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**NOTE**

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

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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.