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# European Protection Order in Criminal Matters versus European Protection Order in Civil Matters\*

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**Summary:** The European Union called for the adoption of specific post-Lisbon instruments to ensure the protection of victims, namely the European protection order. The contribution deals with the European protection order in criminal matters and its comparison to the European protection order in civil matters. It is divided into three sections. While the first section is focused on general overview and legal basis of the European protection order in criminal matters, the second section analyses its definition and scope of application. In the third section the author compares the European protection order in criminal matters and the European protection order in civil matters.

**Keywords:** European protection order in criminal matters, European protection order in civil matters, the Directive 2011/99/EU on the European protection order, the Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters, mutual recognition

## 1. Introduction

One of the victim's most important rights is the right to be protected against further attacks by the offender. Victims have the right to avoid being a victim once again. Victim protection is a priority objective of any advanced criminal policy. 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 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.

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All Member States of the European Union apply measures to protect victims' lives, their physical, mental and sexual integrity and their freedom. However, such measures are effective only on the territory of the State which adopted them and thus 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 it should apply to victims wherever they go.<sup>1</sup>

No cross-border problem arises as long as the victim and the offender remain within the State in which the protection measure has been adopted and the issue is thus confined to that State. If the offender moves to a different State there have been already introduced legal instruments that cover this cross-border element.

Two crucial measures have been introduced in the European Union – the 'European protection order in criminal matters' and the 'European protection order in civil matters'. The contribution deals with the European protection order in criminal matters and its comparison to the European protection order in civil matters. It is divided into three sections. While the first section is focused on general overview and legal basis of the European protection order in criminal matters, the second section analyses its definition and scope of application. In the third section the author compares the European protection order in criminal matters and the European protection order in civil matters.

## **2. European Protection Order in Criminal Matters: General Overview and Legal Basis**

The Treaty on the Functioning of the European Union<sup>2</sup> provides that '[t]o the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial co-operation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives [...] establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States. They shall concern [...] the rights of victims of crime'<sup>3</sup>.

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<sup>1</sup> Council of the European Union (2010): 'Initiative [...] for a Directive of the European Parliament and of the Council on the European Protection Order – Explanatory memorandum', 17513/09, ADD 1, REV 1, p. 3.

<sup>2</sup> Treaty on the Functioning of the European Union as amended by the Treaty of Lisbon. Official Journal of the European Union, C 83/47 of 30th March 2010.

<sup>3</sup> Article 82(2)(c) of the Treaty on the Functioning of the European Union as amended by the Treaty of Lisbon.

Further, the Stockholm Programme<sup>4</sup> of 2009 also devotes particular attention to the rights of victims and their protection. Referring specifically to criminal law it states that ‘victims of crime or witnesses who are at risk can be offered special protection measures which should be effective within the Union’<sup>5</sup>. Indeed, besides the Treaty on the Functioning of the European Union the European Parliament also called to examine how to improve legislation and practical support measures for the protection of victims.

The European Union legislator opted for the adoption of a specific post-Lisbon legislative instrument to ensure the protection of victims when they exercise free movement rights in the European Union<sup>6</sup>, namely the European protection order (in criminal matters).

The legal basis of the European protection order addressed for the Member States of the European Union is the *Directive 2011/99/EU on the European protection order*<sup>7</sup>. However, Ireland and Denmark are not taking part in the adoption of the Directive and are not bound by it or subject to its application. The objective of the Directive 2011/99/EU on the European protection order is to ensure the trans-border protection to victims of crimes in other Member States when they move within the European Union. It is defined in its core text as well as in its Preamble.

First, the core text of the Directive 2011/99/EU on the European protection order stipulates that it sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has been adopted with a view to protecting a person against a criminal act by another person which may endanger his life, physical or psychological integrity, 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* in the territory of that other Member State, following criminal conduct, or alleged criminal conduct, in accordance with the national law of the issuing State (emphasis added).<sup>8</sup>

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<sup>4</sup> European Council (2009): ‘Stockholm Programme – An open and secure Europe serving and protecting citizens’. Official Journal of the European Union, C 115/1 of 4th May 2010; see also: European Commission (2010): ‘Delivering an area of freedom, security and justice for Europe’s citizens : Action Plan Implementing the Stockholm Programme’, communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2010) 171 final.

<sup>5</sup> Point 3.1.1. of the Stockholm Programme.

<sup>6</sup> MITSILEGAS, Valsamis. The Place of the Victim in Europe’s Area of Criminal Justice. In IPPOLITO, Francesca, IGLESIAS SÁNCHEZ, Sara (eds). *Protecting Vulnerable Groups: The European Human Rights Framework*. Oxford – Portland: Hart Publishing, 2015, p. 317.

<sup>7</sup> Directive 2011/99/EU of the European Parliament and of the Council of 13th December 2011 on the European protection order. Official Journal of the European Union, L 338/2 of 21st December 2011.

<sup>8</sup> Article 1 of the Directive 2011/99/EU on the European protection order; see also: RYCKMAN, Charlotte, VERMEULEN, Gert, De BONDT, Wendy. Considerations For a Future EU Policy

Second, the Preamble of the Directive 2011/99/EU on the European protection order highlights that its objective is ‘to protect persons who are in danger’<sup>9</sup> and adds that ‘this Directive should set out rules whereby the protection stemming from certain protection measures adopted according to the law of one Member State [...] can be extended to another Member State in which the protected person decides to reside or stay’<sup>10</sup>.

The Directive 2011/99/EU on the European protection order takes account of the different legal traditions of the Member States as well as the fact that effective protection can be provided by means of protection orders issued by an authority other than a criminal court. The Directive does not create obligations to modify national systems for adopting protection measures nor does it create obligations to introduce or amend a criminal law system for executing a European protection order.<sup>11</sup>

The measures included in the Directive 2011/99/EU on the European protection order, offering the victim a guarantee of safety, are not a novelty for the Member States of the European Union. They had been recognised, first, in the Framework Decision 2008/947/JHA 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<sup>12</sup> (hereinafter ‘Framework Decision 2008/947/JHA on mutual recognition of probation measures and alternative sanctions’), and second, in the Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention<sup>13</sup> (hereinafter ‘Framework Decision 2009/829/JHA on mutual recognition of supervision measures as an alternative to provisional detention’).

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on Disqualifications. In COOLS, Marc et al (eds). *Readings on Criminal Justice, Criminal Law & Policing*. Antwerpen – Apeldoorn: Maklu, 2009, p. 121; MITSILEGAS, Valsamis. The Place of the Victim in Europe’s Area of Criminal Justice. In IPPOLITO, Francesca, IGLESIAS SÁNCHEZ, Sara (eds). *Protecting Vulnerable Groups: The European Human Rights Framework*. Oxford – Portland: Hart Publishing, 2015, p. 317; VERMEULEN, Gert, De BONDT, Wendy. Justice, Home Affairs and Security: European and International Institutional and Policy Development. Antwerpen – Apeldoorn: Maklu, 2015, p. 117.

<sup>9</sup> Recital 39 of the Directive 2011/99/EU on the European protection order.

<sup>10</sup> Recital 7 of the Directive 2011/99/EU on the European protection order.

<sup>11</sup> Recital 8 of the Directive 2011/99/EU on the European protection order.

<sup>12</sup> Council Framework Decision 2008/947/JHA of 27th 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 as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 337/102 of 16th December 2008.

<sup>13</sup> Council Framework Decision 2009/829/JHA of 23rd 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. Official Journal of the European Union, L 294/20 of 11th November 2009.

The Directive emphasises that it ‘should contribute to the protection of persons who are in danger, thereby complementing, but not affecting, the instruments already in place in this field’<sup>14</sup>, namely mentioned framework decisions.

The Framework Decision 2008/947/JHA on mutual recognition of probation measures and alternative sanctions aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction. With a view to achieving these objectives, the Framework Decision lays down rules under which a Member State of the European Union other than the Member State in which the person concerned has been sentenced, recognises judgments and probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment.<sup>15</sup> It applies to many alternatives to custody and to measures facilitating early release, for example, an obligation not to enter certain localities, to carry out community service or instructions relating to residence or training or professional activities. However, the Directive 2011/99/EU on the European protection order and the Framework Decision partly overlap. For example, if both the protected person (victim) and the person causing danger (offender) would move to the same Member State and the protection measure entails an obligation not to enter certain localities, places or defined areas in the issuing or executing State and/or an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed, there is overlap between the European protection order and the Framework Decision in cases of post-trial measures.<sup>16</sup>

The Framework Decision 2009/829/JHA on mutual recognition of supervision measures as an alternative to provisional detention lays down rules according to which one Member State of the European Union recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of these measures<sup>17</sup>. However, the Directive 2011/99/EU on the European protection order and the Framework Decision partly cover the same types of supervision

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<sup>14</sup> Recital 33 of the Directive 2011/99/EU on the European protection order.

<sup>15</sup> Article 1(1) of the Framework Decision 2008/947/JHA on mutual recognition of probation measures and alternative sanctions.

<sup>16</sup> Van der AA, Suzan, OUWERKERK, Jannemieke. The European Protection Order: No Time to Waste or a Waste of Time? *European Journal of Crime, Criminal Law and Criminal Justice*, 2011, Vol. 19, No. 4, p. 276.

<sup>17</sup> Article 1 of the Framework Decision 2009/829/JHA on mutual recognition of supervision measures as an alternative to provisional detention.

measures. The most obvious difference between the scope of the Directive and that of the Framework Decision is that the latter only refers to pre-trial orders as an alternative to provisional detention, whereas the Directive also handles post-trial orders.<sup>18</sup>

The Directive 2011/99/EU on the European protection order shall not affect the application of:<sup>19</sup>

- the Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>20</sup>,
- the Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility<sup>21</sup>,
- the Hague Convention on the Civil Aspects of International Child Abduction<sup>22</sup> of 1980, and
- the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children<sup>23</sup> of 1996.

As far as the relationship of the Directive 2011/99/EU on the European protection order with other agreements and arrangements is concerned, Member States of the European Union may continue to apply bilateral or multilateral agreements

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<sup>18</sup> Van der AA, Suzan, OUWERKERK, Jannemieke. The European Protection Order: No Time to Waste or a Waste of Time? *European Journal of Crime, Criminal Law and Criminal Justice*, 2011, Vol. 19, No. 4, p. 274.

<sup>19</sup> Article 20(1) of the Directive 2011/99/EU on the European protection order.

<sup>20</sup> Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters as amended by the Regulation (EU) No 156/2012. Official Journal of the European Communities, L 12/1 of 16th January 2001.

<sup>21</sup> Council Regulation (EC) No 2201/2003 of 27th 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 as amended by the Regulation (EC) No 2116/2004. Official Journal of the European Union, L 338/1 of 23rd December 2003.

<sup>22</sup> Hague Convention on the Civil Aspects of International Child Abduction of 25th October 1980.

<sup>23</sup> Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children of 19th October 1996. Official Journal of the European Union, L 151/39 of 11th June 2008; see the Council Decision 2008/431/EC of 5th June 2008 authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law – Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children. Official Journal of the European Union, L 151/36 of 11th June 2008.

or arrangements which are in force upon the entry into force of the Directive, in so far as they allow the objectives of the Directive to be extended or enlarged and help to simplify or facilitate further the procedures for taking protection measures. In addition to that, Member States may conclude bilateral or multilateral agreements or arrangements after the entry into force of the Directive, in so far as they allow the objectives of the Directive to be extended or enlarged and help to simplify or facilitate the procedures for taking protection measures.<sup>24</sup>

### 3. Definition and Scope of Application

A principal question which begs consideration is the definition of the term *European protection order*. In the national legal systems of the Member States of the European Union the concept of the *protection order* is defined and interpreted differently.<sup>25</sup> Although it is less or more often similar, the harmonisation or even the unification of this concept has never been an objective of the European Union. Moreover, the Directive 2011/99/EU on the European protection order does not focus on it. Rather, it introduces special approach.

The Directive 2011/99/EU on the European protection order defines the European protection order as ‘a decision, taken by a judicial or equivalent authority of a Member State in relation to 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 continuing the protection of the protected person’<sup>26</sup>. The precedent is the *protection order* in the English-speaking world which takes the form of a court order protecting one person from another, is valid for the entire national territory and contains a number of obligations or prohibitions which the person to whom it is directed must observe, for example, prohibition on possessing weapons, approaching or contacting one or more persons, etc. The European protection order is based on the following assumptions:<sup>27</sup>

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<sup>24</sup> Article 19(1)(2) of the Directive 2011/99/EU on the European protection order.

<sup>25</sup> Various synonyms of the term *protection order* exist. For example, in national laws of the Member States of the EU can be observed equivalents or closely related terms such as *protective order*, *restraining order*, *stay-away order*, or even *no-contact order*; details see: Van der AA, Suzan. Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here? *European Journal on Criminal Policy and Research*, 2012, Vol. 18, No. 2, pp. 183–204.

<sup>26</sup> Article 2(1) of the Directive 2011/99/EU on the European protection order; see also: MITSILEGAS, Valsamis. The Place of the Victim in Europe’s Area of Criminal Justice. In IPPOLITO, Francesca, IGLESIAS SÁNCHEZ, Sara (eds). *Protecting Vulnerable Groups: The European Human Rights Framework*. Oxford – Portland: Hart Publishing, 2015, p. 317.

<sup>27</sup> Council of the European Union (2010): ‘Initiative [...] for a Directive of the European Parliament and of the Council on the European Protection Order – Explanatory memorandum’, 17513/09,

- there is a person in danger,
- the danger is such that the Member State of the European Union 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 of the European Union, and
- the person continues to be in danger on the territory of the Member State to which (s)he 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 of the European Union 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.

The Directive 2011/99/EU on the European protection order applies to protection measures which aim specifically to protect a person against a criminal act of another person which may, in any way, endanger that person's life or physical, psychological and sexual integrity, for example, by preventing any form of harassment as well as that person's dignity or personal liberty, for example, by preventing abductions, stalking and other forms of indirect coercion, and which aim to prevent new criminal acts or to reduce the consequences of previous criminal acts. These personal rights of the protected person (victim) correspond to fundamental values recognised and upheld in Member States. However, a Member State of the European Union is not obliged to issue the European protection order on the basis of a criminal measure which does not serve specifically to protect a person, but primarily serves other aims, for example, the social rehabilitation of the offender. It is important to underline that the Directive applies to protection measures which aim to protect all victims and not only the victims of gender violence, taking into account the specificities of each type of crime concerned.<sup>28</sup> Indeed, the Directive relates to protection measures in criminal matters. The application of protection measures in civil matters is not included.

The Directive 2011/99/EU on the European protection order clearly seeks to restrict its scope of application to criminal matters.<sup>29</sup> For purposes of the Directive the term *protection measure* shall mean '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 prohibitions or restrictions [...] are imposed on

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ADD 1, REV 1, p. 11.

<sup>28</sup> Recital 9 of the Directive 2011/99/EU on the European protection order.

<sup>29</sup> BRADLEY, Kieran. Legislating in the European Union. In BARNARD, Catherine, PEERS, Steve (eds). *European Union Law*. Oxford: Oxford University Press, 2014, p. 121.



a person causing danger in order to protect a protected person against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity'<sup>30</sup> (emphasis added).

Indeed, the European protection order involves a mechanism based on mutual recognition and, as such, it is not a harmonisation measure. Its objective is not to ensure uniformity as regards the protection measures which each national legislature can adopt, but to eliminate existing borders from the point of view of victim protection. Its objective is therefore threefold:<sup>31</sup>

- to prevent a further offence by the offender or presumed offender in the State to which the victim moves, the executing State,
- providing the victim with a guarantee of protection in the Member State to which (s)he moves which is similar to that provided in the Member State which adopted the protection measure, and
- 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 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 Member State of the European Union whose judicial authority adopted the initial measure and equivalent to that provided to other victims in the executing State. As the European Data Protection Supervisor *Hustings* pointed out, the protection measure imposed on the person causing danger aim to protect life, physical and psychological integrity, freedom, or sexual integrity of the protected person within the European Union regardless of national boundaries. It attempts to prevent new crimes against the same victim.<sup>32</sup>

For the application of the Directive 2011/99/EU on the European protection order the protection measure may have been imposed following a judgment within the meaning of the Framework Decision 2008/947/JHA on mutual recognition of probation measures and alternative sanctions, or following a decision

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<sup>30</sup> Article 2(2) of the Directive 2011/99/EU on the European protection order.

<sup>31</sup> Council of the European Union (2010): 'Initiative [...] for a Directive of the European Parliament and of the Council on the European Protection Order – Explanatory memorandum', 17513/09, ADD 1, REV 1, p. 12.

<sup>32</sup> European Data Protection Supervisor (2010): 'Opinion of the European Data Protection Supervisor on the Initiative [...] for a Directive of the European Parliament and of the Council on the European Protection Order, and on the Initiative [...] regarding the European Investigation Order in criminal matters', Official Journal of the European Union, C 355/1 of 29th December 2010.

on supervision measures within the meaning of the Framework Decision 2009/829/JHA on mutual recognition of supervision measures as an alternative to provisional detention. If a decision was adopted in the issuing State on the basis of one of those Framework Decisions, the recognition procedure should be followed accordingly in the executing State.<sup>33</sup>

As far as the Framework Decision 2008/947/JHA on mutual recognition of probation measures and alternative sanctions is concerned, for its purposes *judgment* shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and imposing:<sup>34</sup>

- a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision;
- a suspended sentence; it shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures; such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;
- a conditional sentence; it shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty; such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;
- an alternative sanction; it shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction.

As far as the Framework Decision 2009/829/JHA on mutual recognition of supervision measures as an alternative to provisional detention is concerned, *decision on supervision measures* shall mean an enforceable decision taken in the course of criminal proceedings by a competent authority of the issuing State in accordance with its national law and procedures and imposing on a natural person, as an alternative to provisional detention, one or more supervision measures. Supervision measures shall mean obligations and instructions imposed

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<sup>33</sup> This, however, should not exclude the possibility to transfer the European protection order to a Member State of the EU other than the State executing decisions based on mentioned framework decisions.

<sup>34</sup> Article 2(1)(2)(3)(4) of the Framework Decision 2008/947/JHA on mutual recognition of probation measures and alternative sanctions.

on a natural person, in accordance with the national law and procedures of the issuing State.<sup>35</sup>

#### **4. ‘European Protection Order in Criminal Matters’ versus ‘European Protection Order in Civil Matters’**

During the negotiations on the Draft Directive on the European protection order it appeared that its mechanism, based on mutual recognition in criminal matters, is not compatible with the ambitious standard of mutual recognition already reached for civil matters.

The Directive 2011/99/EU on the European protection order explicitly states that the European protection order does not cover protection measures adopted in civil matters<sup>36</sup>. Originally, the European protection order was meant to be an instrument for the recognition of protection measures adopted both in criminal and in civil matters in order to respond to the existing diversity in the legislation of the Member States and to the different legal systems providing for criminal, civil or mixed measures. Even so, in spite of the fact that on many occasions a combination of different measures are used, it was decided to base the Directive on criminal co-operation because the legal interests to be protected, such as life, physical or mental integrity, or sexual freedom, have traditionally been safeguarded under criminal law. The main objection was that, according to some States, these measures go beyond the legal basis used for the Directive, the Treaty on the Functioning of the European Union, which regulates the judicial co-operation in criminal matters. For this reason during the negotiations on Directive in order to overcome the frontal opposition by the European Commission and the doubts of certain Member States regarding the procedure followed, the scope of the European protection order was limited to criminal matters.<sup>37</sup>

While the European protection order is focused on protection orders of criminal nature, in case of mutual recognition of protection orders of non-criminal nature applies its complementary measure – the European protection order in civil matters.

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<sup>35</sup> Article 4(a)(b) of the Framework Decision 2009/829/JHA on mutual recognition of supervision measures as an alternative to provisional detention.

<sup>36</sup> Recital 10 of the Directive 2011/99/EU on the European protection order.

<sup>37</sup> ATANASOV, Atanas et al. *The European Protection Order: Its Application to the Victims of Gender Violence*. Madrid: Tecnos, 2015, pp. 35–36.

The legal basis of the European protection order in civil matters at the European Union level is the *Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters*<sup>38</sup>. It is part of a legislative package which aims at strengthening the rights of victims in the European Union. The Regulation establishes rules for a mechanism for the recognition of protection measures ordered in a Member State of the European Union in civil matters.<sup>39</sup> It shall apply to protection measures in civil matters ordered by an issuing authority.<sup>40</sup>

The Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters 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 of the European Union benefit from an efficient mechanism to ensure their free circulation throughout the European Union.<sup>41</sup> The need for the measure applying exclusively to protection orders taken in civil proceedings appeared during the negotiations on the Draft Directive on the European protection order. To consult more specifically on the need for and the modalities of the Draft, the European Commission launched additional consultations with Member States, other institutions and experts from different backgrounds.

The distinction between both protection orders does not exclude the possibility of confusion. The Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters, however, establishes a different recognition system. This duplicity might be a source of confusion for legal actors that may intervene in the process of issuing and/or executing European protection orders, and also for the victims, who will have to be properly informed about the protection measures and recognition processes in other Member States which make them available, and specifically, about the procedures and guarantees in each or them.<sup>42</sup> As argue

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<sup>38</sup> Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters. Official Journal of the European Union, L 181/4 of 29th June 2013; see also: Commission Implementing Regulation (EU) No 939/2014 of 2nd September 2014 establishing the certificates referred to in Articles 5 and 14 of Regulation (EU) No 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters. Official Journal of the European Union, L 263/10 of 3rd September 2014.

<sup>39</sup> Article 1 of the Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters.

<sup>40</sup> Article 2(1) of the Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters.

<sup>41</sup> European Commission (2011): 'Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters', COM(2011) 276 final, p. 3.

<sup>42</sup> FREIXES, Teresa, ROMÁN, Laura. *Protection of the Gender-Based Violence Victims in the European Union*. Tarragona: Publicacions Universitat Rovira i Virgili, 2014, pp. 15 and 16.

*Vermeulen, De Bondt, Rackman and Peršak*, there is a very thin demarcation line between both instruments.<sup>43</sup>

The relation of both protection orders is not defined either in the Directive 2011/99/EU on the European protection order or in the Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters. It is natural that the first act does not define their relationship. However, the second act should define it and make clear distinction between the ‘European protection order in criminal matters’ and the ‘European protection order in civil matters’. While the Preamble to the Directive states that it ‘applies to protection measures adopted in criminal matters’<sup>44</sup>, the Preamble to the Regulation states that it ‘complements the Directive 2012/29/EU’<sup>45</sup> (i.e. the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime<sup>46</sup>) and that its scope ‘is within the field of judicial co-operation in civil matters’<sup>47</sup>.

The comparison of the term *protection measure* is clear answer of the question what is the distinction between both protection orders.<sup>48</sup> In case of the ‘European protection order in criminal matters’ it shall mean ‘*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 prohibitions or restrictions [...] are imposed on a person causing danger in order to protect a protected person *against a criminal act* which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity’<sup>49</sup> (emphasis added). In case of the ‘European protection order in civil matters’ it shall mean ‘*any decision,*

<sup>43</sup> VERMEULEN, Gert, De BONDT, Wendy, RYCKMAN, Charlotte, PERŠAK, Nina. The disqualification triad: Approximating legislation: Executing requests: Ensuring equivalence. Antwerpen – Apeldoorn – Portland: Maklu, 2012, p. 45.

<sup>44</sup> Recital 10 of the Directive 2011/99/EU on the European protection order.

<sup>45</sup> Recital 8 of the Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters.

<sup>46</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25th October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Official Journal of the European Union, L 315/57 of 14th November 2012. The purpose of the Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

<sup>47</sup> Recital 9 of the Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters.

<sup>48</sup> KLIMEK, Libor. Európsky ochranný príkaz: nový trestnoprocesný nástroj Európskej únie a úvahy k právnemu poriadku Slovenskej republiky [transl.: European Protection Order: a New Criminal Law Instrument of the European Union and Considerations towards Law of the Slovak Republic]. *Justičná revue*, 2014, Vol. 66: No. 4, p. 568.

<sup>49</sup> Article 2(2) of the Directive 2011/99/EU on the European protection order.

whatever it may be called, ordered by the issuing authority of the Member State of origin in accordance with its national law and imposing one or more of the following obligations on the person causing the risk with a view to protecting another person, when the latter person's physical or psychological integrity may be at risk' (emphasis added):<sup>50</sup>

- a prohibition or regulation on entering the place where the protected person resides, works, or regularly visits or stays,
- a prohibition or regulation of contact, in any form, with the protected person, including by telephone, electronic or ordinary mail, fax or any other means, and
- a prohibition or regulation on approaching the protected person closer than a prescribed distance.

Indeed, while the 'European protection order in criminal matters' covers protection measures issued through decisions in criminal matters, protection measures covered by the 'European protection order in civil matters' covers any other decisions.

The term 11<sup>th</sup> January 2015 is important for both protection orders. The Member States of the European Union shall take the necessary measures to comply with the provisions of the Directive 2011/99/EU on the European protection order by that date. The Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters shall apply from that date (to protection measures ordered on or after that date, irrespective of when proceedings have been instituted).

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<sup>50</sup> Article 3(1)(a)(b)(c) of the Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters.