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- Answers by delegations in reply to the questionnaire

On 23 September 2009, the General Secretariat distributed document 13577/09 COPEN 176, containing a questionnaire drawn up by the (incoming) Spanish Presidency on the envisaged instrument for a European Protection Order.

Many delegations provided answers to this questionnaire, for which the Presidency is most grateful. The answers received are set out in the Annex to this note.

**ANSWERS RECEIVED BY THE GENERAL SECRETARIAT IN REPLY TO THE
QUESTIONNAIRE ON "EUROPEAN PROTECTION ORDER"**

(ref: 13577/09 COPEN 176)

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BELGIUM

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

In Belgium the public prosecutor, as well as the court, can impose conditions that concern the protection of a victim. Nonetheless it is impossible to use the statistics coming from these two institutions to answer the question that is posed. The envisaged conditions, obligations are not registered as specific variables in their statistics, what makes it impossible to give a correct estimation.

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

In Belgium such obligations are possible both in criminal and civil proceedings. Of course, the interpretation and the follow-up of such obligations will differ depending on the criminal or civil nature of the imposed obligation

- b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?**

No, there are no criminal consequences. The infringement of an imposed civil measure can be sanctioned by the judge of the civil court, through the payment of a sum of money. It is called “une astreinte”.

- 3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**

We are convinced that if indeed there would be a mechanism allowing the victim, who moves to another Member State, to demand, himself, for the enforcement of a measure imposed in the Member State of origin, this would increase the victim's sense of security. Improving this sense of security seems necessary in order to let these victims fully enjoy their right of free movement and settlement.

- 4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?**

In general, we do not foresee more difficulties than other Member States. When we take into account the different frameworks in which such a measure can be implemented in the Belgian context, the difficulties that we will encounter will not differ from those encountered by other implementing states. However, the challenge presented will be finding a system, instrument or mechanism that allows an efficient and transparent application of the protection measure.

This instrument should be flexible so that the different national systems can easily implement the foreseen provisions, allowing the victim to benefit from the protection as quickly as possible.

This also raises the question of how such obligations will be enforced in the executing state, a question which implies further reflection.

At this moment we believe that the instrument should be limited to obligations imposed in criminal proceedings. We believe that this position can be supported by the argument that this Protection Order would become an instrument in the European framework of Cooperation in

Criminal Matters, and because it can undoubtedly be stated that the procedures of imposing and follow-up of these obligations within the Civil Law context are quite different from those in the Criminal Law context. This would therefore render the redaction of the instrument more difficult.

The instrument should pay particular attention to the quickest ways of communicating the data, permitting the identification of the perpetrator. Making it possible for the controlling authorities to dispose of all the practical information, as soon as possible, is of the utmost importance in order to be able to offer the victim a concrete protection.

Agreements should be made on the consequences of the infringement of the obligation. These consequences have been formulated rather vague in the text.

Article 8, point nr 6 stipulates the obligation for the country of a person, causing a danger that is moving to the executing state, to inform the issuing authority and the protected person “when he or she (person causing the danger) ignores it”. In the event of an infringement of the Protection Order the executing state “has to inform without delay the issuing authority and the protected person” and “take the appropriate measures to proceed to his or her detention and his or her extradition to the issuing state”. In article 12 it is mentioned that the law of the executing state governs the application of the protection measures, approved by its competent authority.

These provisions raise certain questions. For instance, if the executing country approves a protection measure issued by the issuing state and that measure is an obligation that was imposed as a condition for the person causing the danger to obtain a conditional release (in between a preventive custody and his appearance before the judge). If an infringement occurs, what will happen to the case? Will the infringement be sanctioned by the judge of the issuing state (That is the principle in the Framework Decision on the European Surveillance Order) or by a judge from the executing state, as article 12 mentioned? Will there be a transfer of the case or will each judge rule on a certain aspect of the case and recognize the decision of the other judge? The abovementioned can lead to a situation in which there is no longer a connexion between the initial crime and the new habitat of the victim.

BULGARIA

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

Bulgaria can not provide the required statistical data since in accordance to Bulgarian criminal law all the probation measures and in particular those restricting the free movement of the offender are imposed for punishing the offender and not for protection of the victim. Thus, the Bulgarian legislator puts emphasis on the restrictive nature of the above said probation measure in order to prevent the commission of another or the same crime. Article 42a of the Bulgarian Criminal code sets out the probation measure of restriction on free movement as a penalty, which comprises the following three prohibition measures: prohibition from attending locations, areas, and establishments, as strictly specified in the sentence; prohibition from leaving the populated area for more than 24 hours without permission from the probation officer or public prosecutor; prohibition from leaving his/her residence during certain hours of the day or night.

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

No, not only.

In cases of domestic violence the victim is entitled to turn to court for protection. The sought protection can be ensured by obligating the perpetrator to refrain from committing domestic violence; removing the perpetrator from the jointly occupied dwelling for a term, specified by court; prohibiting the perpetrator to enter the dwelling, place of work and the locations of social contacts and recreation of the victim under conditions and for a term, specified by the court; provisional designation of the place of residence of the child with the victim parent or the parent, who did not perpetrate violence, under conditions and for a term, specified by the court if this would not be against the child's interests; obligating the perpetrator of violence to

attend specialized programs; directing the victims into rehabilitation programs. The procedure is regulated within the Law on the protection against domestic violence and is being carried out outside the criminal proceedings. The protective order is issued by a civil court.

Special protection can be given to individuals at risk in relation to criminal proceedings, as well as to individuals directly related to them, who can not afford the protection provided for under the Criminal Procedure Code. The terms and conditions for the provision of special protection are detailed regulated within the Law on Protection of individuals at risk in relation to criminal proceedings. The group of individuals at risk eligible for these special protection is very broad and includes the participants in criminal proceedings (witnesses, private prosecutors, civil parties, the accused, defendants, expert witnesses, certifying witnesses) and the convicted person if their testimony, explanations or depositions provide significantly important evidence to criminal proceedings for some serious criminal offences under Chapter One, Chapter Two, and Chapter Six, Article 242, paragraphs 2, 3 and 4, Chapter Eight, Title IV, Chapter Eleven, Article 330, 333, 354a - 354c , and Chapter Fourteen of the Bulgarian Criminal Code, as well as for all criminal offences committed at the orders or in implementation of a decision made by an organised criminal group (Article 4). Relatives of the participants in criminal proceedings and the convict or individuals who are very closely related to the latter may also receive protection under this law. The aforementioned law contains a set of measures such as personal physical protection; property protection, provisional placement in a safe location; change in the place of residence, workplace, or educational establishment or placement in another facility for the service of a sentence; full change of identity.

Admission to the Programme for Protection shall be made at the proposal of a district prosecutor and, at the trial stage of proceedings, of the judge who is trying the case and shall be addressed to a special administrative body –the Protection Board for the protection of individuals at risk within the Ministry of justice. The proposal for the provision of protection can be made ex officio or at a request of the individual at risk, the investigative body or the supervising prosecutor. The Protection Board is composed a deputy minister of justice, the head of the Protection bureau, a judge from the Supreme court of cassation, a prosecutor from the Supreme Prosecutor's office of cassation, an examining magistrate from the National investigation service, and one representative from each the Ministry of Interior and the State agency for national security occupying the position of Director of Directorate (Art. 13a).

The Protection Board examines the proposal of the district prosecutor or the judge, and assesses whether testimony, explanations or depositions by the individuals at risk are of significant importance to the criminal proceedings, as well as the objective presence and level of risk. Depending on the conclusions made the Protection Board takes the decision whether or not to provide protection.

b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?

Yes, there are criminal consequences. They are envisaged only for domestic violence cases, where the obligations implied by the court are being infringed. According to Article 21 paragraph 2 of the Law on protection against domestic violence if the perpetrator violates the protective court order, the police body, which has established the violation, shall detain the perpetrator and inform forthwith the prosecutor's office.

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

We agree that the proposed mechanism could be a useful instrument with regard to safeguarding the life, physical and psychical integrity, freedom, sexual indemnity or property of a person whose situation of danger has been stated during the criminal procedure. Bulgaria shares the opinion that the classical orientation of the criminal proceedings, which refers mainly to the offender's figure, needs to be changed in order to avoid possible violation of the protective measures against second victimization. Bulgaria is looking forward to receive for further consideration the redrafted Spanish proposal.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

We do not foresee any particular difficulties. Bulgaria has already a working mechanism for recognition and enforcement of effective sentences issued by foreign national courts (Chapter 33, Section 2 Criminal procedure code). While according to Bulgarian criminal law probation measures are penalties, the prescriptions of CPC in question can be applied for recognition and enforcement of court sentence, including those imposing probation measures if the following conditions are met:

- The act in respect of which the request has been made constitutes a criminal offence under Bulgarian law
- The offender is criminally responsible under Bulgarian law;
- The sentence has been issued in full compliance with the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms and with the Protocols thereto, to which the Republic of Bulgaria is a party;
- The offender has not been sentenced for a crime that is considered political or for one associated with a political or a military crime;
- In respect of the same offender and for the same crime the Republic of Bulgaria has not recognised any sentence issued by another national court;
- The sentence does not stand in contradiction to the fundamental principles of Bulgarian criminal and criminal procedural law (Art.463 CPC).

The request for recognition of a sentence issued by foreign national courts in the Republic of Bulgaria shall be extended to the Bulgarian Ministry of Justice by the competent authority of that other state. The Ministry of Justice shall refer the request together with the sentence and other relevant documents attached thereto to the district court at the place of residence of the sentenced individual.

On grounds of an international agreement to which the Republic of Bulgaria is a party or on the principle of mutuality assistance in the fulfilment of the protection as set forth in the Law on protection of individuals at risk in relation to criminal proceedings can also be provided. At request of other state the Bulgarian competent authority can provide residence to an individual transferred to the Republic of Bulgaria within the framework of a Programme for Protection or temporary residence in the Republic of Bulgaria to a foreign individual under protection for the period indicated in the request, as well as personal physical protection, where necessary.

CZECH REPUBLIC

1. **Can you provide statistics, or give estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

We do not have such specific statistical data.

In the year 2008 the court has imposed 895 punishments of prohibition of residence (however, we do not know how many of them were imposed so as to protect the victim), 2713 suspended sentences with supervision, however we do not know the exact contents of the obligations or restrictions, if there were any imposed, and how many of those were connected to protection of the victim (according to our Criminal Code the restrictions which could apply to victims are in particular (the list is not exhaustive) the obligation that the offender desists from visiting unsuitable milieus, sporting, cultural and other social events, and from contacts with particular persons.

In the year 2008 the police authorities decided in 679 cases on eviction of a person from his/her place of residence which is shared with a person in danger, in 406 cases the persons requested the civil court to prolong the preliminary measure.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

In the context of criminal proceedings the criminal court can impose the following measures:

- The punishment of prohibition of residence, which consists in prohibition of staying in a certain specific determined place or district throughout the duration of the punishment (from 1 to 5 years). If the offender needs to stay in such a place for personal reasons, he must obtain authorisation (permission) thereto. The offender cannot be prohibited from staying in a place or district of his permanent residence.

- If the offender is a foreign national the court may impose the punishment of expulsion.
- The court may impose suspended sentence of imprisonment with supervision, conditional waiver from the term of imprisonment with supervision and conditional release from the term of imprisonment with supervision. Within the contents of supervision, the court may impose certain restrictions or obligations. Among others it is possible to oblige the offender to desist from visiting unsuitable milieus, sporting, cultural and other social events, and from contacts with particular persons (individuals). Since 1 January 2010 the court will be able to oblige the offender to abstain from unlawful violation of rights or legally protected interests of particular persons.

Apart from the criminal proceedings, according to the Act on Police the police officers are authorized to evict a person from his/her flat or a house which is shared with a person in danger, when it can be reasonably anticipated, especially with regard to previous attacks, that the evicted person might commit another attack against life, health, freedom or human dignity of another person. The person might be evicted also from the nearby surroundings of the residence. Such obligation must be performed immediately. However, such measure lasts only 10 days and during this time the evicted person cannot enter the determined territory, must give the police authority all relevant keys and must abstain from or must not take a contact with the person in danger.

The court in civil procedure might impose a preliminary measure on a person against whom the proceedings are conducted, due to the fact that the complainant's life, health, freedom or human dignity is in danger. Such preliminary measure may rest particularly in imposing to leave the cohabited residence, as well as the nearby surroundings, to not to enter such premises, to not to take contact with the complainant or refrain from any undesirable stalking of the complainant. Such preliminary measure may last 1 month and may be extended up to 1 year.

The Criminal Code states a definition of a criminal offence of torture of a person living in a shared apartment or house or a close person, which is punishable by a term of imprisonment up to 3 years. In case the act is committed in a particularly cruel manner or against two or more persons, or the offender continues this activity for a longer time, the offence may be punishable by a term of imprisonment from 2 to 8 years.

b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?

In case the above-mentioned administrative or civil measures are not obeyed it may constitute a criminal offence of frustrating execution of an official decision, which states that whoever frustrates or substantially obstructs execution of a decision of a court or another state authority by (among others) staying without permission and a serious reason in a place or district from which he has been prohibited, or by not complying with a restriction imposed on him in connection with his sentence; staying in the territory of the Czech Republic, even though he has been expelled from it or prohibited from staying on its territory; performing an activity which he has been prohibited from carrying on; or committing an act or activity which seriously or repeatedly frustrates the decision on expulsion issued according to a special legal enactment or according to a precaution of the court.

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

We agree that such mechanism could improve the protection of the victims. However, we have doubts regarding its practical use. Our competent authorities have not experienced serious cases requiring further action at the EU level in this area. Bearing in mind that two new Framework Decisions (ESO and “probation”), which improve the protection of the victims in comparison to the current state significantly, have just been recently adopted, it could be considered as more appropriate to wait for their evaluation, in particular whether they are used by practitioners, first.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

As it follows from the information given under the question 1, in our legal system we have explicitly only minimum of the measures which are foreseen under Article 2 Paragraph 2 of the Proposal. But given the limited scope of the paragraph in the new draft of the Proposal, we might be able to find a way for adjusting the measures issued in another State so that we could able to execute them in our legal system. In this regard it is essential that the proposal contains similar provisions on adaption of the measures as it was negotiated in the above-mentioned two Framework decisions (ESO and probation).

DENMARK

1. **Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

Pursuant to Article 265 of the Danish Criminal Code, the police can issue cautions (orders) on a person who violates the peace of another by intruding on him, pursuing him with written communication or inconveniencing him in other similar ways.

There are no recent statistics available on how many times a year an offender is imposed an obligation in order to protect the victim(s). However, in 2006 the police had 1.279 reports from citizens requesting a caution (order) issued against another person. Of the reported 1.279 cases 420 cautions were issued. In 2005, the police received 1.442 requests for cautions. 462 were issued. In 2004 the police received 1.540 requests for cautions. 419 were issued.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

A caution is issued at the discretion of the police. However, it is a condition that the accused has recently committed one or more violations of the peace of another person. It is not a condition that the violations constitute criminal offences. A caution issued in accordance with Article 265 is valid for five years.

- b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?**

If a person violates Article 265 of the Danish Criminal Code the courts can impose a fine or sentence him or her to imprisonment for any term not exceeding two years.

Statistic shows that in 2007 there were 188 reports to the police of violations of cautions issued in accordance with Article 265. 13 persons were sentenced an unconditional prison sentence, 12 persons were sentenced a suspended sentence, 85 persons were fined, in 12 cases the charges were dropped, in 6 cases the person were acquitted and in 60 cases there were no charges.

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

The principle of mutual recognition has been the cornerstone in the judicial cooperation in criminal matters between the Member States since the Tampere conclusions of 1999. From a Danish point of view, the cooperation has worked very well. Hence, Denmark believes that the future cooperation in criminal cases should also be based on the principle of mutual recognition.

In this light, a possible new framework decision on mutual recognition of orders may have some added value.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

It follows from Danish constitutional law that a decision made by a foreign authority cannot have direct effect regarding a person staying in Denmark. Thus, it will not be possible for a person situated in Denmark to rely on a decision – original or subsequent – issued by a foreign authority, unless a Danish authority has been involved and it has been transferred into a Danish decision.

GERMANY

1. **Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

Criminal law

There are no statistics on protection orders under criminal law. Lack of a reliable basis means an estimation is not possible.

However, German statistics on criminal prosecutions do show whether or not obligations or instructions were issued in the case of suspended sentences, although no distinction is made according to type.

Civil law/Family law

According to statistics, the family courts concluded 14 501 proceedings under the Protection from Violence Law in 2008.

No statistics are kept on how they were concluded.

Statistics on proceedings before the civil courts last year are not yet available. In 2007, the magistrates' courts concluded 13 539 cases, 6 090 by a contentious final judgment or by a court order in interim proceedings for judicial remedy. Almost 3 000 cases ended in a settlement. No statistics were compiled on how many cases also involved injunctions under the Protection from Violence Law.

The fact that of all the concluded cases in which a decision as to costs was issued, which include the 1 152 cases in which actions were withdrawn, in 1 486 cases it was the plaintiff who bore most of the costs, in 6 210 cases it was the defendant and in 1 876 cases each party bore half of the costs (in the remaining cases the decision as to costs did not fit into any of these three categories) suggests that in more recently decided cases victims have prevailed much more often than they have been defeated.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

Criminal law

Substantive criminal law in Germany is rarely the basis for a protection order within the meaning of Article 2(2) of the Spanish draft, as it does not allow for autonomous protection orders. Instructions in the context of a suspended sentence or in the context of what is known as supervision of conduct, which commences under certain circumstances once a custodial sentence has been fully enforced, are the only option.

Both of these variations presuppose a criminal judgment passed in Germany (see Section 56c and Section 68b of the German Penal Code).

Civil law/Family law

In Germany the issue of autonomous protection orders is regulated exclusively under civil law in the Protection from Violence Law.

Before the Law on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction was introduced on 1 September 2009, either family courts or civil courts had jurisdiction over matters under the Protection from Violence Law, depending on the facts of the case. Now only the family courts have jurisdiction.

- b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?**

Infringements of injunctions pursuant to the Protection from Violence Law are liable as misdemeanours under Section 4 of that Law to a custodial sentence of up to one year or to a fine. This does not affect criminal liability pursuant to general provisions.

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

We do not share that opinion. It already seems doubtful whether there is a real need in practice for a European Protection Order. Cases in which a person presents a threat to the life, physical and psychological integrity, freedom, sexual indemnity or property of another person and continues to pose a threat even after the person at risk either has moved from one EU Member State to another or is (temporarily) staying in an EU Member State other than their country of residence are probably extremely rare. The person who poses a threat will only be able to follow the person at risk in exceptional cases.

In the few cross-border cases which do arise, the victim will contact the competent local authorities anyway, and at least obtain preliminary advice and support. If, in rare, isolated cases, the threat continues in the new country in which the person is staying, a new protection order can quickly be issued on the basis of national law. At least in Germany this normally takes only a few hours. The examination and transposition of foreign decisions, even if they are on a European legal basis, takes longer in most cases. This applies in particular to cases in which national law makes no provision for the protection measures ordered in the other Member State, making it necessary to ascertain which national protection measures ensure a comparable level of protection. A decision on the basis of national law alone therefore ultimately guarantees faster and better protection. A European Protection Order does nothing to improve victim protection.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

Criminal law

It would be very problematic for Germany if a protection order issued in another Member State had to be enforced in Germany using measures provided for under criminal law.

Instructions in the context of suspended sentences or what is known as supervision of conduct are the only option allowed under German criminal law. Such instructions presuppose a criminal judgment handed down in Germany and imposing a custodial sentence which has either been suspended or after full enforcement of which supervision of conduct has commenced (see Sections 56c and 68b of the German Penal Code).

In cases in which another Member State issues a European Protection Order, there will often not be any German criminal judgment at all which could serve as a basis for (protection) instructions, never mind a judgment which satisfies the above criteria. An isolated protection order which is independent of such a German criminal judgment is not possible under German substantive criminal law.

Even in the few cases in which, by pure coincidence, a custodial sentence was simultaneously handed down in Germany against the person concerned and it also satisfied the above criteria (suspended sentence or supervision of conduct), it would be very problematic to enforce a protection order issued in another Member State, since a (protection) instruction issued under German criminal law in respect of a suspended sentence can only be enforced by revoking suspension of the sentence. The (protection) instruction must therefore have an inherent connection to the offence for which the sentence was passed, which will not usually be the case for a protection order issued in another Member State.

Civil law/Family law

First of all, it is doubtful whether the planned European Protection Order also concerns the enforcement of judgments under civil law. Obviously the main aim of the European Protection Order is the protection of victims under criminal law.

That aside, it is hard to answer question number 4 from the civil procedure point of view. For example, it is not clear whether the question is directed at technical difficulties or at material difficulties, such as the content of the judgment or how it was reached.

In general, the following principles apply to the enforcement of foreign instruments in civil or family law matters in Germany:

The enforcement of foreign instruments in Germany is only admissible if the foreign judgment has been recognised and declared enforceable.

The procedure for recognition and enforcement is primarily based on the relevant EU Regulations or international agreements. Depending on the legal basis and form of the judgment to be recognised and enforced, these may be, for instance, Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation) or Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIa Regulation).

If the judgment to be enforced does not fall within the scope of an EU Regulation or an international agreement, its recognition and enforcement are based on Sections 328, 722 and 723 of the Code of Civil Procedure or Section 107 of the Family and Non-Contentious Jurisdiction Law.

If a foreign judgment has been declared enforceable, enforcement are based on national enforcement law. To what extent difficulties may arise in the enforcement of a foreign protection order cannot be said without knowing more about the contents of the foreign judgment.

ESTONIA

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

There has been at least 40 restraining orders applied (in criminal proceedings) towards 35 different people during the period from July 2006 till now. 23 of these restraining orders were temporary and 17 were assigned by the court judgment .

In 2006 (during the last 6 months) there were restraining orders applied towards 3 people, in 2007 12, in 2008 15 and in 2009 (9 months) towards 5 people.

Among these previously mentioned restraining orders, there are prohibitions to approach other persons and regulations to the use of housing or communication (via internet, telephone, mobile phone etc.).

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

In Estonia, such obligations can be imposed by a criminal court in the context of criminal proceedings.

§75(2)7 in Penal Code declares that the court may impose the obligation on the convicted offender for the period of supervision of conduct not to stay in places or communicate with persons determined by the court.

The Code of Criminal Procedure (§310¹) allows courts to apply, at the request of the victim, for protection of private life or other personality rights of the victim on the basis of §1055 of the Law of Obligation Act, the restraining order with a term of up to three years to an offender convicted of a crime against the person or against a minor.

Such a request of a victim is adjudicated similarly as an application submitted in civil action. (Code of Criminal Procedure §310).

Restraining orders can be imposed by a civil court in civil matters in following cases:

- a measure for securing an action; or
- provisional legal protection in proceedings on petition (Code of Civil Procedure §378 (1) 3, 546, 551 (1))

Restraining orders can be imposed as a civil law protection instrument in cases of infringement of personality rights (Law of Obligation Act §1055)

According to the §475(1)7 of the Code of Civil Procedure, imposition of a restraining order and other similar measures for the protection of personality rights can be made in proceedings on petition.

§544-549 of the Code of Civil Procedure provide the procedure related to designation of restraining order.

b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?

§ 331² of Penal Code declares that violation of a restriction order or other measure of protection of personality right imposed by a court decision, except violation of a temporary restriction order, if this poses a danger to the life, health or property of persons, or repeated violation of a restriction order or other measure of protection of personality right is punishable by a pecuniary punishment or up to one year of imprisonment.

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

Yes.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

No.

If the restraining order is part of a criminal punishment, chapter 19 of the Code of Criminal Procedure applies.

Requests for recognition and execution of Estonian court judgments by foreign states is covered by § 488 of the Code of Criminal Procedure.

Assistance in recognition and execution of judgments of foreign courts is described in § 476 and scope of assistance in § 477 of the Code of Criminal Procedure.

In addition, chapter 62 of the Code of Civil Procedure covers recognition and enforcement of judgments in civil matters and other execution documents of foreign states.

SPAIN

1. **Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

29.648 protection measures of those foreseen in this questionnaire were adopted last year in Spain.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

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.

Among the civil measures, the following ones could be mentioned: use of habitual residence, maintenance obligations, parental visiting rights...

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.

b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?

Not relevant.

- 3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**

We believe that the rights of victims could be better protected with such a mechanism that should consider the different national systems.

- 4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?**

As a co-sponsoring Member State, Spain shares the view that all technical difficulties that may emerge will be solved since the objective of promoting the protection of victims is of the utmost importance and a common aim for us all.

FRANCE

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

La délégation française ne dispose pas de statistiques permettant d'évaluer le nombre précis d'affaires dans lesquelles des interdictions de contact avec la victime ou de séjour dans des lieux déterminés ont été ordonnées, les outils statistiques ne permettant pas d'enregistrer le détail des obligations accompagnant une mesure de surveillance ou de probation.

A titre purement indicatif, une évaluation en matière d'affaires conjugales a permis d'estimer à 2.754 le nombre de mesures d'éloignement du domicile prononcées au cours de l'année 2008. Cette estimation comprend les obligations résultant de mesures pré- et post-sentencielles.

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

Les interdictions d'entrer en contact avec la victime ou de pénétrer dans certains lieux sont principalement ordonnées dans le cadre de procédures pénales.

Toutefois, dans le cadre d'une instance en divorce, le Juge aux affaires familiales, saisi en urgence selon la procédure des référés, peut, à titre de mesure conservatoire, statuer sur la résidence séparée des époux lorsque les violences exercées par l'un des époux mettent en danger son conjoint ou un enfant. Cette procédure « d'éviction » du conjoint violent, permet d'attribuer la jouissance du logement conjugal au conjoint victime de violences. Elle n'entraîne pas pour autant une interdiction pour l'auteur des violences de paraître au domicile ou d'entrer en contact avec la victime.

b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?

Non, il n'existe pas de conséquence pénale dans le cas cité ci-dessus.

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

Il paraît à première vue paradoxal de prévoir un mécanisme de reconnaissance d'une décision judiciaire dans l'Etat membre de résidence de la victime, alors même que la personne directement concernée par cette décision (la personne poursuivie ou condamnée), ne s'y trouve pas.

Pour la délégation française, l'effectivité de la mesure de protection bénéficiant à la victime ne dépend pas de la reconnaissance qui en est faite par l'Etat membre dans lequel celle-ci s'est établie : l'interdiction ou l'obligation s'impose à la personne poursuivie ou condamnée, quel que soit le lieu de résidence de la victime. En revanche, si la personne poursuivie ou condamnée établit sa résidence habituelle dans un autre Etat membre, les instruments adoptés ou en cours d'adoption permettent de transférer le suivi des obligations vers cet Etat¹.

Pour assurer l'effectivité de la mesure en cas de changement de résidence de la victime, il pourrait en revanche être envisagé de compléter les instruments existants en organisant des modalités d'échange d'informations entre les autorités compétentes des Etats membres concernés. Un tel mécanisme permettrait d'informer :

¹ - Décision-cadre 2008/947/JAI du Conseil du 27 novembre 2008 concernant l'application du principe de reconnaissance mutuelle aux jugements et aux décisions de probation aux fins de surveillance des mesures de probation et de peines de substitution;
- Décision-cadre 2009/829/JAI du Conseil du 23 octobre 2009 relative à l'application du principe de reconnaissance mutuelle aux décisions relatives à des mesures de contrôle en tant qu'alternative à la détention provisoire.

- 1) l'Etat membre dans lequel la victime s'établit, des obligations mise à la charge de la personne poursuivie ou condamnée et bénéficiant à la victime,
- 2) l'Etat membre dans lequel la mesure a été ordonnée (ou celui dans lequel elle est suivie si le personne poursuivie ou condamnée a changé de résidence), de toute violation des obligations constatées dans l'Etat membre de résidence de la victime.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

Comme indiqué précédemment, il paraît paradoxal de prévoir un mécanisme de reconnaissance d'une décision judiciaire dans l'Etat membre de résidence de la victime, alors même que la personne faisant l'objet du suivi (la personne poursuivie ou condamnée) ne s'y trouve pas.

La délégation française estime que la mise en œuvre d'un instrument tel que décrit serait de nature à créer des confusions en termes de répartition de compétences entre l'Etat de résidence de la victime et celui dans lequel la mesure est suivie.

ITALY

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

In February 2009 a specific precautionary measure was introduced into the Italian legal system by which the aggressor can be prevented from approaching the victim, wherever the victim is. To date approximately 500 of said orders have been made.

In the 8 years prior to the coming into force of this specific precautionary measure – even without this specific precautionary measure – approximately 150 orders were issued with analogous content as a consequence of judicial interpretation of the legislation in force at the time.

In addition to what is indicated above there are also other measures adopted in the enforcement phase of a conviction in relation to which it is not possible to give credible statistics in a tight timescale.

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

Those obligation shall always be imposed by a criminal court in the context of criminal proceedings.

- 3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**

Yes, we agree.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

The major difficulties that it is possible to foresee concern the operational aspects for the implementation of the order which depend on the movements of the victim and therefore are relevant in relation to intervention by the police and – on the contrary – not very compatible with procedures aimed at putting judicial authorities of different States into direct contact with one another.

LATVIA

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

The obligation to avoid contact with the victim or obligation to enter certain localities are the security measures provided by Latvian Criminal Procedure Law and imposed on the suspected or accused person. During the year 2006, these security measures were applied in 83 cases, in 2007 – in 123 cases, in 2008 – in 184 cases, and during the first 9 months of the 2009 – in 119 cases.

At the same time Latvia would like to draw attention to the fact that, in addition to the security measures imposed on the suspected or accused person, in accordance with Chapter 17 of the Latvian Criminal Procedure Law special procedural protection may be applied to persons who are victims of serious and especially serious crimes, as well as to victims who are minors.

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

Special procedural protection and security measures provided by Latvian Criminal Procedure Law could be imposed only according to the criminal procedure provided by the Law and within the criminal proceedings. Latvian law does not provide for the possibility to impose such obligations by civil court or administrative authority according to civil or administrative procedure.

- b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?**

Not relevant.

- 3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**

- 4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?**

Up to date in the context of cross-border cases, where especially there should be a need for international judicial cooperation, Latvian competent authorities have not experienced substantial difficulties as regards protection of the victims. Thus, Latvia considers that elaboration of a new mechanism will not substantially improve the protection of victims. At the same time as regards the difficulties that Latvia finds to have the protection measures imposed in one Member State to be recognized in another Member State, Latvia would like to draw the attention to the fact that, the main difficulties arise due to substantial differences between mechanisms of protecting the victims chosen in each Member State. For example, there are differences between the understanding of the meaning and scope of the protection measures. At the same time, in some Member States obligations as regards protection of the victims are imposed in civil proceedings etc. Thus Latvia expresses its concerns that due to differences between the positions of the Member States it could be difficult to reach a compromise solution.

LITHUANIA

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

Article 132¹ of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter referred to as the “CCP”) provides for one of the supervision measures as stipulated by the Code of Criminal Procedure, namely, the *mandatory injunction to reside separately from the victim*. In addition to being placed under the mandatory injunction to reside separately from the victim, the suspect may also be ordered not to communicate and not to seek contact with the victim and co-habiting persons, also not to visit the indicated places which the victim or the co-habiting persons usually stay at. Such a mandatory injunction is imposed during pre-trial investigation by a ruling of a pre-trial investigation judge at a prosecutor's request. In 2008, the mandatory injunction to reside separately from the victim was imposed in 12 criminal cases (against 12 suspects (accused), and during the first half of 2009 – in 10 criminal cases (against 10 suspects (accused)).

According to Article 132 of the Code of Criminal Procedure, the abovementioned mandatory injunctions are a constituent part of the supervision measure of *house arrest*. House arrest is the mandatory injunction imposed against the suspect to stay at the specified time at his place of residence, not to visit public places and not to communicate with certain persons. This supervision measure is imposed during a pre-trial investigation by a pre-trial investigation judge at a prosecutor's request. In 2008, house arrest was imposed 59, and in 2009 – 49 times. In compliance with Article 136 of the Code of Criminal Procedure, the mentioned mandatory injunctions are also a constituent part of the supervision measure of a written obligation to stay at a designated place. The written obligation to stay at the designated place as imposed on the suspect may additionally prohibit him from visiting certain places as well as communicating and seeking contact with certain persons, including the victim.

A written obligation to stay at a designated place may be imposed by a prosecutor's decision, a pre-trial investigation judge's or court's ruling. In 2008, a written obligation to stay at a designated place was imposed 7697, and in 2009 – 8138 times. We do not hold statistical data as regards application of additional mandatory and prohibitive injunctions in combination with this measure.

According to provisions of the Criminal Code of the Republic of Lithuania (hereinafter referred to as the "Criminal Code"), similar mandatory injunctions are a constituent part of the penalty of *restriction of liberty* as provided for in Article 48 of the Criminal Code. The penalty of restriction of liberty is imposed by a court in the cases provided for in the Special Part of the Criminal Code. In addition to other mandatory and prohibitive injunctions as provide for in Article 48 of the Criminal Code, a court may, when imposing the mentioned penalty, place the convict under the obligation not to change the place of residence without giving a notice to a court or the institution executing the penalty, to stay at home at a certain time and/or prohibit the person from visiting certain places, communicating with certain persons or groups of persons, owning, using, acquiring, storing on one's own or transferring for safekeeping to other persons certain items. In 2008, the penalty of restriction of liberty was imposed against 1912 persons. We do not hold any current statistical data regarding the imposition of this penalty in 2009.

Article 72¹ of the Criminal Code stipulates that a court may impose a *prohibition to approach the victim* where this is necessary with a view to protecting the legitimate interests of the victim. Upon imposition of prohibition to approach the victim, the offender shall be prohibited, until the expiry of a time limit laid down by a court, from communicating and seeking contact with the victim, visiting the indicated places at which the victim is usually present. Taking account of the fact that Article 72¹ of the Criminal Code entered into force as late as on 27-06-2008, in 2008 this penal sanction was imposed 3 times, and in the first half of 2009 – 13 times.

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

The measures similar to the protection measures referred to in Question 1 are also provided for by the Civil Code of the Republic of Lithuania (hereinafter referred to as the “Civil Code”). Having regard to the interests of the children of the spouses as well as the interests of one of the spouses, a court may make orders for provisional protection measures pending the court’s ruling. In addition to other protection measures referred to in Article 3.65 of the Civil Code, the court may make the following orders for provisional protection measures: order one of the spouses to reside separately, prohibit one of the spouses from having contact with his minor children or visiting certain places, determine the residence of the minor children with one of the parents and demand for one of the spouses not to interfere with the use of certain property by the other spouse. We hold no statistical data on the application of these measures.

- b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?**

Article 245 of the Criminal Code provides a general criminal liability regime for not complying with a court decision not associated with a penalty. It is a misdemeanour punishable by community service or by a fine or by restriction of liberty or by arrest.

- 3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**
- 4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?**

The Republic of Lithuania supports the opinion that all the EU Member States should ensure an effective protection of victims with a view to paying due attention to the vulnerability of the victims and the incurred physical and psychological suffering as well as protecting the victim against secondary victimisation and further unlawful action of the offender. In general, the Republic of Lithuania would support EU action in this sphere. However, the position would depend on the concrete wording of the proposed instrument.

NETHERLANDS

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

In the Netherlands an obligation, as meant by question 1, can only be imposed under special conditions. These special conditions aren't usually registered in the case file, because they are very case-specific. As a consequence, it is impossible to provide statistics or an estimation of the number of cases in which such an obligation is imposed. From the beginning of this year however, the police have begun to register imposed obligations in the case of domestic violence. In these cases, the offender is prohibited from entering the home where the victim lives, nor is he / she allowed to contact the victim. Based on this registration, an estimated 1800 obligations of this sort will be imposed by the end of 2009 in the sole case of domestic violence.

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

The obligations, as referred to in question 1, can also be imposed by a civil court in the context of civil proceedings. In the administrative field, the Temporary Restraining Order Act of 1-1-2009 provides the possibility for the mayor to impose a ban on a person to enter a house, if his presence in the house forms a serious and immediate risk for the safety of persons who are residing with him in that house, or in case of serious presumptions of this risk. The ban can be imposed for a period of ten days, with a possibility to extend this period to a maximum of four weeks. The person involved has the right to lodge an appeal with an administrative judge.

In addition, the government has recently put forward a draft law to Parliament, which, in the context of the maintenance of public order, provides the mayor of a municipality with the power to issue an order to prohibit the presence of a person on a certain location or in a certain area in the municipality. This order can be issued for a period of three months, and it can be extended three times the same period (thus amounting to a maximum of nine months). The draft also provides the public prosecutor with the power to order a person not to appear in a certain area or to avoid contact with (a) certain person(s). This order can be given for a maximum period of 90 days, and can be extended three times the same period (thus amounting to a maximum of three times 90 days).

b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?

Yes, the infringement of the decision of the mayor to ban a person from a house is a criminal act, which can be sentenced with imprisonment of a maximum of two years.

The infringement of the order referred to in question 2a, issued by either a mayor or a public prosecutor, is also a criminal act, which can be punished with imprisonment of a maximum of one year.

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

Yes, such a mechanism could possibly be useful to improve the protection of the victim, especially in cases of domestic violence or violence against women. Such a mechanism should be carefully tailored to the existing or planned instruments on EU-level, such as the Framework decision 2008/947/JHA on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions, and the proposal for a Framework decision on the European supervision order in pre-trial procedures between Member States of the European Union. Moreover, such a mechanism should be suitable for application by the law enforcement authorities.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

The Netherlands have questions with regard to the capacity to enforce obligations imposed in other States. Moreover, because the level of protection between the issuing and executing States can be different, it might not be clear to the victim which protection he / she is guaranteed by the State in which he / she is residing.

AUSTRIA

1. **Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

2006: in 116 cases; 2007: in 239 cases; 2008: in 188 cases.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

In Austria, such obligations can also be imposed by a civil court or an administrative authority in the context of civil or administrative proceedings.

- b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?**

No.

3. **Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**

We are not convinced of the added value of the proposed FD as in case the alleged offender continues to harass the victim in the executing State, administrative proceedings in order to protect the victim and/or criminal proceedings can and must anyway be initiated in that State in accordance with its own law. Furthermore, any possible added value seems to be limited as neither all the obligations set forth in Art. 2 para. 2 are provided for in the national law of the MS nor are all of them imposed by a criminal court in the context of criminal proceedings.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

We do foresee difficulties as not all the obligations set forth in Art. 2(2) are provided for in the national law of the MS nor are all of them imposed by a criminal court in the context of criminal proceedings.

POLAND

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

The statistics of the obligations, which were imposed on offenders for the protection of the victims in Poland in 2008, are as follows:

- 81 custodial sentences and 1235 suspended sentences, in which there was imposed on offender the obligation to avoid contacts with the victim;
- 409 suspended sentences, in which there was imposed on offender the obligation to leave the property (dwelling) shared with the victim;
- 1115 cases, in which an obligation not to enter to certain localities, places or defined areas was imposed on the offender

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

Protection measures, which are bound by the situation of threat are imposed within criminal proceedings. Irrespective of the stage of such proceedings it might be imposed either as preventive measures (pre-trial and trial proceedings) or measures which accompany the judgment founding the person guilty. Such obligations may not be imposed neither in civil nor in administrative proceedings.

- 3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**

Poland shares such opinion that mechanism establishing in victim's favor the right to demand the enforcement in executing State (State where the victim moves to) of measures imposed on an alleged offender in issuing States would improve the protection of the victim.

- 4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?**

The enforcement of obligation imposed on an alleged offender, which would be recognized by Polish judicial authorities, shall not create any difficulties.

PORTUGAL

1. **Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

At the present time, it is not possible to provide such data.

The Portuguese criminal system has a wide variety of measures, both at the pre-trial/trial stage and post trial (sentence) which may be applied to ensure the protection of the victim, through the imposition of certain obligations, in particular in the cases of domestic violence, which include, but are not limited to, obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

It is not within the Portuguese legal tradition to apply this kind of obligations outside the context of criminal proceedings. Although, in theory it is possible to envisage that the victim requests, within a civil procedure, the imposition of certain obligations or conducts on the alleged perpetrator. However, as said before, the Portuguese legal tradition is to give the protection of rights of a personal nature to criminal law, and does not provide for measures of a civil nature

- b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?**

As stated in the previous question, there are no specific mechanisms of civil nature for the imposition of these obligations, and therefore, the issue is to be resolved at the level the criminal consequences of the infringement of these obligations. According to the Portuguese legal tradition, the infringement of obligations of this nature, determined by a court, may lead to criminal responsibility.

- 3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**

The above mentioned mechanism will surely improve the protection of the victim. That being said, the creation of such mechanism should be guided by the principle of necessity and proportionality, as well as take into consideration other existent EU instruments, in particular the 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 provision detention, in order to establish the necessary articulation and a coherent system.

- 4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?**

In principle, one does not foresee any special difficulty in enforcing as an execution as long as its execution is governed by the Portuguese law, as it seems to be, also, the philosophy of the project of the framework decision, as per its article 12 (governing law).

SLOVENIA

1. **Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

Measure of prohibiting approach to particular person during the criminal procedure (Article 195a of Criminal procedure Act) was imposed in 105 cases by district courts and in 37 cases by county courts in the year 2006. In the year 2007 measure was imposed in 128 cases by district courts, in 19 cases by county courts and three times in cases against minors. In the year 2008 there were 29 cases of measure being imposed by district court and 35 cases of measure being imposed by county courts in the course of criminal procedure.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

The restraint order prohibiting approach to a specific place or person can be imposed by court in the course of criminal procedure as a substitute and less severe measure to detention order. In addition, police may order a restraining order prohibiting the person from approaching a particular place or person if there is a reasonable suspicion that a person has committed a misdemeanour involving violence or if a person has been caught in the committing of such a misdemeanour and there are reasons for suspecting that this person is about to endanger life, personal safety or freedom of a person with whom he/she is or was in a close relationship. Police order is ex officio reviewed by the district court investigating judge, who may uphold, amend or annul the restraining order.

There is also a possibility for witnesses, close relatives or other persons who are endangered due to their relation with the witness together with persons showing remorse to be included in the witness protection programme (urgent protection measures include also technical protection of persons or residences and physical protection of persons or residences) if they

are endangered due to co-operation in criminal procedure. Witness protection programme is used under certain conditions set in the Witness Protection Act and is envisaged for criminal procedures with regards to more severe criminal offences (for which undercover investigative measures can be used).

In the case of domestic violence victim can propose the court to issue an order to the perpetrator of violence to prohibit him the following:

- entering to the accommodation premises where the victim lives;
- to come at a specified distance within the proximity of the accommodation where the victim lives;
- to come near to places which the victim frequents regularly (workplace, school, preschool facility, etc.).
- to establish contact with the victim in any way whatsoever, including by way of the means for distance communication;
- to establish any kind of meeting with the victim.

For decision-taking on these actions the District Court has jurisdiction over the subject matter in the non-litigious proceeding (nepřevodní postopek) if it is not determined differently by the law. The court considers the matters on a primary basis, the proceedings are urgent and the public is excluded.

b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?

No.

- 3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**

Slovenia is not familiar with this mechanism as our system is based on supervision measures being imposed on offender and any violation requires consequences for the offender.

Introducing the possibility for victim to ask for the enforcement would open both legal and practical difficulties and issues, in particular the relationship between the measure that is imposed on the offender and the victim.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State

These questions are determined in the Framework Decision on Supervision measures (ie. ESO) and as regards its content we do not see any difficulties at this point.

SLOVAKIA

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

Stated statistics data are not available.

- 2. a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

These obligations may be imposed in the context of criminal proceedings (mostly by criminal court), but also may be imposed by civil court or administrative authority in the context of civil or administrative proceedings.

According to Art. 76 letters f) and g) of Slovak Code of Civil Procedure the civil court in the context of civil proceedings may issue a preliminary measure with a view to ordering the party to do something, to abstain from doing something, or to suffer something to be done or may issue a preliminary measure with a view to temporary prohibition of entry to house or flat in which a victim lives.

In the context of criminal proceedings may be such obligations according to provisions of Slovak Code of Criminal Procedure imposed by the criminal court in form of appropriate restrictions or duties. Such court decision is always connected with other decision (e.g.: imposition of sentence, conditional sentence, conditional release, imposing probation measure, etc.).

According to Art. 216 para. 4 of Slovak Code of Civil Procedure in case of conditional stay of criminal prosecution prosecutor may also impose appropriate restrictions designed to making accused person lead a regular life or refrain from the activities that led to the commission of the minor offence.

In addition also members of Police Corps may prohibit enter to certain place or impose to stay on certain place or allocate person from common residence. But all these measures are imposed only on necessary time period. For short time periods these measures cannot belong into the scope of proposed framework decisions.

b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?

Yes, person who seriously obstructs the enforcement of obligations imposed by civil court or police authority may be punished according to Art. 348 and 349 of Slovak Criminal Code (criminal offence: obstruction of enforcement of official decision).

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

Slovak Republic supports the improvement of the protection of victims in all Member States. However the first proposal of this legal instrument seems too formalized and not very effective. We consider as a problem the fact, that Slovak legal order regulates only measures imposing certain obligations to offenders and not measures imposing some duties to victims. Also recognition of civil or administrative decisions is from our point of view too complicated. In the proposal should be specified a clear line between criminal proceedings and civil procedure. We consider that some issues fall within the cognizance of civil courts.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

Slovak national law does not regulate the enforcement of measure which was imposed to unknown offender. It will be a serious problem to ensure such measure. Also the enforcement of protection of victim will be very difficult and complicated in cases when offender stays in another Member State.

FINLAND

1. **Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

According to the official statistics concerning restraining orders issued by our courts, no distinction has been made between various types of restraining orders. During the period of 2002 – 2008, the number of restraining orders imposed by our courts has ranged from 988 to 1506.

In addition to restraining orders issued by our courts, pre-investigative authorities may impose temporary restraining orders. During the period of 2005 – 2008, the number of temporary restraining orders has ranged from 1534 – 1692.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

In Finland restraining orders are imposed as separate security measures in courts which are competent in civil and criminal matters. As to the procedure, the Criminal Procedure Act applies *mutatis mutandis*.

- b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?**

Infringement of a restraining order is criminalised by the Finnish Penal Code. According to section 9a of chapter 16, if a person subject to a restraining order or a temporary restraining order violates the order, he/she shall be sentenced for violation of a restraining order to a fine or to imprisonment for at most one year.

- 3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?**

We share that opinion, but in our view it should also be possible for the victim to ask for the enforcement of the restraining order in situations where the offender moves to another Member State. Current instruments (EPO, ESO) do not provide for solutions for all such situations.

- 4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?**

In our view rules should be general and flexible in this regard. The executing State should have wide possibilities to adapt obligations in accordance with its law. Otherwise it might be impossible for the executing State to enforce obligations imposed in the issuing State (e.g. in a situation where there would be a prohibition to enter certain places or areas within the territory of the issuing State).

SWEDEN

1. **Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

According to the Office of the Prosecutor-General the number of applications for restraining orders in 2008 was 11 551, of which 4 388 were granted.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

The decision to impose a restraining order or not is made by public prosecutors. Usually, the decision follows an application by an alleged victim in connection with the reporting of a crime. It is also possible for a prosecutor to impose a restraining order without a formal application. The prosecutor's decision can be appealed. Hence, a restraining order might be imposed by a court. A basic requirement for the imposition of a restraining order is that the individual for whose protection the order is imposed faces the risk of becoming a victim of a crime or of serious persecution. Regardless, the decision as such is always considered to be administrative in nature.

- b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?**

Infringing on a restriction order is a criminal offence, except for instances in which the infringement is deemed to be minor. Possible penalties range from a fine up to one year of imprisonment.

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

Sweden attaches great importance to the safeguarding and protection of the rights of people that have become victims of crime, or that faces the risk of being victimized. Furthermore, she or he should be able to move within the EU, and to change her or his residence, without fearing the loss of any particular level of protection that has been granted by the state in which she or he (originally) resides. Applying the principle of mutual recognition to decisions that imposes restriction orders, which is the mechanism supposedly being referred to and which is the topic of current discussions, would broaden the possible geographical scope of such orders. In addition, it would enhance the foreseeability when an individual, for whose protection such an order has been imposed, considers the consequences of changing his or her residence. The Swedish reply to the question posed is therefore affirmative.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

With the caveat that the measures imposed by the original decision would have to be adapted to the equivalent measures available according to Swedish law, the decision should be possible to enforce by Sweden as an executing state. However, the current text of the draft Framework Decision does raise the particular issue that under Swedish law, a basic requirement for the enforceability of a restriction order is that the person who it is being imposed upon has been informed in detail of the order. This requirement would also have to be extended to any restriction order originating in another Member State. The draft Framework Decision does however not seem to include such a provision.

Furthermore, the legal basis for the proposed Framework Decision may require further discussions in order to evaluate its conformity with both current and future treaties within the EU and with respect to decisions imposing restriction orders that arise both within and outside of criminal procedure proper.

UNITED KINGDOM

- 1. Can you provide statistics, or give an estimation, of the number of cases in which yearly in your Member State obligations are imposed on (alleged) offenders for the protection of victim(s), such as the obligation to avoid contact with the victim, and the obligation not to enter certain localities, places or defined areas where the victim lives/works?**

A number of civil and criminal orders are used in the UK to impose restrictions on (alleged) offenders. Based on the figures available we estimate that approximately 60,000 orders are made in civil and criminal courts in England and Wales. Unfortunately we do not have figure available for the orders imposed in Scotland. Details, where available, are given below.

Non-Molestation Orders (civil order)

A non-molestation order states that one person should not molest another. Such an order deals with violence or threats of violence, as well as behaviour by which one person harasses, pesters or annoys another. Figures are below.

Occupation Orders (civil order)

An occupation order regulates who may occupy a specified property. It may exclude one party totally from that property and thus require them to live elsewhere or it may exclude them from certain rooms within the property, e.g. forbidding a husband to enter the bedroom that the wife is now sleeping in. An occupation order can also create an exclusion zone around the property.

In the calendar year 2008: 25,172 applications for non-molestation and occupation orders were made; 24,621 orders were made.

In the financial year April 2008 - March 2009: 25,815 applications for non-molestation and occupation orders were made; 24,958 orders were made.

Forced Marriage Protection Orders (civil order)

A Forced Marriage Protection Order can be made to prevent or pre-empt forced marriages from occurring. The order may contain prohibitions, restrictions or requirements or such other terms as the court thinks appropriate to stop or change the behaviour or conduct of those who would force the victim into marriage.

Since implementation of the Forced Marriage (Civil Protection) Act 2007 in November 2008, to the end of September 2009, 72 Forced Marriage Protection orders have been recorded.

Restraining orders

Criminal proceedings under the Protection from Harassment Act 1997 can result in a conviction and a restraining order. Home Office research suggests that there are about 5,600 applications per year, resulting in about 3,123 restraining orders.

Section 12 of the Domestic Violence Crime and Victims Act (which has just been implemented at the end of September 2009) extends the circumstances whereby the criminal courts can issue restraining orders:

- When sentencing for any offence the court will be able to make a restraining order for the purpose of protecting a person from conduct which amounts to harassment or will cause fear of violence.
- On acquittal for any offence, the court may make a restraining order if the court considers it necessary to protect a person from harassment.

The Home Office estimate that there will be about 3,300 additional restraining orders in the magistrates' courts as a result of making orders available on conviction for any offence and on acquittal, however, as this is a new element of restraining orders this is just an estimate at this stage.

Bail Conditions

Conditions can also be imposed to bail in criminal cases to protect witnesses (and victims). There are no statistics available in this area.

Community Sentences

Conditions to exclude an offender from a particular place can be imposed as part of a community sentence or (more usually) licence following release from prison. These "exclusion zones" often are to prevent further contact with a victim or the victim's family. If the victim/family were to move abroad within the EU then it might be appropriate to create new exclusion zones in that member state. But this could be done under the probation FD.

Scotland

There are a number of civil and criminal orders in Scotland which may contribute to the protection of victims, and therefore may be relevant to the EPO. These include exclusion orders from matrimonial homes and restriction from liberty orders. However, figures are not available on the use of measures.

2. **a) In your Member State, are such obligations (always) imposed by a criminal court in the context of criminal proceedings, or can they also be imposed by a civil court or administrative authority in the context of civil or administrative proceedings?**

Civil courts are able to impose such obligations if they are part of civil proceedings, such as in non-molestation orders, occupation orders and Forced Marriage Protection Orders. Breach of a non-molestation order is now a criminal offence. Some orders, such as the occupation order, allow for a power of arrest to be attached to civil court order when it is made.

Therefore, if there is a breach of the order the person can be arrested without a warrant or a need to return to the court to give permission for the arrest. For orders where a power of arrest is not attached to the initial order, it can be applied for if the order is breached.

However, there is an added complication as the criminal courts are able to impose civil remedies, such as restraining orders.

b) In case obligations can be imposed by a civil court or administrative authority, are there any criminal consequences if the obligations imposed are infringed?

Not necessarily. There is a distinction depending on the type of order made by the civil court. A breach of a non-molestation order or an injunction is a criminal offence (although an applicant can also choose to pursue breach of the order as contempt of court through the civil courts), whereas a breach of an occupation order or a forced marriage order is dealt with by the civil courts as contempt of court.

Contempt of court proceedings in civil proceeding for disobeying the order of the (civil) court and a proven breach can lead to a punishment of a fine or imprisonment for up to 2 years. However, imprisonments are very rare.

3. Do you share the opinion that a mechanism whereby a victim can ask for the enforcement, in the Member State to which he/she moves (executing State), of a measure imposed on an (alleged) offender in another Member State (issuing State) would improve the protection of the victim?

In general, we agree that such a mechanism would be beneficial where additional protection is required by the victim, however, recognising the initial order in another Member State may not be convenient for the victim. First, protection orders often need to be varied over time, re-issued as circumstances change, and discharged. Protection Orders in the UK often expire after a certain period of time (e.g. 6 months). The victim returns to court to request an extension if necessary. A victim who moved to another Member State would not want to return to the first state to request an extension of an order. Second, the content of the order should reflect the kind of protection available locally. A court in England would not know what protection is available in Poland, and the victim would therefore not benefit from local services if she relies on an order issued in England.

It may be that the FD on probation may be able to capture some of these cases if the restrictions on contact etc formed part of a sentence under that FD. We would want to see a strong evidence base for the need of the EPO in addition to that. We are not aware of any victim from another Member State who has not been able to get a protection order in the UK.

In England and Wales in the civil arena, as explained above in response to 2a), if a civil order (without the power of arrest) is breached, the applicant-victim 'can ask' the court to issue a power of arrest to bring the respondent (alleged offender) back to court for committal. Also even with breach of a non-molestation order having been criminalised the applicant can in a way still 'ask' that the civil court deal with it as contempt if she/he does not want to pursue the criminal avenue. This will depend on the seriousness of the breach and whether or not Crown Prosecution Service feel there is good reason to pursue the criminal charge.

It is not entirely clear whether it is envisaged that an EPO would encompass a condition imposed by a court on release on bail. The UK's view is that bail, or pre-trial release and detention should not form part of this proposal. There should not be any further obligations to enforce conditions of bail (or pre-trial measures) other than those provided by the European Supervision Order FD.

4. Do you foresee any special difficulty to enforce as an executing State an obligation (possibly adapted in accordance with your national law) that has been imposed on an (alleged) offender in the issuing State?

We are concerned that there are a great variety of obligations that could be imposed by issuing states and not all would be suitable to be enforced through the criminal law. Not all the elements listed in Article 2 are criminal offences in the UK, for example, it is not a criminal offence to take a photograph of someone. In some cases, it can be a tort, but it is not an element of protection that we would be able to enforce through the criminal law. We suggest that there is a discussion on which kinds of conduct should be prevented by an EPO, the breach of which would be a criminal offence.

In order to answer this question more fully, we need clarification about the following provisions in the draft EPO:

Article 1(2) of the draft framework decision would appear to require that all Member States make breach of the Order a criminal offence, whether or not the original order was a civil matter. Do you think that there will be legal base problems with this approach?

Whether the person would be extradited to stand trial in the Member State that imposed the original order) and whether they would be able to be extradited if what they did was not a criminal offence in the receiving country) is unclear. We do not think that the FD on the European Arrest Warrant should be applied in all these situations.

If orders in the issuing MS are specific to e.g. a geographical location in that country, such as with restraining orders in the UK, how will that be transferred to the executing MS? We are concerned that, for example, an English court issuing an EPO for someone moving to Paris should not attempt to make an order about French territory. The English court is not best placed to draw the boundaries of the protection.

Will there need to be a process by which a court or an administrative body in the issuing member state needs to reassess and vary a domestic order in order for it to become an EPO? We would expect that the victim who wants to move to another Member State would have to request the order to be varied. Although this may introduce new and burdensome processes which inconvenience the victim, it may be necessary to make the EPO a practical rule.

There are a number of practical reasons for which we suggest that the victim may be in a better position by applying to a court in the new Member State for a protection order (rather than requiring the new Member State to recognise the original order). First, the local court could make a suitable order with exemption zones as necessary based on local knowledge of police practices.

Second, the current text does not reflect how an order issued would be varied or discharged in the new Member State. If an order were varied by a local court, what effect would that have on the original order? Similarly, how would a discharge by the executing state affect the original order? It is an important principle of law that court orders be able to be varied or discharged by the court that made them.

Some domestic orders, such as the restraining order in the UK, are discharged when there has been a change of circumstance, which could include the victim moving away. This would effectively bring an end to the order and it could not be recognised by an EPO. In such cases, we would expect that an EPO would not be necessary. If the victim moved to another Member State, we would expect them to seek a protection order in the new Member State if difficulty arose again there. Is this your understanding?

Would the breach have to be a recognised criminal offence in the executing state? If so, do you consider that this would amount to harmonising the elements of a criminal offence in a context that has not been anticipated to date (i.e. breach of protection orders?). Do you think that there is sufficient legal base to do this?

When assessing the costs of implementing this draft proposal, consideration should be given to the translation and other administrative costs. If we need to enforce orders which involve imprisonment, there may be implications for the overburdened prisons in the UK unless they would be sent to the original Member State to serve their sentence. Last, we wonder whether we have any evidence of a victim being refused protection in a Member State to which they move?
