.

Of the 18 Member States which replied to the questionnaire, 13 Member States, representing 61,5 % of the EU's population in 2008, provided statistical information. The data forwarded by these countries shows that in 2008 they issued over 73 000 protection measures, mostly in cases of gender violence.

If these data are extrapolated to the whole of the EU, since there are no objective reasons for assuming that the situation is different in the Member States in which the remaining 39,5 % of the EU's population lives, this would mean that 118 000 protection measures were issued in 2008.

No data are available on victims who move to another Member State under such measures or who return to their country of origin, as the Member States do not keep track of them, but just 1 % of 118 000 would mean 1 180 cases in one year (2008) in which a victim moved to a different EU State from the one which imposed the measure.

1. 2. 2. Legal situation in the Member States of the European Union in relation to protection measures. Legal measures for protecting victims in the Member States.

The following information is based on the replies received to the aforementioned questionnaire, from Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Spain, Finland, France, Germany, Italy, Latvia, Lithuania, the Netherlands, Portugal, Slovakia, Sweden and the United Kingdom.

The legal measures which can be imposed to protect victims are summarised below as described by the Member States in their replies to the questionnaire on the European Protection Order. All the Member States which replied have measures they can use to protect victims which involve imposing restrictions on the (alleged) offender(s). In the majority of cases, the measures are applied in the context of criminal proceedings. In a number of Member States, however, they may also be imposed in civil or administrative proceedings, and in some Member States via these channels only. When the measures are issued in civil or administrative proceedings, the majority of Member States provide for criminal liability in the event that the obligations are not met.

1. 2. 2. 1. Criminal proceedings

A. Measures imposed before the trial

A number of Member States can impose restrictions on the alleged offender during the pre-trial phase. In England and Wales, conditions may be attached to the bail in criminal proceedings in order to protect witnesses and victims. The Portuguese penal system provides for a wide range of measures, both before and during the trial as well as after the judgment, which may be applied in order to protect the victim by imposing certain obligations, particularly in cases of domestic violence, including the obligation to avoid contact with the victim and the obligation not to enter certain localities, places or defined areas where the victim resides. Likewise, the Spanish criminal

justice system provides for the issue of a protection order in cases of gender violence, with a range of measures which confer full protection and can include provisional measures under civil and criminal law, as well as social assistance and protection measures.

The most common measure is expulsion from the victim's home. In France, for example, this measure can be imposed both before and after the judgment. In Lithuania an obligation can be issued during the pre-trial investigation period, either as part of measures for supervising house arrest or as part of a written obligation to remain in a specific place. The alleged offender may be required to live apart from the victim, not to communicate or attempt to communicate with the victim or persons living with the victim, or not to visit specific places of residence.

Similarly, in Latvia the alleged offender can be ordered to avoid contact with the victim or to avoid going to certain localities. Furthermore, victims of serious or very serious crimes may be afforded procedural protection, as may juvenile victims.

In the Czech Republic, police officers have the powers to evict a person when they constitute a threat to their cohabitee, if it can be reasonably assumed - especially if there have been previous attacks - that the person evicted is endangering the other person's life, health, freedom or human dignity. The evicted person must hand over to the police all keys to the building in question and refrain from establishing contact with the person in danger. Access to the area surrounding the endangered person's home may also be prohibited. However, this measure can only last for ten days.

In Denmark, the police have powers to impose a provisional measure when a person has disturbed the peace of another person or harassed him/her. Harassment does not constitute a crime, but if the order is infringed, the courts may impose a financial penalty or a sentence of up to two years' imprisonment.

In Finland the authorities conducting the pre-trial investigation may issue temporary prohibition orders; the maximum penalty for infringement of this order is one year's imprisonment. In Italy, since February 2009, a provisional measure may be imposed preventing an alleged attacker from approaching the victim.

B. Measures imposed following a conviction

B. 1. Probation measures

All the Member States that replied to the questionnaire have measures that can be imposed on a convicted offender to contribute to protecting the victim. The reply from the Bulgarian delegation indicated that all probation measures, and in particular those which restrict the free movement of offenders, are aimed at punishing the offender and preventing him from re-offending, which implicitly entails protection for the victim. Probation measures that restrict free movement include: a prohibition on entering specific localities, areas or establishments; a prohibition on leaving a specific area for more than 24 hours without the permission of the person responsible for supervising probation or of the prosecutor, and a measure prohibiting the offender from leaving his residence during specific periods of the day or night.

The most common measure prohibits the offender from entering a specific locality so as to prevent him from contacting the victim or his/her family. In the United Kingdom, for example, the most frequent scenario is for the conditions preventing an offender from entering a specific locality to be imposed as part of a community sentence or licence after release from prison. Similarly, in Germany conditions can be imposed when an offender is subject to a supervision order or conditional release from prison. In Estonia, the court can order an offender not to enter specific localities and not to communicate during the period of supervision with persons stipulated by the court.

In Spain, offenders can be deprived of the right to reside in or enter specific localities, or prohibited from approaching or communicating with the victim or certain members of the victim's family. This applies not only to cases of domestic violence but also, depending on the seriousness of the case or the danger represented by the offender, to crimes involving murder, abortion or injury, crimes against personal freedom, torture, and crimes against moral integrity, sexual offences, attacks on personal privacy and the right to protection of one's own image and offences against the inviolability of the home, a person's good name, property and the socio-economic order, and can last up to 10 years in the case of serious offences and up to five years in the case of less serious offences. Such prohibitions can also be imposed in cases of suspended custodial sentences and as a security measure.

In the Czech Republic, a court can impose obligations which include refraining from establishing contact with certain persons as a condition in a conditional sentence with supervision, a conditional waiver of a prison sentence with supervision or a conditional release with supervision. Czech legislation also provides for a prohibition on residence, which involves prohibiting a person from residing in a specific locality or area for a period of between one and five years. The offender cannot, however, be banned from staying in his place or area of permanent residence.

In Lithuania, a court can impose a prohibition on approaching the victim when such a measure is necessary to protect the victim's legitimate interests. It can also impose a range of obligations as part of a sentence involving restriction of liberty: the obligation not to change place of residence without prior notification or to be at home at a certain time, or a prohibition on visiting certain places or communicating with certain persons or groups of persons, being in possession of certain objects, or acquiring or storing them or transferring them to other people for safekeeping.

In Slovakia, those obligations can be imposed as part of a sentence, conditional sentence or conditional release. In the case of a conditional suspension of criminal proceedings, a prosecutor may also apply restrictions to oblige the accused to lead a "normal life" or to refrain from carrying out activities that could lead to the commission of an offence.

B. 2. Restraining orders

In addition to the conditions imposed on an offender subject to conditional release or release under supervision, a number of Member States have provision for the imposition of moderate restraining orders. In Finland, for example, prohibitory orders are issued as independent security orders by the competent civil and criminal courts. A person who breaches a restraining order will be fined or imprisoned for up to a year. In Estonia, a court may impose a restraining order of up to three years on a person found guilty of an offence against a person, regardless of whether or not that person is a minor, in order to protect the victim's private life.

Under the 1997 Protection from Harassment Act, criminal proceedings in the United Kingdom can result in a sentence and a restraining order. Section 12 of the recently implemented Domestic Violence Crime and Victims Act expands the circumstances under which criminal courts can impose restraining orders to protect a person from behaviour that could result in harassment or fear of possible violent acts. The court may also impose restraining orders on acquittal for any offence, if it deems it necessary to protect a person from possible harassment.

In the Netherlands, an obligation can be imposed only under special circumstances. In the case of gender violence, the offender is prohibited from entering the victim's residence or making contact with him/her.

1. 2. 2. 2. Civil or administrative procedures

In Italy and Latvia, only a criminal court can impose obligations on alleged offenders, through criminal proceedings. This is also true of Portugal, although it is possible in theory for the victim to apply to have certain obligations imposed on the alleged offender in civil proceedings.

However, in most of the Member States which responded to the questionnaire (e.g. Austria, Belgium and Estonia), a civil court or administrative authority may also impose such obligations in the context of civil or administrative proceedings. In fact, in Germany preventive measures in the case of gender violence can be adopted only in the family courts. In Sweden, the decision to impose a restraining order is adopted by the prosecutors and is generally the result of a request from the alleged victim in relation to notification of an offence, although the decision is always deemed to be administrative in nature.

The most usual conditions are prohibitions on approaching or contacting the victim. In Lithuania, for example, a court may impose provisional protection measures pending the court sentence such as ordering one of the spouses to reside in another place, prohibiting one of them from contacting his/her minor children or from visiting certain places, requiring minor children to live with one of the parents or requesting non-interference in the use of certain properties of the other spouse.

The Slovak protection order may entail similar conditions. Such an order may be obtained in cases of gender violence (as well as in the form of possible temporary or preliminary measures in civil proceedings). Special protection can be granted to persons who are in danger in the context of criminal proceedings, as well as to direct family members. The possible measures under this protection order include physical protection, safeguarding of property, moving the victim to a safe place, changing the victim's place of residence, work or study, establishing another location for the notification of the sentence, or a complete change of identity.

In the Netherlands, a temporary administrative restraining order can be issued by a Mayor prohibiting a person from entering a house if his/her presence constitutes a serious and imminent danger for the security of the persons who live there. The prohibition may last for ten days, and may be extended for up to four weeks.

In England and Wales, a non-molestation order may be issued to deal with cases of violence or threats of violence, or when one person harasses or molests another. An occupation order determines who will occupy a specific property. A person can be totally excluded from the use of a

property and obliged to live in another place, or else may be subject to a prohibition from entering certain rooms in a property, i.e. the husband may be prohibited from entering the room in which the wife is sleeping. An occupation order may also entail a no-access zone around the property.

Another measure possible in the United Kingdom is the Forced Marriage Protection Order, which can be issued to prevent forced marriages from taking place. That order can include prohibitions, restrictions, conditions or any other measure the court considers appropriate to stop or change the behaviour or conduct of those who would force the victim into marriage.

1. 2. 2. 3. Consequences of infringement

A. Non-criminal law consequences

Infringing an obligation imposed in civil or administrative proceedings does not constitute an offence in Austria or France. In Belgium non-compliance with a civil measure may be punished by a fine, imposed by a civil court, but it will not entail criminal liability.

However, in the majority of Member States in which such administrative procedures are possible, non-compliance is deemed to constitute an offence. In the Czech Republic, for example, obstructing the implementation of an official decision can constitute an offence. Likewise, in Slovakia a person who seriously obstructs compliance with the obligations imposed by a civil court or a police authority can be punished for the offence of obstructing compliance with an official decision.

In Sweden, breaching a restraining order is an offence, except in cases in which the breach is considered a minor transgression. In Bulgaria, a breach has consequences under criminal law only in cases of gender-based violence; if the material author of a crime breaches a restraining order issued by a court, the police force that notified the breach will detain the person and notify the prosecutor's office accordingly.

B. Consequences under criminal law

In Sweden and Germany, the penalties for breach of a restraining order in connection with gender violence range from a fine to a year's imprisonment. In Estonia, breaching a restraining order or other protection measure, with the exception of temporary restraining orders, is also subject to a fine or up to one year in prison if the breach is repeated or represents a danger to life, health or property. In the Netherlands, the maximum penalty is generally one year's imprisonment; however, breaching an order issued by a mayor prohibiting a person from entering a house can be punished with up to two years' imprisonment.

2. DEFINITION OF THE PROBLEM

2.1. What is the problem?

In many types of crime the offence is a single act and the offender does not tend to commit another offence against the same victim. In other cases the offence is targeted at a specific victim and therefore tends to be repeated. This is the typical pattern of gender violence, in which the victim, in the vast majority of cases a woman, is the object of repeated offences which in many cases result in murder or manslaughter. Nor should we forget those cases which fall short of assault, coercion or threats but where the tension reaches such a pitch, particularly in relations between partners, that measures have to be taken specifically to prevent an offence being committed against one of the parties, again in most cases a woman. And the same applies to offences involving the sexual exploitation of minors or trafficking in human beings, for very different reasons. There are also instances in which the offender's desire to retaliate against or intimidate the victim to prevent the person testifying against him in a trial results in threats, if not in a further offence, against the victim.

All the situations described above pose a danger to the victim so that the State in which the offences occur adopts victim protection measures of various kinds, either to prevent an offence being committed against the victim or to prevent a repeat offence or other behaviour.

No cross-border problem arises as long as the victim and the offender remain within the State in which the protection measure has been adopted, and the issue is thus confined to that State. If the offender moves to a different Member State there are already legal instruments that cover this cross-border element. By contrast, if it is the victim who moves there are no instruments that provide for the protection measure taken in the State of origin to be extended.

Unfortunately, the figures given in section 1.2 of this assessment reveal the scale of a problem that needs to be tackled by many different methods, but they also demonstrate the need for a legislative instrument to close a gap that should not be allowed to persist within the EU: the absence of any means of allowing the victim protection measure adopted by another Member State to be extended throughout EU territory.

2.2. Who is affected by the problem?

In the first place the problem affects women who are victims of gender violence, which is a type of criminal behaviour in which unfortunately the threat against the victim is more likely to continue, when it does not result in the offence being repeated. But it also applies to victims of offences in general, who are exposed to the threat or danger of the same offence or a new offence being committed against them, perhaps even more serious than the previous one, although here we should highlight the particularly high incidence of this problem in trafficking in human beings and the sexual exploitation of minors.

Nor do the Member States' judicial authorities have any means at present, or any legal basis, that would enable them to act in the way they would if the offences which led to the adoption of the measure by the State of origin had occurred in their territory; they cannot therefore impose any

measure to protect the victim, although, in the end, what is required is no more than a crime-prevention measure. In the absence of any legal basis for such action, the law enforcement authorities cannot adopt any measures either, except in cases where an offence against the victim is committed or attempted in their territory. In short, the present situation is not conducive to action either by judicial authorities or by law enforcement authorities to prevent a further offence being committed against a victim who moves to their territory and is already the subject of a protection measure adopted by another State.

2.3. Scale of the problem

The figures set out in section 1.2 of this study indicate the seriousness of the problem we face, although there is a lack of up-to-date statistics on, for example, femicide in the EU. Crime levels in general, and in particular those relating to gender violence, domestic violence, trafficking in human beings and sexual abuse of minors, are not diminishing over time but are either remaining stable or continuing to increase, as shown by the impact studies carried out by the Commission in connection with proposals to amend framework Decisions 2004/68/JHA on combating the sexual abuse of children and child pornography (COM(2009) 135, SEC(2009) 356) and 2002/629/JHA on combating trafficking in human beings (COM(2009) 136 final, SEC(2009) 359).

2.4. Underlying factors

Victims' problems, owing to their special situation as victims, intensify when they move to a Member State other than that in which they lived and in which they suffered the offence. Not only are they likely to be confronted with language barriers and very different social problems and circumstances, but their feeling of defencelessness increases in an environment with which they may not yet be sufficiently familiar, particularly when they find that the threat remains despite the move.

Victims may be reluctant to report the threat, through embarrassment or fear of the consequences, particularly where the abuses have occurred within the family; this reaction, which occurs when the victims are living in their State of origin, may be more intense when they are in another country and have to seek help from unfamiliar legal and judicial systems.

In addition, where victims have suffered the offence in the territory of a Member State other than their State of residence, they must have appropriate mechanisms available to claim in the State of residence the protection granted by the other State, as a preventive mechanism, without having to wait for a further offence.

2.5. Weaknesses in the current legal structure

Although, as pointed out in section 1.3, national legal systems allow for the possibility of adopting victim protection measures, such protection is restricted to the territory of the Member State that granted it and cannot be extended to another Member State in which the victim may happen to be.

When it is the offenders who move to another State and provided that they have their residence in the former, and return or agree or wish to return there, or to another State, the cross-border issue raised by this move is governed by Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. However, when the it is the victims who move to a State other than that which adopted the measure designed to protect them, there is no instrument for the recognition or application of the measure taken by the State of origin, which would resolve the cross-border problem that such a move raises.

There is at present no legal basis that allows a State to recognise the protection granted to an individual by another State and thus adopt the necessary prevention and protection measures in its territory.

2.6. Main problems to be addressed

Given the situation that exists, the specific problems that need to be addressed are as follows:

1 Insufficient protection for victims who move to another Member State

a. There is no legal instrument that allows a Member State's judicial authorities to recognise protection measures granted in another State.

b. The victims can benefit from a protection measure in the State to which they move only if they are again the victims of an offence in the latter State.

c. There is no legal basis on which a judicial authority of the State to which the victims move can adopt provisional or precautionary measures to prevent a further offence being committed against the victim in its territory.

2. No reaction in the State which adopted the original protection measure

a. The State which adopted the measure is unaware of the acts committed by the offender outside its territory when, clearly, knowledge of that conduct could result in a change in the measure concerned and, in short, lead to better protection for the victim.

b. There is no legal basis enabling the authorities of the executing State to consider a violation of the measure committed by the offender in another Member State as if it had been committed in its territory.

2.7. Evolution of the problem

Despite the efforts made by the various EU States and institutions, the magnitude of the crime problem and, in particular, of gender violence remains substantial, while the mobility of EU citizens is constantly increasing. Specific, effective measures are therefore required to protect victims, wherever they may be in the Union, and will only help to prevent crime and in particular benefit victims for whose protection a measure was adopted in another Member State.

2.8. Legal basis, subsidiarity, proportionality and fundamental rights

Article 67(1) of the Treaty on the Functioning of the European Union (TFEU) states that "the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States" and Article 67(3) states that "the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws".

Article 82(1)(d) of the Treaty on the Functioning of the European Union states that "the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to: (a) (…) (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions".

Point 3.1.1 of the Stockholm Programme to strengthen freedom, security and justice in the EU, which was approved by the European Council meeting on 10 and 11 December 2009, states that "victims of crime or witnesses who are at risk can be offered special protection measures which should be effective within the Union.".

In accordance with Article 5(1) and (3) of the Treaty on the Functioning of the European Union and of Protocol 2 annexed thereto, on the Application of the Principles of Subsidiarity and Proportionality, and in line with the principle of subsidiarity, the European Union may act in this area only to the extent that the objective sought cannot be adequately attained by the Member States and can only be achieved by the Union. Given the cross-border dimension of the problem to be resolved, action by the EU is needed in order to provide an effective solution.

In relation to the principle of proportionality and in accordance with Article 5(1) and (4) of the TFEU and of Protocol 2 annexed thereto, on the Application of the Principles of Subsidiarity and Proportionality, EU action in this area may not go beyond what is strictly necessary to attain its objective.

All action by the European Union must respect fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the right to human dignity, life and physical and mental integrity, as well as the right to an effective remedy. When they apply EU legislation the Member States must act in compliance with these rights and principles, so that they cannot interfere with the fundamental legal principles enshrined in Article 6 of the Treaty on European Union.

3. OBJECTIVES

3.1. General, specific and operational objectives

Article 67(3) of the Treaty on the Functioning of the European Union states that "the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws".

In line with that precept, **the general political objective** in this area is to **ensure a high level of security through the prevention and combating of crime**, focusing specifically on the victim in this case. This objective should be achieved by the establishment of a coherent instrument that will improve the situation of victims in cross-border cases in which they move to a Member State other than that in which the offence was committed.

Taking account of the problem described in section 2 of this impact assessment, this general objective could be attained by action to address the following specific and operational aspects.

A. <u>Specific objective: prevent a further offence being committed against the victim</u>

Operational objectives:

A.1. **Set up a mechanism enabling measures to be adopted to protect the victim in a State other** than that in which the offence was committed. This objective is especially important in that it seeks to facilitate such a measure, instead of allowing the State to which the victim moves to adopt it only if a further offence is committed in that State.

A.2. **Make it possible to adopt the provisional measures needed to ensure victim protection,** especially in cases where there is evidence that the offender has started to harass the victim.

A.3. Make it possible for the State which originally adopted the protection measure to **consider acts committed by the offender in another State** as if they had been committed in its own territory, either for the purposes of amending that measure or for instituting proceedings against the offender.

A.4. **Improve** cooperation **between authorities,** in particular with the aim of ensuring smooth communication between them when a victim in danger moves away, and especially when such danger begins to manifest itself in specific acts by the offender or alleged offender.

B. Specific objective: make the victim's right to protection a reality

B.1. **Make it possible for victims to obtain protection** without having to institute new proceedings in another State for that purpose.

B.2. **Extend the basic protection which victims enjoyed** in their State of origin to the State to which they move, so that they do not need to justify or prove once again the danger to which they are exposed in order to benefit from a protection measure.

B.3. **Prevent discrimination** in relation to people in the State to which the victim moves who have been victims of a similar offence, offering the incoming victim the same options that that State's legislation provides for situations of that kind.

3.2. Consistency of the objectives with other horizontal policies and objectives of the European Union

The objectives set out above are fully consistent with EU policy on protection and observance of the rights of victims of crime, both internal and external. Full and effective application of the aforementioned rights to human dignity, life, physical and mental integrity and to an effective remedy, recognised in Articles 1, 2(1), 3(1) and 47 respectively of the EU Charter of Fundamental Rights, requires the Union to ensure that victims are protected and establish the conditions to guarantee their security, and this is also in line with the Tampere and Hague programmes and the current Stockholm programme.

Such objectives are also consistent with the European Parliament resolutions of 16 September 1997 on a European campaign for zero tolerance of violence against women, and of 2 February 2006 on the current situation in combating violence against women and any future action (2004/2220 (INI)), and with the Commission communication to the Council and the European Parliament establishing for the period 2007-2013 a framework programme on Fundamental Rights and Justice (COM(2005)0122).

4. POLITICAL OPTIONS FOR SOLVING THE PROBLEM

Option A: No new action to be taken in the European Union

The EU would not undertake any new action (legislation, non-legislative instrument, financial support) to tackle the problem at issue. The current situation would continue and there would be no instrument to extend protection measures adopted in one Member State to another State.

Each Member State would be free to decide whether or not to take action in this area and, in consequence, whether or not to recognise protection measures adopted by another Member State in order to safeguard incoming victims.

Option B: Adopt non-legislative measures

The EU would not undertake any legislative action but instead non-legislative measures would be adopted in the form, for example, of Council conclusions urging Member States to:

- improve the exchange of information between judicial authorities concerning data they hold on the individuals, victim and offender, concerned in each specific case
- encourage a more general exchange of experience and good practice followed in the Member States in criminal matters, in particular to prevent renewed victimisation
- encourage exchange of information and experience on non-criminal measures
- establish mechanisms for the collection of data or focal points for observing and evaluating the various types of criminal behaviour, and in particular violence against women.

Such non-legislative measures would seek, fundamentally through exchange of information, experience and good practice, to explore new ways of taking more effective action in the threefold area of persecution, protection and prevention in relation to victims, and especially on repeat offences.

Option C: New legislation on victim protection in the event of cross-border movement amending Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

The third option would involve a legislative act, in the form of a directive, designed to extend victim protection to the State to which victims move, amending the two aforementioned Framework Decisions and inserting in each the legal provisions required to achieve the objective sought. This would mean dealing with the problem in two separate texts even though the same solution would be offered to victims in both cases, since there is no reason to set up a different protection mechanism in each case. If this mechanism were different, the legislative result would be more complex as there would then be two different forms or methods of extending victim protection in two different legal instruments.

Council Framework Decision 2008/947/JHA of 27 November 2008 has to be transposed into national law by 6 December 2011 in accordance with Article 25 thereof, whilst Council Framework Decision 2009/829/JHA has to be transposed by 1 December 2012 in accordance with its Article 27. Both legislative instruments would thus have to be amended before their transposition period expires.

This option could offer a legal arrangement with the following objectives:

1. prevention, in the Member State to which victims move, of a further offence against them by the offender or alleged offender, enabling the judicial authorities of the executing State to act in accordance with the situation that occurred in the issuing State and to grant the measures needed to deal with it, offering them an appropriate legal basis without the need to wait for a further offence to be committed in their territory;

   providing victims, in the Member State to which they move, with a guaranteed level of protection similar to that enjoyed in the Member State which granted the measure, preventing their security from being reduced as a result of the move, given their freedom of movement;

3. avoiding discrimination against victims who move to the executing State by comparison with victims benefiting from protection measures enacted by that State, so that they enjoy protection similar to that granted by the executing State to locals in the same situation.

Pursuing this option would certainly not be incompatible with the adoption by the EU of the mechanisms set out in option B above, which it is to be hoped will be put in place, and would be the most appropriate approach for this purpose, in a future instrument, preferably legislative in nature, offering an all-encompassing framework covering the status of victims, their procedural rights, their right to compensation, pre- and post-trial assistance, improved statistics on the matter and exchange of information, as well as cooperation between authorities of the various Member States. This option, on the other hand, is intended to resolve a specific problem, which arises when a victim enjoying a protection measure moves to another Member State, and offers a solution and a specific instrument, as in the case where the offender or alleged offender moves to a Member State other than the one which adopted the measure against him; this is the situation covered by the two aforementioned Framework Decisions.

Option D: New legislation comprising a single text covering all scenarios relating to the extension of victim protection

This option would involve a single legislative instrument to deal with the problem at issue rather than two separate ones as in option C.

The objective pursued would be exactly the same as in option C and, as with that option, would be fully compatible with any future Community instruments adopted particularly after the entry into force of the Lisbon Treaty, supplementing EU action in this area.

The presentation of a text specifically addressing the problem at issue would have the following consequences:

- ✓ It would enable the specific problem of a victim's move to another Member State to be targeted directly, without the need to fit into other instruments intended for a quite different purpose;

- ✓ it would facilitate discussion on the system to be pursued, its starting point being focused exclusively on the victim;

- ✓ it would make it possible to arrive at a dynamic, quick and effective system for the protection of victims in a Member State other than that which adopted the measure providing protection;

- ✓ it would be clearer and easier to apply for legal practitioners, who would know what instrument to apply in specific instances in which the victim moved to another Member State.

5. IMPACT ANALYSIS

✓ *Social impact*

Any measure that is ineffective in combating crime is likely to have a series of negative effects, including damage to values which are important to society, undermining confidence in States' public institutions and authorities, trauma for victims, and intensify the sense of fear or insecurity. The commission of a further offence against the victims, but also their continued harassment, causes deep and lasting physical, psychological and social damage to them and those around them. In the following analysis we refer to this impact as the "negative social impact of the renewed victimisation and harassment of victims".

On the other hand, measures with proven effectiveness in combating crime definitely have a positive social impact since security and confidence in institutions and authorities and in interpersonal relations is thereby increased, and there is less recourse to self-protection. In the case of victims, it means a more stable social and family life, and in particular the chance to build a more secure life. In the following analysis we refer to this impact as the "positive social impact of combating the renewed victimisation and harassment of victims".

✓ *Economic impact*

In the same way, measures which are ineffective in combating crime generally have a negative economic impact. In the long term this reduces the effectiveness of State action owing to a lack of confidence in public authorities, ineffective use of public resources as citizens resort to methods of self-protection and a decline in productivity linked to the trauma that victims suffer. These negative effects are intensified in the case of gender violence owing to an increase in the economic cost of treating victims' psychological problems, the anxiety which they suffer and the costs involved in criminal proceedings. In the following analysis we refer to this impact as the "negative economic impact of the renewed victimisation and harassment of victims".

Conversely, when measures to combat crime are effective this generally has a positive economic impact. In the short term there may be a moderate increase in administrative costs due to higher demands on the criminal justice system, as a more effective system for fighting crime catches and prosecutes more offenders, and involves a larger economic effort to finance this increase in expenditure. However, in the medium and long term there will be a substantial reduction in costs as a more effective crime fighting and prevention system is a deterrent to offenders, resulting in fewer offences, while bearing in mind that a minimum level of crime is undoubtedly unavoidable. In any event, in the particular case of gender violence any possible short-term increase in administrative costs will be amply offset by the economic benefits of avoiding the expenditure that such offences entail. In the following analysis we refer to this impact as the "positive economic impact of combating the renewed victimisation and harassment of victims".

An evaluation should also be made of the impact which the different options would have on fundamental rights, as indicated in the heading of this section, as well as their effects on the rules which the Member States will have to develop, in accordance with Article 5 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality.

Table of symbols: "-" is used for costs and "+" for benefits

Low intensity	- / +
Medium intensity	-- / ++
High intensity	--- / +++
No impact	0

5.1. Policy option A: No new action in the European Union

As pointed out earlier, this option would maintain the status quo, without any means of extending protection measures imposed in one Member State to another.

In a common area of freedom, security and justice, it would be strange if victims subject to a measure designed to protect them in one country were to forfeit the safeguard provided by that measure, in exercising their freedom to move within the EU. While the victim would be able to cross the border between two Member States, the victim protection measure would not.

In view of the number of people enjoying the safeguard of such a measure each year, on the basis of the statistics used in making the assessment, this would mean that, on a low estimate, over a thousand victims a year would lose the security provided by the measure, by moving to a different Member State. Leaving the present loophole in place would perpetuate that state of affairs for years to come.

5.1.1. Economic impact:

Inaction under this option would leave the present situation unchanged, with no means of prevention available. In the medium to long term, this would entail a negative economic impact of renewed victimisation and harassment of victims, involving a financial cost in itself, without any particular benefit.

5.1.2. Social impact: –

Continuation of the present situation, in which an offender can go on harassing the victim in another country, despite a measure imposed on the offender for the victim's protection in one country, would entail a negative social impact of renewed victimisation and harassment of victims, involving a social cost in itself, without any particular benefit.

5.1.3. Impact on fundamental rights: –

Clearly, EU inaction here would mean that crime victims would see neither any increase in their protection nor any improvement in their rights. This could be regarded as having a negative impact on fundamental rights.

5.1.4. Impact on national legislation:

This option would, of course, have no impact on Member States' legislation.

5.2. Policy option B: Non-legislative action

Under this option, non-legislative arrangements would serve basically to share information and good practice between Member States' authorities. The aim of this would be to improve exchange of information between judicial authorities and general sharing of experience and good practice in both criminal and civil-law matters and to establish arrangements for compiling data for monitoring and assessment of the various types of offence, particularly gender violence.

This option would improve the situation somewhat in encouraging sharing of information and good practice as well as, hopefully, in having statistics compiled, but would bring only modest benefits where there is a need to enact new legislation and more specifically to provide the authorities in the Member State to which the victim moves with a legal basis for action, chiefly in order to prevent any further offence against the victim.

5.2.1. Economic impact:

– *Financial cost: –*
– *Economic benefit: +*

Action to improve the sharing of information and good practice and the compilation of statistics making for awareness of the scale of the problem, particularly as regards gender violence, and hence for adoption of measures as a result might bring moderate improvements in the situation in the medium to long term. The financial cost of introducing such measures can be expected to be moderate, the main expense being the work and infrastructure required for really reliable, efficient data compilation.

5.2.2. Social impact:

– *Social costs: 0*
– *Social benefits: +*

There might be a slightly more positive social impact of combating renewed victimisation and harassment of victims, if it proved possible, by non-legislative and hence non-compulsory means, to improve coordination between authorities in the cross-border cases concerned.

No significant social costs can be seen.

5.2.3. Impact on fundamental rights:

- *Risk of encroaching upon fundamental rights: 0*
- *Improvement in relation to fundamental rights: 0*

This option would not involve any policy jeopardising fundamental rights, as it aims merely to improve arrangements for sharing information and good practice.

5.2.4. Impact on national legislation: 0

Being non-legislative, this option would have no implications for Member States' national legislation.

5.2.5. Relationship between possible non-legislative action and objectives pursued

Action	***Specific objective***	***Cost***
Sharing information	*A.4*	*Not quantifiable*
Sharing good practice in criminal matters	*A.4*	*Not quantifiable*
Sharing information and experience in non-criminal matters	*A.4*	*Not quantifiable*
Arrangements to improve data compilation		*Not quantifiable*

5.3. Policy option C: New legislation on victim protection in the event of cross-border movement by amending Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

This policy option would provide the EU with legislation, in the form of a directive, to extend protection enjoyed by a victim in one Member State to another, to which the victim moves, by amending the two Framework Decisions, whose transposition period has not yet expired, so as to incorporate the relevant legal mechanism.

The aim would be to cover as broad a scope as possible, so as to extend the effects to the greatest possible number of victims and make allowance for the diversity of Member States' national law in this area, as pointed out in section 1.2.2 above, thus including both criminal-law measures and civil-law measures where any breach would involve criminal liability or might otherwise result in offenders being deprived of their liberty.

The cases in which the mechanism would apply should also be confined to those where it is really needed, so as to reduce costs and administrative work for the judicial system. This would preclude automatic forwarding of the various protection measures imposed in each Member State.

Responsibility for the measure originally imposed would remain with the country which ordered it or with any country to which responsibility had been transferred because an offender was still living there.

The forwarding procedure should be based on direct communication between authorities, both to make the system smoother and more effective and to cut costs.

The mechanism to be introduced should not involve any harmonisation of protection measures applicable in individual Member States, which should rather grant such measures as are available under their own law in a similar case. The idea would thus actually be to provide the country where the victim is living with a legal basis for action, designed basically to prevent offences, without having to wait for an offender to commit any further crime against the victim; such action by the executing State's authorities would be governed by its own national legislation, thereby obviating the need for any harmonisation which might here be held to run counter to the principles of proportionality and subsidiarity in particular. This would enable the original victim protection measure to be recognised in any Member State.

Special consideration would be given, under this option, to imposing any urgent interim measures required to prevent an offender from harassing or committing further offences against the victim.

Information on the victim's behaviour should be exchanged between the authorities concerned, too, so that the measures in question could be applied and, if need be, amended more efficiently.

Any decisions to be taken for the victim's protection should also be reached as swiftly as possible.

5.3.1. Economic impact:

– *Financial cost: –*
– *Economic benefit: ++*

The significant improvement brought about in victim protection and indirectly in crime prevention through the deterrent effect of such an EU-wide instrument would entail a substantial positive economic impact of combating renewed victimisation and harassment of victims.

Generally speaking, such a mechanism would result in a more effective criminal justice system. This would, initially at least, bring more judicial and hence police action, more arrests and more ensuing criminal proceedings. At that initial implementation stage, it would impose an increased financial burden on Member States, although the costs involved are hard to quantify. On the other hand, the economic benefits of greater security and less danger for victims in particular and society in general are plain to see. As it is in any case better and, in the long term, cheaper to live in a secure society than in an insecure one, the economic benefits will presumably far exceed the costs.

5.3.2. Social impact:

– *Social costs: 0*
– *Social benefits: ++*

Option C would entail a substantial positive social impact of combating renewed victimisation and harassment of victims, both in prevention and in improved efficiency of criminal justice systems. Greater protection of victims, or rather Europe-wide coverage for it, by measures designed actually

to prevent reoffending, would reduce their feelings of fear and helplessness and make them less reluctant to report harassment or offences inflicted on them, which would result in a more effective crime prevention and prosecution system. A more effective response by legal systems would indirectly act as a deterrent to offenders and prevent further abuses, thereby reducing cases of renewed victimisation.

On the other hand, this option has no social costs.

5.3.3. Impact on fundamental rights:

- *Risk of encroaching upon fundamental rights: 0*
- *Improvement in relation to fundamental rights: ++*

The idea under this option would be to establish a mechanism not impinging on offenders' rights, but rather providing the necessary safeguards for observance of their rights, particularly as regards notification of any measures imposed in the country where the victim is living, without thereby detracting from the victim's security.

The mechanism's aim is merely that the protection provided for the victim by any obligation or prohibition imposed on an offender should carry over its preventive, deterrent effects into the country where the victim is living, thus extending its territorial coverage. If offenders are not allowed to breach any restrictions imposed on them, for victims' protection, in one country, nor should they be allowed to do so in another country. As offenders clearly do not have any right to continue harassing or pestering their victims or to commit further offences against them, it makes no sense, in a common area of freedom, security and justice, for such basically preventive, protective measures to operate in one country but not in another, where the victim is actually living.

The improvement in the rights of victims moving to a different country from that in which a measure was originally imposed, under such an option, would be so obvious as to require no further comment.

5.3.4. Impact on national legislation: –

This option would not involve amending national legislation so as to introduce any new measures alien to a country's system, nor would it impose any kind of harmonisation. The measures to be applied by a country would be those available under its own law. The only effect on its legislation would be that of transposing the Directive entailed by option C, which would not take any great effort, as it would just involve applying a quite straightforward system.

Action	***Specific objective***	***Cost***
Providing a legal basis for measures in the country where the victim is living	*A.1 and A.2*	*No direct cost*
Providing the victim with a safeguard similar to the original measure	*A.1, A.2, B.1 and B.2*	*No direct cost*
Taking action in accordance with the national legislation of the country where the victim is living	*B.3*	*No direct cost*
Leaving responsibility for the measure with the country which imposed it	*A.3 and A.4*	*No direct cost*

5.4. Option D: New legislation comprising a single text covering all scenarios relating to the extension of victim protection

The effects of option D would be the same as for option C above, since both would establish the same mechanism; the difference between them would lie in the legislative procedure by which to do so, here a new instrument specifically dealing with the cross-border cases in question, instead of having to amend two Framework Decisions, as for option C.

The difference between options C and D thus lies not in their economic or social impact or their impact on human rights or national legislation, but in opting for a more suitable legal instrument here, in view of existing legislation.

6. COMPARISON OF OPTIONS

6.1. Cost-benefit summary table

Costs (–)/benefits (+)

Policy option	Economic impact	Social impact	Impact on fundamental rights	Impact on national legislation
A	–	–	–	0
B	–/+	0/+	0/0	0
C	–/++	0/++	0/0	–
D	–/++	0/++	0/0	–

6.2. Advantages and disadvantages of the various policy options

Policy option	Advantages	Disadvantages
A	None identifiable	Present situation left unchanged
B	Would improve sharing of information and good practice	Weakness of present legal framework left unchanged Victim would not enjoy any real protection in another country Financial cost of information-sharing system, including translation, and of data compilation
C	Binding instrument Improved prevention and protection	Financial cost of translation

6.3. Comparison of options

6.3.1. General comparison of all options

In the light of all the above, option A (the status quo) is not an advisable course of action. Option B seems insufficient to bring any real improvement in effectiveness of victim protection in cross-border cases. Options C and D would leave victims in a better position than at present. They

would have measures applied to prevent commission of any further offence and would therefore improve victim protection in such cross-border cases. The potential financial costs, chiefly for translation, would be virtually the same as for option B, while the economic and especially the social benefits would far exceed such minor costs.

6.3.2. Comparison of options C and D

As pointed out, the distinction between the two options is one of legislative method, since they both involve the same mechanism. The difference, then, is that option D would enact a new legal text specifically addressing the situation of victims, whereas the protection mechanism under option C would be inserted, by revising them accordingly, into Council Framework Decisions 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

The basic premise of those Framework Decisions is quite different from the case arising in this initiative, where it is the victim who leaves the Member State in which the sentence or measure was imposed or the Member State in which the offender is resident or to which the offender voluntarily moves. Under those Framework Decisions, it is for the executing State, i.e. the country in which the offender is living or to which the offender wants to move, to supervise and enforce probation orders and alternative penalties or to oversee supervision measures.

The EU instruments for supervision of such provisional measures or penalties have therefore been drawn up from the point of view of the person accused or convicted. The effectiveness of such measures in a country other than the one in which they were imposed thus hinges on a request from, or at least the consent of, the actual or alleged offender and above all on a change of residence by the actual or alleged offender and not by the victim.

That is the case both for the Council Framework Decision on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and for the Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, neither of which is applicable where it is the victim who has a change of residence.

The typical case arising under those Framework Decisions thus involves an individual who has committed an offence or is charged or accused in Member State A, but who is a national of Member State B. The aim of the Framework Decisions is to allow the person convicted or charged to serve a substitute or alternative sentence or a period of probation or supervision in Member State B, that person's country of residence.

The typical case arising under the proposal, on the other hand, involves a victim enjoying a protection measure in Member State A, where the actual or alleged offender is still living (regardless of whether either the offender or the victim is a national of that country), with the result that the Framework Decisions are not applicable when the victim moves to Member State B. In State B, the victim would not enjoy any protection; if the offender follows the victim, the preventive or protective effect of the measure imposed in State A would be lost in State B.

That represents a legal loophole in European legislation, which makes provision for transfer of a sentence or measure in relation to the offender only and not a measure to protect the victim.

This results in the paradox that an offender who is, say, not allowed to approach the victim in State A, which has imposed a requirement to keep away, can do so in State B, where the victim is living or staying. The situation is all the more paradoxical in that, if in the same case it were the offender who moved to State B, the offender would not there be allowed to approach the victim. In other words, a substitute or alternative sentence or a supervision measure will or may accompany an offender who has a change of residence (albeit not on occasional travel), but cannot accompany a victim.

Victim protection could arguably be extended to any country to which the victim moves, by amending the Framework Decisions on suspended sentences and supervision orders, but:

- ✓ Framework Decisions of that kind relate to offences which do not necessarily involve imposing any such protective measures (fraud, money laundering, environmental crime etc.) or which are in fact precisely what is to be prevented (murder, serious injury, rape, trafficking in human beings, sexual exploitation of minors etc.). In short, if protection is to be really effective and useful, it should not be based on a list of offences (or at any rate not on the list in the mutual assistance instruments previously adopted) but on the protective measure itself, on account of the need for the victim to be protected outside the country in which the courts imposed it;

- ✓ such Framework Decisions are available only where it is the offender who moves to the executing State, not where it is the victim who moves, and make appropriate arrangements for the former case but not for the latter. For instance, they introduce a means of transferring responsibility for a measure imposed on the offender, which does not, however, form part of this proposal. That would give rise to an artificial combination, within each of those instruments, of its current provisions with the mechanism under the proposal;

- ✓ revision of the two Framework Decisions would establish a twofold victim protection system, part of it in each of them, thus splitting the mechanism for victims between two separate pieces of legislation, which would run counter to the specific treatment called for by and the importance to be attached to extension of victim protection.

In short, given the different approach followed by that existing legislation and the need to resolve the problems faced by victims moving to another Member State, it would be easier, clearer and more effective for the purpose to have a separate instrument governing extension of judicial protection decisions and their effects in another Member State.

7. MONITORING AND ASSESSMENT

The following could serve as key indicators of progress in achieving the proposal's objectives:

Objective	Indicator
General aim	
Ensuring a high level of security, by preventing and combating crime	Number of crime victims, particularly for gender violence and domestic violence
A.1. Measures to protect victims in another Member State	Number of European protection orders (EPOs) issued
A.2. Interim measures required for victim protection	Number of such decisions under an EPO
A.3. Coverage of offences committed by an offender in another Member State	Number of European arrest warrants issued under an EPO Number of original measures amended under an EPO
A.4. Improving cooperation between authorities	Number of EPO-based messages between judicial authorities
B.1. Enabling victims to obtain protection without further proceedings in another Member State	Number of refusals to recognise an EPO
B.2. Extending the basis for protection available to victims in their home country	Number of refusals to recognise an EPO
B.3. Preventing discrimination, by providing victims with the same arrangements as are available under the host country's legislation in similar situations	Number of refusals to recognise an EPO Number of complaints made on this account

FINANCIAL NOTE

It is envisaged that the application of the proposed Directive will not involve additional major operating costs for the budget of the European Union or for those of the Member States, whether those of national governments or those of regional or local authorities.

The proposal does not contemplate any specific machinery nor does it impose any measure on the Member States in addition to those with which they already work. The judicial authorities of the Member States have the freedom to adopt any measure they consider appropriate, in accordance with their legislation, the only requirement being that it should be what they would impose in a similar case if it had occurred within their territory. This proposal does not, therefore, involve any additional expenditure for the Member States. On the other hand, the issue of an EPO is considered only on application by the victim, preferably before that person moves to another Member State, when the dangerous situation in which the victim finds him- or herself can continue to obtain in the executing State. Thus the number of cases in which an EPO is issued and transmitted is limited; transmission is not, therefore, automatic or addressed to the entire EU, but restricted to those cases in which it is truly necessary, and thus both in cases – the majority – in which the victim continues to reside in the State in which the measure is adopted, and in cases in which the issue of an EPO is not required, expenditure is not incurred.

As the number of cases in which EPOs are issued is thus limited, costs will be restricted to those of translation into the language of the executing State; for the rest, the costs of administration by means of the mechanism described in the proposal submitted will be minimised.

This proposal has been drafted with care to ensure that the introduction throughout the EU of a mechanism to protect victims will involve only the minimum, essential costs, such as those involved in translation.

Nor does this initiative involve any increase in costs for economic operators or for the public, as it does not provide for any practical action that they would have to undertake or carry out.

On the other hand, and as outlined in the detailed statement, with regard to the financial consequences of the options C and D described in that statement, it can be affirmed in general terms that employing a mechanism like that in this initiative would result in a more effective criminal system. It would involve at least, to start with, more activity on the part of the judicial and therefore of the police systems, as a result of which in the initial stages the financial burden on the Member States would increase, a consequence just of the improvement of the efficiency of the criminal system, but it would certainly be difficult to calculate the actual amount of the costs that that improvement would involve.

Accordingly, the economic benefits resulting from an improved level of security, greater protection and, consequently, fewer dangers for victims are obvious; such benefits would be worth far more than the initial costs which, it must be insisted, would be caused only by the simple improvement in the efficiency of the system, if those costs actually produce the deterrent effect that the existence of a protection order at European level will involve for offenders.

On the other hand, it is obvious that victims will move to other States for greatly varying reasons, regardless of whether EPOs are issued or not. That is to say that the EPO will not cause an increase in the number of members of the public that move about within the EU but will only continue to provide the protection that existed before when such movements occur, and such movements will occur in any case.

In the same way, the danger that an offender will cross a frontier in order to continue his attacks on his victim will always be present; to be precise, it is hoped that the EPO will produce a deterrent effect that will have consequences not only in those cases with a trans-frontier component, at which is it specifically aimed, but also within each Member State, and bring about further progress in the fight against crime, and in particular against gender violence and other sorts of crime, such as trafficking in human beings and the sexual exploitation of minors.

The precise point here is that when such movements occur and the threat continues in the State to which a victim has gone, the authorities of that State employ those means to deal with that threat, which is not new, and must in any case be dealt with; thus they are able more satisfactorily to prevent a new crime being committed and they can provide greater security for the victim. It is therefore hoped that the result will be a reduction in costs because of the prevention of a new crime, the essential purpose of the EPO, because that is more economical than prosecution, punishment and reparation.

The proposal submitted will not involve any additional costs for the budget of the European Union's institutions.

RAT DER EUROPÄISCHEN UNION

Brüssel, den 6. Januar 2010 (OR. en)

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COPEN 247

GESETZGEBUNGSAKTE UND ANDERE RECHTSINSTRUMENTE: KORRIGENDUM

Betr.: INITIATIVE FÜR EINE RICHTLINIE DES EUROPÄISCHEN PARLAMENTS UND DES RATES über die europäische Schutzanordnung

Seite 1, zweiter Bezugsvermerk:

Statt:

"auf Initiative des Königreichs Belgien, der Republik Bulgarien, des Königreichs Spanien, der Republik Estland, …"

muss es heißen:

"auf Initiative des Königreichs Belgien, der Republik Bulgarien, der Republik Estland, des Königreichs Spanien, …"

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