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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

on the application of Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters

1. INTRODUCTION

1.1. Background

Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters[1] (the 'Regulation') complements Directive 2011/99/EU on the European protection order[2] (the 'Directive'). Both are part of the same legislative package. The Regulation was adopted on 12 June 2013, based on Article 81(2)(a), (e) and (f) of the Treaty on the Functioning of the European Union.

Together with Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime[3] (the 'Victims' Rights Directive'), the Directive and the Regulation form a consistent set of measures. This strengthens the rights and protection of victims and potential victims of crime when they travel or move to another Member State.

The Directive and the Regulation aim to achieve this objective by providing a legal basis for the competent authorities in Member States to recognise protection orders granted in another Member State. Under this legal framework, all Member States must recognise and execute both criminal protection orders and civil protection measures issued in another Member State.

As required under Article 21 of the Regulation, this report assesses its application. The European Commission must also submit a report on the Regulation's application to the European Parliament, the Council and the European Economic and Social Committee and, if necessary, any proposals for amendments. Although the report was due by 11 January 2021, the outbreak of the COVID-19 pandemic in the first half of 2020 put the Commission under unprecedented pressure to deal with urgent COVID-19-related files. This has delayed the assessment and its publication.

The Regulation complements the Directive to ensure that there is no legal loophole in the EU framework for the mutual recognition of protection measures for victims of crime. Therefore, this report must be read together with the report on the implementation of the Directive, which the Commission published on 11 May 2020[4]. Together, the reports provide a complete picture of the minimum rules that apply across the EU on transnational recognition and execution of protection measures by the competent authorities in Member States.

1.2. Purpose and main elements of the Regulation

The Regulation aims to ensure that a natural person who benefits from a protection measure in civil matters in one Member State can continue to rely on such protection

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1 Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L 181, 29.6.2013, p. 4).

2 Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (OJ L 338, 21.12.2011, p. 2).

3 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

4 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 (COM(2020) 187 final, 11.5.2020).

when moving or travelling to another Member State. At the same time, the Regulation aims to safeguard the rights of defence of the person causing the risk.

Therefore, the Regulation lays down rules for the mutual recognition of protection measures ordered in Member States. These rules enable the competent authorities to ensure continuous protection throughout the EU using a simple and rapid mechanism.

The Regulation applies to national protection measures in civil matters, ordered as part of civil and administrative procedures. More specifically, it applies to measures that impose obligations on a person causing a risk to another person's physical or psychological integrity and whose purpose is to protect this other person. The Regulation applies to all victims. It covers the three most common types of national protection measures:

- prohibitions or regulations on entering the place where the protected person resides, works or stays, or which the protected person regularly visits;
- prohibitions or regulations of contact, in any form, with the protected person; and
- prohibitions or regulations on approaching the protected person closer than a prescribed distance.

Protection measures mostly aim to prevent any form of:

- gender-based violence;
- domestic violence; or
- violence in close relationships, such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion.

Victims of such crimes are particularly exposed to secondary and repeated victimisation, intimidation and retaliation. In practice, women are the primary beneficiaries of protection measures.

Protection orders usually entail a relatively limited violation of the freedom of movement of the person causing the risk. Issuing and monitoring protection orders generally does not involve significant financial investments. However, they can help reduce and prevent violence[5].

In practice, the person who receives protection under one or more national protection measure(s) (the 'protected person') makes a request to the authority of the Member State in which the protecting measures are ordered (the 'issuing authority'). If the request is granted, the issuing authority in this Member State (the 'Member State of origin') issues a certificate. Then, the issuing authority sends this certificate to the competent authority of another Member State (the 'Member State addressed') to have the protecting measures recognised and executed on the territory of the Member State addressed. The competent authority of the Member State addressed can adopt any measure available under its national law in a similar case to continue the protected person's protection on the territory of the Member State addressed. The Member State addressed must provide the victim with the same level of protection it would provide its own citizens in a similar situation.

5 van der Aa, S., Niemi, J., Sosa, L., Ferreira, A., Baldry, A., *Mapping the legislation and assessing the impact of protection orders in the European Member States*, 2015.

The certificate on protection measures in civil matters takes the form of a multilingual standard template, which was adopted by a subsequent implementing act[6]. The other Member States must recognise this certificate without any additional verification. The certificate must be directly enforceable, meaning that the protected person is able to directly invoke the protection measures before the authorities of the Member State addressed.

Since 11 January 2015, the Regulation is directly applicable in all Member States except in Denmark.

1.3. Objective and scope of the report

The Commission's analysis mostly builds on direct information from Member States. The Commission extracted primary data from Member States' notifications under Article 18(1). These notifications list the competent authorities and languages accepted for the purpose of the Regulation. In addition, the Commission examined the responses to a questionnaire on the application of the Regulation since its entry into force. The Commission had sent this questionnaire to the competent authorities in the Member States in July 2021 and 19 Member States had replied. Of all Member States, 16 had confirmed that their legal system enables protection measures in civil matters. The Commission gathered additional information on the competent authorities in the Member States using the e-Justice portal.

To draft this report, the Commission used two additional studies, which complemented the data from Member States. More specifically, the Commission drew from a study published by the European Parliament in 2017. The study looked into the functioning of the mutual recognition of protection measures in civil matters as part of an assessment of the Directive's implementation[7]. The Commission also delved into the final study of POEMS, a project funded by the Commission's DAPHNE programme between 2012 and 2014. The study mapped legislation and assessed the impact of protection orders in Member States[8].

This report focuses on provisions which form the core of the Regulation and are crucial for the smooth functioning of the mutual recognition of protection measures in civil matters throughout the EU.

These provisions include the obligation to notify the types of authorities that are competent in matters covered by the Regulation, specifying:

- the authorities competent to issue civil protection measure certificates;
- the authorities before which a protection measure ordered in another Member State is to be invoked (and which are competent to enforce such a measure);
- the authorities which are competent to effect the adjustment of protection measures; and

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6 Commission Implementing Regulation (EU) No 939/2014 of 2 September 2014 establishing the certificates referred to in Articles 5 and 14 of Regulation (EU) No 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters (OJ L 263, 3.9.2014, p. 10).

7 European Parliament Research Service, *European protection order – Study*, PE 603.272, September 2017 (http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603272/EPRS_STU(2017)603272_EN.pdf).

8 van der Aa, S. et al., op. cit.

- the authorities to which the application for refusal of recognition is to be submitted.

The report also looks into:

- Member States' language arrangements;
- the obligation to respect the rights of defence of the person causing the risk;
- the issuing, processing and transmission of civil protection measure certificates; and
- the rectification and withdrawal of civil protection measure certificates.

2. GENERAL ASSESSMENT

The report covers all Member States that are bound by the Regulation[9].

Issuing authorities in the Member State of origin can order protection measures in civil matters, for instance prohibitions on approaching another person closer than a prescribed distance. Under recital 14 of the Regulation, the Member State addressed must recognise such measures as protection measures in civil matters.

In addition, the notion of civil matters must be interpreted autonomously. The authority ordering a protection measure can be of a civil, administrative or criminal nature. However, this nature is not relevant when assessing whether a protection measure is of a civil nature, as long as the decision itself concerns civil matters (recital 10).

The Regulation takes account of the different legal traditions of Member States and does not interfere with the national systems for ordering protection measures. This means that it does not oblige Member States to change their national systems to enable protection measures in civil matters. Neither does it oblige Member States to introduce protection measures in civil matters for the Regulation's application (recital 12).

The Commission received confirmation from 16 Member States that their legal systems do enable protection measures in civil matters. Of all Member States, 4 confirmed that they do not enable protection measures in civil matters or certificates covered by the Regulation. The Commission took this into account when drafting the report.

As a result, the report reflects the situation in Member States insofar as the Regulation is applicable to them in practice. The report also takes into account recital 12 of the Regulation.

The 2015 POEMS final report[10] and the 2017 European Parliament study[11] found that all Member States provide for some form of criminal or civil protection orders. However, both studies found that protection order laws and levels of protection differ

9 The report does not cover the United Kingdom as the data on the implementation of the Regulation collected for the analysis part of the report was collected after this country had left the EU and after the end of the transition period during which the Regulation still applied in the United Kingdom.

10 van der Aa, S. et al., op. cit.

11 European Parliament Research Service, op. cit.

significantly across the EU and therefore may hamper the smooth functioning of the Directive and the Regulation, which together make up the EU legal framework.

It appears that most Member States favour a system where protection measures are ordered following either a criminal procedure, or a civil or administrative procedure. In other Member States, a mix of civil and criminal measures are available to victims.

In certain cases it can be difficult for the competent authorities in Member States to determine whether the Directive or the Regulation applies. This situation is likely to occur when a single protection order includes several measures of various natures (either civil, administrative or criminal).

Therefore, both the 2015 POEMS final report and the 2017 European Parliament study suggest that, in practice, the use of protection measures in civil and criminal matters and the way they are applied vary greatly across the EU.

3. SPECIFIC ASSESSMENT

3.1. Competent authorities (Article 18(1)(a))

Article 18(1)(a) of the Regulation requires Member States to inform the Commission of the types of authorities that are competent in matters covered by the Regulation. By July 2015, all but one Member State bound by the Regulation had notified the necessary information to the Commission.

According to Article 5(1) of the Regulation, the issuing authority of the Member State of origin must, on the protected person's request, issue the certificate using the multilingual standard form. Article 18(1)(a)(i) requires Member States to notify the Commission about the categories of authorities competent to order protection measures and issue certificates.

Of all Member States to which the Regulation applies, 20 notified that the authorities competent to order and issue protection measures in civil matters are geographically competent courts. These include courts of first instance, courts of appeal and supreme courts. Of all Member States, 5 explicitly mentioned family courts or the family section of courts, while 1 Member State mentioned the labour court. Furthermore, 4 Member States notified that public prosecutors are also competent.

To take account of the various types of authorities that order protection measures in civil matters in Member States, the Regulation applies to decisions of both judicial and administrative authorities. However, administrative authorities must offer guarantees with regard to their impartiality and to the parties' right to judicial review. This also means that police authorities cannot be issuing authorities (recital 13). One Member State informed the Commission that the mayor of a town is competent. Another Member State notified that the police, in its capacity as a body vested with public administration powers, may order temporary preventive restraining measures, and issue certificates.

Article 18(1)(a)(ii) of the Regulation requires Member States to notify the Commission of the types of authorities:

- before which a protection measure ordered in another Member State is to be invoked; and/or

- which are competent to enforce such a measure.

Of all Member States, 12 designated courts, out of which all but one explicitly designated geographically competent courts, such as district courts, city courts or county courts. In 3 Member States, public prosecutors are competent, and in 4 others, the bailiff. In addition, 8 Member States involve law enforcement authorities to enforce protection measures. It appears that in 2 Member States, the police is directly responsible for recognising certificates and enforcing protecting measures.

Article 18(1)(a)(iii) of the Regulation requires Member States to notify the Commission about the types of authorities which are competent to effect the adjustment of protection measures. Of all Member States, 18 explicitly designated geographically competent courts, such as district courts, city courts, county courts or the president of the local tribunal. Furthermore, 3 Member States designated courts or courts of first instance in general, while 2 Member States designated public prosecutors and 2 others the bailiff.

Finally, Article 18(1)(a)(iv) of the Regulation requires Member States to notify the Commission about the types of authorities to which the application for refusal of recognition (and enforcement) is to be submitted. Of all Member States, 17 designated geographically competent courts explicitly. On the other hand, 4 Member States notified other types of courts, such as courts of first instance, minor offence courts, and courts of appeal.

3.2. Language regime (Article 18(1)(b), Article 16, Article 4(2)(c) and Article 5(3))

If necessary, a protected person who wishes to invoke a protection measure in the Member State addressed must provide the competent authorities with a translation of the certificate (Article 4(2)(c)). The protected person can request the Member State of origin to provide this translation (Article 5(3)).

The certificate must be translated into one of the official languages of the Member State addressed or into an official language of the EU which this Member State has notified it can accept (Article 16(1)). Member States had until 11 July 2014 to notify this information to the Commission (Article 18(1)(b)). Of all Member States, 8 respected this deadline. By July 2015, all but one Member State bound by the Regulation had notified the necessary information to the Commission.

Of all Member States, 3 accept incoming certificates in English and 1 informed the Commission that one of its district courts accepts incoming certificates in Italian. Furthermore, 2 Member States accept incoming certificates in additional languages on a reciprocal basis.

3.3. Procedural guarantees for the person causing the risk (Articles 6, 11, 12 and 13)

The Regulation provides for specific safeguards to ensure that, if a protected person requests the issuing of a certificate, the rights of defence of the person causing the risk are respected (Article 6). In particular, the competent authority must verify whether the person causing the risk:

- was notified of the protection measure (or of its adjustment, in accordance with Article 11(3));
- was informed of the initiation of the proceeding; or

- has the right to challenge the protection measure in the Member State of origin.

In 5 Member States, the person causing the risk is notified of the protection measure personally, by bailiff or by court official.

In 2 Member States, the person is notified either personally or by registered letter. In 1 Member State, this is done only via registered letter. In 1 Member State, the notification takes place in writing in most cases (electronically or by registered letter). If the person causing the risk is present at the hearing, the information is provided orally. In 1 Member State, the person is notified by normal postal letter. In 3 Member States, the police can, in some cases, do the notification in person.

In 3 Member States, there are no specific rules on notifying the certificate. The person causing the risk can be notified in various ways, such as by electronic means, by registered letter, by courier service providers, or personally.

Member States did not report any recurring problems in notifying the person causing the risk.

Under the Regulation, the person causing the risk can take judicial action in the Member State addressed. The person causing the risk can appeal against the adjustment of the protection measure (Article 11(5)). In certain cases[12], this person can also request the refusal of the recognition or enforcement of the protection measure (Article 13(1)).

1 Member State provided statistics on action that persons causing the risk had taken before the court of first instance. There were 13 requests in total in 2017, 28 in 2018 and 13 in 2019.

3.4. Issuing, processing and transmitting the certificate (Article 4(1) and Article 5(1))

A protected person can request the Member State of origin's issuing authority to issue the certificate (Article 5(1)) and address it to another Member State's authorities for recognition and enforcement. Under Article 4(1) of the Regulation, Member States must recognise protection measures ordered in another Member State without any special procedure being required. Furthermore, these measures must be directly enforceable in the Member State addressed.

The operation of the multilingual standard form issued under Article 5 of the Regulation, including its content, was satisfactory according to all 8 Member States that provided feedback on the matter.

Of all Member States, 7 have made it possible to send certificates electronically. In addition, 5 Member States confirmed that certificates for the recognition of protection measures in civil matters can be processed digitally. Of these Member States, 4 had a positive experience in this regard, and none of them had a negative experience. No Member State made the Commission aware of any problems in sending certificates. However, 1 Member State noted that separate standard forms must be completed if more than one person is concerned. In such cases, it takes more time to complete the forms.

[12] If such recognition is manifestly contrary to public policy in the Member State addressed or if it would be irreconcilable with a judgment given or recognised in that Member State.

No Member State declared any recurring problem with the procedure, including in complying with deadlines. Lastly, 4 Member States signalled that they do not have data or practical experience.

3.5. Rectification or withdrawal of protection measures and certificates (Article 14(1) and Article 9(1))

A protecting measure can be suspended, limited or withdrawn in the Member State of origin. In such an event, the protected person or the person causing the risk can request the issuing of a certificate to ensure that this change is taken into account in the Member State addressed (Article 14(1)).

If a certificate contains a clerical error or was clearly wrongly granted, the protected person or the person causing the risk can request the rectification or the withdrawal of the certificate. The issuing authority can also do so on its own initiative (Article 9(1)).

The operation of the multilingual standard form issued under Article 14 of the Regulation, including its content, was satisfactory according to all 8 Member States that provided feedback on the matter.

Only 1 Member State provided information about the average time for the withdrawal or the rectification to take place, and indicated it took 10 to 14 days. Furthermore, 1 Member State informed that in one case, the certificate had to be rectified due to a calculation error.

In another Member State, national law does not set any deadline to rectify or withdraw the certificate. In this Member State, the issue is examined during a court hearing of which the participants must be notified in advance. Therefore, the duration of the procedure may vary depending on the duration of these court proceedings. Lastly, 9 Member States either did not provide data or indicated that they have not had any cases.

3.6. Awareness raising and training on the Regulation's implementation

Of all Member States, 7 raised awareness on the Regulation's implementation among judicial authorities and judicial professionals, notably using letters of information, websites, handbooks and manuals, bar associations, and guidelines.

Training sessions on the Regulation's implementation were organised in 5 Member States. However, in 4 of them, these sessions did not specifically focus on the Regulation, but rather were part of programmes for judges and/or court officials with a more general outlook.

4. DATA COLLECTION

In July 2021, the Commission sent a questionnaire to the competent authorities in the Member States to collect data and information on the Regulation's implementation from its entry into force. The Commission received replies from 19 Member States, of which 16 confirmed that their legal system enables protection measures in civil matters.

The Commission found that 10 Member States (i.e. half of the Member States to which the Regulation applies) declared not to have disaggregated statistical data on protection measures in civil matters. Therefore, these Member States were not able to provide data on the number of certificates issued or received under the Regulation. Of all Member States, 7 provided data, but indicated extremely low numbers for both the certificates issued and the certificates received (from 1 to 0). In 1 Member State, 25 certificates were issued.

Of all Member States, 14 replied that they had not had any cases or did not have disaggregated statistics on the requests to issue certificates that they had received acting as a Member State of origin. On the other hand, 2 Member States informed that their respective competent authorities had each received a single request to issue a certificate, one of which had been rejected.

The questionnaire also enquired about cases in which Member States, acting as a Member State addressed, enforced a protection measure via the Article 5 certificate and eventually adjusted this measure. Of all Member States, 5 indicated that they had not had any such cases.

Similarly, 5 Member States indicated that they had not had any cases involving an appeal procedure against the adjustment of a protection measure.

Nearly all Member States that replied to the questionnaire indicated that they did not have known cases of (2 Member States) or disaggregated data on (9 Member States) suspended, rectified or withdrawn protection measures under Article 14 or Article 9 of the Regulation. This is regardless of whether they acted as a Member State of origin or as a Member State addressed. In 1 Member State, 1 certificate was rectified in accordance with Article 9 of the Regulation, due to a calculation error.

The 2015 POEMS final report[13] and the 2017 European Parliament study[14] already pointed out the lack of reliable and publicly available data on the occurrence of civil protection orders. Both studies reported that many Member States lacked regular statistics and could only rely on incidental studies. In addition, the information provided usually covered certain protection orders or certain parts of the country. The studies concluded that the great differences in the data gathered in various Member States could suggest that the true occurrence of civil protection measures was largely underestimated. The results of the 2021 survey lead to a similar conclusion. The lack of disaggregated data by Member States whose legal systems enable protection measures in civil matters poses challenges to the real estimation of the use of civil protection measures.

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13 van der Aa, S. et al., op. cit.

14 European Parliament Research Service, op. cit.

5. CONCLUSION

A smooth functioning of the Regulation is paramount to offer complete and reliable protection to victims of crime in the EU when they exercise their right to free movement.

According to the Member States concerned, the core of the mutual recognition system set up by the Regulation (i.e. the operation of the multilingual standard form) is satisfactory. In addition, it appears that Member States did not encounter any major issues when applying the main aspects of the Regulation, such as those onthe issuing, processing and transmission of certificates. Several Member States can send certificates electronically.

Member States also do not report any recurring problems with regard to the procedural guarantees for the person causing the risk. In particular, when it comes to notification to this person of the protection measures, Member States apply different procedures, such as notifications by registered letters, by electronic means or personal notification.

The analysis did not identify problematic issues with regard to the rectification or withdrawal of protection measures. Some Member States indicated that they do not have such cases.

However, similar to the report on the implementation of the Directive on the European protection order, this analysis shows that differences in laws and practices on national protection measures in the EU are likely to prevent the instrument from reaching its full potential and affect the success of the mutual recognition of protection orders. Analysis shows that in certain cases it can be difficult to determine whether the Directive or the Regulation applies. For instance, these are the cases when a single protection order includes several measures of various natures (either civil, administrative or criminal).

In addition, this report shows that there is scope to improve awareness of the Regulation in Member States. Promoting awareness raising and providing information and guidance to practitioners and stakeholders at national level could help making better use of the Regulation.