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**PROPOSAL**

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| dated:        | 20 May 2011   |
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| Subject:      | Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters |

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Jordi AYET PUIGARNAU, Director, to Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union.

Encl.: COM(2011) 276 final



EUROPEAN COMMISSION

Brussels, 18.5.2011  
COM(2011) 276 final

2011/0130 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on mutual recognition of protection measures in civil matters**

{COM(2011) 274}

{COM(2011) 275}

{SEC(2011) 580}

{SEC(2011) 581}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

This proposal is part of a legislative package which aims at strengthening the rights of victims in the EU and which also includes the following other elements: a communication on the strengthening of victims' rights in the EU and a directive establishing minimum standards on the rights, support and protection of victims of crime. This proposal, dealing with protection orders taken in civil matters, aims at complementing a Member States' initiative of September 2009 for a Directive on the European Protection Order<sup>1</sup>, which will ensure the mutual recognition of protection measures taken in criminal matters.

The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the principle of mutual recognition of judgments and other decisions of judicial authorities within the Union.

The Stockholm Programme (2010-2014)<sup>2</sup> and the Commission's action plan to implement it, recognise the need for further action to place the needs of victims of crime at the centre of our justice systems. They place victims high on the EU agenda and firmly establish the need and intention to create an integrated and co-ordinated approach to victims, in line with the October 2009 JHA Council Conclusions<sup>3</sup>.

The European Union has already acted on the rights of victims in criminal proceedings through Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. Whilst improvements have been achieved on victims' rights, the objectives of the Council Framework decision have not been fully realised.

The European Parliament has also called upon the Council to adopt a comprehensive legal framework offering victims of crime the widest protection<sup>4</sup>. In its resolution of 26 November 2009<sup>5</sup> on the elimination of violence against women the European Parliament 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, protection and support for all victims of violence.

In a common area of freedom, security and justice, victims of (for example, domestic) violence or persons whose physical and/or psychological integrity or liberty is at risk and who benefit from a protection measure taken in one Member State should benefit from the same level of protection in other Member States should they move or travel, without going through expensive and time consuming procedures. Such action also replies to the Commission's call

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<sup>1</sup> OJ C 69, 18.3.2010, p. 5-18, 13577/09 COPEN 176 of 23 September 2009.

<sup>2</sup> Multi-annual programme which sets out the European Union's priorities for the area of justice, freedom and security for the period 2010-2014: "The Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens" (OJ C 115, 4.5.2010, p. 1).

<sup>3</sup> 2969th JAI Council meeting of 23/10/2009, [14936/09 (Presse 306)].

<sup>4</sup> European Parliament resolution of 7 May 2009 on the development of a European Union criminal justice area, [P6\_TA(2009)0386].

<sup>5</sup> European Parliament resolution of 26 November 2009 on the elimination of violence against women, [P7\_TA(2009)0098].

to further dismantle the obstacles to citizens' rights, set out in its Citizenship Report" of 27 October 2010<sup>6</sup>.

In September 2009, 12 Member States put forward a proposal for a Directive of the European Parliament and of the Council on the European Protection Order<sup>7</sup>. During the negotiations, it appeared that the mechanisms used in this instrument, based on Article 82 TFUE dealing with mutual recognition in criminal matters, is not compatible with the ambitious standard of mutual recognition already reached for civil matters, covered by Article 81 TFUE. The present proposal therefore aims at completing a legal instrument on the mutual recognition of protection measures taken in criminal matters to ensure that all protection measures taken in a Member State benefit from an efficient mechanism to ensure their free circulation throughout the EU.

## **2. CONSULTATION AND IMPACT ASSESSMENT**

The need for this proposal applying exclusively to protection orders taken in civil proceedings appeared during the negotiation of the Member States' initiative for a European Protection Order which was accompanied by an Impact Assessment. To consult more specifically on the need for and the modalities of this proposal, the Commission launched additional consultations with Member States, other institutions and experts from different backgrounds.

The Commission first hosted an experts' meeting on 25 May 2010 which confirmed that many Member State have put civil law protection measures in place, the mutual recognition of which should follow the common standards used in civil matters, rather than the more heavy procedures which are common standard in criminal matters.

The European Commission also contracted an external Study to assist with the impact assessment in identifying the needs of victims of crime, which measures could be established to meet these needs and to examine the impacts of any possible options<sup>8</sup>. As part of the preparation process of the Impact Assessment, the Commission held a public consultation from 15 July 2010 to 30 September 2010, open to all members of the public as well as to non-governmental and governmental organisations asking their views on what action the EU should take to improve the situation of victims of crime, including in the field of protection orders.

A further study was contracted to examine options in relation to the specific objective of ensuring that the protection gained through a protection order is not lost when a protected person travels or moves to another Member States<sup>9</sup>.

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<sup>6</sup> EU Citizenship Report 2010, "Dismantling the obstacles to EU citizens' rights" - COM(2010) 603.

<sup>7</sup> 13577/09 COPEN 176 of 23 September 2009.

<sup>8</sup> Matrix Insight/Andersson Elfers Felix, "A Study for an Impact Assessment on Ways of Improving the Support, Protection and Rights of Victims across Europe", Final Report, 3 November 2010.

<sup>9</sup> Burkhard Hess: "Feasibility Study: The European Protection Order and the European Law of Civil Procedure", soon available at: [http://ec.europa.eu/justice/index\\_en.htm](http://ec.europa.eu/justice/index_en.htm).

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Legal basis**

This proposal is based on Article 81(2)(a), (e) and (f) of the Treaty on the Functioning of the European Union. According to Article 81 the Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

For these purposes, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring, *inter alia*, the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases.

#### **3.2. Summary of the proposed regulation**

To protect victims of violence, in particular domestic violence, stalking or violence against children, the national laws of the Member States provide for the possibility to adopt temporary and preventative measures with a view to protecting a person when a serious risk exists to consider the persons physical and/or psychological integrity or liberty at risk. Protection measures are issued by a judicial or other authority upon request of the person at risk. Many of them are ordered without the person causing the risk being summoned to appear, in particular in case of urgency ("*ex parte*" procedures). Protection measures consist of, for example, the obligation not to approach the protected person closer than a prescribed distance, or the obligation not to enter certain localities where the protection person resides or that he visits. A specificity of many protection measures is that the public authorities do not actively intervene to ensure their execution: in case of violation of his obligation by the person causing the risk, the person is directly subject to a sanction, often to a criminal sanction.

Due to the increase of free movement more persons are moving or travelling abroad. Consequently, it is extremely important to ensure that such a temporary protection provided in one Member State is maintained when a person travels or moves to another Member State without having to go through time-consuming procedures. Civil judicial cooperation has developed in the context of the creation of an internal market in Europe based on the premise of mutual recognition of judicial and extra-judicial decisions. Such mutual recognition has been gradually improved by lowering the controls with respect to foreign decisions in the Union. This proposal provides for a speedy and efficient mechanism to ensure that the Member State to which the person at risk moves will recognise the protection measure issued by the first Member State without any intermediate formalities. As for other mutual recognition instruments in civil matters, this proposal introduces a standardised certificate which contains all information relevant for the recognition and, where applicable, enforcement. Therefore, a certificate will be issued by the competent authority of the first Member State, either *ex-officio* or on request of the protected person, who will then contact the competent authorities in the second Member State and provide them with the certificate. The competent authorities of the second Member State will notify the person causing the risk about the geographical extension of the foreign protection measure, the sanctions applicable in case of its violation and, where applicable, ensure its enforcement.

In order to ensure a quick, cheap and efficient mechanism of circulation of protection measures in the European Union, the *rationale* of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 ('Brussels II-bis')<sup>10</sup> and in particular Articles 41 and 42 thereof, has been followed. Inspiration has been taken also from the Commission's proposal for a recasting of Council Regulation (EC) No 44/2001 ('Brussels I')<sup>11</sup>. The proposal provides for the abolition of intermediate procedures and no grounds for refusal have been proposed, except for the existence of an irreconcilable decision in the Member State of recognition.

Automatic recognition also applies when the Member State of recognition and/or enforcement does not have protection measures in civil matters. This is indeed a fundamental principle of mutual recognition in civil matters: the fact that the Member State where the recognition and/or enforcement are sought does not foresee a measure in its internal law must not affect its obligation to recognise and, where applicable, enforce the measure taken by another Member State. The nature of the authority which has taken the protection measures (civil court, mayor, criminal court) is not decisive with this respect.

The abolition of intermediate procedures will be accompanied by fundamental rights safeguards:

- The authority of the first Member State which will be requested to issue the certificate will have to check that the right to a fair trial, in particular the right of defence, of the person causing the risk has been respected. In case such rights have not been guaranteed, the certificate cannot be issued.
- In case of suspension or withdrawal of the protection measure by the first Member State, the competent authority of the second Member State has, at request of the person causing the risk, to suspend or withdraw its recognition and, when applied, enforcement.
- The competent authorities of both Member States have to bring to the notice of the person causing the risk and to the protected person any information related to the issuing, recognition, possible enforcement and sanctions, suspension or withdrawal of the protection measure.

All these safeguards ensure the fundamental rights and principles recognised in particular by the Charter of Fundamental Rights of the European Union be guaranteed, while the time and costs of the exequatur procedure will be saved.

The proposal does not deal with criminal sanctions put in place by Member States in case of violation of a protection measure. This question will continue to be dealt with by the national law of each Member State.

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<sup>10</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1).

<sup>11</sup> Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) - COM(2010) 748, 14.12.2010.

### **3.3. Analysis of the most important Articles**

This proposal is a mutual recognition instrument in civil matters and as such it follows the *rationale* of existing EU instruments on judicial cooperation in civil and commercial matters, from which it takes broad inspiration. Many articles are similar or equal to the correspondent articles in the mentioned legislation.

#### **Article 1 - Scope**

Certain protection measures are already covered by Brussels I<sup>12</sup> and Brussels II-bis Regulations, hence it is important to clarify the articulation of the proposal with these regulations.

This Regulation establishes special rules in relation to protection measures. Following a general principal of law, it shall therefore supersede the general rules set out by Brussels I.

The situation is different as regards Regulation Brussels II-bis, the aim of which is to centralise all proceedings relating to a given divorce or legal separation. This proposal must not jeopardise rules governing jurisdiction and the recognition of judgments contained in that specific instrument by offering the possibility to seize the jurisdiction of another Member State as regards the protection measures taken in the context of the ongoing proceedings. For this reasons, all protection measures entering into the scope of Brussels II-bis shall continue to be governed by this instrument. However, the protection measures which do not fall under the application of Brussels II-bis, e.g. protection measures which would concern a couple which has not been married, same sex partners or neighbours, will be covered by this proposal.

#### **Article 2 - Definitions**

*Protection measures* - The definition of the term 'protection measure' stresses the preventive and temporary nature of such measures, which are taken in a Member State with a view to protecting a person when serious reasons exist to consider the persons' physical and/or psychological integrity or liberty to be at risk. A 'protection measure' may be taken either in *ex parte* proceedings (without the person causing the risk being summoned to appear) or in proceedings on notice to both parties.

*Authority* - The definition of the term 'authority' is broad in order to include any authority designated by a Member State as having competence in the matters falling within the scope of this Regulation. Hence, the term includes not only courts and tribunals, but also administrative and other authorities which under the national law of a Member State have competence in the matters falling within the scope of this Regulation.

#### **Article 3 - Jurisdiction**

The rules of jurisdiction should be highly predictable. Therefore, they are founded on the principle that jurisdiction is that of the authorities of the Member State where the person's physical and/or psychological integrity is at risk and where a person needs protection. Although this generally dovetails with the habitual residence of the person who needs

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<sup>12</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1).

protection, it may be not the case, i.e. when the person moves abroad for a determined and relatively short period of time for study reasons, for example.

#### **Article 4 - Recognition**

This Article takes inspiration from other mutual recognition instruments in civil law matters, namely the proposal for recasting Brussels I and Brussels II-bis, namely on the right of access or the return of the child. No intermediate procedures are required: the recognition is automatic.

#### **Article 5 - Certificate**

The certificate is necessary for the person at risk to invoke the protection measure in another Member State. The *rationale* of Articles 41 and 42 of Brussels II-bis, dealing with decisions on the right of access or the return of the child, has been followed.

The certificate will be issued, *ex officio* or at the request of the protected person, by the competent authorities of the Member State of origin following the standard form set out in the Annex to this Regulation. Then, it will be up to the party who wishes to invoke the measure in another Member State to provide the competent authorities of that Member State with the issued certificate. The certificate contains all information relevant for the recognition and/or enforcement of the foreign protection measure, in particular a description of the protection measure formulated in such a way as to allow the competent authorities of the second Member State to recognise it and, where applicable, enforce it under its national law. Therefore, neither specific reference to the national law, i.e. Article X of Code Y instead of the explication of the measure, nor to local places, i.e. a specific address instead of a general reference to the place of work or domicile, must be included in the certificate.

The competent authorities of the second Member State may request a transliteration or a translation of the content of the certificate, namely of the description of the measure.

#### **Article 8 - Adaptation**

This Article concerns the case where the foreign protection measure is not known under the national law of the second Member State. The competent authority in that Member State will therefore have to adapt, to the extent possible, the protection measure to one known under its own law which has similar effects attached to it and pursue similar aims and interests. Adaptation is indeed a recurrent rule in instruments of mutual recognition in civil matters.

#### **Article 9 - Enforcement of certain protection measures**

Under national law very few protection measures requires the competent authorities to actively intervene to give effect to them.

In these cases, the competent authority of the Member State of enforcement will need to apply the rules provided under its national law for similar protection measures, without any special procedure being required.

#### **Article 10 - Fundamental rights safeguards**

The protection of the fundamental rights of the individual has become an even stronger priority for the EU with the entry into force of the Lisbon Treaty: the EU Charter has become

legally binding on the Union and the EU is about to accede to the European Convention of Human Rights (ECHR). When speaking of victims a range of fundamental rights is relevant: human dignity, the right to life, right to the integrity of the person, right to liberty and security, respect for private and family life, protection of personal data, right to property, freedom of movement and residence, equality before the law, the rights of the child, the rights of the elderly, integration of persons with disabilities, and right to an effective remedy and to a fair trial, and finally presumption of innocence and right of defence.

As set out in detail in the impact assessment accompanying this proposal and in accordance with the Union's Strategy for the effective implementation of the Charter of Fundamental Rights of the European Union<sup>13</sup>, all elements of the Regulation respect the rights set out in the Charter of Fundamental rights, and, in particular, the right to an effective remedy and the right to a fair trial guaranteed in its Article 47.

The abolition of any intermediate formalities for the recognition and, where applicable, the enforcement in the second Member State of a protection measure taken in the first Member State must be accompanied by fundamental rights safeguards. This article provides a solid safeguard, since the certificate cannot be issued when the right to a fair trial of the person causing the risk have not been guaranteed.

#### **Article 12 – Refusal, suspension or withdrawal of recognition or enforcement**

The recognition and where applicable the enforcement of protection measures taken in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required. In accordance with this principle, only one ground for refusal is proposed. In the interests of the harmonious administration of justice it is necessary to minimise the possibility of irreconcilable decisions. Therefore, the competent authority in the Member State of recognition may, on application by the person causing the risk, refuse the recognition of the protection measure taken by the court of origin if it is irreconcilable with a decision taken in the Member State of recognition.

It is important to ensure that when a protection measure is suspended or withdrawn in the Member State of origin, the competent authority of the Member State of recognition suspends or withdraws the recognition and, where applied, the enforcement of the protection measure. It is the responsibility of the person causing the risk to apply for it. To that end, a standardised application form is annexed to the proposal.

#### **Article 13 - Notice**

As for other mutual recognition instruments in civil matters, this article provide for a basic harmonisation of minimum standards as regards the necessity to bring to the notice of the person causing the risk and to the protected person any information related to the issuing, recognition, possible enforcement and sanctions, suspension or withdrawal of the protection measure in the first Member State. It also introduces, at paragraph 2, the same obligation for the second Member State. This will ensure the respect of fundamental rights as set out in the Charter of Fundamental Rights of the European Union.

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<sup>13</sup> Communication from the Commission, "Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union" - COM(2010) 573, 19.10.2010.

#### **4. SUBSIDIARITY AND PROPORTIONALITY**

The objective of the proposal cannot be sufficiently achieved by Member States alone, because of the transnational aspects of the issue. It is important to ensure persons do not lose the protection they have been given when they travel or move abroad. The mechanism foreseen in this regulation consisting in the elimination of any intermediate formalities, through the use of a standardised and multilingual certificate cannot be achieved by the Member States alone. Only legislation at European level can create a level playing field. The proposal therefore complies with the subsidiarity principle.

The proposal also complies with the proportionality principle in that it does not go beyond the minimum required in order to achieve the stated objective at European level and what is necessary for that purpose.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on mutual recognition of protection measures in civil matters**

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 81(2)(a), (e) and (f) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>14</sup>,

Having regard to the opinion of the Committee of the Regions<sup>15</sup>,

Acting in accordance with the ordinary legislative procedure.

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice, facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. In order to establish progressively such an area, the Union should adopt, amongst other things, measures relating to judicial cooperation in civil matters, particularly when necessary for the proper functioning of the internal market.
- (2) This area is within the field of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty on the Functioning of the European Union.
- (3) Differences between national rules governing protection measures hamper the sound operation of the internal market. Provisions to ensure rapid and simple recognition and, where applicable, enforcement of protection measures from Member States bound by this Regulation are essential to ensure the protection afforded is maintained when a person travels or moves to another Member State.
- (4) In order to attain the objective of free movement of protection measures, it is necessary and appropriate that the rules governing jurisdiction and the recognition and, where applicable, enforcement of protection measures be governed by a legal instrument of the Union which is binding and directly applicable.

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<sup>14</sup> OJ C [...], [...], p. [...].

<sup>15</sup> OJ C [...], [...], p. [...].

- (5) This Regulation applies to protection measures taken in civil proceedings whatever the nature of the authority, be it a court, a tribunal, an administrative or any other authorities.
- (6) This Regulation applies to all protection measures as defined therein. It does not however apply to protection measures covered by Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. For measures entering into its scope, this Regulation shall supersede Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- (7) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is that of the Member State where the person's physical and/or psychological integrity or liberty is at risk. The jurisdiction should always be available on this ground.
- (8) The harmonious functioning of justice requires that irreconcilable decisions should not be pronounced in two Member States. To this end, this regulation should provide for a ground for refusal of recognition and/or enforcement on application by the person causing the risk in case of irreconcilable decisions.
- (9) Mutual trust in the administration of justice in the Union and the aim of ensuring quicker and less costly circulation of protection measures within the European Union justify procedures for the recognition and/or enforcement of such measures without any intermediate formalities. As a result, a protection measure taken in a Member State should, for recognition and, where applicable, enforcement purposes, be treated as if it had been taken in the Member State in which recognition and/or enforcement is sought.
- (10) Where under the law of the second Member State, an intervention by the competent authorities of that Member State is required in order to give effect to the protection measure, the procedure for such an enforcement of the protection measure should be governed by the law of that Member State.
- (11) This Regulation does not deal with criminal sanctions put in place by Member States in case of violation of a protection measure, which continue to be dealt with by the national law of each Member State.
- (12) In order to facilitate free movement of protection measures within the European Union, this Regulation should introduce a uniform model of certificate and appoint the authority competent to issue it. In order to respect the principle of subsidiarity, this certificate should not replace the internal procedure of the Member States.
- (13) The certificate should not be subject to appeal. However, if the protection measure is suspended or withdrawn in the first Member State, the competent authority of the second Member State should, on application by the person causing the risk, suspend or withdraw the recognition and/or enforcement of the protection measure.

- (14) In order to ensure the swift and efficient functioning of this Regulation, the power to adopt acts in accordance with article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of any amendment to the forms set out in the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (15) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure the rights of the defence and fair trial, as established in Article 47 thereof. This Regulation must be applied according to these rights and principles.
- (16) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (17) [In accordance with Articles 1, 2, 3 and 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Regulation] / [without prejudice of Article 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by or be subject to its application].
- (18) In accordance with Articles 1 and 2 of Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation, and is therefore not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION

## CHAPTER I

### Scope, definitions and jurisdiction

#### *Article 1 – Scope*

This Regulation applies to protection measures taken in civil matters whatever the nature of the authority. It does not apply to protection measures covered by Regulation (EC) No 2201/2003.

#### *Article 2 – Definitions*

For the purposes of this Regulation:

- (a) 'protection measure' means any decision, whatever it may be called, of a preventive and temporary nature taken by an authority in a Member State in accordance with its national law with a view to protecting a person when serious reasons exist to consider the person's physical and/or psychological integrity or liberty to be at risk. It shall include measures ordered without the person causing the risk being summoned to appear.

The following are notably protection measures:

- (i) an obligation not to enter certain localities, places or defined areas where the protected person resides, works or that he visits; or
- (ii) an obligation not to enter into contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or
- (iii) an obligation not to approach the protected person closer than a prescribed distance; or
- (iv) a decision attributing the exclusive use of the common housing of two persons to the protected person.
- (b) 'authority' shall include any authority designated by a Member State as having competence in the matters falling within the scope of this Regulation;
- (c) 'Member State of origin' means the Member State in which the protection measure is taken;
- (d) 'Member State of recognition' means the Member State in which the recognition and, if relevant, the enforcement of the protection measure is sought;

### *Article 3 – Jurisdiction*

The authorities of the Member State where the person's physical and/or psychological integrity or liberty is at risk shall have jurisdiction.

## **CHAPTER II**

### **Recognition and enforcement of protection measures**

#### *Article 4 – Recognition*

A protection measure taken in a Member State shall be recognised in the other Member States without any special procedure being required and without any possibility of opposing its recognition if the decision has been certified in the Member State of origin in accordance with Article 5.

#### *Article 5 – Certificate*

1. A party who wishes to invoke in another Member State a protection order recognised pursuant to this Article shall provide the competent authorities of the Member State of recognition with the certificate issued in accordance with this Article.
2. The competent authorities of the Member State of origin shall issue the certificate using the standard form set out in the Annex, containing, *inter alia*, a description of the measure which shall be formulated in such a way as to facilitate the recognition and, where applicable, the enforcement in the second Member State.
3. The certificate shall be issued:
  - (i) *ex-officio* in case of involvement of cross-border situations at the time of the adoption of the protection measure; for the purpose of this Regulation, a matter has cross-border implications except where the risk for the person's physical and/or psychological integrity or liberty is located exclusively in the Member State of origin;
  - (ii) at the request of the protected person in any other case; when adopting a protection measure, the competent authority of the Member State of origin shall inform the protected person of the possibility of requesting a certificate as established by this Regulation.
4. The competent authorities of the Member State of recognition may, where necessary, request a transliteration or a translation of the content of the certificate, in accordance with Article 15.

#### *Article 6 – Effects of the certificate*

The certificate shall take effect only within the limits of the enforceability of the decision.

### *Article 7 – Rectification of the certificate*

1. The law of the Member State of origin shall be applicable to any rectification of the certificate.
2. No appeal shall lie against the issuing of a certificate.

### *Article 8 – Adaptation of the foreign protection measure*

If a protection measure is not known in the Member State of recognition, the competent authority in that Member State shall, to the extent possible, adapt the protection measure to one known under its own law which has equivalent effects attached to it and pursues similar aims and interests.

### *Article 9 – Enforcement of certain protection measures*

1. To the extent that a protection measure taken in one Member State requires under the law of another Member State an intervention by the competent authorities of that Member State in order to give effect to the protection measure, it shall be enforced in that other Member State without the need for a declaration of enforceability.
2. The procedure for the enforcement of protection measures taken in another Member State shall be governed by the law of the Member State of recognition, including the appeal against the adaptation of the protection measure taken in accordance with Article 8.

### *Article 10 – Fundamental rights safeguard*

1. The authorities of the Member State of origin shall issue the certificate referred to in Article 5 only if the fundamental rights safeguards set out in this Article have been respected.
2. A person causing the risk who did not enter an appearance in the Member State of origin shall have the right to apply for a review of the protection measure before the competent authorities of that Member State where
  - (a) he was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence; or
  - (b) he was prevented from contesting the protection measure by reason of *force majeure* or due to extraordinary circumstances without any fault on his part;unless he failed to challenge the protection measure when it was possible for him to do so.
2. Where the protection measure is taken without the person causing the risk being summoned to appear and is intended to be recognised and/or enforced without prior

service of that person, that person has the right to challenge the measure under the law of the Member State of origin.

*Article 11 – No review as to substance*

Under no circumstances may a protection measure taken in a Member State be reviewed as to its substance in the Member State in which recognition and/or enforcement is sought.

*Article 12 – Refusal, suspension or withdrawal of recognition or enforcement*

1. The competent authority in the Member State of recognition may, on application by the person causing the risk, refuse the recognition of the protection measure taken by the court of origin if it is irreconcilable with a decision taken in the Member State of recognition.
2. If the protection measure is suspended or withdrawn in the Member State of origin, the competent authority of the Member State of recognition shall, on application by the person causing the risk, suspend or withdraw the recognition and, when applied, the enforcement of the protection measure. The application shall be submitted using the form set out in Annex II.
4. The recognition of a protection measure may not be refused because the law of the Member State of recognition does not allow for such a measure based on the same facts.

*Article 13 – Notice*

1. The competent authorities of the Member State of origin shall, without delay and according to the law of that Member State, bring to the notice of the person causing the risk and to the protected person:
  - (i) the issuing of a protection measure;
  - (ii) if applicable, the correspondent measures of enforcement;
  - (iii) if applicable, the sanctions in case of violation of the protection measure
  - (iv) any suspension or withdrawal of the protection measure.
2. Upon reception of the certificate pursuant to Article 5 provided by the protected person, the competent authorities of the Member State of recognition shall, without delay and where necessary according to the rules of Regulation (EC) No 1393/2007<sup>16</sup>, bring to the notice of the person causing the risk and to the protected person:
  - (i) the recognition of the protection measure;

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<sup>16</sup> OJ L 324, 10.12.2007, p. 79.

- (ii) if applicable, the correspondent measures of enforcement;
- (iii) if applicable, the sanctions in case of violation of the protection measure;
- (iv) any suspension or withdrawal of the protection measure.

## **CHAPTER III**

### **Other provisions**

#### *Article 14 – Legalisation and other similar formalities*

No legalisation or other similar formality shall be required in the context of this Regulation.

#### *Article 15 – Transliteration or translation*

When a transliteration or translation is required under this Regulation, such transliteration or translation shall be into the official language or one of the official languages of the Member State of recognition or any other language that the Member State of recognition has indicated it can accept. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

#### *Article 16 – Right to legal aid*

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceeding relating to the enforceability of the protection measure, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of recognition.

## **CHAPTER IV**

### **General and final provisions**

#### *Article 17 – Transitional provisions*

This Regulation shall apply to protection measures taken as of the day of entry into application therefor, even if the application for these protection measures was lodged before that date.

### *Article 18 – Amendments to the form*

The Commission shall be empowered to adopt delegated acts in accordance with Article 19 concerning any amendment to the forms set out in the Annexes.

### *Article 19 – Exercise of delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 18 shall be conferred for an indeterminate period of time from the [*Date of entry into force of this Regulation*].
3. The delegation of powers referred to in Article 18 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 18 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [*2 months*] at the initiative of the European Parliament or the Council.

### *Article 20 – Review clause*

By [*five years from the date of application in Article 23*] at the latest, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the application of this Regulation. If necessary, the report shall be accompanied by proposals for adaptation.

### *Article 21 – Information made available to the public*

Within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC<sup>17</sup>, the Member States shall provide a description of the national rules and procedures concerning protection measures, including authorities competent for recognition and/or enforcement with a view to making it available to the public.

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<sup>17</sup> OJ L 174, 27.06.2001, p. 25.

Member States shall keep that information permanently updated.

*Article 22 – Communication by the Member States*

By [*1 year before the entry into force of this Regulation*], the Member State shall communicate to the Commission

- (a) the authorities having competence in the matters falling within the scope of this Regulation;
- (b) the languages accepted for translations of the of the certificate as referred to in Article 15.

The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters established by Decision 2001/470.

*Article 23 – Entry into force and application*

The Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [*12 months after its entry into force*].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the treaties.

Done at [...]

**ANNEX I**

**CERTIFICATE MENTIONED UNDER ARTICLE 5**

**1. MEMBER STATE OF ORIGIN**

AT  BE  BG  CY  CZ  DE  EE  EL  ES  FI  FR  HU  IE  IT  LT  LU   
LV  MT  NL  PL  PT  RO  SE  SI  SK  UK

**2. COMPETENT AUTHORITY ISSUING THE CERTIFICATE**

**2.1 Name:**

**2.2 Address:**

**2.3 Telephone/Fax/E-mail:**

**3. PROTECTED PERSON**

**3.1 Full Name (surname, first name)**

**3.2 Address to be used for notice purposes as provided by Article 13**

**3.3 Date and place of birth (where available)**

**4. PERSON CAUSING THE RISK**

**4.1 Full Name (surname, first name):**

**4.2 Address to be used for notice purposes as provided by Article 13**

**4.3 Date and place of birth (where available)**

**5. PROTECTION MEASURE**

**5.1 Date and reference number:**

**6. DESCRIPTION OF THE PROTECTION MEASURE<sup>18</sup>**

**I, the undersigned, hereby certify that the protection measure has been taken in the Member State of origin against the person causing the risk set out in point 4 and that the fundamental rights safeguards set out in Article 10 have been respected.**

**If additional pages have been attached, state the number of pages: ...**

**Done at: ...**

**Signature and/or stamp of the competent authority of the Member State of origin:**

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<sup>18</sup> The description of the protection measure must be formulated in such a way as to allow the competent authorities of the second Member State to recognise it and, where applicable, enforce it under the national law of that Member State. Therefore, neither specific reference to the national law, i.e. Article X of Code Y instead of the explication of the measure, nor to local places, i.e. a specific address instead of a general reference to the place of work or domicile, must be included. Hence, a general description of the measure must be provided, e.g. obligation not to enter the place where the protected person works, instead of obligation not to approach Street X or of protection measure adopted according to Art. X of Law Y. In case the protection measure is not known or is regulated slightly differently in the second Member State, the authority of that Member State will, to the extent possible, adapt the measure to one known under its law which has similar effects and pursues the same aims.

## ANNEX II

### **APPLICATION FOR SUSPENSION OR WITHDRAWAL OF RECOGNITION OR ENFORCEMENT UNDER ARTICLE 12**

#### **1. APPLICANT (PERSON CAUSING THE RISK)**

**1.1 Full Name (surname, first name)**

**1.2 Address to be used for notice purposes as provided by Article 13**

**1.3 Date and place of birth (where available)**

#### **2. COMPETENT AUTHORITY IN THE MEMBER STATE OF ORIGIN**

**2.1 Name**

**2.2 Address**

**2.3 Member State**

AT  BE  BG  CY  CZ  DE  EE  EL  ES  FI  FR  HU  IE  IT  LT  LU   
LV  MT  NL  PL  PT  RO  SE  SI  SK  UK

**2.4. Telephone/Fax/E-mail**

#### **3. DECISION SUSPENDING OR WITHDRAWING A PROTECTION MEASURE**

**3.1 Date and reference number**

**3.2 Summary of the decision suspending or withdrawing a protection measure**

#### **4. PROTECTED PERSON**

**4.1 Full Name (surname, first name)**

**4.2 Address to be used for notice purposes as provided by Article 13**

**4.3 Date and place of birth (where available)**

**If additional pages have been attached, state the number of pages: ...**

**Done at: ...**

**Signature:**