



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 January 2010**

**5678/10**

---

---

**Interinstitutional File:  
2010/0802 (COD)**

---

---

**COPEN 29  
CODEC 51**

**NOTE**

---

Subject: Initiative for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Protection Order  
- Detailed statement

---

In relation to the initiative by a group of Member States for a Directive of the European Parliament and of the Council on the European Protection Order<sup>1</sup>, please find attached a detailed statement allowing to appraise compliance with the principles of subsidiarity and proportionality, in accordance with Article 5 of Protocol (No 2) to the Lisbon Treaty.

A financial note is set out at the end of the statement.

---

<sup>1</sup> PE-CONS 2/10.

Brussels, 6 January 2010

Initiative

of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia,  
the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Hungary,  
the Republic of Poland, the Portuguese Republic, Romania, the Republic of Finland and  
the Kingdom of Sweden

for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
ON THE EUROPEAN PROTECTION ORDER**

**DETAILED STATEMENT**

**allowing to appraise compliance with the principles of subsidiarity and proportionality  
in accordance with Article 5 of Protocol (No 2) to the Lisbon Treaty**

## **DETAILED STATEMENT**

### **EXECUTIVE SUMMARY**

The growing concern in the European Union over the rights of victims reflects the need to change the traditional focus of criminal proceedings with their emphasis on the connection between the punitive power of the State and the alleged offender, leaving the victim of the crime, the aggrieved party, in second place.

Since the end of the 20th century, the victim in the penal system has begun to re-emerge as one of the principal players, with the result that criminal proceedings constitute not only a mechanism for resolving the conflict between the State and the offender, but also an effective way of protecting the rights and interests of the victim.

The victims of domestic violence deserve special consideration, particularly women. Whilst women are not the only victims to be afforded protection under the European Protection Order, they will be the beneficiaries in the majority of cases.

This change in approach has already resulted in some important EU instruments such as Directive 2004/80/EC relating to compensation to crime victims and Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. It has also been reinforced by the initiatives which are already under way, such as the amendment of the Framework Decision on combating the sexual exploitation of children and child pornography and the Framework Decision on combating trafficking in human beings, where the victims take centre stage, as well as by the other instruments planned, such as the amendment of Framework Decision 2001/220/JHA referred to above.

One of the victim's most important rights is the right to be protected against further attacks by the offender. Victims not only have the right to compensation for the consequences of a crime, but above all have the right to avoid being a victim once again. Given that European residents are increasingly mobile, the legislative work of the EU and Member States' efforts to protect the victims of crime would remain incomplete if protection granted to a person by a Member State were limited to the territory of that State.

The victim under threat should as far as possible enjoy the same level of protection throughout EU territory as in the State which adopted the original protection measure, so that a change of residence to another State does not entail any loss of protection. Victims' freedom of movement in the territory of the EU cannot be at the expense of their rights.

On the other hand, the preventive measures or penalties which involve a prohibition on entering certain localities, places or defined areas or involve preventing contact with certain persons entail two aspects: on the one hand, as security measures or penalties, they restrict the rights of the offender; secondly, but of equal importance, they constitute measures to protect the victim against further attacks, that being their *raison d'être*.

However, until now no mechanism has been available enabling a protected person to apply to have protection extended to the State they were moving to, given that a protection measure takes effect only in the territory of the State which adopted it.

It was because they are aware of this loophole that the Member States making this proposal decided to submit it to the European Parliament and the Council to create an EU legislative act to fill the gap. It is significant that the objective of the first legislative initiative submitted by the Member States in the area of freedom, security and justice after the entry into force of the Lisbon Treaty, in accordance with Article 76(b) of the TFEU, is to protect victims and establish a mechanism allowing protective measures adopted by one Member State to be extended beyond the territory of that State.

In order to achieve this goal, various policy options have been examined:

– Policy option A: No new action to be taken in the European Union

The EU would not take any new action: thus the existing situation would continue, with victims unable to have a measure protecting them in one Member State extended to the State they wish to move to.

– Policy option B: Non-legislative measures, whose basic aim would be to establish a mechanism for exchanging information and good practices

A new legislative instrument would not be necessary. Instead, this option could involve putting in place non-legislative measures, Council conclusions for example, which would stimulate exchanges of information between judicial authorities in each specific case on the persons involved (victim and offender), in addition to more general exchanges of experience concerning prosecution, victim protection and crime prevention.

- Policy option C: Legislative proposals to amend Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, and Council Framework Decision 2009/829/JHA on the application between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

Amended versions of those Framework Decisions could incorporate a protection mechanism for those cases where it is the victim who moves to a State other than the one which adopted the measure. The Framework Decisions start from the assumption that it is the offender or alleged offender who is the subject of an alternative measure, a probation measure or a provisional measure imposed by a Member State who has returned or wishes to return to the State of residence, who consents to do so, or who wishes to go to another Member State in which he does not intend to reside.

- Policy option D: Legislative proposal comprising a single text covering all scenarios relating to the extension of victim protection

A new legislative text in this area would entail a single instrument specifically aimed at protecting victims and focusing on their protection needs. It would not be incorporated into a pre-established framework which pursues a completely different goal.

Option A would clearly not improve the current situation, but would maintain the status quo: in order to enjoy protection in the other State, a person would have to be the victim of another offence or attempted offence there, since at present there is no mutual recognition agreement allowing such protection to be extended.

Option B would not be sufficient to improve the situation of victims. as a non-legislative option, it would not solve problems requiring a legal basis, nor would it allow protection granted by one State to be extended, or any preventive measures to be adopted on the basis of the existence of a victim protection decision in another Member State.

Option C would improve the situation of crime victims going to another Member State, but would have to fit into the framework of the two Framework Decisions referred to, one on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, and the other relating to the European supervision order in pre-trial procedures between Member States of the European Union. This would result in two different legislative frameworks for the protection of victims requiring a list of offences, to which a genuine system of protection should not be confined.

Option D would involve an instrument in its own right, specifically geared to protecting victims and adapted to that purpose. For that reason, D is the preferred option and is, in fact, the only truly viable option capable of providing effective protection for victims going to a Member State other than the State which adopted a protection measure.

## **1. CONSULTATION OF THE MEMBER STATES AND STATE OF PLAY**

### **1.1. Political context and background**

The Tampere European Council on 15 and 16 October 1999 and the Hague Programme on strengthening freedom, security and justice in the European Union (2005/c53/01), which was adopted by the European Council on 4 and 5 November 2004, already expressed concern over the situation of victims. In addition, EU Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings defines a victim as "a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State". The Stockholm Programme, adopted by the European Council on 10 and 11 December 2009, also devotes particular attention to the rights of victims and their protection.

EU Member States have singled out combating domestic violence, in particular gender violence, as an issue worthy of special attention. There is no doubt that violence against women acts as an obstacle to the achievement of equality, development and social peace (1995 UN Conference); in relation to victims of domestic violence, Recommendation (85)4 adopted by the Committee of Ministers of the Council of Europe recommends that States "*take steps to ensure (...) that the appropriate measures can be (...) taken (...) to protect the victim and prevent similar incidents from occurring*" and the European Parliament report of 9 December 2005 recommends that Member States adopt an attitude of "zero tolerance" towards all forms of violence against women and *that the appropriate protection measures be taken.*

While the essential aim of criminal law is to penalise typical crimes and it is therefore applied when lawful property has been damaged, it must also provide an immediate response to those situations where an attack on a victim's lawful property involves additional elements which create a risk that the violence will be repeated, with further attempts being made to attack the victim's rights and interests. The victims obviously cannot await a conviction at the end of criminal proceedings to receive protection against such risks, which is why under the rules of criminal procedure measures may be adopted on an interim or provisional basis to protect victims during the course of the proceedings.

The precedent is the *protection order* in the English-speaking world which takes the form of a court order protecting one person from another, is valid for the entire national territory and contains a number of obligations or prohibitions which the person to whom it is directed must observe (prohibition on possessing weapons, approaching or contacting one or more persons, etc.).

Most European legal systems have provision for measures to protect victims (especially victims of domestic and gender violence) and persons closely related to them who are also at risk. However, this protection is only feasible and effective if the victims remain in the State which has granted them protection, as it is not possible at present to extend this protection to other European Union countries.

## **1. 2. Consultations**

The following methods were used to establish the factual and legal state of play:

- Replies to the questionnaire to delegations with a view to a possible submission by Spain and other Member States of an initiative for a Directive of the European Parliament and of the Council on the European Protection Order (the questionnaire is set out in 13577/09 COPEN 176 of 23 September 2009; the replies are set out in 5002/10 COPEN 1).
- Initiative of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences (8662/07 COPEN 49 of 14 May 2007), with the summary of delegations' replies to the questionnaire (7142/07 COPEN 31).
- Initiative of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences and alternative sanctions (14001/07 COPEN 23 of 23 October 2007), with a follow-up to delegations' replies to the questionnaire on "competent authorities" (10891/07 COPEN 96).

### **1. 2. 1 Factual results of the consultations with Member States**

The need for an instrument as described above does not stem from a purely theoretical basis. It is clear that in the EU at present there is no instrument which allows victims to request that measures protecting them in one Member State be applied in another Member State to which they have moved. Moreover, victims can obviously exercise their freedom of movement and, as a consequence of their experiences, they may be more inclined than those fortunate enough not to have had the same experiences to seek a new life by moving to another Member State or by returning to their country of origin, as the case may be.

The harassment of victims, particularly victims of gender violence, has a global dimension, rather than a merely regional one; it concerns all the countries in world, including all EU countries. According to the 2003 UNIFEM (United Nations Development Fund for Women) document, "Not a Minute more", one woman in three across the world will be exposed to gender violence in their lifetime; or will be beaten, raped, assaulted, will be victims of trafficking, bullied or forced to submit to acts which damage their health, such as female genital mutilation. According to Eurostat figures, between 700 and 900 women in the EU die each year as a result of gender violence.

In the discussions prior to the submission of this initiative, a questionnaire was sent to the Member States requesting them to forward statistics on the number of cases in which protection measures had been imposed requiring the offender to avoid contact with the victim and to avoid entering certain localities, places or defined areas in which the victim was living or working.

Of the 18 Member States which replied to the questionnaire, 13 Member States, representing 61,5 % of the EU's population in 2008, provided statistical information. The data forwarded by these countries shows that in 2008 they issued over 73 000 protection measures, mostly in cases of gender violence.

If these data are extrapolated to the whole of the EU, since there are no objective reasons for assuming that the situation is different in the Member States in which the remaining 39,5 % of the EU's population lives, this would mean that 118 000 protection measures were issued in 2008.

No data are available on victims who move to another Member State under such measures or who return to their country of origin, as the Member States do not keep track of them, but just 1 % of 118 000 would mean 1 180 cases in one year (2008) in which a victim moved to a different EU State from the one which imposed the measure.

### **1. 2. 2. Legal situation in the Member States of the European Union in relation to protection measures. Legal measures for protecting victims in the Member States.**

The following information is based on the replies received to the aforementioned questionnaire, from Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Spain, Finland, France, Germany, Italy, Latvia, Lithuania, the Netherlands, Portugal, Slovakia, Sweden and the United Kingdom.

The legal measures which can be imposed to protect victims are summarised below as described by the Member States in their replies to the questionnaire on the European Protection Order. All the Member States which replied have measures they can use to protect victims which involve imposing restrictions on the (alleged) offender(s). In the majority of cases, the measures are applied in the context of criminal proceedings. In a number of Member States, however, they may also be imposed in civil or administrative proceedings, and in some Member States via these channels only. When the measures are issued in civil or administrative proceedings, the majority of Member States provide for criminal liability in the event that the obligations are not met.

#### **1. 2. 2. 1. Criminal proceedings**

##### *A. Measures imposed before the trial*

A number of Member States can impose restrictions on the alleged offender during the pre-trial phase. In England and Wales, conditions may be attached to the bail in criminal proceedings in order to protect witnesses and victims. The Portuguese penal system provides for a wide range of measures, both before and during the trial as well as after the judgment, which may be applied in order to protect the victim by imposing certain obligations, particularly in cases of domestic violence, including the obligation to avoid contact with the victim and the obligation not to enter certain localities, places or defined areas where the victim resides. Likewise, the Spanish criminal

justice system provides for the issue of a protection order in cases of gender violence, with a range of measures which confer full protection and can include provisional measures under civil and criminal law, as well as social assistance and protection measures.

The most common measure is expulsion from the victim's home. In France, for example, this measure can be imposed both before and after the judgment. In Lithuania an obligation can be issued during the pre-trial investigation period, either as part of measures for supervising house arrest or as part of a written obligation to remain in a specific place. The alleged offender may be required to live apart from the victim, not to communicate or attempt to communicate with the victim or persons living with the victim, or not to visit specific places of residence.

Similarly, in Latvia the alleged offender can be ordered to avoid contact with the victim or to avoid going to certain localities. Furthermore, victims of serious or very serious crimes may be afforded procedural protection, as may juvenile victims.

In the Czech Republic, police officers have the powers to evict a person when they constitute a threat to their cohabitee, if it can be reasonably assumed - especially if there have been previous attacks - that the person evicted is endangering the other person's life, health, freedom or human dignity. The evicted person must hand over to the police all keys to the building in question and refrain from establishing contact with the person in danger. Access to the area surrounding the endangered person's home may also be prohibited. However, this measure can only last for ten days.

In Denmark, the police have powers to impose a provisional measure when a person has disturbed the peace of another person or harassed him/her. Harassment does not constitute a crime, but if the order is infringed, the courts may impose a financial penalty or a sentence of up to two years' imprisonment.

In Finland the authorities conducting the pre-trial investigation may issue temporary prohibition orders; the maximum penalty for infringement of this order is one year's imprisonment. In Italy, since February 2009, a provisional measure may be imposed preventing an alleged attacker from approaching the victim.

### B. Measures imposed following a conviction

#### B. 1. Probation measures

All the Member States that replied to the questionnaire have measures that can be imposed on a convicted offender to contribute to protecting the victim. The reply from the Bulgarian delegation indicated that all probation measures, and in particular those which restrict the free movement of offenders, are aimed at punishing the offender and preventing him from re-offending, which implicitly entails protection for the victim. Probation measures that restrict free movement include: a prohibition on entering specific localities, areas or establishments; a prohibition on leaving a specific area for more than 24 hours without the permission of the person responsible for supervising probation or of the prosecutor, and a measure prohibiting the offender from leaving his residence during specific periods of the day or night.

The most common measure prohibits the offender from entering a specific locality so as to prevent him from contacting the victim or his/her family. In the United Kingdom, for example, the most frequent scenario is for the conditions preventing an offender from entering a specific locality to be imposed as part of a community sentence or licence after release from prison. Similarly, in Germany conditions can be imposed when an offender is subject to a supervision order or conditional release from prison. In Estonia, the court can order an offender not to enter specific localities and not to communicate during the period of supervision with persons stipulated by the court.

In Spain, offenders can be deprived of the right to reside in or enter specific localities, or prohibited from approaching or communicating with the victim or certain members of the victim's family. This applies not only to cases of domestic violence but also, depending on the seriousness of the case or the danger represented by the offender, to crimes involving murder, abortion or injury, crimes against personal freedom, torture, and crimes against moral integrity, sexual offences, attacks on personal privacy and the right to protection of one's own image and offences against the inviolability of the home, a person's good name, property and the socio-economic order, and can last up to 10 years in the case of serious offences and up to five years in the case of less serious offences. Such prohibitions can also be imposed in cases of suspended custodial sentences and as a security measure.

In the Czech Republic, a court can impose obligations which include refraining from establishing contact with certain persons as a condition in a conditional sentence with supervision, a conditional waiver of a prison sentence with supervision or a conditional release with supervision. Czech legislation also provides for a prohibition on residence, which involves prohibiting a person from residing in a specific locality or area for a period of between one and five years. The offender cannot, however, be banned from staying in his place or area of permanent residence.

In Lithuania, a court can impose a prohibition on approaching the victim when such a measure is necessary to protect the victim's legitimate interests. It can also impose a range of obligations as part of a sentence involving restriction of liberty: the obligation not to change place of residence without prior notification or to be at home at a certain time, or a prohibition on visiting certain places or communicating with certain persons or groups of persons, being in possession of certain objects, or acquiring or storing them or transferring them to other people for safekeeping.

In Slovakia, those obligations can be imposed as part of a sentence, conditional sentence or conditional release. In the case of a conditional suspension of criminal proceedings, a prosecutor may also apply restrictions to oblige the accused to lead a "normal life" or to refrain from carrying out activities that could lead to the commission of an offence.

## B. 2. Restraining orders

In addition to the conditions imposed on an offender subject to conditional release or release under supervision, a number of Member States have provision for the imposition of moderate restraining orders. In Finland, for example, prohibitory orders are issued as independent security orders by the competent civil and criminal courts. A person who breaches a restraining order will be fined or imprisoned for up to a year. In Estonia, a court may impose a restraining order of up to three years on a person found guilty of an offence against a person, regardless of whether or not that person is a minor, in order to protect the victim's private life.

Under the 1997 Protection from Harassment Act, criminal proceedings in the United Kingdom can result in a sentence and a restraining order. Section 12 of the recently implemented Domestic Violence Crime and Victims Act expands the circumstances under which criminal courts can impose restraining orders to protect a person from behaviour that could result in harassment or fear of possible violent acts. The court may also impose restraining orders on acquittal for any offence, if it deems it necessary to protect a person from possible harassment.

In the Netherlands, an obligation can be imposed only under special circumstances. In the case of gender violence, the offender is prohibited from entering the victim's residence or making contact with him/her.

### **1. 2. 2. 2. Civil or administrative procedures**

In Italy and Latvia, only a criminal court can impose obligations on alleged offenders, through criminal proceedings. This is also true of Portugal, although it is possible in theory for the victim to apply to have certain obligations imposed on the alleged offender in civil proceedings.

However, in most of the Member States which responded to the questionnaire (e.g. Austria, Belgium and Estonia), a civil court or administrative authority may also impose such obligations in the context of civil or administrative proceedings. In fact, in Germany preventive measures in the case of gender violence can be adopted only in the family courts. In Sweden, the decision to impose a restraining order is adopted by the prosecutors and is generally the result of a request from the alleged victim in relation to notification of an offence, although the decision is always deemed to be administrative in nature.

The most usual conditions are prohibitions on approaching or contacting the victim. In Lithuania, for example, a court may impose provisional protection measures pending the court sentence such as ordering one of the spouses to reside in another place, prohibiting one of them from contacting his/her minor children or from visiting certain places, requiring minor children to live with one of the parents or requesting non-interference in the use of certain properties of the other spouse.

The Slovak protection order may entail similar conditions. Such an order may be obtained in cases of gender violence (as well as in the form of possible temporary or preliminary measures in civil proceedings). Special protection can be granted to persons who are in danger in the context of criminal proceedings, as well as to direct family members. The possible measures under this protection order include physical protection, safeguarding of property, moving the victim to a safe place, changing the victim's place of residence, work or study, establishing another location for the notification of the sentence, or a complete change of identity.

In the Netherlands, a temporary administrative restraining order can be issued by a Mayor prohibiting a person from entering a house if his/her presence constitutes a serious and imminent danger for the security of the persons who live there. The prohibition may last for ten days, and may be extended for up to four weeks.

In England and Wales, a non-molestation order may be issued to deal with cases of violence or threats of violence, or when one person harasses or molests another. An occupation order determines who will occupy a specific property. A person can be totally excluded from the use of a

property and obliged to live in another place, or else may be subject to a prohibition from entering certain rooms in a property, i.e. the husband may be prohibited from entering the room in which the wife is sleeping. An occupation order may also entail a no-access zone around the property.

Another measure possible in the United Kingdom is the Forced Marriage Protection Order, which can be issued to prevent forced marriages from taking place. That order can include prohibitions, restrictions, conditions or any other measure the court considers appropriate to stop or change the behaviour or conduct of those who would force the victim into marriage.

### **1. 2. 2. 3. Consequences of infringement**

#### *A. Non-criminal law consequences*

Infringing an obligation imposed in civil or administrative proceedings does not constitute an offence in Austria or France. In Belgium non-compliance with a civil measure may be punished by a fine, imposed by a civil court, but it will not entail criminal liability.

However, in the majority of Member States in which such administrative procedures are possible, non-compliance is deemed to constitute an offence. In the Czech Republic, for example, obstructing the implementation of an official decision can constitute an offence. Likewise, in Slovakia a person who seriously obstructs compliance with the obligations imposed by a civil court or a police authority can be punished for the offence of obstructing compliance with an official decision.

In Sweden, breaching a restraining order is an offence, except in cases in which the breach is considered a minor transgression. In Bulgaria, a breach has consequences under criminal law only in cases of gender-based violence; if the material author of a crime breaches a restraining order issued by a court, the police force that notified the breach will detain the person and notify the prosecutor's office accordingly.

## *B. Consequences under criminal law*

In Sweden and Germany, the penalties for breach of a restraining order in connection with gender violence range from a fine to a year's imprisonment. In Estonia, breaching a restraining order or other protection measure, with the exception of temporary restraining orders, is also subject to a fine or up to one year in prison if the breach is repeated or represents a danger to life, health or property. In the Netherlands, the maximum penalty is generally one year's imprisonment; however, breaching an order issued by a mayor prohibiting a person from entering a house can be punished with up to two years' imprisonment.

## **2. DEFINITION OF THE PROBLEM**

### **2.1. What is the problem?**

In many types of crime the offence is a single act and the offender does not tend to commit another offence against the same victim. In other cases the offence is targeted at a specific victim and therefore tends to be repeated. This is the typical pattern of gender violence, in which the victim, in the vast majority of cases a woman, is the object of repeated offences which in many cases result in murder or manslaughter. Nor should we forget those cases which fall short of assault, coercion or threats but where the tension reaches such a pitch, particularly in relations between partners, that measures have to be taken specifically to prevent an offence being committed against one of the parties, again in most cases a woman. And the same applies to offences involving the sexual exploitation of minors or trafficking in human beings, for very different reasons. There are also instances in which the offender's desire to retaliate against or intimidate the victim to prevent the person testifying against him in a trial results in threats, if not in a further offence, against the victim.

All the situations described above pose a danger to the victim so that the State in which the offences occur adopts victim protection measures of various kinds, either to prevent an offence being committed against the victim or to prevent a repeat offence or other behaviour.

No cross-border problem arises as long as the victim and the offender remain within the State in which the protection measure has been adopted, and the issue is thus confined to that State. If the offender moves to a different Member State there are already legal instruments that cover this cross-border element. By contrast, if it is the victim who moves there are no instruments that provide for the protection measure taken in the State of origin to be extended.

Unfortunately, the figures given in section 1.2 of this assessment reveal the scale of a problem that needs to be tackled by many different methods, but they also demonstrate the need for a legislative instrument to close a gap that should not be allowed to persist within the EU: the absence of any means of allowing the victim protection measure adopted by another Member State to be extended throughout EU territory.

## **2.2. Who is affected by the problem?**

In the first place the problem affects women who are victims of gender violence, which is a type of criminal behaviour in which unfortunately the threat against the victim is more likely to continue, when it does not result in the offence being repeated. But it also applies to victims of offences in general, who are exposed to the threat or danger of the same offence or a new offence being committed against them, perhaps even more serious than the previous one, although here we should highlight the particularly high incidence of this problem in trafficking in human beings and the sexual exploitation of minors.

Nor do the Member States' judicial authorities have any means at present, or any legal basis, that would enable them to act in the way they would if the offences which led to the adoption of the measure by the State of origin had occurred in their territory; they cannot therefore impose any

measure to protect the victim, although, in the end, what is required is no more than a crime-prevention measure. In the absence of any legal basis for such action, the law enforcement authorities cannot adopt any measures either, except in cases where an offence against the victim is committed or attempted in their territory. In short, the present situation is not conducive to action either by judicial authorities or by law enforcement authorities to prevent a further offence being committed against a victim who moves to their territory and is already the subject of a protection measure adopted by another State.

### **2.3. Scale of the problem**

The figures set out in section 1.2 of this study indicate the seriousness of the problem we face, although there is a lack of up-to-date statistics on, for example, femicide in the EU. Crime levels in general, and in particular those relating to gender violence, domestic violence, trafficking in human beings and sexual abuse of minors, are not diminishing over time but are either remaining stable or continuing to increase, as shown by the impact studies carried out by the Commission in connection with proposals to amend framework Decisions 2004/68/JHA on combating the sexual abuse of children and child pornography (COM(2009) 135, SEC(2009) 356) and 2002/629/JHA on combating trafficking in human beings (COM(2009) 136 final, SEC(2009) 359).

### **2.4. Underlying factors**

Victims' problems, owing to their special situation as victims, intensify when they move to a Member State other than that in which they lived and in which they suffered the offence. Not only are they likely to be confronted with language barriers and very different social problems and circumstances, but their feeling of defencelessness increases in an environment with which they may not yet be sufficiently familiar, particularly when they find that the threat remains despite the move.

Victims may be reluctant to report the threat, through embarrassment or fear of the consequences, particularly where the abuses have occurred within the family; this reaction, which occurs when the victims are living in their State of origin, may be more intense when they are in another country and have to seek help from unfamiliar legal and judicial systems.

In addition, where victims have suffered the offence in the territory of a Member State other than their State of residence, they must have appropriate mechanisms available to claim in the State of residence the protection granted by the other State, as a preventive mechanism, without having to wait for a further offence.

## **2.5. Weaknesses in the current legal structure**

Although, as pointed out in section 1.3, national legal systems allow for the possibility of adopting victim protection measures, such protection is restricted to the territory of the Member State that granted it and cannot be extended to another Member State in which the victim may happen to be.

When it is the offenders who move to another State and provided that they have their residence in the former, and return or agree or wish to return there, or to another State, the cross-border issue raised by this move is governed by Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. However, when it is the victims who move to a State other than that which adopted the measure designed to protect them, there is no instrument for the recognition or application of the measure taken by the State of origin, which would resolve the cross-border problem that such a move raises.

There is at present no legal basis that allows a State to recognise the protection granted to an individual by another State and thus adopt the necessary prevention and protection measures in its territory.

## 2.6. Main problems to be addressed

Given the situation that exists, the specific problems that need to be addressed are as follows:

### 1 *Insufficient protection for victims who move to another Member State*

- a. There is no legal instrument that allows a Member State's judicial authorities to recognise protection measures granted in another State.
- b. The victims can benefit from a protection measure in the State to which they move only if they are again the victims of an offence in the latter State.
- c. There is no legal basis on which a judicial authority of the State to which the victims move can adopt provisional or precautionary measures to prevent a further offence being committed against the victim in its territory.

### 2 *No reaction in the State which adopted the original protection measure*

- a. The State which adopted the measure is unaware of the acts committed by the offender outside its territory when, clearly, knowledge of that conduct could result in a change in the measure concerned and, in short, lead to better protection for the victim.
- b. There is no legal basis enabling the authorities of the executing State to consider a violation of the measure committed by the offender in another Member State as if it had been committed in its territory.

## **2.7. Evolution of the problem**

Despite the efforts made by the various EU States and institutions, the magnitude of the crime problem and, in particular, of gender violence remains substantial, while the mobility of EU citizens is constantly increasing. Specific, effective measures are therefore required to protect victims, wherever they may be in the Union, and will only help to prevent crime and in particular benefit victims for whose protection a measure was adopted in another Member State.

## **2.8. Legal basis, subsidiarity, proportionality and fundamental rights**

Article 67(1) of the Treaty on the Functioning of the European Union (TFEU) states that "the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States" and Article 67(3) states that "the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws".

Article 82(1)(d) of the Treaty on the Functioning of the European Union states that "the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to: (a) (...) (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions".

Point 3.1.1 of the Stockholm Programme to strengthen freedom, security and justice in the EU, which was approved by the European Council meeting on 10 and 11 December 2009, states that "victims of crime or witnesses who are at risk can be offered special protection measures which should be effective within the Union".

In accordance with Article 5(1) and (3) of the Treaty on the Functioning of the European Union and of Protocol 2 annexed thereto, on the Application of the Principles of Subsidiarity and Proportionality, and in line with the principle of subsidiarity, the European Union may act in this area only to the extent that the objective sought cannot be adequately attained by the Member States and can only be achieved by the Union. Given the cross-border dimension of the problem to be resolved, action by the EU is needed in order to provide an effective solution.

In relation to the principle of proportionality and in accordance with Article 5(1) and (4) of the TFEU and of Protocol 2 annexed thereto, on the Application of the Principles of Subsidiarity and Proportionality, EU action in this area may not go beyond what is strictly necessary to attain its objective.

All action by the European Union must respect fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the right to human dignity, life and physical and mental integrity, as well as the right to an effective remedy. When they apply EU legislation the Member States must act in compliance with these rights and principles, so that they cannot interfere with the fundamental legal principles enshrined in Article 6 of the Treaty on European Union.

### **3. OBJECTIVES**

#### **3.1. General, specific and operational objectives**

Article 67(3) of the Treaty on the Functioning of the European Union states that "the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws".

In line with that precept, **the general political objective** in this area is to **ensure a high level of security through the prevention and combating of crime**, focusing specifically on the victim in this case. This objective should be achieved by the establishment of a coherent instrument that will improve the situation of victims in cross-border cases in which they move to a Member State other than that in which the offence was committed.

Taking account of the problem described in section 2 of this impact assessment, this general objective could be attained by action to address the following specific and operational aspects.

**A. Specific objective: prevent a further offence being committed against the victim**

*Operational objectives:*

A.1. **Set up a mechanism enabling measures to be adopted to protect the victim in a State other** than that in which the offence was committed. This objective is especially important in that it seeks to facilitate such a measure, instead of allowing the State to which the victim moves to adopt it only if a further offence is committed in that State.

A.2. **Make it possible to adopt the provisional measures needed to ensure victim protection**, especially in cases where there is evidence that the offender has started to harass the victim.

A.3. Make it possible for the State which originally adopted the protection measure to **consider acts committed by the offender in another State** as if they had been committed in its own territory, either for the purposes of amending that measure or for instituting proceedings against the offender.

A.4. **Improve cooperation between authorities**, in particular with the aim of ensuring smooth communication between them when a victim in danger moves away, and especially when such danger begins to manifest itself in specific acts by the offender or alleged offender.

**B. Specific objective: make the victim's right to protection a reality**

B.1. **Make it possible for victims to obtain protection** without having to institute new proceedings in another State for that purpose.

B.2. **Extend the basic protection which victims enjoyed** in their State of origin to the State to which they move, so that they do not need to justify or prove once again the danger to which they are exposed in order to benefit from a protection measure.

B.3. **Prevent discrimination** in relation to people in the State to which the victim moves who have been victims of a similar offence, offering the incoming victim the same options that that State's legislation provides for situations of that kind.

**3.2. Consistency of the objectives with other horizontal policies and objectives of the European Union**

The objectives set out above are fully consistent with EU policy on protection and observance of the rights of victims of crime, both internal and external. Full and effective application of the aforementioned rights to human dignity, life, physical and mental integrity and to an effective remedy, recognised in Articles 1, 2(1), 3(1) and 47 respectively of the EU Charter of Fundamental Rights, requires the Union to ensure that victims are protected and establish the conditions to guarantee their security, and this is also in line with the Tampere and Hague programmes and the current Stockholm programme.

Such objectives are also consistent with the European Parliament resolutions of 16 September 1997 on a European campaign for zero tolerance of violence against women, and of 2 February 2006 on the current situation in combating violence against women and any future action (2004/2220 (INI)), and with the Commission communication to the Council and the European Parliament establishing for the period 2007-2013 a framework programme on Fundamental Rights and Justice (COM(2005)0122).

#### 4. POLITICAL OPTIONS FOR SOLVING THE PROBLEM

##### *Option A: No new action to be taken in the European Union*

The EU would not undertake any new action (legislation, non-legislative instrument, financial support) to tackle the problem at issue. The current situation would continue and there would be no instrument to extend protection measures adopted in one Member State to another State.

Each Member State would be free to decide whether or not to take action in this area and, in consequence, whether or not to recognise protection measures adopted by another Member State in order to safeguard incoming victims.

##### *Option B: Adopt non-legislative measures*

The EU would not undertake any legislative action but instead non-legislative measures would be adopted in the form, for example, of Council conclusions urging Member States to:

- improve the exchange of information between judicial authorities concerning data they hold on the individuals, victim and offender, concerned in each specific case
- encourage a more general exchange of experience and good practice followed in the Member States in criminal matters, in particular to prevent renewed victimisation
- encourage exchange of information and experience on non-criminal measures
- establish mechanisms for the collection of data or focal points for observing and evaluating the various types of criminal behaviour, and in particular violence against women.

Such non-legislative measures would seek, fundamentally through exchange of information, experience and good practice, to explore new ways of taking more effective action in the threefold area of persecution, protection and prevention in relation to victims, and especially on repeat offences.

***Option C: New legislation on victim protection in the event of cross-border movement amending Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.***

The third option would involve a legislative act, in the form of a directive, designed to extend victim protection to the State to which victims move, amending the two aforementioned Framework Decisions and inserting in each the legal provisions required to achieve the objective sought. This would mean dealing with the problem in two separate texts even though the same solution would be offered to victims in both cases, since there is no reason to set up a different protection mechanism in each case. If this mechanism were different, the legislative result would be more complex as there would then be two different forms or methods of extending victim protection in two different legal instruments.

Council Framework Decision 2008/947/JHA of 27 November 2008 has to be transposed into national law by 6 December 2011 in accordance with Article 25 thereof, whilst Council Framework Decision 2009/829/JHA has to be transposed by 1 December 2012 in accordance with its Article 27. Both legislative instruments would thus have to be amended before their transposition period expires.

This option could offer a legal arrangement with the following objectives:

1. prevention, in the Member State to which victims move, of a further offence against them by the offender or alleged offender, enabling the judicial authorities of the executing State to act in accordance with the situation that occurred in the issuing State and to grant the measures needed to deal with it, offering them an appropriate legal basis without the need to wait for a further offence to be committed in their territory;

providing victims, in the Member State to which they move, with a guaranteed level of protection similar to that enjoyed in the Member State which granted the measure, preventing their security from being reduced as a result of the move, given their freedom of movement;

3. avoiding discrimination against victims who move to the executing State by comparison with victims benefiting from protection measures enacted by that State, so that they enjoy protection similar to that granted by the executing State to locals in the same situation.

Pursuing this option would certainly not be incompatible with the adoption by the EU of the mechanisms set out in option B above, which it is to be hoped will be put in place, and would be the most appropriate approach for this purpose, in a future instrument, preferably legislative in nature, offering an all-encompassing framework covering the status of victims, their procedural rights, their right to compensation, pre- and post-trial assistance, improved statistics on the matter and exchange of information, as well as cooperation between authorities of the various Member States. This option, on the other hand, is intended to resolve a specific problem, which arises when a victim enjoying a protection measure moves to another Member State, and offers a solution and a specific instrument, as in the case where the offender or alleged offender moves to a Member State other than the one which adopted the measure against him; this is the situation covered by the two aforementioned Framework Decisions.

***Option D: New legislation comprising a single text covering all scenarios relating to the extension of victim protection***

This option would involve a single legislative instrument to deal with the problem at issue rather than two separate ones as in option C.

The objective pursued would be exactly the same as in option C and, as with that option, would be fully compatible with any future Community instruments adopted particularly after the entry into force of the Lisbon Treaty, supplementing EU action in this area.

The presentation of a text specifically addressing the problem at issue would have the following consequences:

- ✓ It would enable the specific problem of a victim's move to another Member State to be targeted directly, without the need to fit into other instruments intended for a quite different purpose;
- ✓ it would facilitate discussion on the system to be pursued, its starting point being focused exclusively on the victim;
- ✓ it would make it possible to arrive at a dynamic, quick and effective system for the protection of victims in a Member State other than that which adopted the measure providing protection;
- ✓ it would be clearer and easier to apply for legal practitioners, who would know what instrument to apply in specific instances in which the victim moved to another Member State.

## 5. IMPACT ANALYSIS

### ✓ *Social impact*

Any measure that is ineffective in combating crime is likely to have a series of negative effects, including damage to values which are important to society, undermining confidence in States' public institutions and authorities, trauma for victims, and intensify the sense of fear or insecurity. The commission of a further offence against the victims, but also their continued harassment, causes deep and lasting physical, psychological and social damage to them and those around them. In the following analysis we refer to this impact as the "negative social impact of the renewed victimisation and harassment of victims".

On the other hand, measures with proven effectiveness in combating crime definitely have a positive social impact since security and confidence in institutions and authorities and in interpersonal relations is thereby increased, and there is less recourse to self-protection. In the case of victims, it means a more stable social and family life, and in particular the chance to build a more secure life. In the following analysis we refer to this impact as the "positive social impact of combating the renewed victimisation and harassment of victims".

### ✓ *Economic impact*

In the same way, measures which are ineffective in combating crime generally have a negative economic impact. In the long term this reduces the effectiveness of State action owing to a lack of confidence in public authorities, ineffective use of public resources as citizens resort to methods of self-protection and a decline in productivity linked to the trauma that victims suffer. These negative effects are intensified in the case of gender violence owing to an increase in the economic cost of treating victims' psychological problems, the anxiety which they suffer and the costs involved in criminal proceedings. In the following analysis we refer to this impact as the "negative economic impact of the renewed victimisation and harassment of victims".

Conversely, when measures to combat crime are effective this generally has a positive economic impact. In the short term there may be a moderate increase in administrative costs due to higher demands on the criminal justice system, as a more effective system for fighting crime catches and prosecutes more offenders, and involves a larger economic effort to finance this increase in expenditure. However, in the medium and long term there will be a substantial reduction in costs as a more effective crime fighting and prevention system is a deterrent to offenders, resulting in fewer offences, while bearing in mind that a minimum level of crime is undoubtedly unavoidable. In any event, in the particular case of gender violence any possible short-term increase in administrative costs will be amply offset by the economic benefits of avoiding the expenditure that such offences entail. In the following analysis we refer to this impact as the "positive economic impact of combating the renewed victimisation and harassment of victims".

An evaluation should also be made of the impact which the different options would have on fundamental rights, as indicated in the heading of this section, as well as their effects on the rules which the Member States will have to develop, in accordance with Article 5 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality.

Table of symbols: "-" is used for costs and "+" for benefits

Low intensity	- / +
Medium intensity	-- / ++
High intensity	--- / +++
No impact	0

## 5.1. Policy option A: No new action in the European Union

As pointed out earlier, this option would maintain the status quo, without any means of extending protection measures imposed in one Member State to another.

In a common area of freedom, security and justice, it would be strange if victims subject to a measure designed to protect them in one country were to forfeit the safeguard provided by that measure, in exercising their freedom to move within the EU. While the victim would be able to cross the border between two Member States, the victim protection measure would not.

In view of the number of people enjoying the safeguard of such a measure each year, on the basis of the statistics used in making the assessment, this would mean that, on a low estimate, over a thousand victims a year would lose the security provided by the measure, by moving to a different Member State. Leaving the present loophole in place would perpetuate that state of affairs for years to come.

### 5.1.1. *Economic impact:*

Inaction under this option would leave the present situation unchanged, with no means of prevention available. In the medium to long term, this would entail a negative economic impact of renewed victimisation and harassment of victims, involving a financial cost in itself, without any particular benefit.

### 5.1.2. *Social impact:* –

Continuation of the present situation, in which an offender can go on harassing the victim in another country, despite a measure imposed on the offender for the victim's protection in one country, would entail a negative social impact of renewed victimisation and harassment of victims, involving a social cost in itself, without any particular benefit.

### *5.1.3. Impact on fundamental rights: –*

Clearly, EU inaction here would mean that crime victims would see neither any increase in their protection nor any improvement in their rights. This could be regarded as having a negative impact on fundamental rights.

### *5.1.4. Impact on national legislation:*

This option would, of course, have no impact on Member States' legislation.

## **5.2. Policy option B: Non-legislative action**

Under this option, non-legislative arrangements would serve basically to share information and good practice between Member States' authorities. The aim of this would be to improve exchange of information between judicial authorities and general sharing of experience and good practice in both criminal and civil-law matters and to establish arrangements for compiling data for monitoring and assessment of the various types of offence, particularly gender violence.

This option would improve the situation somewhat in encouraging sharing of information and good practice as well as, hopefully, in having statistics compiled, but would bring only modest benefits where there is a need to enact new legislation and more specifically to provide the authorities in the Member State to which the victim moves with a legal basis for action, chiefly in order to prevent any further offence against the victim.

### 5.2.1. *Economic impact:*

- *Financial cost:* –
- *Economic benefit:* +

Action to improve the sharing of information and good practice and the compilation of statistics making for awareness of the scale of the problem, particularly as regards gender violence, and hence for adoption of measures as a result might bring moderate improvements in the situation in the medium to long term. The financial cost of introducing such measures can be expected to be moderate, the main expense being the work and infrastructure required for really reliable, efficient data compilation.

### 5.2.2. *Social impact:*

- *Social costs:* 0
- *Social benefits:* +

There might be a slightly more positive social impact of combating renewed victimisation and harassment of victims, if it proved possible, by non-legislative and hence non-compulsory means, to improve coordination between authorities in the cross-border cases concerned.

No significant social costs can be seen.

5.2.3. *Impact on fundamental rights:*

- *Risk of encroaching upon fundamental rights: 0*
- *Improvement in relation to fundamental rights: 0*

This option would not involve any policy jeopardising fundamental rights, as it aims merely to improve arrangements for sharing information and good practice.

5.2.4. *Impact on national legislation: 0*

Being non-legislative, this option would have no implications for Member States' national legislation.

5.2.5. *Relationship between possible non-legislative action and objectives pursued*

<i>Action</i>	<i>Specific objective</i>	<i>Cost</i>
<i>Sharing information</i>	<i>A.4</i>	<i>Not quantifiable</i>
<i>Sharing good practice in criminal matters</i>	<i>A.4</i>	<i>Not quantifiable</i>
<i>Sharing information and experience in non-criminal matters</i>	<i>A.4</i>	<i>Not quantifiable</i>
<i>Arrangements to improve data compilation</i>		<i>Not quantifiable</i>

**5.3. Policy option C: New legislation on victim protection in the event of cross-border movement by amending Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention**

This policy option would provide the EU with legislation, in the form of a directive, to extend protection enjoyed by a victim in one Member State to another, to which the victim moves, by amending the two Framework Decisions, whose transposition period has not yet expired, so as to incorporate the relevant legal mechanism.

The aim would be to cover as broad a scope as possible, so as to extend the effects to the greatest possible number of victims and make allowance for the diversity of Member States' national law in this area, as pointed out in section 1.2.2 above, thus including both criminal-law measures and civil-law measures where any breach would involve criminal liability or might otherwise result in offenders being deprived of their liberty.

The cases in which the mechanism would apply should also be confined to those where it is really needed, so as to reduce costs and administrative work for the judicial system. This would preclude automatic forwarding of the various protection measures imposed in each Member State.

Responsibility for the measure originally imposed would remain with the country which ordered it or with any country to which responsibility had been transferred because an offender was still living there.

The forwarding procedure should be based on direct communication between authorities, both to make the system smoother and more effective and to cut costs.

The mechanism to be introduced should not involve any harmonisation of protection measures applicable in individual Member States, which should rather grant such measures as are available under their own law in a similar case. The idea would thus actually be to provide the country where the victim is living with a legal basis for action, designed basically to prevent offences, without having to wait for an offender to commit any further crime against the victim; such action by the executing State's authorities would be governed by its own national legislation, thereby obviating the need for any harmonisation which might here be held to run counter to the principles of proportionality and subsidiarity in particular. This would enable the original victim protection measure to be recognised in any Member State.

Special consideration would be given, under this option, to imposing any urgent interim measures required to prevent an offender from harassing or committing further offences against the victim.

Information on the victim's behaviour should be exchanged between the authorities concerned, too, so that the measures in question could be applied and, if need be, amended more efficiently.

Any decisions to be taken for the victim's protection should also be reached as swiftly as possible.

### 5.3.1. *Economic impact:*

- *Financial cost:* –
- *Economic benefit:* ++

The significant improvement brought about in victim protection and indirectly in crime prevention through the deterrent effect of such an EU-wide instrument would entail a substantial positive economic impact of combating renewed victimisation and harassment of victims.

Generally speaking, such a mechanism would result in a more effective criminal justice system. This would, initially at least, bring more judicial and hence police action, more arrests and more ensuing criminal proceedings. At that initial implementation stage, it would impose an increased financial burden on Member States, although the costs involved are hard to quantify. On the other hand, the economic benefits of greater security and less danger for victims in particular and society in general are plain to see. As it is in any case better and, in the long term, cheaper to live in a secure society than in an insecure one, the economic benefits will presumably far exceed the costs.

### 5.3.2. *Social impact:*

- *Social costs:* 0
- *Social benefits:* ++

Option C would entail a substantial positive social impact of combating renewed victimisation and harassment of victims, both in prevention and in improved efficiency of criminal justice systems. Greater protection of victims, or rather Europe-wide coverage for it, by measures designed actually

to prevent reoffending, would reduce their feelings of fear and helplessness and make them less reluctant to report harassment or offences inflicted on them, which would result in a more effective crime prevention and prosecution system. A more effective response by legal systems would indirectly act as a deterrent to offenders and prevent further abuses, thereby reducing cases of renewed victimisation.

On the other hand, this option has no social costs.

### 5.3.3. *Impact on fundamental rights:*

- *Risk of encroaching upon fundamental rights: 0*
- *Improvement in relation to fundamental rights: ++*

The idea under this option would be to establish a mechanism not impinging on offenders' rights, but rather providing the necessary safeguards for observance of their rights, particularly as regards notification of any measures imposed in the country where the victim is living, without thereby detracting from the victim's security.

The mechanism's aim is merely that the protection provided for the victim by any obligation or prohibition imposed on an offender should carry over its preventive, deterrent effects into the country where the victim is living, thus extending its territorial coverage. If offenders are not allowed to breach any restrictions imposed on them, for victims' protection, in one country, nor should they be allowed to do so in another country. As offenders clearly do not have any right to continue harassing or pestering their victims or to commit further offences against them, it makes no sense, in a common area of freedom, security and justice, for such basically preventive, protective measures to operate in one country but not in another, where the victim is actually living.

The improvement in the rights of victims moving to a different country from that in which a measure was originally imposed, under such an option, would be so obvious as to require no further comment.

5.3.4. *Impact on national legislation:* –

This option would not involve amending national legislation so as to introduce any new measures alien to a country's system, nor would it impose any kind of harmonisation. The measures to be applied by a country would be those available under its own law. The only effect on its legislation would be that of transposing the Directive entailed by option C, which would not take any great effort, as it would just involve applying a quite straightforward system.

<i>Action</i>	<i>Specific objective</i>	<i>Cost</i>
<i>Providing a legal basis for measures in the country where the victim is living</i>	<i>A.1 and A.2</i>	<i>No direct cost</i>
<i>Providing the victim with a safeguard similar to the original measure</i>	<i>A.1, A.2, B.1 and B.2</i>	<i>No direct cost</i>
<i>Taking action in accordance with the national legislation of the country where the victim is living</i>	<i>B.3</i>	<i>No direct cost</i>
<i>Leaving responsibility for the measure with the country which imposed it</i>	<i>A.3 and A.4</i>	<i>No direct cost</i>

#### 5.4. Option D: New legislation comprising a single text covering all scenarios relating to the extension of victim protection

The effects of option D would be the same as for option C above, since both would establish the same mechanism; the difference between them would lie in the legislative procedure by which to do so, here a new instrument specifically dealing with the cross-border cases in question, instead of having to amend two Framework Decisions, as for option C.

The difference between options C and D thus lies not in their economic or social impact or their impact on human rights or national legislation, but in opting for a more suitable legal instrument here, in view of existing legislation.

### 6. COMPARISON OF OPTIONS

#### 6.1. Cost-benefit summary table

Costs (-)/benefits (+)

Policy option	Economic impact	Social impact	Impact on fundamental rights	Impact on national legislation
A	-	-	-	0
B	-/+	0/+	0/0	0
C	-/+++	0/+++	0/0	-
D	-/+++	0/+++	0/0	-

## 6.2. Advantages and disadvantages of the various policy options

Policy option	Advantages	Disadvantages
A	None identifiable	Present situation left unchanged
B	Would improve sharing of information and good practice	Weakness of present legal framework left unchanged  Victim would not enjoy any real protection in another country  Financial cost of information-sharing system, including translation, and of data compilation
C	Binding instrument  Improved prevention and protection	Financial cost of translation

## 6.3. Comparison of options

### 6.3.1. General comparison of all options

In the light of all the above, option A (the status quo) is not an advisable course of action. Option B seems insufficient to bring any real improvement in effectiveness of victim protection in cross-border cases. Options C and D would leave victims in a better position than at present. They

would have measures applied to prevent commission of any further offence and would therefore improve victim protection in such cross-border cases. The potential financial costs, chiefly for translation, would be virtually the same as for option B, while the economic and especially the social benefits would far exceed such minor costs.

### **6.3.2. Comparison of options C and D**

As pointed out, the distinction between the two options is one of legislative method, since they both involve the same mechanism. The difference, then, is that option D would enact a new legal text specifically addressing the situation of victims, whereas the protection mechanism under option C would be inserted, by revising them accordingly, into Council Framework Decisions 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

The basic premise of those Framework Decisions is quite different from the case arising in this initiative, where it is the victim who leaves the Member State in which the sentence or measure was imposed or the Member State in which the offender is resident or to which the offender voluntarily moves. Under those Framework Decisions, it is for the executing State, i.e. the country in which the offender is living or to which the offender wants to move, to supervise and enforce probation orders and alternative penalties or to oversee supervision measures.

The EU instruments for supervision of such provisional measures or penalties have therefore been drawn up from the point of view of the person accused or convicted. The effectiveness of such measures in a country other than the one in which they were imposed thus hinges on a request from, or at least the consent of, the actual or alleged offender and above all on a change of residence by the actual or alleged offender and not by the victim.

That is the case both for the Council Framework Decision on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and for the Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, neither of which is applicable where it is the victim who has a change of residence.

The typical case arising under those Framework Decisions thus involves an individual who has committed an offence or is charged or accused in Member State A, but who is a national of Member State B. The aim of the Framework Decisions is to allow the person convicted or charged to serve a substitute or alternative sentence or a period of probation or supervision in Member State B, that person's country of residence.

The typical case arising under the proposal, on the other hand, involves a victim enjoying a protection measure in Member State A, where the actual or alleged offender is still living (regardless of whether either the offender or the victim is a national of that country), with the result that the Framework Decisions are not applicable when the victim moves to Member State B. In State B, the victim would not enjoy any protection; if the offender follows the victim, the preventive or protective effect of the measure imposed in State A would be lost in State B.

That represents a legal loophole in European legislation, which makes provision for transfer of a sentence or measure in relation to the offender only and not a measure to protect the victim.

This results in the paradox that an offender who is, say, not allowed to approach the victim in State A, which has imposed a requirement to keep away, can do so in State B, where the victim is living or staying. The situation is all the more paradoxical in that, if in the same case it were the offender who moved to State B, the offender would not there be allowed to approach the victim. In other words, a substitute or alternative sentence or a supervision measure will or may accompany an offender who has a change of residence (albeit not on occasional travel), but cannot accompany a victim.

Victim protection could arguably be extended to any country to which the victim moves, by amending the Framework Decisions on suspended sentences and supervision orders, but:

- ✓ Framework Decisions of that kind relate to offences which do not necessarily involve imposing any such protective measures (fraud, money laundering, environmental crime etc.) or which are in fact precisely what is to be prevented (murder, serious injury, rape, trafficking in human beings, sexual exploitation of minors etc.). In short, if protection is to be really effective and useful, it should not be based on a list of offences (or at any rate not on the list in the mutual assistance instruments previously adopted) but on the protective measure itself, on account of the need for the victim to be protected outside the country in which the courts imposed it;
- ✓ such Framework Decisions are available only where it is the offender who moves to the executing State, not where it is the victim who moves, and make appropriate arrangements for the former case but not for the latter. For instance, they introduce a means of transferring responsibility for a measure imposed on the offender, which does not, however, form part of this proposal. That would give rise to an artificial combination, within each of those instruments, of its current provisions with the mechanism under the proposal;
- ✓ revision of the two Framework Decisions would establish a twofold victim protection system, part of it in each of them, thus splitting the mechanism for victims between two separate pieces of legislation, which would run counter to the specific treatment called for by and the importance to be attached to extension of victim protection.

In short, given the different approach followed by that existing legislation and the need to resolve the problems faced by victims moving to another Member State, it would be easier, clearer and more effective for the purpose to have a separate instrument governing extension of judicial protection decisions and their effects in another Member State.

## 7. MONITORING AND ASSESSMENT

The following could serve as key indicators of progress in achieving the proposal's objectives:

Objective	Indicator
General aim	
Ensuring a high level of security, by preventing and combating crime	Number of crime victims, particularly for gender violence and domestic violence
A.1. Measures to protect victims in another Member State	Number of European protection orders (EPOs) issued
A.2. Interim measures required for victim protection	Number of such decisions under an EPO
A.3. Coverage of offences committed by an offender in another Member State	Number of European arrest warrants issued under an EPO  Number of original measures amended under an EPO
A.4. Improving cooperation between authorities	Number of EPO-based messages between judicial authorities
B.1. Enabling victims to obtain protection without further proceedings in another Member State	Number of refusals to recognise an EPO
B.2. Extending the basis for protection available to victims in their home country	Number of refusals to recognise an EPO
B.3. Preventing discrimination, by providing victims with the same arrangements as are available under the host country's legislation in similar situations	Number of refusals to recognise an EPO  Number of complaints made on this account

## FINANCIAL NOTE

It is envisaged that the application of the proposed Directive will not involve additional major operating costs for the budget of the European Union or for those of the Member States, whether those of national governments or those of regional or local authorities.

The proposal does not contemplate any specific machinery nor does it impose any measure on the Member States in addition to those with which they already work. The judicial authorities of the Member States have the freedom to adopt any measure they consider appropriate, in accordance with their legislation, the only requirement being that it should be what they would impose in a similar case if it had occurred within their territory. This proposal does not, therefore, involve any additional expenditure for the Member States. On the other hand, the issue of an EPO is considered only on application by the victim, preferably before that person moves to another Member State, when the dangerous situation in which the victim finds him- or herself can continue to obtain in the executing State. Thus the number of cases in which an EPO is issued and transmitted is limited; transmission is not, therefore, automatic or addressed to the entire EU, but restricted to those cases in which it is truly necessary, and thus both in cases – the majority – in which the victim continues to reside in the State in which the measure is adopted, and in cases in which the issue of an EPO is not required, expenditure is not incurred.

As the number of cases in which EPOs are issued is thus limited, costs will be restricted to those of translation into the language of the executing State; for the rest, the costs of administration by means of the mechanism described in the proposal submitted will be minimised.

This proposal has been drafted with care to ensure that the introduction throughout the EU of a mechanism to protect victims will involve only the minimum, essential costs, such as those involved in translation.

Nor does this initiative involve any increase in costs for economic operators or for the public, as it does not provide for any practical action that they would have to undertake or carry out.

On the other hand, and as outlined in the detailed statement, with regard to the financial consequences of the options C and D described in that statement, it can be affirmed in general terms that employing a mechanism like that in this initiative would result in a more effective criminal system. It would involve at least, to start with, more activity on the part of the judicial and therefore of the police systems, as a result of which in the initial stages the financial burden on the Member States would increase, a consequence just of the improvement of the efficiency of the criminal system, but it would certainly be difficult to calculate the actual amount of the costs that that improvement would involve.

Accordingly, the economic benefits resulting from an improved level of security, greater protection and, consequently, fewer dangers for victims are obvious; such benefits would be worth far more than the initial costs which, it must be insisted, would be caused only by the simple improvement in the efficiency of the system, if those costs actually produce the deterrent effect that the existence of a protection order at European level will involve for offenders.

On the other hand, it is obvious that victims will move to other States for greatly varying reasons, regardless of whether EPOs are issued or not. That is to say that the EPO will not cause an increase in the number of members of the public that move about within the EU but will only continue to provide the protection that existed before when such movements occur, and such movements will occur in any case.

In the same way, the danger that an offender will cross a frontier in order to continue his attacks on his victim will always be present; to be precise, it is hoped that the EPO will produce a deterrent effect that will have consequences not only in those cases with a trans-frontier component, at which is it specifically aimed, but also within each Member State, and bring about further progress in the fight against crime, and in particular against gender violence and other sorts of crime, such as trafficking in human beings and the sexual exploitation of minors.

The precise point here is that when such movements occur and the threat continues in the State to which a victim has gone, the authorities of that State employ those means to deal with that threat, which is not new, and must in any case be dealt with; thus they are able more satisfactorily to prevent a new crime being committed and they can provide greater security for the victim. It is therefore hoped that the result will be a reduction in costs because of the prevention of a new crime, the essential purpose of the EPO, because that is more economical than prosecution, punishment and reparation.

The proposal submitted will not involve any additional costs for the budget of the European Union's institutions.

---