



# **Cross-border victims' rights in the EU (Victims' Directive and European Protection Orders)**

## ***Workshop Session 1***

### ***Cooperation for victims' rights in cross-border cases***

VSE Annual Conference « Supporting Victims of Crime in Europe »  
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# Content

Victims' Directive 2012/29/EU: Article 17 and 26

Cross – border protective measures:

why EU legislation on protection measures?

Criminal matters - Directive 2011/99/EU on the European Protection Order ("EPO Criminal")

Civil matters - Regulation ("EPO Civil"): Comparison of two instruments

Challenges

## **Victims' Directive 2012/29/ EU**

### Art.17 - RIGHT OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE (Recitals 50 and 51)

- transmission of complaint
- mutual legal assistance in criminal matters
- "sharing" of obligation to provide support to victim between MS
- cooperation networks among victims' support organisations in border regions

## **Victims' Directive 2012/29/ EU**

Art.26 – COOPERATION AND COORDINATION OF SERVICES (Recitals 62 and 63)

- national level
- international dimension

## Protection measures (PM)

- Help when offender intimidates or threatens to (re)assault the victim
- generally issued by judicial authorities, but also by police
- "*non-facere*" - require the offender to refrain from certain conduct or regulate contact with the victim
- In criminal matters - usually after the trial, in addition to or instead of a regular penalty. Non-compliance is a criminal offence, under penalty of detention or fine
- In civil matters - usually before the trial, upon mainly financial penalties, non-compliance may constitute also an offence
- Some MS: Hybrid measures or both measures may apply to the same situation

## Why EU legislation on cross – border protection measures?

- PM exist in all MS but are valid in the territory of one State ...
- Differences in qualification and admission of evidence – victim may not receive the new PM in another MS

**EU response:** no harmonization, but mutual recognition – measure of 1<sup>o</sup>MS is transmitted and recognized in the another MS

## In place - Directive 2011/99/EU on the European Protection Order ("EPO Criminal")

- 2010 *initiative* of 12 Member States
- Introduced mechanism for MS that issued a measure of protection to extend it to another MS
- Compromise to reduce the instrument to criminal matters only [Article 82 TFEU!]
- Transposition period by January 2015

! To apply the Directive: (1) the act/conduct must be qualified as **criminal**(2) the procedure for the adoption of measures must contain "the element of criminal procedure"

## Finalised negotiations on : Regulation on mutual recognition of protection measures in civil matters ("EPO Civil")

- Political compromise: mutual recognition in criminal matters must be complemented by *separate legislation in civil matters*
- Thus COM proposal in May 2011
- COM provides for a quick, simple and direct mechanism of circulation for PM by a *certificate* accompanying the victim

**! Value-added:** Directive 2011/99 + Civil Regulation = comprehensive legislation covering measures irrespective of their legal nature

## Comparison Directive 2011/99/EU and Regulation EPO Civil

- List of measures: exhaustive, three main types that cover most of the people at risk. Possibility of combination of prohibitions and regulations:
- (1) **enter** the place where the victim resides, works, studies or visits regularly;
- (2) **contact**, by any means, with the victim
- (3) **approach** the victim closer than a certain distance

## Comparison/2 Measures issued by which authority?

- **Regulation EPO civil** : PM issued by *judicial* and *administrative* authorities (excluding police) can be certified to circulate in the EU if its 1. *impartiality* 2. possibility of *appeal to a judicial authority* are guaranteed
- **Directive 2011/99/UE** : judicial and *equivalent* authorities

## Comparison/3 What mechanism of mutual recognition?

- Special feature of the EPO Criminal: Recognition "in 3 steps" + Role of "adaptation" (Articles 9 and 11):
  1. 1°MS adopts the protective measure.
  2. It issues the European Protection Order and transmits it to 2°MS
  3. 2°MS (of execution) does not apply the measure as received but adopts a new measure corresponding "*to the highest degree possible*" to the original measure = 2°MS provides the victim with a measure available in place under national legislation, should it be criminal, civil or administrative ...
- Special feature EPO civil – recognition limited in time - 12 months

## Comparison/4 What mechanism of mutual recognition?

- **No appeal** against the issuing of *certificate* or *European Protection Order* (EPO)
- **No review of substance** of original measure in 2°MS when recognition or enforcement is sought
- **Grounds for refusal of recognition:**
  - Limited in civil Regulation (just *public order* and *irreconcilability*) but
  - Numerous in Directive 2011/99, including double criminality requirement

## Comparison/5 And what about sanctions?

- **Directive 2011/99/UE**: Recognition may be accompanied by sanctions in case of breach – if this is provided by 2°MS in similar situation
- If no sanction available – obligation to report violation to 1°MS , possibility of sanctions there
- **Regulation EPO civil** : silent on sanctions (due to legal base) but obligation *to give full effect* to the protective measure...

## Comparison/6 And what transmission mechanism?

Directive 2011/99 – direct contact between authorities or recourse to a central authority

Regulation EPO civil – victim carries the certificate at hand and decides whether or not invoke it in 2°MS

## Challenges:

Effective and timely transposition in all MS:

**Victims' Directive :16 November 2015**

**EPO Criminal :11 January 2015**

**EPO Civil :11 January 2015 (direct effect)**



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**Thank you!**

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