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to : CATS

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Subject: Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Spain, the Republic of Estonia, the French Republic, the Republic of Hungary, the Italian Republic, the Republic of Poland, the Republic of Portugal, 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
- Follow-up to the meeting of the COPEN Working Party on 25 July 2011

I. Introduction.

On 25 July 2011 the Working Party on Judicial cooperation in criminal matters examined the text of the draft Directive on the European protection order as set out in doc. 12863/11. The meeting followed the informal JHA Council in Sopot (19 July 2011), where a large majority of delegations called to give a priority to a completion of negotiations of this Directive. The main objective of the meeting of the Working Party was to verify the adaptations of the text with respect to the amended provisions on the scope of application of the Directive, which were examined by COREPER on 11 May 2011 (see doc. 9667/1/11 COPEN 97 CODEC 737), and have been considered by COREPER as a valid basis for further discussions in the Council.

The Presidency would like to thank delegations for their constructive contributions to the discussion. On the basis of the comments received during the meeting of COPEN, an amended version of the draft Directive has been prepared. This draft is set out in Annex I to this note (changes with respect to the previous version of the instrument are highlighted by ***bold italics underlined***).

The Presidency would now like to turn to CATS in order to confirm the proposed approach, as well as to resolve the last outstanding issues in the text. The text would then be submitted to COREPER with a view to a rapid finalisation of work on this Directive.

II. Scope of application of the Directive

At the meeting of COREPER on 11 May 2011 (see doc. 9667/1/11 COPEN 97 CODEC 737) delegations have examined a possible compromise proposal for the text of the Articles of the Directive dealing with the scope of application of the instrument, in the light of the presentation by the Commission of a proposal for a Regulation concerning the mutual recognition of protection measures taken in civil matters ¹. That proposal was considered by COREPER as a valid basis for further discussions in the Council.

At the informal meeting of the Justice Ministers in Sopot (19 July 2011), a large majority of delegations requested that the scope of application of the Directive on the European protection order be clearly defined.

Following the meeting of COPEN on 25 July, the Presidency could conclude that a majority of delegations supported the wording of the instrument as set out in the Annex to this note, in particular concerning Articles 1, 2 (2) and Recitals (7) and (9), which have been amended to illustrate the content of the respective Articles in the operative part of the text.

¹ See doc. COM (2011)276 of 18 May 2011.

In the opinion of the Presidency, the resulting text represents a valid compromise between the outcome of the negotiations with the European Parliament, which have led to the adoption, on 14 December 2010, of its first reading position, and the concerns of those Member States and of the Commission, which requested a more strict delimitation of the scope of application of this Directive to criminal matters. The resulting text, while clarifying this aspect, does not alter the nature of the instrument, and could well serve as a valid basis for further discussions with the European Parliament, with a view to reaching a pre-negotiated first reading position of the Council ("early second reading") and thus a rapid conclusion of the legislative procedure.

At the same time, the Presidency has taken note of a concern of the delegations expressed in the light of negotiations on the Commission proposal for a Regulation on civil law protection measures that the combination of the two instruments (the Directive and the Regulation) should cover the broadest possible number of protection measures for victims issued in the Member States, given the various national regimes in this field.

This aim is coherent with the commitment taken by Council in its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (see Measure "C")².

In order to address the concerns of delegations on this matter, while keeping the pace of the procedure for the approval of the Directive, the Presidency proposes that at the time of adoption of the Directive the Council approve a declaration concerning the necessity to coordinate the scope of the criminal law and the civil law instruments. A draft of such declaration is set out in Annex II to this note.

CATS is invited to endorse the text of the Directive for what concerns the scope of application, as well as to endorse the text of the declaration to be adopted at the same time as the Directive, as set out in the Annexes to this note.

² OJ 28.6.2011, C 187.

III. Technical issues.

1. Relation with other instruments on mutual recognition of decisions in criminal matters.

During the discussions at the meeting of COPEN on 25 July, some delegations have drawn the attention to the necessity to ensure proper coordination between the mechanism devised by the Directive on the European protection order and other instruments, in particular 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.

In order to address these concerns, the Presidency has introduced certain changes in Article 10 of the Directive, in particular for what concerns decisions taken in accordance with Framework Decision 2008/947/JHA. Specifically, a direct link has been established between the content of the European protection order and decisions taken by the executing State in accordance with Article 14 of said Framework Decision. The scope of the amendments has been limited to the effects of decisions under Framework Decision 2008/947/JHA (probation), given that subsequent decisions under Framework Decision 2009/829/JHA (supervision), in principle, fall within the competence of the issuing state .

2. Other issues.

Other outstanding issues and concerns of delegations are set out in the footnotes to the draft text of the Directive.

Delegations are invited to endorse the text proposed by the Presidency in Annex to the present note.

Draft

Directive of the European Parliament and of the Council on the European Protection Order

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(a) and (d) thereof,

Having regard to 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,

Acting in accordance with the ordinary legislative procedure ³,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) Article 82(1) of the Treaty on the Functioning of the European Union (TFEU) provides that judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions.

³ Position of the European Parliament of ... (not yet published in the Official Journal) and Council Decision of ... (not yet published in the Official Journal).

- (3) According to the Stockholm programme, adopted by the European Council at its meeting on 10 and 11 December 2009, mutual recognition could extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative. It also calls on the Commission and the Member States to examine how to improve legislation and practical support measures for the protection of victims. The programme also points out that victims of crime can be offered special protection measures which should be effective within the Union. This Directive will form part of a coherent and comprehensive set of measures on victims' rights.
- (4) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women calls on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures and calls on the Union to guarantee the right to assistance and support for all victims of violence. The resolution of the European Parliament of 10 February 2010 on equality between women and men in the European Union – 2009 endorses the proposal to introduce the European protection order for victims.

(4a) In its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, the Council stated that action should be taken at the level of the European Union in order to strengthen the rights and protection of victims of crime, calling on the Commission to present appropriate proposals to that end. In this framework, a mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures for victims of crime. According to the Resolution, this Directive, which concerns the mutual recognition of protection measures taken in criminal matters, should be complemented by an appropriate mechanism concerning measures taken in civil matters.

- (5) In a common area of justice without internal borders, it is necessary to ensure that the protection provided to a natural person in one Member State is maintained and continued in any other Member State to which the person moves or has moved. It should also be ensured that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union (TEU) and Article 21 of the TFEU, does not result in a loss of their protection.
- (6) In order to attain these objectives, this Directive should set out rules whereby the protection stemming from certain protection measures adopted according to the law of one Member State ("the issuing State") can be extended to another Member State in which the protected person decides to reside or stay ("the executing State").
- (7) This Directive considers the different legal traditions of the Member States as well as the fact that effective protection can be provided by means of protection orders taken by an authority other than a criminal court. This Directive does not establish obligations to modify national systems for adopting protection measures. This Directive does not establish obligations to modify national systems for issuing protection measures nor does it establish obligations to introduce or amend a criminal law regime for executing a European protection order.

- (8) This Directive applies to protection measures which aim at protecting a person against a criminal act of another person which may, in any way, endanger his life, physical, psychological and sexual integrity, e.g. by preventing any form of harassment, as well as his dignity or personal liberty, e.g. by preventing abductions, stalking and other forms of indirect coercion, and aiming at avoiding new acts of crime or at reducing the consequences of previous acts of crime. These personal rights of the protected person correspond to fundamental values recognised and upheld in all Member States. It is important to underline that this Directive applies to protection measures which aim at protecting all victims and not only the victims of gender violence, taking into account the specificities of each type of crime concerned ⁴.
- (9) This Directive applies to protection measures taken in criminal matters, **and thus does not cover protection measures taken in civil matters**. For a protection measure to be executable in accordance with this Directive, it is not necessary that a criminal offence has been established by a final decision. The nature of the authority issuing a protection measure, be it criminal, administrative **or civil** does not matter either. **This directive does not oblige Member States to amend their national law to the effect that they must be able to issue protection measures in the context of criminal proceedings.**
- (10) This Directive is intended to apply to protection measures issued in favour of victims, or possible victims, of crimes; it should not apply to measures issued with a view to witness protection.
- (10a) If a protection measure, as defined in this Directive, is issued for the protection of a relative of the main protected person, an EPO may also be requested by and issued with regard to this relative, subject to the conditions laid out in this Directive.

⁴ DE suggested to add the following words to this Recital: "_However, a Member State is not obliged to issue a European protection order on the basis of a criminal measure which does not serve specifically the protection of a person, but primarily other aims, for example the social rehabilitation of the offender."

- (10b) Any request for the issuing of an EPO should be treated with adequate celerity taking into consideration the specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.
- (10c) Where information is to be provided under this Directive to the person causing danger or the protected person, this information should also be provided to the guardian or the representative of the person concerned if they exist. Due attention should also be paid to the need for the protected person, the person causing danger or their representative in the proceedings, to receive information, as provided for by this Directive, in a language they understand.
- (10d) In the procedures for the issuing and recognition of a European Protection order, competent authorities should give appropriate consideration to the needs of victims, including particularly vulnerable persons, e.g. minors or persons with disabilities. Due attention should also be paid to the need for the protected person or the person causing danger to receive information, as provided for by this Directive, in a language they understand.

(11) For the application of this Directive, a protection measure may have been imposed following a judgment, as defined by Article 2 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, or following a decision on supervision measures as defined in Article 4 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. If a decision was made in the issuing State on the basis of one of these instruments, the recognition procedure should be followed accordingly in the executing State. This, however, shall not exclude the possibility to transfer a European Protection order to a Member State other than the State executing decisions based on these instruments⁵.

(12) In conformity with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with Article 47, paragraph 2, of the Charter on Fundamental Rights of the European Union, the person causing danger should be provided, either in the procedure leading to the adoption of a protection measure or before issuing a European protection order, with the possibility to be heard and to challenge the protection measure.

(13) In order to prevent a crime or new crime being committed against the victim in the executing State, that State should be given a legal basis for recognising the decision previously adopted in the issuing State in favour of the victim, while also avoiding the need for the victim to start new proceedings or to produce the evidence in the executing State again as if the issuing State had not adopted the decision. The recognition of the European protection order by the executing State implies inter alia that the competent authority of that State, subject to the limitations set out in this Directive, accepts the existence and validity of the protection measure adopted in the issuing State, acknowledges the factual situation described in the European protection order, and agrees that protection should be provided and should be continued to be provided in accordance with its national law.

⁵ DE opposes the insertion of this Recital. Positive scrutiny reservations have been entered by AT, FR, UK. See now the proposal for amendment of Article 10 of the Directive.

- (14) This Directive contains a closed number of obligations or prohibitions which, when imposed in the issuing State and contained in the European protection order, should be recognised and enforced in the executing State, subject to the limitations set out in this Directive. Other types of protection measures may exist at national level, such as, if provided by national law, the obligation for the person causing danger to remain in a specified place. Such measures may be imposed in the issuing State in the framework of the procedure leading to the adoption of one of the protection measures which, according to this Directive, may be the basis for a European Protection Order.
- (14a) Since in the Member States different kind of authorities (civil, criminal or administrative) are competent to issue and enforce protection measures, it seems appropriate to provide a high degree of flexibility in the cooperation mechanism between the Member States under this Directive. Therefore, the competent authority in the executing State does not in all cases have to take the same protection measure as adopted in the issuing State, but it has a degree of discretion to adopt any measure which it finds adequate and appropriate under its national law in a similar case in order to provide continued protection to the protected person in the light of the protection measure adopted in the issuing State and as described in the European protection order.
- (15) The obligations or prohibitions to which this Directive applies include, among others, measures aimed at limiting personal or remote contacts between the protected person and the person causing danger, e.g. by imposing certain modalities of such contacts or imposing restrictions on the contents of communications.
- (16) The competent authority of the executing State should inform the person causing danger, the competent authority of the issuing State and the protected person of any measure taken on the basis of the European protection order. In the notification of the person causing danger due regard should be taken to the interest of the protected person of not having his/her address or other contact details disclosed. Such details should be excluded from the notification, provided that the address or other contact detail is not comprised in the obligation or prohibition imposed as an enforcement measure on the person causing danger.

- (17) When the competent authority in the issuing State has withdrawn the European protection order, the competent authority in the executing State should end the measures which it has adopted in order to enforce the European protection order, it being understood that the competent authority in the executing State may - autonomously, according to its national law - adopt any protection measure under its national law in order to protect the person concerned.
- (18) Given that this Directive deals with situations in which the protected person moves to another Member State, executing its provisions does not imply any transfer to the executing State of powers relating to principal, suspended, alternative, conditional or secondary penalties, or relating to security measures imposed on the person causing danger, if the latter continues to reside in the State that issued the protection measure.
- (19) Where appropriate, it should be possible to use electronic means with a view to putting into practice the measures adopted in application of this Directive, in accordance with national laws and procedures.
- (20) In the framework of cooperation among the authorities involved in ensuring the safeguard of the protected person, the competent authority of the executing State should communicate to the competent authority of the issuing State any breach of the measures adopted in the executing State with a view to executing the European protection order. This communication should enable the competent authority of the issuing State to promptly decide on any appropriate reaction with respect to the protection measure imposed in its State on the person causing danger. Such reaction may comprise, where appropriate, the imposition of a custodial measure in substitution of the non-custodial measure originally adopted, e.g. as alternative to preventive detention or as a consequence of conditional suspension of a penalty. It is understood that such decision, since it does not consist in the imposition *ex novo* of a criminal sanction in relation to a new criminal offence, does not interfere with the possibility that the executing State may, where applicable, impose criminal or non-criminal sanctions in case of breach of the measures adopted in order to execute the European protection order.

- (21) Considering the different legal traditions of the Member States, where no protection measure would be available in the executing State in a case similar to the factual situation described in the European protection order, the competent authority of the executing State should report any breach of the protection measure described in the European protection order of which it is aware to the competent authority of the issuing State.
- (22) In order to achieve the smooth application of this Directive in each particular case, the competent authorities of the issuing and the executing States should exercise their competencies in conformity with the provisions of this Directive, taking into account the principle of *ne bis in idem*.
- (22a) The protected person should not be required to sustain costs for the recognition of the European protection order which are disproportionate with respect to a similar national case. When implementing this Directive, Member States should ensure that, after recognition of the European protection order, the protected person should not be required to initiate further national proceedings to obtain from the executing authority, as a direct consequence of the recognition of the European protection order, the decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person.
- (23) Bearing in mind the principle of mutual recognition on which this Directive is based, Member States should promote to the widest extent possible the direct contact between the competent authorities in the application of this instrument.
- (23a) Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States should consider requesting those responsible for the training of judges, prosecutors, police and judicial staff involved in the procedures aiming at issuing or recognizing a European protection order to provide appropriate training with respect to the objectives of this Directive.

- (23b) In order to facilitate the evaluation of the application of this Directive, Member States should communicate to the European Commission relevant data related to the application of national procedures on the European protection order, at least on the number of European protection orders requested, issued and/or recognized. In this respect, other types of data, such as for example the types of crimes concerned, would also be useful.
- (24) Since the objective of this Directive, namely to protect persons who are in danger, cannot be sufficiently achieved by the Member States acting unilaterally, given the cross-border nature of the situations involved, and could instead, due to the scale and potential effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to in Article 5(3) of the TEU. In accordance with the principle of proportionality, as set out in Article 5(4) of the TEU, this Directive does not go beyond what is necessary to achieve that objective.
- (25) This Directive should contribute to the protection of persons who are in danger, thereby complementing but not affecting the instruments already in place in this field, such as Council Framework Decision 2008/947/JHA and Council Framework Decision 2009/829/JHA. (...) ⁶
- (26) When a decision relating to a protection measure falls within the scope of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁷, Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility ⁸, or the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children ⁹, the recognition and enforcement of such decision should be carried out in accordance with the provisions of that legal instrument.

⁶ The last part of this Recital has been moved under Recital (11).

⁷ OJ L 12, 16.1.2001, p. 1.

⁸ OJ L 338, 23.12.2003, p. 1

⁹ OJ L 12, 16.1.2001, p. 1.

- (26a) Member States and the Commission should include information about the European protection order, where it is appropriate, in existing education and awareness-raising campaigns on the protection of victims of crime.
- (27) Personal data processed when implementing this Framework Decision should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ¹⁰ and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.
- (28) This Directive should respect the fundamental rights, as guaranteed by the Charter on Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in conformity with Article 6 of the TEU;
- (28a) When implementing this Directive, Member States are encouraged to take into account the rights and principles enshrined in the Convention on the elimination of all forms of discrimination against women (CEDAW),

HAVE ADOPTED THIS DIRECTIVE:

¹⁰ OJ L 350, 30.12.2008, p. 60.

Article 1

Objective

This Directive sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has been issued with a view to protecting a person against a criminal act of another person which may endanger his life, physical or psychological integrity and dignity, personal liberty or sexual integrity, to issue a European protection order enabling a competent authority in another Member State to continue the protection of the person concerned in the territory of this Member State, following a criminal conduct, or alleged criminal conduct¹¹, according to the national law of the issuing Member State.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

- 1) "European protection order" means a decision, taken by a judicial or equivalent authority of a Member State in relation with a protection measure, on the basis of which a judicial or equivalent authority of another Member State takes any appropriate measure or measures under its own national law with a view to continue the safeguard of the protected person.
- 2) "Protection measure" means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the obligations or prohibitions, referred to in Article 4, are imposed on a person causing danger to the benefit of a protected person [*specifically*]¹² with a view to protecting the latter against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity (...)¹³.

¹¹ COM considers this addition superfluous.

¹² Insertion proposed by DE.

¹³ CZ, NL preferred to keep the last part of this paragraph.

- 3) "Protected person" means the natural person who is the object of the protection stemming from a protection measure adopted by the issuing State.
- 4) "Person causing danger" means the natural person on whom one or more of the obligations or prohibitions, referred to in Article 4, have been imposed.
- 5) "Issuing State" means the Member State in which a protection measure has been adopted, constituting the basis for issuing a European protection order.
- 6) "Executing State" means the Member State to which a European protection order has been forwarded with a view to its recognition.
- 7) "State of supervision" means the Member State to which a judgment, as defined in Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as defined in Article 4 of Framework Decision 2009/829/JHA, has been transferred.

Article 3

Designation of competent authorities

1. Each Member State shall inform the Commission which judicial or equivalent authority or authorities are competent under its national law to issue a European protection order and to recognise such an order, in accordance with this Directive, when that Member State is the issuing State or the executing State.
2. The Commission shall make the information received available to all Member States. Member States shall inform the Commission on any change related to the information referred to in Paragraph 1.

Article 3bis
Recourse to a central authority

1. Each Member State may designate a central authority or, where its legal system so provides, more than one central authority to assist its competent authorities.
2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of any European protection order, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the central authority(ies) of the Member State concerned.
3. Member States wishing to make use of the possibilities referred to in this Article shall communicate to the Commission information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 4

Condition of existence of a protection measure under national law

A European protection order may only be issued when a protection measure has been previously ordered in the issuing State, imposing on the person causing danger one or more of the following obligations or prohibitions:

- (a) a prohibition from entering certain localities, places or defined areas where the protected person resides or that he visits;
- (b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or
- (c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

Article 5

Issue of a European protection order

1. A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, *inter alia*, the length of the period or periods time for which the protected person envisages to stay in the executing State and the seriousness of the need for protection.
2. A judicial or equivalent authority of the issuing State may issue a European protection order only at the request of the protected person and after verifying that the protection measure meets all the requirements set out in Article 4.
3. The protected person may submit a request for issuing a European protection order either to the competent authority of the issuing State or to the competent authority of the executing State. If such a request is submitted in the executing State, its competent authority shall transfer this request as soon as possible to the competent authority of the issuing State.
- 3 bis. Before issuing an European protection order the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if he has not had these rights in the procedure leading to the adoption of the protection measure.

4. When a competent authority adopts a protection measure containing one or more of the obligations referred to in Article 4, it shall inform the protected person in any appropriate way in accordance with procedures under its national law about the possibility of requesting a European protection order in case he decides to leave for another Member State, as well as of the basic conditions for such request. The authority shall advise the protected person to submit the application before leaving the territory of the issuing State.
5. If the protected person has a guardian or representative, that person may introduce the request referred to in paragraph 2 and 3, on behalf of the protected person.
6. When the request to issue a European protection order is rejected, the issuing authority shall inform the protected person about legal remedies available, where applicable, under its national law against its decision.

Article 6

Form and content of the European protection order

The European protection order shall be issued in accordance with the form set out in Annex I to this Directive. It shall in particular contain the following information ¹⁴:

- (a) the identity and nationality of the protected person, as well as the identity and nationality of the person's guardian or representative if the protected person is a minor or is legally incapacitated;
- (b) the date from which the protected person intends to reside or stay in the executing State, and the period or periods of stay, if known;
- (c) the name, address, telephone and fax numbers, and e-mail address of the competent authority of the issuing State;
- (d) the identification (e.g. through a number and date) of the legal act containing the protection measure on the basis of which the European protection order is adopted;
- (e) a summary of the facts and circumstances which have led to the imposition of the protection measure in the issuing State;
- (f) the obligations or prohibitions imposed in the protection measure underlying the European protection order on the person causing danger, their length and the indication of the penalty or sanction, if any, in case of the breach of the respective obligation or prohibition;
- (f-bis) the use of a technical device, if any, that has been provided to the protected person or to the person causing danger as a means to enforce the protection measure;

¹⁴ The following categories of information will be added in the form: “*other useful information (such as, where available and necessary, information on other States where protective measures have been taken previously with regard to the same person, ...)*”

- (g) the identity and nationality of the person causing danger, as well as his contact details;
- (g-bis) where such information is known by the issuing authority without requiring further inquiry, the fact whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State.
- (h) where appropriate, other circumstances that could have an influence on the assessment of the danger that confronts the protected person;
- (i) *the express indication, where applicable, that a judgement, as defined by Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as defined by Article 4 of Council Framework Decision 2009/829/JHA, has already been transferred to the State of supervision, when different from the State of execution of the European protection order, and the identification of the competent authority of that State for the enforcement of such a judgment or decision*¹⁵.

¹⁵ The reinsertion in the text of this paragraph has been suggested by BE, ES, FR; DE opposed it. Positive scrutiny reservations were entered by AT, FR, UK.

Article 7

Transmission procedure

1. Where the competent authority of the issuing State transmits the European protection order to the competent authority of the executing State, it shall do so by any means which leaves a written record so as to allow the competent authority of the executing Member State to establish its authenticity. All official communication shall also be made directly between the said competent authorities.
2. If the competent authority of either the executing or the issuing State is not known to the competent authority of the other State, the latter authority shall make all the relevant enquiries, including via the contact points of the European Judicial Network referred to in Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network¹⁶, the National Member of Eurojust or the National System for the coordination of Eurojust of its State, in order to obtain the required information.
3. When an authority of the executing State which receives a European protection order has no competence to recognise it, that authority shall, ex officio, forward the European protection order to the competent authority and shall without delay inform the competent authority of the issuing State accordingly by any means which leaves a written record.

¹⁶ OJ, n° L 348, 24 December 2008, p. 130

Article 8
Measures in the executing State

1. Upon receipt of a European protection order transmitted in accordance with Article 7, the competent authority of the executing State shall without undue delay recognise that order and take a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person, unless it decides to invoke one of the grounds for non-recognition referred to in Article 9. The executing State may apply, according to its national law, criminal, administrative or civil measures.

- 1 bis. The measure adopted by the competent authority of the executing State in accordance with paragraph 1, as well as any other measure taken on the basis of a subsequent decision referred to in Article 9 bis, shall correspond, to the highest degree possible, to the protection measure ordered in the issuing State ¹⁷.

2. The competent authority of the executing State shall inform the person causing danger, the competent authority of the issuing State and the protected person of any measures taken in application of paragraph 1, as well as of the possible legal consequence of a breach of such measure, as provided under national law and in accordance with Article 9bis (2). The address or other contact details of the protected person shall not be disclosed to the person causing danger unless necessary in view of the enforcement of the measure adopted in application of paragraph 1.

3. If the competent authority in the executing State considers that the information transmitted with the European protection order according to Article 6 is incomplete, it shall without delay inform the issuing authority by any means which leaves a written record, assigning a reasonable term for the issuing authority to provide the missing information.

¹⁷ UK suggested to add the words: "and shall respect the rights of the person causing danger under the European Convention on Human Rights"; BE, ES, FR opposed this addition.

Article 9

Grounds for non-recognition of a European protection order

1. (...) ¹⁸.

2. The competent authority of the executing State may refuse to recognise a European protection order in the following circumstances :
 - (a) the European protection order is not complete or has not been completed within the time-limit set by the competent authority of the executing State;
 - (b) the requirements set out in Article 4 have not been met;
 - (c) the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State;
 - (d) the protection derives from the execution of a penalty or measure that is covered by amnesty according to the law of the executing State and relates to an act or behaviour which falls within its competence according to that law;
 - (e) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt measures on the basis of a European protection order;
 - (f) criminal prosecution against the person causing danger for the act or behaviour in relation to which the protection measure has been adopted is statute-barred under the law of the executing State, when the act or behaviour falls within its competence under its national law;

¹⁸ See new § 3.

- (g) recognition of the European protection order would contravene the ne bis in idem principle;
- (h) under the law of the executing State, the person causing danger cannot, because of his age, be held criminally responsible for the act or behaviour in relation to which the protection measure has been adopted;
- (i) the protection measure relates to a criminal offence which under the law of the executing State is regarded as having been committed wholly or for a major or essential part within its territory.

3. Where the competent authority of the executing State refuses to recognize a European protection order in application of one of the above grounds, it shall :

- (a) inform the issuing State and the protected person without undue delay of this refusal and of its motivation;
- (b) where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure according to its national law;
- (c) where applicable, inform the protected person about legal remedies available under its national law against its decision.

Article 9bis

Governing law and competence in the executing State

1. The executing State has competence to adopt and to enforce measures in that State following the recognition of a European protection order. The law of the executing State applies to the adoption and enforcement of the decision foreseen in Article 8 paragraph 1, including rules on legal remedies against decisions adopted in the executing State relating to the European protection order.
2. In case of a breach of one or more of the measures taken by the executing State following the recognition of a European protection order, the competent authority of the executing State has, in application of paragraph 1, the competences to:
 - a) impose criminal sanctions and take any other measure as consequence of the breach of such measure, if this amounts to a criminal offence under the law of the executing State;
 - b) take any non-criminal decisions related to the breach;
 - c) take any urgent and provisional measure in order to put an end to the breach, pending, where appropriate, a subsequent decision by the issuing State.
3. If there is no available measure at national level in a similar case to be taken in the executing State, the competent authority of the executing State shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware.

Article 9ter

Notification in case of breach

The competent authority of the executing State shall notify the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order. Notice shall be given using the standard form set out in Annex II.

Article 10
Competence in the issuing State

1. The competent authority of the issuing State shall have exclusive competence to take decisions relating to :
 - (a) the renewal, review, modification, revocation and withdrawal of the protection measure and, consequently, of the European protection order;
 - (b) the imposition of a custodial measure as a consequence of revoking the protection measure, provided that the protection measure has been applied on the basis of a judgement, as defined by Article 2 of Council Framework Decision 2008/947/JHA, or on the basis of a decision on supervision measures, as defined in Article 4 of Council Framework Decision 2009/829/JHA;
2. The law of the issuing State shall apply to decisions taken pursuant to paragraph 1.
3. Where a judgment, as defined in Article 2 of Council Framework Decision 2008/947/JHA, or a decision on supervision measures, as defined in Article 4 of Council Framework Decision 2009/829/JHA, has already been transferred¹⁹, or is transferred after the issuing of the European protection order, to another Member State, subsequent decisions, *as foreseen by these Council Framework Decisions*,²⁰ shall be taken in accordance with the relevant provisions of those Framework Decisions.

3bis. When the protection measure is contained in a judgement, as defined in Article 2 of Council Framework Decision 2008/947/JHA, which has been transferred or is transferred after the issuing of the European Protection Order to another Member State, and the competent authority of the State executing this judgement has made subsequent decisions affecting the obligations or instructions contained in the protection measure in accordance with Article 14 of that Framework Decision, the competent authority of the issuing State shall renew, review, modify, revoke or withdraw without delay the European protection order accordingly.

¹⁹ DE suggested the deletion of the words "has already been transferred, or".

²⁰ Addition proposed by DE

4. The competent authority of the issuing Member State shall inform without delay the competent authority of the executing Member State of any decision taken in accordance with paragraphs 1 ***and 3bis***.
5. If the competent authority in the issuing State has revoked or withdrawn the European protection order in accordance with paragraphs 1(a) ***and 3bis***, the competent authority in the executing State shall end the measures adopted in accordance with Article 8(1) as soon as it has been duly notified by the competent authority of the issuing State.
6. If the competent authority in the issuing State has modified the European protection order in accordance with paragraphs 1(a) ***and 3bis***, the competent authority in the executing State shall, as appropriate
 - (a) change the measures taken on the basis of the European protection order, acting in accordance with Article 8;or
 - (b) refuse to enforce the modified obligation or prohibition when it does not fall within the types of obligations or prohibitions referred to in Article 4 or if the information transmitted with the European protection order according to Article 6 is incomplete and has not been completed within the time-limit set by the competent authority of the executing State according to Article 8(3).

Article 11

Grounds for discontinuation of measures taken on the basis of a European protection order

1. The competent authority of the executing State may discontinue the measures taken in execution of a European protection order:
 - (a) where there is clear indication that the protected person does not reside or stay in the territory of the executing State, or has definitively left that territory;
 - (b) when, according to its national law, the maximum term of duration of the measures adopted in execution of the European protection order has expired;
 - (c) in the case referred to in Article 10(6)(b).
 - (d) where a judgment, as defined in Article 2 of Council Framework Decision 20008/947/JHA, or a decision on supervision measures, as defined in Article 4 of Council Framework Decision 2009/828/JHA, is transferred to the executing State after the recognition of the European protection order ²¹.
2. The competent authority of the executing State shall immediately inform the competent authority of the issuing State and, where possible, the protected person of such decision.
3. Before discontinuing measures in accordance with paragraph 1(b) the competent authority of the executing State may invite the competent authority of the issuing State to provide information as to whether the protection provided for by the European protection order is still needed in the circumstances of the particular case at hand. The competent authority of the issuing State shall, without delay, reply to such an invitation.

²¹ UK suggested adding a further letter to this paragraph, reading: "(e) where the protected person requests the measure be discontinued". ES, FR opposed this addition.

Article 12

Priority in recognition of a European protection order

The European protection order shall be recognized with the same priority which would be applicable in a similar national case, taking into consideration the specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.

Articles 13 and 14

(deleted)

Article 15

Consultations between competent authorities

Where appropriate, the competent authorities of the issuing State and of the executing State may consult each other in order to facilitate the smooth and efficient application of this Directive.

Article 16

Languages

1. The European protection order shall be translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State.
2. The form referred to in Article 9ter shall be translated by the competent authority of the executing State into the official language or one of the official languages of the issuing State.
3. Any Member State may, either when this Directive is adopted or at a later date, state in a declaration deposited with the Commission that it will accept a translation in one or more other official languages of the institutions of the Union.

Article 17

Costs

Costs resulting from the application of this Directive shall be borne by the executing State, in accordance with its national law, except for costs arising exclusively within the territory of the issuing State.

Article 18

Relation to other agreements and arrangements

1. Member States may continue to apply bilateral or multilateral agreements or arrangements which are in force upon the entry into force of this Directive, insofar as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate further the procedures for taking protection measures.
2. Member States may conclude bilateral or multilateral agreements or arrangements after the entry into force of this Directive, insofar as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate the procedures for taking protection measures.
3. By ...^{*}, Member States shall notify the Commission of the existing agreements and arrangements referred to in paragraph 1 which they wish to continue applying. Member States shall also notify the Commission of any new agreements and arrangements as referred to in paragraph 2, within three months of signing such an agreement.

^{*} OJ: please insert date 3 months after the entry into force of this Directive

Article 18bis

Relationship with other instruments

1. This Directive shall not affect the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ²², nor of Council Regulation (EC) No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children, repealing Regulation (EC) No 1347/2000 ²³, nor of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, nor of the 1980 Hague Convention on the Civil Aspects of International Child Abduction ²⁴.
2. This Directive shall not affect the application of Council Framework Decision 2008/947/JHA and Council Framework Decision 2009/829/JHA.

²² OJ L 12 of 16.1.2001, p. 1.

²³ OJ L 338 of 23.12.2003, p. 1.

²⁴ COM suggested the deletion of this paragraph. Council Legal Service has insisted that it be maintained in the text.

Article 19
Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions to comply with this Directive by ...*. They shall forthwith inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 19a
Data collection

Member States shall, in order to facilitate the evaluation of the application of this Directive, communicate to the European Commission relevant data related to the application of national procedures on the European protection order, at least on the number of European protection orders requested, issued and/or recognized.

Article 20
Review

By*, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive. The report shall be accompanied, if necessary, by legislative proposals.

* OJ: please insert date 3 years after the entry into force of this Directive.

* OJ: please insert date 4 years after the entry into force of this Directive

Article 21

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.

Done at [Brussels],

For the European Parliament

For the Council

The President

The President

DECLARATION

**to be inserted in the minutes of the meeting of the
Justice and Home Affairs Council
on ...**

The Council welcomes the adoption of the Directive of the European Parliament and of the Council on the European protection order, as an important instrument of the protection of the victims of crime in the European Union.

Considering the fact that this Directive is focused on protection measures taken in criminal matters, and given the different legal traditions in the Member States in this field, the Council is aware that this instrument will have to be complemented in the future by a similar mechanism for mutual recognition of protection measures taken in civil matters.

In this respect, the Council recalls that the proposal presented by the Commission on 18 May 2011 for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters is currently under examination in the preparatory bodies of the Council.

In line with its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (see Measure "C"), the Council commits itself to continuing the examination of this proposal as a matter of priority. It also commits itself to ensure that this instrument will complement the provisions of the Directive on the European protection order, so that the combined scope of application of the two instruments enable the cooperation among the Member States, irrespective of the nature of their national systems, with respect to the highest possible number of protection measures for victims of crime.