

European Protection Order Handbook for Lawyers



ARTEMIS

878592 — ARTEMIS — JUST-AG-2019/JUST-JACC-AG-2019

WP4 - Handbook for Lawyers and Legal Professionals



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1st Edition: October 2021



This publication was funded by the European Union’s Justice Programme (2014-2020).

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A. EPO and EC Directive 2011/99/EU

The European Protection Order (EPO) is an important tool for the protection of European citizens and in particular victims of violence; it is a mechanism for the mutual cooperation among Member States and the recognition of decisions concerning protection measures for victims of crime. The EPO was established by Directive **2011/99/ EU** and is part of a coherent and comprehensive set of EU measures on victims' rights, related to the elimination of violence against women; together with **Regulation 606/2013** (on mutual recognition of protection measures in civil cases) and **Victims' Directive 2012/29 / EU**, they consist a package of measures aiming at strengthening the rights and protection of victims of crime in the EU in particular when traveling or moving to another Member State.

As is stated in the preamble of the Directive; *“In a common area of freedom, security and justice, without internal frontiers, it is essential to ensure that the protection afforded to a natural person in one Member State is maintained and continued in any other Member State where the person will go or has gone. Therefore it should be safeguarded that the lawful exercise by citizens of the European Union of their right to move and reside freely within the territory of the Member States, in accordance with Article 3 (2) of the Treaty on European Union (TEU) and Article 21 of the Treaty on the Functioning of the EU will not lead to a loss of their protection”*.¹

The main purpose of the (EPO) is to protect the victim (the so-called- **“protected person”**), from the dangerous behavior of a perpetrator (the so-called - **“person causing danger”**), a behavior that goes beyond national borders, within European level. This protection should apply in a manner that is effective for the benefit of the **persons in need of protection**, in order to prevent the continuous search for judicial protection, the re-examination/ questioning of the same facts and, finally, their repeated victimization.

According to the definition provided in article 2 of the Directive:

‘European protection order’ means 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;

Whereas;

‘protection measure’ means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the prohibitions or restrictions referred to in Article 5 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;

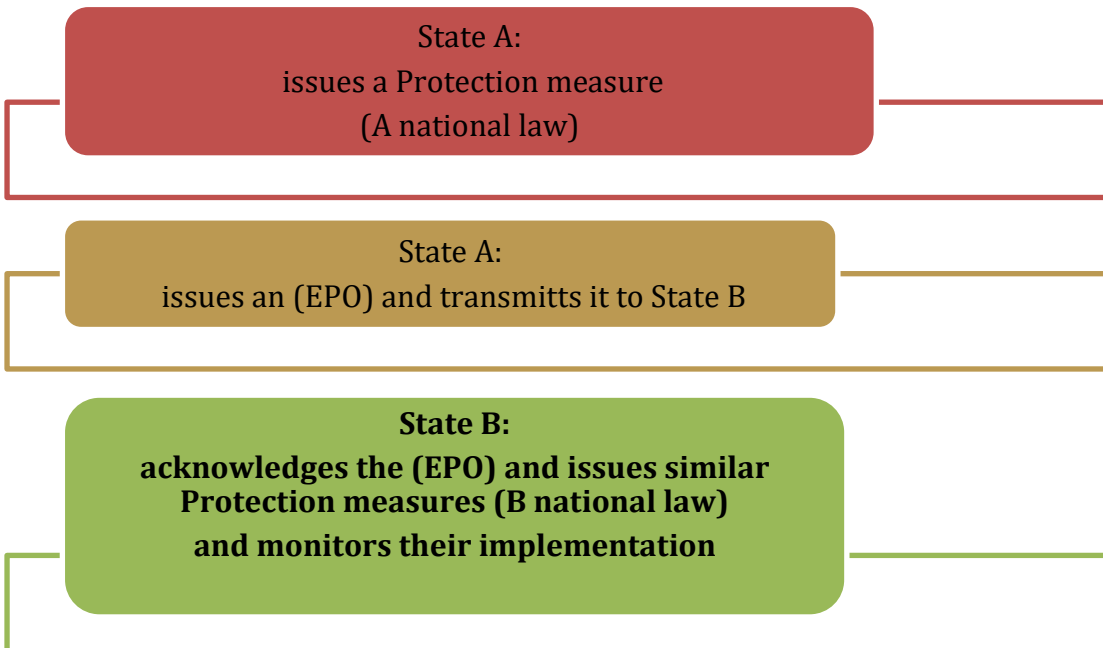
Therefore crucial elements for the understanding of an (EPO) are the following:

- A decision or an order
- Taken by a judicial (or equivalent) authority in a Member State (State A),

¹ Said Directive is binding on all Member States (including also the UK) except Ireland and Denmark,.

- related to protection measures (certain prohibitions and restrictions)
- imposed on a person causing danger (perpetrator)
- for the benefit of the protected person (victim)
- in order to ensure that her/his protection continues in another Member State (State B) where both victim and the perpetrator have moved and (temporarily) reside.

The following Table depicts it more schematically:



The Directive contains an exhaustive list of prohibitions or restrictions which, when imposed in the **issuing State** and contained in an (EPO), they (prohibitions or restrictions) should be recognized and enforced in the **executing State**. These prohibitions / restrictions are the most common among EU - member-states and if not imposed on the person causing danger are most likely to endanger the safety and integrity of a person. At national level there may also be other/ more types of protection measures, imposed on the person (that is likely to) causing danger. Therefore an (EPO) applies to the **three most common types of national protection measures** (article 5 Directive 2011/99/EU: *Need for an existing protection measure under national law*)

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

It is important to note that:

Victims of criminal acts are not the only victims of sexual violence, although these are the most common cases for which a protection measure may be requested; they might also be victims of a racist crime or of terrorist acts. The Directive refers to criminal cases and national protection measures that aim to protect a person from criminal acts, i.e. acts that endanger life, physical-psychological-sexual integrity, dignity and personal freedom

of the person. Therefore an (EPO) would be expected to be implemented in instances when persons in need of protection find themselves in imminent or possible danger in (at least) two EU Member States by the same perpetrator. Such instances or crimes would be Domestic Violence-crimes, Acts of Interpersonal violence, Human trafficking, Crimes against minors and Stalking.

The **nature of the authority** issuing the protection measure, (criminal, administrative or civil), does not matter. In the preamble of the Directive, it is emphasized that "*since in the Member States various authorities (civil, criminal or administrative) are responsible for issuing and enforcing protection measures, it seems appropriate to give the Member States cooperation mechanism a great deal of flexibility*".

A necessary condition for the executing State to take action is **the movement of the person causing the danger** to the territory of said Member State. Since this Directive regulates cases in which the protected person moves to another Member State, the issuance, or the enforcement of an (EPO) should not entail the transfer to the executing State of powers relating to principal, suspended, alternative, probation or ancillary penalties, or with security measures imposed on the person causing the danger, if that person is still residing in the State that issued the protection measure.

Recognition of the (EPO) by the executing State implies, inter alia, that the competent authority of that State acknowledges the existence and validity of the protection measure taken in the issuing State, recognizes the actual situation as described in the (EPO) and agrees that protection should continue to be provided in accordance with its national law. Additionally, in order for a protection measure to be enforceable, it is not necessary for the criminal act to have been recognized by a final court decision.

Protection measures aim to prevent the commission of new criminal acts or mitigating the consequences of previous criminal acts. A Member State is not obliged to issue an (EPO) under a prohibition/restriction/protection measure which does **not specifically aim to protect a person in danger** but mainly serves other purposes, such as e.g. the social reintegration of the perpetrator.

Member States are by **no means obliged to amend their national law** to adopt protection measures in criminal proceedings issued by other member states. Competent authority of the executing State is not obliged to take the same security measure applied by the issuing State and has a **wide range of discretion** to approve any measure it deems appropriate under its national law, in order to ensure continued and, to the highest degree possible, equivalent protection for the protected person, in line with the (EPO).

B. Implementation of Directive 2011/99/EU – A general overview of the main application aspects

Aim of the Directive is to ensure that a person who benefits from a protection measure in one Member State (hereinafter MS) can continue to rely on such protection when moving or travelling to another MS. This instrument was introduced by the Directive 2011/99/EU², which finds its legal basis adopted under Article 82(1) (a) and (d) TFEU (the *Treaty on the Functioning of the European Union*), and it constitutes the first mutual recognition of the Directive after the entry into force of the Lisbon Treaty: it is focused more specifically on judicial cooperation in criminal matters, which provides for the mutual recognition of judgments and judicial decisions within the common area of freedom, security and justice.

The state of actual implementation of the contents of Directive 2011/99/EU has been the subject of recent official reports³, which will form the basis of the considerations below.

Generally, the information regarding the actual implementation of EPOs in the EU territory are minimal and often anonymously referred to as MSs (e.g., ‘two MSs’, without any specific indication).

- **Communications**

Some MSs did not communicate relevant data on the application of the instrument provided for by Article 22 of the Directive. Consequently, the lack of specific cataloguing of EPOs in some countries and rather fragmentary reporting to the Commission give unclear information on the subject.

Upon expiry of the transposition period on 11th January 2015, the following 14 MSs did not communicate the necessary measures to the Commission: Belgium, Bulgaria, Czech Republic, Greece, France, Cyprus, Latvia, Lithuania, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden. By October 2017, all MSs bound by the Directive notified the Commission of their national transposing measures (in accordance with Article 21) and informed the Commission about judicial or equivalent authorities that are competent to issue and execute EPOs.

- **Competent authorities - Language**

Article 3 provides that MSs inform the Commission which judicial or equivalent authorities are competent to issue the EPOs. In the majority of MSs, the authorities competent to issue EPOs are courts, public prosecutors or examining magistrates: police authorities have been designated in one MS.

² For the contents, definitions and general considerations of Directive 2011/99/EU please refer, for the sake of brevity, to Chapter A, Part 1, of the Handbook. This chapter aims to provide information on some practical aspects related to the further application of the Directive.

³ See: *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2011/99/EU of the European Parliament and of the Council of 13th December 2011 on the European protection order*, 11 May 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:187:FIN>; *Report on the implementation of Directive 2011/99/EU on the European protection order* (2016/2329), 14 March 2018, https://www.europarl.europa.eu/doceo/document/A-8-2018-0065_EN.html; *European protection order Study*, EPRS, PE603.272, September 2017, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603272/EPRS_STU\(2017\)603272_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603272/EPRS_STU(2017)603272_EN.pdf); *Criminal procedural laws across the European Union – A comparative analysis of selected main differences and the impact they have over the development of EU legislation*, PE 604.977, August 2018, [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604977/IPOL_STU\(2018\)604977_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604977/IPOL_STU(2018)604977_EN.pdf)

As a competent executing authority, the vast majority of MSs have designated geographically competent judicial authorities (for cases with unknown residence of the protected person, two MSs have additionally designated the courts in their capitals); one MS has designated police authorities.

The attached table (last reviewed on 14th April 2021 by EJN – attachment no. 1) shows, in greater detail, the designated authorities for each MS and the official languages – or translations- in which EPOs (and related communications) must be drafted (Article 17 Directive): many MSs only accept their national language, while some also accept English and some also other languages on condition of reciprocity.

- **Issuance of a European protection order**

The Directive (Article 5 and Article 6) provides that the request for issuing an EPO should be dealt with great promptness, taking into account the specific circumstances of the case (Recital 13). In this regard, it is worth mentioning that a few MSs have laid down deadlines for taking a decision on an EPO of 3, 10 or 15 days. One MS recommends that an EPO should be issued at the same time when the national protection measure is imposed. Article 7, on the other hand, provides for the form and content of the EPO, according to the model laid down in Annex I of the legislative text (see attachment no. 2).

- **Guarantees to the person causing danger**

The Directive (Article 6(4)) provides that before issuing an EPO, the person causing danger is entitled to be heard and to challenge the national protection measure, if that person has not been granted these rights in the procedure leading to the adoption of the national protection measure (Article 6(4)). More than half of the MSs have transposed this directive; some of them go beyond the minimum requirement laid down in Article 6(4) of the Directive.

- **Obligations to inform the protected person**

In compliance with the Directive, when adopting a national protection measure, the competent authority should inform the protected person of the possibility to apply for an EPO, in accordance with the procedures laid down in its national law (Article 6(5): some Member States explicitly provide that competent authorities should inform the protected person of this possibility. Moreover, in case the request for issuing an EPO is rejected, the competent authority shall inform the protected person of the possible legal remedies available. MSs have transposed these obligations in order to inform in a differentiated manner.

Procedure for recognition and adoption

The Directive (Article 9 (1)-(2)) does not provide for a mandatory time limit for the recognition of an EPO or for the adoption of a national protection measure on the basis of an EPO. However, some MSs have introduced specific time limits (ranging from 2 to 28 days), which can be extended if they need to consult the competent authorities of the issuing State due to incomplete information.

- **Obligation to inform the protected person, the person causing danger and the competent authority of the issuing State about the measures taken and the consequences of their breach**

The degree of transposition of this obligation varies among MSs. It provides information on measures taken with regard to the EPO, to all three parties. Others, however, have extended the information to the authorities closest to the protected person in the executing State, such as the public prosecutor or the police, or to the competent authority in the issuing State, with a view to informing the protected person.

- **Grounds for non-recognition**

The Directive provides for nine grounds for non-recognition of an EPO (Article 10(1)); executing authorities may refuse to recognise an EPO on these grounds, that several MSs have transposed as optional, while others have introduced most of them as mandatory. In any event, non-recognition of the EPO imposes a duty to inform the protected person and the issuing State (Article 10. 2): almost all of the MSs concerned have fulfilled this obligation.

- **Procedures for the adoption and enforcement of protection measures**

In the executing State, decisions are taken according to the national law (Article 11(1)): all the States have transposed this provision, with the exception of one MS.

- **Consequences in case of violation of the protection measure**

If, following recognition of an EPO (Article 11(2)), one or more measures taken by the executing State are found to have been violated, some MSs provide for the adoption of a ‘more severe’ measure or a ‘measure of other protection or assistance’ by the competent judicial authority: a couple of MSs, on the other hand, only provide for financial sanctions.

- **Obligation to notify the competent authority of the issuing State in the event of breach of the protection measure**

The Directive obliges the executing State to notify the issuing State of any breach of the measures based on the EPO, so as to provide a timely and adequate response to the person causing danger (Article 12). A standard form is provided for this purpose in Annex II (see attachment no.3) and the competent authority of the executing State is under obligation to use it. One MS has not transposed this obligation.

- **Data collection**

The Directive provides for Member States to supply the Commission with reliable data on the application of national procedures on EPOs, at least on the number of EPOs requested, issued and/or recognised (Article 22), and urges them to communicate relevant offences: the aim is to know the degree of effective implementation of the directive's contents.

Questionnaires were sent to MS: one with the aim of receiving data by September 2017 (from 2015 to mid-2017) and the other by March 2019 (from 2015 to 2018).

The statistics provided by the MSs and compiled for the time period 2015-2018 amount to a total of 37 EPOs issued: most of them were issued by only one MS (27 out of 37), while 10 MSs reported that they had neither issued nor recognised any EPO. The data provided shows that only 15 EPOs were recognised and led to the adoption of protection measures in the executing state (4 in 2015, 5 in 2016, 3 in the first half of 2017, and 3 date from 2017-2018). There is still a lot to be done but nevertheless we are in the presence of a significant increase in the number of EPOs, if we consider that in the previous period only seven EPOs had been issued since the entry into force of the Directive: four of the seven EPOs issued in Spain, two in the United Kingdom and one in Italy, despite the thousands of protection orders issued at national level⁴. It has been estimated

⁴ See note 2, regarding the European Parliament's study on the evaluation of European implementation.

that in 2010 over 100.000 women residing in the EU were covered by protection measures related to gender-based violence.

CONCLUSIONS

The national implementing provisions received from all 26 MSs are considered by the EU Commission to be satisfactory overall: this is especially true with regard to the procedures for recognition of EPOs.

However, ten years after its adoption and six years after the expiry of the transposition period, the Directive has not yet reached its full potential, as evidenced by the low number of issued and executed EPOs, despite the fact that the issue of gender-based violence⁵ and the means to combat it, is a burning and major issue in the civic consciousness of Europeans.

Based on a number of analyses, the causes of low EPO's diffusion can be established in: **1.** a general lack of awareness of the existence of these instruments, on the part of judicial authorities, practitioners, civil society and the victims themselves. **2.** differences between national protection regimes. These also depend on the way crimes have been defined and framed at MSs level: indeed, national legal definitions of gender-based violence in general, and of specific forms of violence (such as rape, sexual violence, stalking and intimate partner violence) differ significantly from one MS to another. **3.** the flexibility⁶ of the enforcement authorities regarding the nature (criminal or civil) of the protection measures to be implemented, which often vary considerably⁷, due to the differences between the legal systems and traditions of the MSs. This, on the one hand, may give rise to an overlap with the civil measures of the EPM Regulation and, on the other hand, to a reduced incisiveness of the measures against criminal offences that are not appropriately and univocally tackled in the whole of Europe. **4.** Some MS do not provide for adequate and effective sanctions for the violation of a measure taken in recognition of an EPO. **5.** Considerable number of reasons for non-recognition of a European protection order. **6.** Weaknesses in some national centralised EPO detection systems.

Among the concrete actions considered most useful for strengthening the EPO system are the following:

- promotion and dissemination of good practices and cooperation among MSs, as well as between MSs and civil society;
- intervention policies to facilitate access to justice and legal aid for victims of crime, encouraging legal aid where necessary, strengthening actions to control and prevent violence against women, including domestic violence in rural areas;
- creation of a single digital system for the European registration of information on EPOs, placed at disposal by all MSs, which also aim to facilitate the coordination and management of data and statistics;

⁵ Violence, in this perspective, should be deemed 'a criminal act that may endanger life, physical or psychological integrity, dignity, personal liberty or sexual integrity'.

⁶ Recital 20 of the Directive provides that the '*competent authority in the executing State is not required in all cases to take the same protection measure as those adopted in the issuing state, and it has a degree of discretion to adopt any measure which it deems adequate and appropriate under its national law*' to offer continued protection to the person.

⁷ The EPO Directive constitutes an 'integrated' system with preventive measures in civil matters provided for in Regulation (EU) No. 606/2013, with which shall be associated Directive 2012/29/EU laying down minimum standards on the rights, support and protection of victims of crime (which also includes victims of gender-based violence) and Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

- launching information campaigns on this topic in the MSs, including cooperation with NGOs;
- boosting public officials training, especially those working with victims in relation to EPOs, as well as training of police forces, staff of competent national authorities, legal practitioners, associations and NGOs dealing with victims of violence.

Finally, the European Union’s signing of the Istanbul Convention follows a comprehensive and coordinated approach, which places the rights of the victim at the centre. A broad adhesion to the Convention would overcome an important critical issue for the practical application of EPOs, namely the non-recognition of “persecutory acts” as a crime in all MSs.

It would, by all definitions, be an important building block for the strengthening and integration of the various instruments for the protection of victims in the European legal space.

C. Good Practices on the effective legal support of victim

The European Protection Order (EPO) represents an important step to protect all victims of violence, and particularly women victims of gender-based violence across the EU Member States. It was estimated that in 2010 over 100,000 women were covered by protection measures in the EU.⁸ Many of these women need protection orders to apply not just in their country of citizenship, but also when they change their residence or travel to another EU Member State. However, a recent report indicated that since its transposition in national legislations in 2015, only 37 EPOs were issued and 15 were implemented.⁹ Such a low number of issued EPOs indicates that there is a need for improving the implementation of the Directive.

In some cases, the national authorities in charge of issuing an EPO are not aware of this possibility and very few EU citizens, especially victims, are aware of its existence. Furthermore, there is a wide variety of protection orders across the states and these are not always easy to transmit to another state in a manner that guarantees the same level of protection. Some states use digital surveillance to ensure the implementation of protection orders while others do not, and not all states punish the breach of an EPO in the same manner. Overall, there is a lack of awareness and training among the judiciary and other relevant actors on the use of EPO, and victims are not well informed of its existence or procedures related to it.

In order to ensure the full implementation of the Directive across the EU, it is useful to identify good practices in implementing protection orders and EPO. Due to the Directive still being seldom used, there are not many good practices identified related to it, but there are good practices in legislation and implementation of protection orders, which is the basis for effective implementation of an EPO. There are also good practices related to effective social support of victims related to protection orders and EPO.

Legal Framework

Portugal – The Portuguese legal system provides for a wide range of protection orders. These measures are governed by criminal law and are regulated both in general criminal law (the Portuguese Code of Criminal Procedure and the Portuguese Criminal Code) and under the legislation concerning specifically the crime of domestic violence (Law No. 112/2009). Measures encompass: contact bans, the prohibition of approaching certain people or places, mandatory permanence within certain locations, travel bans, mandatory attendance of rehabilitation or perpetrator programmes for domestic violence offenders and the prohibition of holding arms. Electronic monitoring can be imposed by a court decision whenever it is deemed essential to guarantee the safety of the victim. It is carried out under the supervision of the prison and probation services.¹⁰

Austria – Austria has been selected as having good practices due to its pioneering role in establishing the first ever regime of Emergency Barring Orders (EBOs) and protection orders aiming to ensure the protection of victims of domestic violence and abuse in 1997. The Austrian legislative framework of EBOs has been recognised by the Council of Europe as constituting the gold standard for the issuance of EBOs and protection orders in cases of domestic violence. The protection regime consists of 3 tiers: (i) issuance of EBOs; (ii) intervention centres providing emergency support to victims; and (iii) civil law POs which may be applied for

⁸ European Parliamentary Research Service, European Protection Order Directive 2011/99/EU: European Implementation Assessment, September 2017.

⁹ European Commission, (2020), “Report from the Commission to the European Parliament and the Council on the implementation of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order”.

¹⁰ GREVIO’s baseline evaluation report on Portugal.

by 3 victims following the expiration of the EBOs or otherwise. The EBOs are issued by the police ex officio and cover all victims of violence in their home, including migrant women and victims of stalking, and there is no requirement for cohabitation between the victim and the perpetrator. At the issuance of the EBO, the police are actively involved in the monitoring of compliance and check with the victim that the perpetrator has not approached the victim's home. Additionally, the police have a duty under the law to inform the victim of their rights to apply for a civil law protection order.¹¹

Procedures for requesting an EPO

Estonia – Estonia has been cited in the EU Parliament Assessment study of the EPO (2017) as a good practice regarding the implementation of the EPO, due to its provision of comprehensive translation services. With regards to the issuance and execution of EPOs, the Estonian Ministry of Justice has established a framework for the translation of EPO forms. Thus, when issuing an EPO, the EPO shall be translated into the official language of the executing State and shall be transferred to the competent authority of the executing State accordingly. Additionally, in the cases of victims which are not proficient in the Estonian language, the legal framework provides for the translation of the EPO into the victim's native language or a language in which s/he is proficient, at the victim's request. The victim may also request the translation of additional supporting documentation which are deemed essential for ensuring her/his 5 procedural rights. If this request is refused, the competent authority must formalise the refusal with a ruling.¹²

Multi-agency cooperation

Italy – In many Prosecutors' Offices in Italy, collaboration has been developed between social services, anti-violence centres, and public and private services of the local network, in order to immediately secure accommodation for victims of violence in cases when their removal from the home is urgent. In some Public Prosecutor's Offices, social service offices have been opened, in order to provide assistance to the specialized group responsible for crimes against "vulnerable groups" with reference to both civil and criminal affairs. The office receives and evaluates reports from individuals, local services, hospitals, and nursing homes for the purpose of providing support. This practice allows for a closer cooperation between the judiciary, the police and social services, facilitating both the investigation of crimes as well as the provision of victim protection. Social workers assigned to the office cooperate with the judiciary and the police by supporting the judicial police in cases where there is a need for a parallel social intervention (such as home visits). In addition, they constitute an effective interface with the social and health services when there is a need to initiate legal protection in favour of persons involved in criminal proceedings. In practice, this function is evaluated positively by the judicial offices that have experienced it because it allows to quickly identifying competent social or health professionals and to obtain the necessary answers in a short time, by ensuring overall the speediness of the judicial action.¹³

¹¹ Council of Europe, Emergency Barring Orders in situations of domestic violence: Art 52 of the Istanbul Convention, 2017.

¹² European Parliamentary Research Service, European Protection Order Directive 2011/99/EU: European Implementation Assessment, September 2017.

¹³ Resolution on guidelines on organization and good practice in dealing with proceedings relating to crimes of gender and domestic violence, (resolution of 9 May 2018), Italian Superior Council of the Magistracy.

D. Country Specific Information

CROATIA

Protection orders in Croatia

Gender-based violence against women is regulated in Croatia through the Criminal Code and the Law on Protection from Domestic Violence. The protection orders are regulated through either the Criminal Code, the Criminal Procedure Code, Misdemeanour Law or the specialised Law on Protection from Domestic Violence.

The **Criminal Code**¹⁴ prescribes a total of nine safety measures that can be applied to any defendant in a criminal procedure, including prohibition of approaching, harassing or stalking the victim (Art. 73 of CC), which can be imposed for a period of 1 to 5 years, and removal from a joint household (Art. 74 of CC), which can be imposed from 3 months to 3 years. Safety measures fall under jurisprudence of the Criminal Court and take effect from the enforceability of the judgment. Safety measures that are prescribed by the Criminal Code can only be issued by the judge presiding in the case. In order to be issued, the public prosecutor or the victim has to apply for them. The court can also decide to issue safety measure(s) without the plaintiff's application, if the judge deems such measures necessary. **The sanction for violating the safety measure is up to two years in prison.**

The **Criminal Procedure Code**¹⁵ prescribes 11 precautionary measures, of which the following can be applied in cases of GBV (Art 98, par 2):

- ban on visiting a certain place or area,
- ban on approaching a certain person,
- prohibition to establish or maintain contact with a certain person,
- prohibition of stalking or harassing the victim or other person,
- removal from home.

According to the Criminal Procedure Code, precautionary measures may be ordered before and during the criminal proceedings. Before filing an indictment, precautionary measures are determined, extended and revoked by a decision of the State Attorney, and the investigating judge when deciding on pre-trial detention. **In case of non-compliance with the imposed measure, it will be replaced by pre-trial detention.** The public prosecutor or the investigating judge who ordered the measure is competent to extend or revoke it. After the indictment has been filed and until the verdict becomes final or enforceable, the measure is determined, extended and revoked by the court.

The **Misdemeanour Law**¹⁶ in Article 130 prescribes precautionary measures, including a ban on visiting a certain place or area, and prohibition of approaching a certain person and prohibition of establishing or

¹⁴ The Criminal Code, Official Gazette 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, available in Croatian at <https://www.zakon.hr/z/98/Kazneni-zakon>

¹⁵ The Criminal Procedure Code, Official Gazette 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, available in Croatian at <https://www.zakon.hr/z/174/Zakon-o-kaznenom-postupku>

¹⁶ The Misdemeanour Law, Official Gazette 107/07, 39/13, 157/13, 110/15, 70/17, 118/18, available in Croatian at <https://www.zakon.hr/z/52/Prekr%C5%A1ajni-zakon>

maintaining contact with a certain person. After the indictment has been filed, the court may ex officio or at the request of the plaintiff issue a decision to apply one or more precautionary measures against the defendant if necessary to ensure the defendant's presence in the proceedings, prevent the defendant from committing new offense or from preventing or complicating evidence in the proceedings. These measures can be applied throughout the duration of the misdemeanour procedure. They can also be issued by the police in cases of domestic violence for a period of up to 8 days, therefore, they can be used as **emergency protection orders**. Once they order the measure, they have eight days to file an indictment asking the court to extend the duration of the precautionary measure, otherwise the measure will cease to be in effect after eight days. The appeal process does not delay the execution of precautionary measures. **The violation of the precautionary measure may be sanctioned with a fine of up to 10,000 HRK (€1,300).**

Cases of domestic violence are most often prosecuted through the **Law on Protection from Domestic Violence**¹⁷. According to this law, which is implemented by the Municipal Misdemeanour courts, protection measures are defined as a type of sanction and can be issued with or without other types of sanctions (jail or a fine). It prescribes the following protection measures:

1. Mandatory psychosocial treatment for the perpetrator,
2. Prohibition of approaching, harassing or stalking a victim of domestic violence,
3. Removal from a joint household,
4. Compulsory treatment for addiction.

Protection measures of removal from a joint household and prohibition of approaching, harassing or stalking a victim (eviction and restraining order) can be passed for a period of 1 month to 2 years. Psychosocial treatment can be ordered for no less than 6 months and addiction treatment for up to 1 year. **Violation of a protection measure can be punished by a fine of at least 3,000 HRK (€400) or by at least 10 days in jail.**

The LPDV in Art. 12 states that protection measures may be imposed ex officio, at the proposal of the authorised prosecutor, the victim or the Centre for Social Welfare. The authorised prosecutor in cases tried under the LPDV is usually the police, or sometimes the public prosecutor. In accordance with Art. 14 of the same law, the court may impose protection measures prohibiting the approach, harassment or stalking of a victim of domestic violence and removal from a joint household before initiating misdemeanour proceedings at the proposal of the victim or another authorized prosecutor if there is a direct threat to the safety of the victim or their family member. That decision has to be rendered by the court without delay, and no later than twenty-four hours after the submission of the motion. The court makes the decision after hearing the victim and the person against whom protection is sought. The appeal does not delay the execution of the decision. The decision will be revoked if the victim or other authorized prosecutor does not file an indictment within eight days from the day the decision was made, of which the court is obliged to warn the victim.

Available data indicates that most POs issued for the protection of women victims of gender-based violence have been issued pursuant to the Law on Protection from Domestic Violence. This reflects data collected by the police, which indicates that the majority of cases of gender-based violence are prosecuted under the Law

¹⁷ The Law on Protection from Domestic Violence, Official Gazette 70/17, 126/19, available in Croatian at <https://www.zakon.hr/z/81/Zakon-o-za%C5%A1titi-od-nasilja-u-obitelji>

on Protection from Domestic Violence as opposed to criminal law, which would entail stronger sentences and would also cover a wider range of victims.

EPO and EC Directive 2011/99/EU

Transposition in National Law

The European Protection Order (EPO) established by the EC Directive 2011/99/EU was transposed into Croatian legislation through the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union¹⁸. It was amended on 4 March 2015 to include the said Directive. This law defines circumstances and procedures for recognising an EPO from another EU state as well as for issuing an EPO in Croatia. As defined by this law, only a victim, that is, the person who has been issued a protection order, can apply herself or through her legal representative for an EPO.

a) Competent Authorities (Article 3 of the Directive)

In Croatia, the investigative judge of the County Court is the competent authority for the issuance and recognition of an EPO. The Judicial Cooperation Act stipulates that the investigating judge of a County court according to the place where the protected person has or intends to have a permanent or temporary residence is competent for the recognition of an EPO in the Republic of Croatia. The EPO in Croatia is also issued by the investigating judge of the County court competent according to the place where the procedure is conducted.

b) Issuance of an EPO (Article 5)

The EPO in Croatia is issued by the investigating judge of the County court competent according to the place where the procedure is conducted. It can be issued at the request of the protected person or her guardian or representative submitted directly to the Court, if the protected person resides or decides to reside in another Member State. The EPO in Croatia can be issued for the safety measures under the Criminal Code, precautionary measures under the Criminal Procedure Code and Misdemeanour Code, and for protection measures under the LPDV^{19,20}. The EPO is issued on the prescribed form and contains the data prescribed by law which enable its execution in the executing state.

There is no specific time limit for issuing or recognising an EPO in Croatia. The law merely states that the judge should act immediately and without delay. The only delay is allowed if the EPO is not translated in Croatian. In those cases, the procedure can be delayed by 15 days. In case of an appeal by the victim, the court needs to rule on that appeal within three days. There is no possibility to simultaneously issue an EPO to different States when the victim expresses the intention to stay in all of them.

¹⁸ Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union, Official Gazette 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, available in Croatian at <https://www.zakon.hr/z/345/Zakon-o-pravosudnoj-suradnji-u-kaznenim-stvarima-s-dr%C5%BEavama-%C4%8Dlanicama-Europske-unije>

¹⁹ The EPO can be issued for the protection orders under the following articles: Criminal Code art. 73 and 74; Criminal Procedure Code art. 98. par 2, points 2), 4), 5), 9), 10); Misdemeanour Code art. 130 par 2 and 3; and Law on Protection from Domestic Violence, art. 16 and 17.

²⁰ The directive is a piece of legislation that sets out the goal that all EU Member States must achieve. However, each state decides independently how to achieve this goal. https://europa.eu/european-union/law/legal-acts_hr#direktive

c) *Obligation to inform the protected person*

Croatian law does impose an obligation on the judicial bodies, if the protection order has been imposed and the protected person plans to leave the country, to inform the protected person on the right to request an EPO. Furthermore, when the investigating judge of the County Court recognises an EPO issued by another Member State, they must immediately inform the protected person. The protected person must also be immediately contacted if the EPO is rejected and informed of her right to appeal (Art. 131.z.(3)).

d) *Transmission procedure-Language regime (Article 8 and 17)*

The Judicial Cooperation Act of Croatia provides that an EPO issued by another Member State must be translated (does not specify by which person/authority in the issuing State and on whose expense) into Croatian in order to be recognised.

e) *Recognition of the EPO (Article 9)*

Immediately upon receipt of the EPO issued by the competent authority of the issuing State, the investigating judge shall recognize the order and take appropriate measures for the purpose of enforcement. There is no specific time limit for issuing or recognising an EPO in Croatia. The law merely states that the judge should act immediately and without delay. If the EPO is incomplete or is not accompanied by a translation, the investigating judge shall set a time limit for delivering the supplement or translation, which may not exceed 15 working days. The investigating judge will postpone the issuance of the decision until the receipt of the amendment or translation of the EPO. The decision on the recognition of the EPO shall be delivered without delay to the issuing State, the protected person, its legal representative or guardian and the person causing danger, with notification of the legal consequences of the breach of those measures.

f) *Grounds for non-recognition of an EPO (Article 10)*

The Croatian law provides for nine (9) grounds enshrined in Directive for the denial of the investigating judge to recognize an EPO by issuing an Order justifying the reasons. Both the issuing State and the protected person should be informed of the reasons for refusing to recognize the EPO. An appeal against the decision on the recognition of an EPO may be lodged by the protected person or his/her guardian or legal representative and the person causing the danger within three days. The panel of the County court should decide on the appeal within three days. Once the decision recognising the EPO becomes final, it is enforced in accordance with domestic law. Withdrawal or amendment of the EPO in the issuing country will result in the revocation, i.e. modification of the precautionary measures and special obligations determined by the decision on the recognition of the EPO.

g) *Breach of the EPO and Obligation to notify related to the breach (Article 12)*

The body executing the protection measure has to inform the investigating judge of any action of the person causing danger contrary to the decision. In case of a breach of measures imposed on the basis of an EPO, the investigating judge has an obligation to inform the competent authority of the issuing or supervising State. This notification is submitted on a standard form which is an integral part of this Act. The form must be translated into the official language or another language accepted by the issuing or supervising State. The sanctions for violation of an EPO in Croatia are determined based on the Criminal Code and Criminal Procedure Code, depending on the type of measure that the judge issued based on the EPO.

Implementation of EPO

Although Croatian transposing provisions seem to be sufficient enough to enable the issuance and recognition of EPOs, very few EPOs have been issued or recognised. There is no available data on the prevalence of EPOs in Croatia. Several contacts with the employees of the Ministry of Justice, the County court and the Supreme Court showed that there is no department in charge of monitoring the application of EPOs and collecting data. Therefore, it is not possible to tell how many EPOs have been issued in Croatia since the Directive was transposed into national legislation. One article from January 2020 by a legal adviser from the Supreme Court indicated that two EPOs in the same case (an original EPO and an extension of it) have been recognised by the County court and enforced.²¹ Without data collection and an institution in charge of monitoring the application of EPOs in Croatia, there is no way to be certain of how many EPOs have been recognised or issued.

Major impediments in the application process and execution of EPOs

The European Protection Order is not often used in Croatia. Women survivors of GBV are generally not aware of the existence of a possibility to obtain such an order and they therefore don't request it. There is a low awareness of it among the service providers and legal practitioners. There is no website or any other information point that provides information to the victims about the EPO. Since the information about an EPO is not readily available and there have been no campaigns to inform the women of their right to have an EPO, the level of awareness of its existence in the general public is very low. No centralised authority has been tasked with implementing the Directive, so there is no central point of information. The County courts don't keep track of the number of EPOs issued or recognised.

Useful Contacts

- **Central authority:** Ministry of Justice and Administration <https://mpu.gov.hr/?impaired=0>
- **NGO:** Autonomous Women's House Zagreb - Women against violence against women <https://www.azkz.net/>
- **Victim support (all crimes):** Victim and Witness Support Service Croatia <https://pzs.hr/>
- **Croatian Lawyers Bar Association** <http://www.hok-cba.hr/>

²¹ Briški, M. *Europski nalog za zaštitu i njegova primjena u Republici Hrvatskoj* ("European Protection Order and its application in the Republic of Croatia"), IUS-INFO, 15 Jan 2020, available at <https://www.iusinfo.hr/aktualno/u-sredistu/40386> (accessed on 27 Aug 2020)

CYPRUS

Protection orders in Cyprus

In Cyprus, protection orders may be imposed under both **criminal law** and **civil law**.

Under criminal law, protection orders are issued in accordance with:

- (i) legislation on domestic violence/violence in the family, namely the **Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004** (as amended) (the “Family Violence law”);
- (ii) legislation on forms of sexual abuse and sexual exploitation of children, namely the **Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014**; and
- (iii) legislation on violence against women, namely the **Violence against Women Law 2021**.

The types of protection orders which are available under criminal law consist of **restraining orders** and **orders for the removal of a victim** from the family home or from his/her place of residence. The specific conditions and restrictions included in such orders are subject to the discretion of the court.²²

Specifically, the protection orders consist of:

- *Interim restraining orders* issued against the perpetrator/offender;²³
- *Interim removal orders* to remove a victim from the family home or from his/her place of residence;²⁴
- *Removal orders* to remove a victim who is a minor from the family home or from his/her place of residence;²⁵
- *Restraining orders* issued against the perpetrator/offender.²⁶

Interim protection orders are temporary and may be issued before the filing of criminal charges for a period of up to 8 days from the date of service of the order to the perpetrator. The court may extend the duration of the interim protection orders by a further 8 days, provided that the duration of the interim orders does not exceed 24 days before the filing of criminal charges. If issued under the provisions of Articles 30 and 31 of

²² Articles 21-23 of the Family Violence law; Articles 32-34 of the Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014; Articles 30-33 Violence Against Women Law 2021.

²³ Article 22 of the Family Violence law; Article 33 of the Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014; Article 31 Violence Against Women Law 2021.

²⁴ Article 22 of the Family Violence law; Article 33 of the Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014; Article 30 Violence Against Women Law 2021.

²⁵ Article 21 of the Family Violence law; Article 32 of the Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014; Article 32 Violence Against Women Law 2021.

²⁶ Article 23 of the Family Violence law; Article 34 of the Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014; Article 33 Violence Against Women Law 2021.

the violence against Women Law, the total duration of the interim order may be up to 60 days before the filing of criminal charges.²⁷

Removal orders may be issued once the criminal charges have been filed and for the duration of the trial, or, once the trial is finalised and the perpetrator is convicted, for as long as deemed necessary according to the discretion of the court.²⁸

Restraining orders may be issued once the perpetrator has been charged and the duration of these are subject to the discretion of the court.²⁹

The violation of *interim orders* is not criminalised. However, a violation of any of the conditions included in *removal orders* and *restraining orders* constitutes a crime punishable with a maximum of 2 years imprisonment.³⁰

Under civil law, protection orders are regulated by family law, specifically by the **Parents' and Children's Relations Law 1990** (as amended).

The types of protection orders consist of:

An order granting partial or full custody of a minor to one parent or to a custodian.³¹

The protection order available under civil law relates to minors, i.e. *children under 18 years of age*.³² The extent and conditions of the custody, as well as the duration of the order, are subject to the discretion of the court.³³

The violation of the protection order is criminalised under certain circumstances, depending on the specific restrictions and conditions included in the protection order which have been violated.³⁴

EPO and EC Directive 2011/99/EU

Transposition in National Law

²⁷ Article 22 of the Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004 (as amended); Article 33 of the Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014; Article 31 Violence Against Women Law 2021.

²⁸ Article 21 of the Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004 (as amended) and Article 32 of the Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014.

²⁹ Article 23 of the Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004 (as amended); Article 34 of the Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014; Article 33 of the Violence against Women Law 2021.

³⁰ Article 23, paragraph 7 of the Family Violence law; Article 34, paragraph 6 of the Preventing and Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law 2014; Manual of Inter-Departmental Procedures for the Handling of Domestic Violence Cases in relation to Children, 2017, p.20 paras. 4.6.1-4.6.2; Article 33 of the Violence against Women Law 2021.

³¹ Article 18 and Article 21 of the Parents' and Children's Relations Law 1990 (as amended).

³² Article 2 of the Parents' and Children's Relations Law 1990 (as amended).

³³ Article 18, paragraph 6 of the Parents' and Children's Relations Law 1990 (as amended).

³⁴ Manual of Inter-Departmental Procedures for the Handling of Domestic Violence Cases in relation to Children, 2017, p.20 paras. 4.6.3-4.6.4.

The Republic of Cyprus transposed EU Directive 2011/99/EU into national legislation in 2015 with Law 156(I)/2015 on the European Protection Order 2015 (the “**Cyprus EPO Law**”).³⁵ The Cyprus EPO Law ensures full legislative transposition.

Application Process for an EPO

a) Competent Authorities

The competent authorities for the issuance and recognition/execution of an EPO are set out in **Article 4 of the Cyprus EPO Law**. Specifically, the District Courts with competence to issue national protection orders are also competent to issue EPOs. With respect to the recognition and execution of EPOs, in cases where the protected person is a resident of Cyprus, the District Court of the district in which s/he resides has competence; in cases where the protected person is not a resident, the competent court is the District Court of Nicosia.

Under **Article 5 of the Cyprus EPO Law**, the Ministry of Justice and Public Order is designated as the central coordinating body.

b) Issuance of an EPO

A victim benefitting from a national protection order issued by a District Court may submit an application for the issuance of an EPO to the same District Court under **Article 6 of the Cyprus EPO Law**. According to **Article 7 of the Cyprus EPO Law**, the competent District Court may issue an EPO when a national protection order has been previously adopted imposing on the perpetrator any of the following restrictions:

- Prohibition of entry into certain localities, places or designated areas where the protected person resides or which s/he visits;
- Prohibiting or regulating any contact with the protected person, including communication by telephone, e-mail or regular mail, fax or other means; **or**
- Prohibiting or regulating the right of access of the protected person closer than a predetermined distance; and, when the protected person who submitted the application
 - (i) decides to settle or already resides in another Member State, **or**
 - (ii) decides to stay or is already staying in another Member State, within the EU.

Only the victim/protected person can apply for an EPO to the District Court. No legal representation is required and legal aid for victims applying for an EPO is not provided for in the Cyprus EPO Law.³⁶

c) Obligation to inform the protected person

Judges are obligated to inform victims of their right to request an EPO and of the necessary conditions that need to be fulfilled for the issuance of an EPO under **Article 7(3) of the Cyprus EPO Law**.

d) Transmission procedure- Language regime

³⁵ http://www.cylaw.org/nomoi/arith/2015_1_156.pdf (in Greek only).

³⁶ ARTEMIS Cyprus national report, 2020, p.11. Available at: https://www.artemis-europa.eu/wp-content/uploads/2020/09/ARTEMIS-Research-Report_Cyprus.pdf.

When Cyprus is the issuing state, the EPO is transmitted to the executing State accompanied by a translation of the EPO in the official language or one of the official languages of the executing State (**Article 9, Cyprus EPO Law**).

e) Recognition of the EPO

The competent District Court, upon receipt of an EPO, shall recognise the EPO and shall take any measures available under Cyprus national law which are equivalent, to the greatest possible degree, to the protection provided by the EPO, unless there are grounds for non-recognition as set out in the Cyprus EPO Law (see below). The District Court must inform the perpetrator of the measures which have been issued against him/her and of the legal consequences of breach of such measures (**Article 10, Cyprus EPO Law**).

According to **Article 16 of the Cyprus EPO Law**, recognition of an EPO by the District Court should be treated as a matter of priority taking into account the specific circumstances of the case. This may include the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the Republic of Cyprus and, where possible, the degree of risk for the protected person.

f) Grounds for non-recognition of an EPO

According to **Article 11 of the Cyprus EPO Law**, the reasons for the competent District Court to reject a request for an EPO include, *inter alia*:

- the European protection order is not complete or has not been completed within the time limit set by the competent District Court;
- the protection measure relates to an act that does not constitute a criminal offence under the law of the Republic of Cyprus;
- the conditions required for the issuing of an EPO according to Article 7 of the Cyprus EPO Law have not been met.

g) Breach of the EPO and Obligation to notify related to the breach

If an EPO is violated, sanctions are foreseen under the Cyprus EPO Law; specifically, the competent District Court is authorised to impose criminal sanctions as foreseen by national law, or impose non-criminal sanctions as appropriate (**Article 12, Cyprus EPO Law**). In the event that national law does not provide for any sanction which may be taken in the circumstances, the competent District Court shall report the breach to the competent authority of the issuing State (**Article 13, Cyprus EPO Law**).

Implementation of EPO

No data is available on the number of EPOs issued or executed in Cyprus; as with national protection orders, the judicial system does not record or monitor the number of EPOs issued or executed, so it is not possible to assess the use of EPOs in Cyprus. However, it appears that ***no EPOs have been issued nor recognised and executed in Cyprus to date.***

Major impediments in the application process and execution of EPOs

- There is a discrepancy in the Cyprus EPO Law regarding the competence and authority of judicial bodies to issue EPOs. According to the Cyprus EPO Law, where an EPO is issued in Cyprus, the body authorised to do this is the District Court which imposed the protection order (Article 4, paragraph 1). This is problematic as under the Violence in the Family law, both the District Court and the Criminal Court may issue protection orders. Specifically, the Criminal Court has jurisdiction over most of the more serious offences of domestic violence set out in Article 4 of the Violence in the Family law, yet under the Cyprus EPO Law it is not authorised to issue an EPO. Conversely, the District Court does not have jurisdiction to try crimes punishable with imprisonment of more than 5 years. This potentially constitutes a gap in protection for those victims who are facing the most serious forms of violence, since they do not appear to be able to apply for an EPO.
- No practical provisions, legislative or otherwise, are foreseen, nor have been implemented, which would result in the tangible effect of the EPO Directive.
- There is no legal obligation of the prosecution or lawyers representing victims of gender-based violence to inform them of their right to apply for an EPO under the Cyprus EPO Law; although judges are obligated to inform victims of their right to request an EPO under Article 7(3) of the Cyprus EPO Law, there is no evidence whether in practice judges do actually inform victims.
- The Cyprus EPO Law fails to mention the need for training of the judiciary, lawyers and prosecutors, and others involved in the procedures of issuing or recognising an EPO. There is no evidence of such training or information being available to professionals in Cyprus.
- Since the transposition of the EPO Directive in 2015, there have been no specific awareness raising, information activities or campaigns on the rights of protected persons under the law.
- There is no provision of legal aid in the Cyprus EPO Law.

Useful Contacts

- Cyprus Bar Association, Tel: +357 22 873300, Email: cybar@cytanet.com.cy, Website: <http://www.cyprusbarassociation.org/index.php/en/>
- Advisory Committee on Preventing and Combating Violence in the Family - Useful Contacts: http://www.familyviolence.gov.cy/cgibin/hweb?-A=31&-V=links&_VCATEGORY=0000
- Association for the Prevention and Handling of Violence in the Family (SPAVO): <https://domviolence.org.cy/en/>
- Cyprus Police, Domestic Violence and Child Abuse unit, Tel: +357 22 808442, Email: domviol.childabuse@police.gov.cy, Website: <https://www.police.gov.cy/police/police.nsf/All/2913319CAC1AFDB1C2258400041D65F?OpenDocument>

CZECH REPUBLIC

Protection orders in Czech Republic

In the Czech Republic, the so-called protection orders, i.e., provisional measures protecting victims of crimes from the offender's repeated wrongful acts, are regulated by criminal, civil and administrative law. Protection measures can be used at the pre-trial stage, as well as safety measures imposed at the sentencing stage. They may be in the form of restraining orders, no contact orders and removal orders. Additionally, the police may issue an emergency order - the eviction order - against the perpetrator as an emergency measure under administrative law.

In Czech Civil Law and in particular Articles 400 et seq. of The Act on Special Judicial Proceedings (hereinafter referred to as "ASJP")³⁷ called "*Preliminary proceedings in the case of protection against domestic violence*" protection orders, competent judicial authorities, process and duration are foreseen. These Articles provide specific protection for victims of domestic violence and victims of stalking. Protection order has an interim character and serves to ensure the regulation of rights and obligations of the participants at the time the proceedings on the merits has not yet begun and thus provides at least preliminary protection of their rights. Competent is the District Court of petitioner's residence (Article 400 ASJP). The court orders protection order if the requirements of § 402 of the ASJP are fulfilled, i.e., when the proposal (filed by the petitioner) includes facts, that the co-residence of the petitioner and the respondent in the house or flat in which the common household is located is unbearable for the petitioner due to physical or mental violence against the petitioner or another person living in the common household, or there is an unwanted monitoring or harassment of the petitioner. If the court comes on the basis of the facts described in the proposal to the conclusion that there is domestic violence or stalking, the proposal is approved. The court may issue an order against the violent person to temporarily leave the common dwelling and its immediate surroundings if he/she resides there, or to not enter into it, as well as to refrain from meeting or contacting the petitioner and/or to refrain from undesirable observing and harassment of the petitioner in any manner (Article 405 par.1 ASJP). The Court must decide about issuing the protection order promptly within 48 hours from its submission (Article 404 ASJP). Court decides about the protection order without hearing the parties, only on the basis of documentary evidence. This decision is enforceable by its issuance, lasts one month and can be extended (up to 6 months) (Articles 407 and 408 ASJP). This is a specific protection against domestic violence and stalking, but of course it is also possible, in the alternative, to use the general regulation of interim measures under § 74 et seq. of the Civil Procedure Code³⁸.

In Czech Criminal Law are protection orders issued under the Criminal Procedure Code³⁹ (hereinafter referred to as "CPC"). Articles 88b et seq. of the CPC called *Protection orders* regulate the competent judicial

³⁷ The Act on Special Judicial Proceedings (Act No. 292/2013 Coll.)

³⁸ Civil Procedure Code (Act No. 99/1963 Coll.), Translation of Civil Procedure Code
https://is.muni.cz/el/1422/jaro2008/SOC026/um/99-1963_EN.pdf

³⁹ Criminal Procedure Code (Act No. 141/1961 Coll.), Translation of Criminal Procedure Code -
https://www.legislationline.org/download/id/6371/file/Czech%20Republic_CPC_1961_am2012_en.pdf

authorities, types of protection orders, process and duration. Provisional measures made in the criminal proceedings are used to protect everyone harmed by the crime or their next of kin (e.g. children). The imposition of a provisional measure is not connected with specific crimes. It is the court or public prosecutor (depending on the stage of the criminal proceedings) who decides on a provisional measure, without a proposal (Article 88m of the CPC). The decision can be initiated by the investigator (police officer) or victim/her/his lawyer. If protection orders according to the CPC are issued, the person they apply to must be prosecuted, i.e., this person must be accused (Article 88b par. 1 of CPC). Provisional measures that may be imposed under Article 80 et seq. of the CPC are prohibiting the offender in particular to contact the injured party, the next of kin, or other persons, especially witnesses; enter the shared dwelling occupied together with the injured party and its immediate vicinity and reside in such a dwelling. In contrast to civil law, provisional measures under criminal law are not interim and continue to be in force as long as its purpose requires it and until the final decision in the case is issued at the longest. A violation of protection orders is punished with either fine or an imprisonment.

Last, but not least is eviction, an administrative-law tool issued under Article 44 et seq. of the Act on the Police of the Czech Republic (hereinafter referred to as “PC”)⁴⁰. Eviction is used for the protection of persons who are exposed to the risk of violence in the form of attacks against life, health, or freedom or an exceptionally severe attack against human dignity and thus typically aimed at victims of domestic violence. Under Article 44 of the PC, only the Police of the Czech Republic are competent to perform eviction, i.e., to expel an offender from the common dwelling and its surroundings. Eviction order lasts for 10 days (with the possibility of extension, using an interim measure according to ASJP, as described above) and the violent person must leave the defined space without undue delay and refrain from entering the defined space and contacting the person at risk (Articles 44 par. 2, 45 of the PC). If the expelled person breaches the eviction order, he or she may commit the offense of obstructing the enforcement of an official decision and expulsion. Generally, it is left up to the victim to report violations of protection orders, excepting the eviction order the violation of which is monitored by the police. A police officer must check compliance with eviction order at least once during the given time limit (Article 47 par. 4 of the PC). An Eviction order and a protection order issued under civil law are used more often in cases of gender based violence, in contrast to protection orders issued under criminal law which are used insufficiently.

EPO and EC Directive 2011/99/EU

Transposition in National Law

In the Czech Republic, the Directive 2011/99/EU on the European protection order was transposed into Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters with Amendment No. 77/2015 Coll., effective from 1 May 2015. The European protection order is described in ss. 340–356 of this Act. The Czech Republic has transposed and adapted sufficiently most of the fundamental provisions of the Directive. Moreover, the government has issued guidelines in an Explanatory Memorandum on the application of the EPO Directive in the national context and specifically on the types of national POs which fall within the remit

⁴⁰The Act on the Police of Czech Republic (Act. No. 273/2008 Coll.)

of the EPO Directive and the EPO. Below are stated specific points of a legal assessment regarding the transposition of EPO into Act No. 104/2013 Coll.

a) Competent Authorities (Article 341, 342)

The European protection order (hereinafter referred to as “EPO”) is issued by a judicial or equal body of another Member State in accordance with its laws and regulations upon the application of the protected person. In the Czech Republic, the judicial bodies include courts and public prosecutor’s offices. Under Article 344, the body authorised to recognise an EPO is the District Court of the place of residence or temporary residence of the protected person. In addition, the Ministry of Justice on the request of the court and the Supreme Public Prosecutor's Office on the request of the public prosecutor assists in finding the necessary information to issue or recognize EPO.

b) Issuance of an EPO (Article 354 et seq.)

Czech law provides that an EPO is issued at the request of the protected person, whereas a judicial authority shall verify whether any of the conditions of Article 354 is fulfilled. In addition, Czech law formalizes further the conditions and stipulates that, before issuing an EPO, the judicial authority is also obliged to verify that the protection order on the basis of which it is to be issued imposes restrictions only under criminal law. The protected person may apply for an EPO, either to the competent authority of the issuing State or to the competent authority of the executing State. If the request to issue an EPO is rejected, the protected person has the right to submit a complaint against such a decision.

c) Obligation to inform the protected person

Czech law, specifically Article 8 par. 3 point (c) of the Act on Victims of Crime⁴¹, stipulates an express obligation that the victim should be informed of their right to request an EPO. In practice however this obligation is not always fulfilled.

d) Transmission procedure - Language regime

As stipulated by Article 355 par. 2, an EPO must be translated (does not specify by which person/authority in the issuing State and on whose expense) into the official language(s) of the executing State.

e) Recognition of the EPO (Article 343 et seq.)

A district court in the place where the protected person (temporarily) resides is competent to issue decisions recognising the EPO. The court must issue two (2) Orders; one for the recognition of the EPO and the second for the adoption of similar protection measures, already prescribed by CPC. The law does not specify any time limits for decisions; there is only a duty to adjudicate without undue delay. The district court is obliged to inform the protected person, the person causing danger, and the competent authority of the issuing State about the measures which were adopted. If the court does not recognise the EPO, it must inform the protected person about the possibility to seek provisional measures under CPC.

f) Grounds for non-recognition of an EPO

⁴¹The Act on Victims of Crime (Act No. 45/2013 Coll.)

Czech law provides for the same nine (9) grounds enshrined in Directive for the denial of the judicial authority in the executing state to recognize an EPO by issuing an Order justifying the reasons. Protected person has the right to submit a complaint against the rejection (Article 347, 349).

g) Breach of the EPO and Obligation to notify related to the breach

In such an event the judicial authority of the executing state is competent to order to the perpetrator a disciplinary penalty, another type of provisional measure, custody, or sanctions for obstructing the enforcement of an official decision and expulsion. However, the last option happens only if the accused commits this breach repeatedly or in a serious manner. Under Article 350 par. 1 only a disciplinary penalty can be imposed for the violation of a follow-up measure issued on the basis of a recognized EPO in the executing state; other sanctions are excluded. This legislation seems to be insufficient and in conflict with the Article 11 par. 2 point (c) of the Directive. A disciplinary penalty can hardly secure an end to the breach of the measure. A single Judge of the executing State shall also notify the competent authority of the issuing State of any breach of the measure or measures taken on the basis of the EPO. Notice shall be given using the standard form set out in Annex II of the Directive translated into the official language(s) of the issuing State.

Implementation of EPO

In Czech Republic, according to info received by the international section of the Supreme Public Prosecutor's Office, has not registered any EPO in 2020 or in the previous years that would be issued there or that would be issued in another EU Member State and sent to the Czech Republic for recognition and execution. It is important to emphasize that the data about EPOs are kept in a confused and non-systematic way.

Major impediments in the application process and execution of EPOs

The Czech Republic is one of the partner countries where the transposing legislation includes more detailed provisions as to the types of protection orders which fall within the ambit of the EPO, this has instituted an arguably restrictive approach to issuing EPOs. Provisions under civil law legislation providing for the issuance of national protection orders specifically for victims of domestic violence and stalking have been expressly excluded from the remit of the EPO, as well as eviction orders. This despite the fact that protection orders are more frequently issued pursuant to these civil law provisions, rather than criminal law provisions, to protect victims of domestic violence.

In the Czech Republic there is exceptionally low awareness about the EPO among the general public and experts. Transposition of the EPO Directive was not accompanied by practical guidelines for legal and social professionals as well as judicial/administrative authorities involved in its implementation. Even though the obligation to inform the protected person about the EPO was implemented into the Czech law, the persons in need of protection are hardly informed about the possibility to apply for it. There is no campaign, or a comprehensive information platform focused on the EPO. The lack of relevant and comprehensible information is a fundamental obstacle to the filing of applications for an EPO.

Useful Contacts

- **Central authority: Ministry of Justice:** Vyšehradská 16, 128 10 Praha 2, data box: kq4aawz, e-mail: posta@msp.justice.cz
- **Supreme State Prosecutor Office:** Jezuitská 585/4, 660 55 Brno, data box: 5smaetu, e-mail: podatelna@nsz.brn.justice.cz

NGOs helping victims of domestic and sexual violence:

- **ACORUS, z. ú.** is a Prague-based organisation offering assistance with simple legal submissions and cooperating with external lawyers (info@acorus.cz, <http://www.acorus.cz/>).
- **Persefona, z. s.**, based in Brno, ensures complex services for victims, including legal aid, for the Region of South Moravia (poradna@persefona.cz, <https://www.persefona.cz/>).
- **profem, o. p. s. – centre for victims of domestic and sexual violence** provides complex legal, social and psychological aid in offices in Prague, Beroun, Přebíram and Benešov (info@profem.cz, <https://www.profem.cz/>).

NGOs helping victims of crimes:

- **Bílý kruh bezpečí, z. s.** operates in various Czech cities (such as Olomouc, Ostrava, Pardubice, České Budějovice, Jihlava etc.), offers legal support and cooperates with external lawyers (bkb@bkb.cz, <https://www.bkb.cz/>).
- **In IUSTITIA, o. p. s.** focuses on victims of hate crimes and it offers legal and social services in Prague and Brno (in-ius@in-ius.cz, <https://www.in-ius.cz/>).

NGOs helping foreigners and migrants:

- **Organizace pro pomoc uprchlíkům (OPU), z. s.** (Organisation for aid to refugees), present in Prague, Brno, Hradec Králové, Plzeň and Ostrava, may assist migrants or asylum-seekers in foreign-related legal matters and it might also coordinate legal representation (opu@opu.cz, <https://www.opu.cz/>).
- **Sdružení pro integraci a migraci (SIMI), o. p. s.** (Association for integration and migration) helps foreigners and migrants living in the Czech Republic and provides them with complex legal support in a number of languages (poradna@migrace.com, <https://www.migrace.com/>).

GREECE

Protection orders in Greece

In the Greek law, protection measures provided for victims of all forms of violence are contained in generic Civil- and Criminal Law and more specific provisions in Domestic Violence (D.M.) Law.

In Civil Law and in particular articles 731 et seq. Code of Civil Procedure (CCP) “*Temporary settlement of a situation*” **security measures** are foreseen, competent judicial authorities, process and duration. In this context, Civil Courts are entitled to order as a security measure any action, omission or tolerance of a specific act by the person against whom the application is directed, in accordance with the specific provisions of articles 731-732(CCP). The Court's decision is of a temporary nature and is valid only if the victim files a lawsuit for the permanent settlement of the case; such measures last until Court’s final decision is issued, the outcome of which is not affected (article 693 CCP). Article 735 par.2 (CCP) is the main article that provides a list of indicative, specific temporary measures that could be ordered for the protection of (D.M.) victims such are; *the eviction of the defendant from the family residence, the relocation, the prohibition to approach the residence or work premises of the applicant or the residences of close relatives/ children’s schools and shelters*. Competent is the 1st Instance Court of the defendant's residence or the spouses' last place of common residence, if marital disputes (article 39 CCP) or the court closest to the place where security measures are to be executed (article 683 par. 4 CCP). Temporary judicial protection can be granted to the protected person, by the issuance of an interim order, in order not to remain unprotected until the discussion of the case and the issuance of security measures; a procedure that may last from 2 to 6 months.

After reviewing relevant case-law of the last decade in the electronic databases NOMOS and ISOKRATIS, security measures ordered by Greek civil courts in case of violence (article 735 CCP) are mainly: a) in (D.V) cases, the removal of parental care due to previous violent behavior, the relocation of the person from family domicile and the regulation of communication with the children and b) in non-family-cases; the prohibition of approaching the person at risk and the prohibition to stay in a specific area / place.

In Greek Criminal Law, Penal Code (PC) and Criminal Procedure’s Code (CPC) **restrictive conditions** are imposed on the person causing danger, which are listed indicatively in article 283 par.1 (CPC) and are; *the provision of a guarantee, the obligation of the accused to appear at certain periods to the investigator or to other authority in Greece or in Greek consular abroad, the prohibition to go or reside in a certain place or abroad and the prohibition to associate or meet with certain persons*. Competent Court-, conditions-, their type and duration differ in every stage of the criminal proceedings; a) pre-trial, b) by the issuance of a court decision or c) in sentencing.

a) At the pre-trial stage and in particular, during the interrogation, restrictive conditions may be imposed on the person accused that last until final decision is issued by the Criminal Court. Competent to impose them is the Investigator, who issues an Order, after obtaining the previous written consent of the Prosecutor. Any dispute among the Investigator and the Prosecutor is resolved by the Council of Criminal Judges. According to article 282 par. 2 (CCP), purpose of the restrictive conditions is on one hand to prevent the risk of new crimes committed by the person accused and on the other to ensure that (s)he will appear in the interrogation or in Court and sentence will be executed. For their imposition, following conditions must apply, namely; i) serious evidence of guilt for the person accused for crime or misdemeanor punishable by at least 3-month-imprisonment (articles 282 par. 1 and 283 par. 2 CCP), (ii) known residence in the country or not having

facilitated his escape by means of preparatory acts or not having previously been a fugitive from a trial or from a sentence or not been found guilty of escaping as a detainee or for violating residence restrictions in order to escape or there are no irrevocable convictions for similar criminal acts so that it is reasonably expected that if (s)he is released will not commit other crimes (article 286 par. 1).

b) At the stage of issuing a court decision, the criminal court may impose restrictive conditions in cases when; i) someone is sentenced to imprisonment not exceeding three years and ii) the execution of the sentence is suspended for a period of one to three years according to article 99 par. 1 or part of the sentence is suspended (article 100 par. 1 PC). These restrictive conditions are imposed disjunctively or cumulatively and are indicatively listed in article 99 par. 2 (PC). If they have been ordered by a court decision, they last for the period defined in it and anyways until the sentence is served. In case terms are violated by the accused article 81 par. 5 (PC) provides, *inter alia*, the lifting of the restrictions and the execution of imprisonment that had been suspended.

c) At the sentencing stage, persons convicted to imprisonment can be released, unless revoked, in cases provided explicitly by article 105 B PC and under the conditions set by article 106 PC. According to article 106 par. 2a' P.C. the person dismissed may be subjected to certain obligations concerning the way of life and in particular his place of residence by analogy application of article 99par.2 PC. Also, according to article 105 par.3 PC, in case imprisonment is replaced by serving the sentence at the residence of the convicted person, appropriate conditions may be placed at the discretion of the Court (those in article 99 par. 2 cases d` to f`), with analogous application of article 99 par. 4 (PC), or sentence under electronic surveillance. The duration is until sentencing is served.

Article 169A par. 2 PC provides for imprisonment **of up to three years** for anyone who violates restriction orders, regarding freedom of movement or residence imposed by a court decision or a panel of judges.

In Greek Law, the pre-eminent law for persons in need of protection is **Law 3500/2006 on Domestic Violence (D.V)**; article 15 provides for security measures that can be ordered by civil courts against a (D.V.)- perpetrator. Furthermore, in the context of criminal proceedings, article 18 contains an indicative list of the restrictive conditions imposed on the perpetrator in the event of a (D.V) crime and defines the procedure, the conditions and the purpose of their imposition. These restrictive conditions shall be the same as those referred to in article 15. They are imposed under specific circumstances and if it is deemed necessary to protect the physical- and mental integrity of the victim. Competent is the criminal court to which the perpetrator is referred to or the investigator/ the judicial council or the prosecutor in charge of the case. A reasoned (judicial) order is required, against which an appeal may be lodged before the Judicial Criminal Council. Their duration is not specified, but it is explicitly provided that they are imposed for as long as it is required. It is noteworthy that after the amendment of Law 3500/2006 by the Istanbul Convention, the imposed restrictive conditions are valid until their revocation, replacement or modification by the Judicial authority that imposed them/ or by the competent Prosecutor, so that the victim is effectively protected. Article 18 par. 1 also provides a sentence of imprisonment in case above mentioned measures/ restrictions are violated.

EPO and EC Directive 2011/99/EU

Transposition in National Law

The European Protection Order (EPO) established by Directive 2011/99/ EU was transposed in Greek legislation on 29/1/2016 by Law. 4360/2016; Greece has transposed and adapted in a satisfactory way most of fundamental provisions of the Directive (Objective, Definitions, Type of Protection measures under article 5, Form and content of the European protection order (Annex I) and Notification in the event of breach (Annex II)). Below are stated specific points of a legal assessment regarding Law 4360/2016.

a) Competent Authorities (article 3)

In Greece central role in the application of an (EPO) have Prosecutors, and in particular Prosecutors of 1st instance Court, Moreover in law (article 3 par.2 and article 5 par.6b) it is also implied that Prosecutors of Appeal Courts may also be competent, in case Greece is the issuing-(of an EPO) State. The Ministry of Justice, Transparency and Human Rights is designated as a central authority, in order to coordinate and assist prosecutors. Greek law additionally stipulates: *“The competent authorities shall, if necessary, consult directly with the competent authority of another State to facilitate the smooth and effective recognition and enforcement of the protection order”*. (Article 3 par.4)

b) Issuance of an EPO (article 5)

Greek law provides that an EPO is issued at the request of the protected persons, whereas the prosecutor shall verify whether any of the conditions of article 4 (article 5 of the Directive-see above chapter A1) is fulfilled. Prosecutors shall also take into account the length of the period, protected persons intend to settle or reside in another Member-State as well as the seriousness of the protection needed. The protected person may apply for an EPO, in person or by proxy, either to the competent authority of the issuing State or to the competent authority of the executing State. Greek law does not formalize further the conditions and does not pose any further requirements (e.x. an exact period for the duration of stay). It is also provided that before the issuance of an (EPO), the person causing danger has the right to be heard and challenge the national Protection measure, if they had not been granted these rights in the procedure leading to the adoption of that measure. In this case they are called to appear before the competent Prosecutor 48- hours before and are entitled to receive an up-to-48 hours-period to submit views in writing.

c) Obligation to inform the protected person

Greek law does not seem to impose an explicit obligation on Judges/ Investigators that impose a protection measure (security measure/ restrictive order) to inform the protected person who might plan to leave the country. Therefore the protection measure of an EPO is left exclusively on legal practitioners, persons supporting the victim, to invoke in front of authorities.

d) Transmission procedure- Language regime

Greek law provides that an EPO must be translated (does not specify by which person/ authority in the issuing State and on whose expense) into the official language(s) of the executing State

e) Recognition of the EPO

Upon receipt of an (EPO), the Prosecutor of 1st Instance Court in the place where the protected person (temporarily) resides shall without undue delay recognize it and adopt all protection measures available under

national law, that correspond to a similar case. According to the wording of the law, prosecutors must issue two (2) Orders; one for the recognition of the (EPO) and the second for the adoption of similar protection measures, already prescribed by law. Greek law does not provide for a mandatory specific deadline for the recognition of an EPO or for the adoption of a national protection measure on the basis of an EPO; as to the duration of the new protection measure (adopted by the executing state), no provision is made; therefore one may deduce that is up to Prosecutor to decide.

Moreover Greek law Innovates in the transposition of the Directive by stating that if the Prosecutor in the (temporary) residence of the protected person considers the protection measure, as reflected in the received (EPO) not to be sufficient and appropriate to ensure continued protection, it may request the Magistrate's Court of three judges (*Τριμελές Πλημμελειοδικείο*) to adjust the measures or impose any other measure provided for under national law for the same criminal act⁴². Prosecutor is accordingly obliged to inform the protected person, the person causing danger and the competent authority of the issuing State about the (new) measures adopted and the consequences of their breach (a. 11 par2).

f) Grounds for non-recognition of an (EPO) (a. 12)

Greek law provides for the same nine (9) grounds enshrined in Directive for the denial of Prosecutor in the executing state to recognize an (EPO) by issuing an Order justifying the reasons. Protected person has the right to appeal against the rejection within ten (10) days upon the delivery of the Prosecutor's Order.

g) Breach of the (EPO) and Obligation to notify related to the breach.

Greek law provides a penalty of an up to 2 years –imprisonment, in case an EPO is violated. In such an event Prosecutor is competent to initiate penal procedures against the person causing danger and take any necessary urgent measure so that violation is lifted until the issuing state takes new decision/ protection measures. Prosecutor of the executing State shall also notify the competent authority of the issuing State of any breach of the measure or measures taken on the basis of the (EPO). Notice shall be given using the standard form set out in Annex II of the Directive translated into the official language(s) of the issuing State.

Implementation of EPO

Although Greek transposing provisions seem to be sufficient enough to enable the issuance and recognition of EPOs, this has not taken place so far. In Greece, according to info received by the Ministry of Justice, Transparency and Human Rights, an (EPO) has not as yet been implemented; Greece has been neither the issuing- nor the executing State.

Major impediments in the application process and execution of EPOs

In Greece, likewise in most EU member states, the transposition of the EPO Directive was not accompanied by practical guidelines for legal and social professionals as well as judicial / administrative authorities involved in

⁴² Article 11; *If the Prosecutor of the Court of First Instance of the place of (temporary) residence of the protected person deems that the protection measures provided for in the EPO are not sufficient and appropriate for his/her continued protection, he shall submit a relevant request to the locally competent 3-member Magistrate's Court which adapts or imposes other protection measures provided in by national law for the same acts. In this case, the new measures shall correspond as closely as possible to the protection measures taken by the issuing State.*

its implementation. Likewise persons in need of protection have never been informed either by authorities or by their own means. Additionally there has not been included in Law, specific provisions related to available free legal assistance to persons requesting an EPO. Also the wide variety of protection measures available in Member States (under civil, administrative or criminal proceedings) can reasonably cause confusion and may be another reason why the (EPO) remains practically non-used.

Useful Contacts

- **Central authority:** Ministry of Justice Transparency and Human Rights (European and International Cooperation) Head of department for European and International Affairs, Ms Kara: tel: 213 1307088 (-7236) MKara@justice.gov.gr
- **Supreme Annulment Court Prosecutor** - Department of International Relations and Lifelong Training of Prosecutors, tel 210 6411528
- **NGO Diotima** <https://diotima.org.gr/en/legal>, e-mail: diotima@otenet.gr, tel: 210-3244380 (lawyer Ms. Apostolaki)
- **Union of Women Associations of Heraklion prefecture**, www.kakopoiisi.gr, email: info@kakopoiisi.gr, tel: 2810 24 21 21

ITALY

Protection orders in Italy

Types of protection measures available, national procedures

The protection offered by the Italian legal system is rather articulated: the measure can be of administrative, civil and criminal nature. In Italy, protection orders are applicable to specific types of crimes: stalking, injury, domestic violence, sexual violence.

a) Administrative protection measures

At administrative level, the measure of reference is the oral warning issued by the 'Questore'⁴³. The authority of public security, evaluates the circumstantial framework, ensures cross-examination and issues the measure, with the obligation to motivate it. By doing this, the Questore admonishes orally the offender, inviting them to conduct themselves in compliance with the law (Law Decree no. 11 of February 23, 2009⁴⁴). The Questore informs the perpetrator of the violence, about the services available on the territory, including family counselling centres, mental health services and addiction treatment facilities, in order to prevent the repetition of the criminal conduct.

Decree Law no. August 14, 2013, n. 93⁴⁵ provides that domestic violence includes all serious and non-episodic acts of physical, sexual, psychological or economic violence that happen in families or households or between current or former spouses or persons linked by an existing or past emotional relationship, regardless of whether the perpetrator of such crimes shares or has shared the same residence with the victim.

b) Civil protection orders

The civil judge has the exclusive power over domestic abuse constituting a crime with a lower prison term, such as, for example, beatings or light injuries, since in these cases the criminal judge cannot issue precautionary measures.

Article 736 bis of the Code of Civil Procedure (hereinafter, c.civ.p.) regulates the judicial procedure relating to the protection orders of civil nature and the possibility for the judicial authority to impose - in cases of urgency - protection orders *inaudita altera parte*: in the hearing that will be held, the protection order can be confirmed, modified or revoked.

According to **Article 342 bis of the Civil Code** (hereinafter, c.c.), when the conduct of one spouse or other cohabitant inflicts serious harm on the physical or moral integrity or freedom of the other spouse or cohabitant, the judge, at the request of the injured party, may adopt by decree one or more of the measures referred to in **Article 342 ter c.c.** This regulation governs the content of protection orders. The judge orders the spouse or cohabitant to stop their criminal conduct and orders the removal from the family home of the

⁴³ High-level official of the Italian Ministry of the Interior who, within a province, in liaison with the Prefect (government representative on the territory), is responsible for the technical direction of police services and public order.

⁴⁴ Decree converted into Law no. 38 of April 23, 2009 (in Official Gazette no. 95/2009).

⁴⁵ Decree converted, with amendments, into Law no. 119 of October 15, 2013 (in Official Gazette no. 242/2013).

cohabitant or spouse with harmful behaviour, ordering, where necessary, not to approach the places habitually frequented by the victim.

c) Criminal protection measures

The precautionary measure of expulsion from the family home (**Article 282 bis of the Code of Criminal Procedure**, hereinafter c.c.p.), provides for the judge to order the defendant to leave the family home immediately, namely, not to return to it, and not to enter it without the judge's authorization. Family home shall mean cohabitation, which therefore also applies to de facto families or forms of cohabitation that are not necessarily stabilized⁴⁶.

If there is a risk to the safety of the injured party or their close relatives, the judge may require that the accused should not approach places that are habitually frequented by the injured party. Furthermore, the periodic payment of an allowance may be ordered in favour of cohabiting persons who remain without adequate means.

The **Article 282 ter c.c.p.**, on the other hand, regulates the prohibition to approach - or the obligation to keep at a certain distance - places habitually frequented by the injured party and their close relatives: to this end, a control modality by means of electronic means or other technical instruments (e.g. electronic bracelet) can also be put in place.

Violation of the obligations or of precautionary measures described is punishable by imprisonment from six months to three years.

Via **Decree Law of August 14, 2013, no. 93**, known as the 'law against femicide', by the Article 384 bis of the Criminal Code (hereinafter crim.c.), the judicial police, upon authorization of the public prosecutor, has the power to order the urgent removal from the family home, with the prohibition to approach the places usually frequented by the injured party, with regard to those who are caught in flagrante delicto of the crimes referred to in Article 282 bis (6), whereas there are reasonable grounds to believe that the criminal conduct may be repeated.

Urgent removal is justified by the flagrancy of the following crimes: violation of family assistance obligations; abuse of means of correction or discipline; personal injuries; reduction or slave maintenance or servitude; child prostitution; child pornography; possession of pornographic material; trafficking in persons; purchase and alienation of slaves; sexual violence; aggravated sexual violence; sexual acts with a minor; corruption of a minor; group sexual violence; threats, formulated towards the cohabitant or their close relatives.

Domestic legislation of reference

The Italian legislation on the subject stands out for some important legislative acts, the most dated of which is **Law no. 154 of April 4, 2001**, which however constitutes a cornerstone, because it has created the backbone of the system of protection of the victim of gender and domestic violence.

⁴⁶ Law no. 54 of April 4, 2001 (in Official Gazette no. 98/2001), which has introduced this provision, expressly refers to regulations governing the fight against violence 'in families'.

Decree Law no. 11 of February 23, 2009, aimed at combating forms of sexual violence, introduced the crime of persecutory acts (stalking, article 612 bis crim. c.) and providing the victim with information on anti-violence centres.

Law Decree no. 93 of August 14, 2013 ('femicide law') has innovated the police procedure for the warning and has introduced into the system the urgent removal from the family home, as well as a tightening of penalties and provision for new aggravating circumstances: violence against pregnant women; ill-treatment in families; physical violence against or in the presence of minors; violence perpetrated by the spouse - even ex-spouse - or by those who have or have had a relationship with the victim, even if there is no marriage or cohabitation bond. In addition, free legal aid has been provided, at the expense of the State, for victims of ill-treatment in families, female mutilation, group sexual violence and stalking.

According to **Law No. 161 of October 17, 2017**⁴⁷, reforming the Anti-Mafia Code, new prevention measures may be applied to the suspects of stalking. In particular, the special surveillance of public security will be applicable, to which the prohibition of residence in one or more municipalities may be added.

Finally, it is worth mentioning that **Law No. 69 of July 19, 2019**⁴⁸, usually referred to as the 'Code Red'. The law introduces four new offences into the Criminal Code: violation of orders of removal from the family home and the prohibition of approaching places frequented by the injured party (**Article 387 bis crim.c.**); deformation of the person's appearance through permanent facial injuries (art. 583 quinquies crim.c.), an intentional violent crime that entitles to the State compensation; illicit dissemination of sexually explicit images or videos without consent of the persons represented (revenge porn), with provision for an aggravating circumstance if the crimes are committed within a romantic relationship, even if it has been ended, or by means of IT tools; coercion or induction into marriage (art. 558 bis crim.c.), using violence or threat or by taking advantage of the conditions of vulnerability or psychic inferiority or a person's need, by abusing family, domestic, working or authority relationships deriving from the custody of the person, due to a medical treatment, training or education, supervision or detention, induces the person to contract marriage or civil union.

EPO and EC Directive 2011/99/EU

Transposition into National Law

Directive 2011/99/EU on the European Protection Order, provides for a mechanism of mutual recognition of the effectiveness of measures taken in criminal matters by national courts, aiming at the protection of the victims of a crime. In particular, this recognition implies the extension of the effects of the measure adopted by the competent authority of a Member State (hereinafter, MS), within the territory of the State where the protected person is staying or residing, or expresses the intention to stay or reside.

The Directive has been implemented in Italy by **Legislative Decree** (hereinafter, L. D.) **no. 9 of February 11, 2015**⁴⁹.

⁴⁷ Published in Official Gazette No. 258/2017.

⁴⁸ Published in Official Gazette No. 173/2019.

⁴⁹ Published in Official Gazette No. 44/2015 and entered into force on March 10, 2015.

a) Competent Authorities (Article 3 of the Directive)

Article 3 of the L. D. designates as competent authorities the national judges; the Ministry of Justice is, instead, the central authority responsible for transmitting and receiving protection measures and EPOs, as well as correspondence relating thereto.

b) Issuance of an EPO (Article 5)

The judge shall act at the request of the protected person, who declares to reside or reside within another MS or who expresses the intention to reside or reside in another MS. In the request the place where the protected person has taken or intends to take up residence, the duration and reasons for the stay, are specified, under penalty of inadmissibility.

The request is evaluated by the judge without further procedural steps and acceptance measure must contain specific formal elements, such as those provided for by the directive, including a summary of the facts and circumstances that led to the adoption of the protection measure; prohibitions and restrictions imposed by the latter; identity and citizenship of the person causing danger, as well as contact details of this person.

It is also provided that the measure that rejects or declares inadmissible the request, can be appealed before Italy's Supreme Court of Cassation.

The judicial authority that issued the EPO sends the order to the Ministry of Justice for the purpose of forwarding to the competent authority of the State of execution, after translation into the language of that State. The same communication shall be provided in cases where it adopts measures of revocation, modification, extension or in cases of annulment or replacement of the measure or of the European protection order.

c) Obligation to inform the protected person (Article 6(5))

The injured party, according to the definition of domestic procedural law, must be informed of the possibility of requesting the granting of an EPO, in implementation of Article 6(5) of the directive.

d) Transmission procedure-Language regime (Articles 8 and 17):

The L. D. does not provide for a specific indication in this regard: therefore, the general indication applies that the acts and communications relating to a criminal trial taking place in Italy are drafted in Italian. The protection order and communications relating to any violations thereof must be sent in this language.

e) Recognition of the EPO (Article 9)

The competence for the recognition of an EPO from another MS and to be enforced in Italy is vested in the Court of Appeal in whose district the protected person, at the time of application, has declared to reside or stay or where they have declared their intention to stay or reside (Article 7 of the L. D.): the application for recognition must be received by the Ministry, which forwards it to the competent Court of Appeal, which, in turn, decides within 10 days. If the EPO is recognized, a measure of domestic law is applied, of the same level as that of the issuing country. The Court of Appeal informs the Ministry of Justice that the recognition has taken place: the Ministry, in turn, will inform the protected person, the person causing danger (also through the competent authority of the issuing State), the judicial police (in order to enforce the precautionary measure) and the social services of the place where the protected person has declared their intention to settle.

Communication must be performed in the language known to the subjects and must be made in such a way as not to disclose the address and contact details of the protected person, to the person causing danger.

f) Grounds for non-recognition of an EPO (Article 10)

In this case, the judicial authority informs the Ministry of Justice, which notifies, without delay, the competent authority of the issuing State.

The decision may be appealed to Italy's Supreme Court of Cassation.

g) Breach of the EPO and Obligation to notify of the breach (Article 12)

When the person causing the danger violates the requirements for protection order, the judicial police informs the Attorney General and the President of the Court of Appeal, for possible measures.

The Court of Appeal shall inform the competent authority of the issuing State, of the violation. The communication shall be made using the form set out in Annex B of the directive, after translating into the language of the issuing State.

Implementation of EPOs

According to the EU Commission's Report on the Implementation of the Directive in the MSs, dated May 2020⁵⁰, in the period 2015-2018, 37 EPOs were issued and 15 of them executed, while in the previous period only one EPO is known to have been issued in Italy. In 2017, the Ministry of Justice requested the Courts of Appeal to register the EPOs issued domestically and those issued in other MS and recognized in Italy, together with the related protection orders, and to forward them to the Ministry. As of now, aggregate and specific data are not available, as they are not yet publicly available.

Major impediments in the application process and execution of EPOs

The EPO instrument is still little known among legal practitioners and associations for the protection of victims of violence, who in turn have even less knowledge about it. The circumstance that the same national data on EPOs issued and/or recognized or rejected are not known to the general public does not help to raise awareness about this tool.

More generally, Italian legislation appears to be quite advanced, both in terms of coverage of various aspects of the directive and in terms of connection with domestic law. Additionally, a lot of attention has been paid to victims (including foreign ones), through a series of support measures guaranteed by special legislation in favour of victims of violence: free legal aid, social assistance, coverage of personal data after the adoption of a protection order, speedy procedures, free numbers to call in order to report violence or difficulties, obligation to inform about the possibility to apply for an EPO after receiving a protective measure, Even for

⁵⁰ Report from the Commission to the European Parliament and the Council on the implementation of Directive 2011/99/EU of the European Parliament and of the Council of 13th December 2011 on the European protection order, 11 May 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:187:FIN>

the offender there are actions that are aimed at their social recovery, mainly at preventing reiteration of criminal conduct.

The legislator has provided for specific training courses for different police forces and has increased funds for the dissemination of knowledge about EPO.

Useful Contacts

- Central Authority: **Ministry of Justice** - Office II - International Cooperation via Arenula 70 - 00186 Roma - e-mail: cooperation.dginternazionale.dag@giustizia.it

Useful Resources on the EPO

In case you are interested in further reading on EPO, we hereby provide you with a list of resources in which you can discover more relevant information.

EU documents

- **European Implementation Assessment of the Directive 2011/99/EU** was released in 2017 by the European Parliamentary Research Service. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2017/603272/EPRS_STU%282017%29603272_EN.pdf.
- **Report of the European Parliament regarding implementation of Directive 2011/99/EU on the EPO** was released in 2018 and contains general recommendations on transposition of the EPO Directive into domestic legal order. Available at: https://www.europarl.europa.eu/doceo/document/A-8-2018-0065_CS.html.

Reports and data

- **Mapping the legislation and assessing the impact of protection orders in the EU Member States** is a thorough report from 2015 resulting from the Daphne III Programme of the European Commission which brings summary of data on protection orders, including the EPO. Available at: <http://poems-project.com/wp-content/uploads/2015/04/Intervict-Poems-digi-1.pdf>.
- **Protection of the Gender-Based Violence Victims in the EU** is a publication issued by the University of Barcelona in 2014. It describes information regarding implementation of the EPO directive in the EU Member States and it focuses on the function of the EPO as a tool of international judicial cooperation. Available at: https://www.researchgate.net/publication/281555933_Protection_of_the_Gender-Based_Violence_Victims_in_the_European_Union.
- **The European Protection Order: Its application to the victims of gender violence** is a publication funded by the Daphne III Programme of the European Commission and published in 2015. The publication analyses the transposition of the EPO Directive in relation to protection of victims of gender-based violence. Available at: https://www.researchgate.net/publication/281555482_The_European_Protection_Order_Its_Application_to_the_Victims_of_Gender_Violence.

Articles

- **Cross-border protection measures in the EU** is an article from 2016 authored by Dutta Anatal for the Journal of Private International Law. The piece tries to sketch the approach of the EU legislator to the creation of the EPO Directive and aims to point out its weaknesses. Available at: <https://www.tandfonline.com/doi/full/10.1080/17441048.2016.1143689>.
- **Protection Orders in the EU Member States: Where Do We Stand and Where Do We Go from Here?** is an article written in 2012 by Suzan van der Aa for the European Journal on Criminal Policy and Research aiming to provide overview of current protection order legislation in the EU. Available at: <https://link.springer.com/article/10.1007/s10610-011-9167-6>.

- **The European Protection Order: No time to waste or a waste of time?** is an article published in 2011 by authors van der Aa and Ouwerkerk in the European Journal of Crime, Criminal Law and Criminal Justice. Available at: <https://research.tilburguniversity.edu/en/publications/the-european-protection-order-no-time-to-waste-or-a-waste-of-time>.

EU Projects

- **Artemis** - Promoting the right of protection of women through the application of the EC Directive 2011/99/EU and the European Protection Order, Website: www.artemis-europa.eu

Croatia

- Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union, with the Application Form, <https://www.zakon.hr/z/345/Zakon-o-pravosudnoj-suradnji-u-kaznenim-stvarima-s-dr%C5%BEavama-%C4%8Dlancama-Europske-unije>
- European portal for E-justice, https://e-justice.europa.eu/content_european_protection_order-360-hr.do

Cyprus

- Judicial Service, Supreme Court, Republic of Cyprus: http://www.supremecourt.gov.cy/judicial/sc.nsf/home_en/home_en?opendocument

Czech Republic

- Act. No 104/2013 Coll. - <https://eur-lex.europa.eu/legal-content/CS/TXT/PDF/?uri=NIM:205471>
- European Justice Portal, https://e-justice.europa.eu/content_mutual_recognition_of_protection_measures-358--maximize-cs.do
- proFem - centrum pro oběti domácího a sexuálního násilí website - <https://www.profem.cz/shared/clanky/837/Informa%C4%8Dn%C3%AD%20materi%C3%A1l%20EPO.pdf>

Greece

- Ministry of Justice Transparency and Human Rights (European and International Cooperation) <https://www.ministryofjustice.gr>
- Supreme Annulment Court Prosecutor - Department of International Relations and Lifelong Training of Prosecutors <https://eisap.gr/>
- Research Center for Gender Equality (KETHI) <https://www.kethi.gr/en>

Italy

- Ministry of Justice – Office II – International Cooperation www.giustizia.it
- Presidency of the Italian Council of Ministers - Department for Equal Opportunities <http://www.pariopportunita.gov.it/controla-violenza-sessuale-e-di-genere>

E. PERCEPTIONS OF LAWYERS ON THE EPO & NATIONAL LEGISLATION FOR PROTECTION MEASURES

During the Transnational Seminar aimed at lawyers, held in Rome on the 2nd of October 2021, participants from all partner countries (Cyprus, Croatia, Greece Czech Republic and Italy) were invited in the “roundtable” section to reflect upon the achievements and gaps they perceive and provide personal considerations, regarding the national legislation for protection from GBV, including national protection orders as well as on the implementation of the EPO. The goal of the afternoon roundtable section was sharing experiences, strategies and recommendations, in order to enhance the capacities of the EU State Members’ judiciary systems on women’s protection against domestic and sexual violence, harassment and stalking.

The main **challenges and gaps** identified by participants regarding the implementation of national protection measures and the EPO can be summarised as follows:

- The main urgency identified is the lack of harmonization and standardization of national proceedings in case of gender-based violence in the EU Member States.
- There is a need of intensifying the information on the management of EPOs among national lawyers.
- There is a need of building a bridge between the European law system and the country-specific ones.
- EPO is not widely known among lawyers and legal professionals; although it is considered a useful tool the participants did not know of any cases. EPO is an effective measure especially for migrant and refugee women in Europe.
- Women victims are often unaware of their rights. As well as this the victim’s perspective is often overlooked.
- There is a great range of legal tools that victims can use, but enforcement is not great.
- National protection measures often take too long to be established and enforced, thus, (migrant) women have problems in accessing protection orders, which also affects the EPO.
- Istanbul Convention and EU Victim’s Directive are not implemented effectively.

The main **recommendation** raised by the participant were the following and come after an explanation of the lawyer personal experience.

- The main aspect faced in the roundtable section was on the different level of protection applied in the EU countries. Why should a victim apply if in other countries the EPO doesn’t work or provides her a weaker protection? The suggestion was to provide to the EU Commission a direct recommendation for **enforcing and improving the EC Directive 2011/99/EU in a way that all the EU countries maintain a certain level of protection in case of an EPO.**
- The participant stated that there are more weaknesses at national level than at European due to the lack of coordination between the figures who manage the victim rights, thus it is not effective. **The suggestion is to improve the internal mechanisms of coordination of the victim rights.**

- A Cypriot lawyer, who pointed out that there are two types of courts working in the matter of GBV nationwide: district courts and higher courts. When a crime is committed to a punishment of more than 5 years of prison (longer penalty), for practical reasons the case is taken upon by the Higher Court. The respondent thus stated that, according to the EC Directive 2011/99/EU, EPO can and should be emitted by district courts only and under any circumstances. In this case the lawyer **advised to open the emission of EPOs also to higher courts**, otherwise, GBV victims (in case of longer penalty) would not have access to another Member State’s protection.
- A Greek lawyer stressed that the EPO should be placed in a general framework of protection measures and linked to already existing national procedures in that regard, instead of the two being considered as two separate blocks. In Greece, for instance, there are no security measure in force, a fact that represents a huge gap to overcome. She **recommends also strengthening the communication between national and regional authorities**, this weakness of the instrument could be easily tackled.
- A Cypriot lawyer **suggested to provide an online portal active in all EU Countries that can support decision makers of other states**.
- An Italian lawyer asked for the recognition of an EPO in case of asylum seekers. The art. 10 of EC Directive 2011/99/EU do not ask for any requirement on the ground of victims’ nationality. However, it is based on mutual recognition between authorities of the State of origin and the executing State, that is responsible for issuing and implementing EPO. This consequently means that the problem rises whether national laws consider or not consider asylum seekers as beneficiaries of a protection order on their territory. The recommendation in this case is **to consider any person on the European ground as possible beneficiary of the EPO without regard of nationality** for avoiding any exclusion to people not recognized as asylum seeker.
- A Greek lawyer stated that the most important measures in Greece are the security measures as the victim can appeal to the civil court and to the criminal court to her discretion. Considering the protection order not as criminal protection order but a civil one provides the victim with an “umbrella procedure” and speeds up the proceedings. **The recommendation in this case was to have a similar approach in every European Country.**
- Regarding the Czech Republic, there was a debate concerning whether the preliminary orders in cases of GBV tend to be predominantly issued by the criminal courts, or the civil courts. This statement **enforced the previous recommendation**.
- A Croatian participant solicited an explanation about the possibility of issuing EPO both by criminal and civil courts, since in Croatia in case of domestic violence both partners are charged for having violated the public order with their misconduct. The respondent asked her if in her country it is mandatory to report GBV as a criminal action. She ensured that, as soon as the victim reports domestic violence, the police is obliged to investigate and the case goes automatically to the County Court, while in other countries not all misconducts are considered crimes and are investigated in criminal proceedings. The respondent answered that in Italy as the EPO is not obliged to be emitted by criminal courts as criminal offenses, but it can be issued by civil courts as well. **The recommendation that follows is to widespread the possibility of requesting an EPO in civil courts in all the European Countries.**

- Concerning minors who witnessed domestic violence against their mother: does the EPO apply to the children as well as the mother, even when the perpetrator is the father, or the husband of the direct victim and they weren't the direct victims of violence? According to the respondent, EPO applies to the husband and to the children even in that case, by prohibiting, for example, contacts between the father and the children. Yet, the participant specified that in Croatia the national procedure is different, since the husband still has the right to have visits with his children and he **can object the mother's decision to move with her children in another European country**. The respondent thus concluded that **there is a need of mutual recognition of decisions among countries and national laws. Protection measures can have a wider effect in the EPO executing State than in the State of origin, meaning there is a need for uniformity.**