

Mapping the legislation and assessing the impact of Protection Orders in the European Member States.

Suzan van der Aa
Johanna Niemi
Lorena Sosa
Ana Ferreira
Anna Baldry



With financial support
from the DAPHNE Programme
of the European Union



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Cover design:

Pjotr Design Studio, Bollenhofsestraat 38, 3572 VN Utrecht

E-Mail: Pjotrdesignstudio@gmail.com

www.pjotr-designstudio.com

Tel. mobile +31 6-41.23.63.07

Published by:

Wolf Legal Publishers (WLP)

PO Box 313

5060 AH Oisterwijk

The Netherlands

E-Mail: info@wolfpublishers.nl

www.wolfpublishers.com

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Acknowledgements

The team involved in the POEMS project wants to thank all professionals, organisations and victims that cooperated with us.

First of all, we would like to express our gratitude to the Dutch Board of Procurators-General, the Dutch Public Prosecution's district office of *Zeeland-West Brabant*, in particular to Ronald Kloppenburg, and the APAV local support schemes who helped finding victims to be interviewed.

A special acknowledgement furthermore goes to Aurora Rodrigues, Valter Batista, and Joana Reis who provided feedback on the Portuguese national report.

The input provided by the 27 experts mentioned on page 1 was invaluable to our project. Without their national reports, this project could not have succeeded. For this, we like to thank them most heartily. The same goes for Dr. Neus Oliveras (University of Rovira i Vigili, Spain), Mónica Gomes (Directorate-General for Justice Policy, Portugal), Rosa Logar (Women Against Violence Europe), and Maria Oreshkina (Council of Europe) who presented at the project's closing conference.

Furthermore, we like to thank Professor Marc Groenhuijsen for his helpful feedback on a first draft of the recommendations.

We would also like to extend our appreciation to the three trainees Marleen Ploum, Eline Fransen, and Karin Hereijgers for their work in the final phase of the project. Laetitia Ruiz deserves our gratitude for double-checking the French summary while the English editing was in the very capable hands of Nikki Idema.

This project was funded by the Daphne III Programme of the European Commission, and we extend our thanks to our contact person, Anda Otilia Ivan, for her input and advice regarding the project management.

Finally, we're extremely grateful for the 58 women who were willing to take the time and trouble to disclose their personal experiences with protection orders to us.

Table of contents

Research teams	1
List of abbreviations and acronyms	2
Country abbreviations	3
Executive summary (English)	5
Executive summary (French)	17
CHAPTER 1. INTRODUCTION	31
1. Introduction	31
2. Research questions	33
3. Definition protection order	35
4. About the report	37
5. Outline of the report	38
CHAPTER 2. MAPPING PROTECTION ORDER LEGISLATION IN THE EU MEMBER STATES	39
1. Introduction	39
2. Methodology	40
2.1. Research methods	40
2.2. Selection of the legal experts	41
2.3. Materials	41
2.4. Quality control on the reports	42
2.5. Data analysis and reporting	42
2.6. Research limitations	43
3. Results per Member State	43
3.1 Austria	43
3.2 Belgium	44
3.3 Bulgaria	45
3.4 Cyprus	45
3.5 Czech Republic	46
3.6 Denmark	46
3.7 Estonia	47
3.8 Finland	47
3.9 France	47
3.10 Greece	48
3.11 Germany	49
3.12 Hungary	49
3.13 Ireland	50
3.14 Italy	50
3.15 Latvia	51
3.16 Lithuania	52
3.17 Luxembourg	52
3.18 Malta	52
3.19 Netherlands	53
3.20 Poland	53

3.21 Portugal	54
3.22 Romania	54
3.23 Slovenia	55
3.24 Slovakia	55
3.25 Spain	56
3.26 Sweden	56
3.27 United Kingdom	57
4. Results per cross-cutting theme	58
4.1. Introduction	58
4.2. General information	58
4.2.1. Types of behavior for which protection orders are issued	58
4.2.2. Areas of law	58
4.2.3. Emergency barring orders	60
4.2.4. Interrelatedness of protection orders with other (substantive) legal proceedings	61
4.2.5. Availability of protection orders in the stages of the criminal procedure	63
4.2.6. Dedicated or generic protection orders.	63
4.3. Protection order procedures	65
4.3.1. Protection order procedures	65
4.3.2. Persons involved in protection order procedures	66
4.3.3. Persons initiating or applying for protection orders	67
4.3.4. Application requirements	69
4.3.5. Ex parte protection orders	71
4.3.6. Immediate effect	72
4.3.7. Appealing a protection order decision	72
4.3.8. Help during emergency barring order	73
4.3.9. Protection orders and children	74
4.3.10. Mutual protection orders	75
4.3.11. Length of the proceedings	76
4.3.12. Financial costs of protection orders	77
4.3.13. (Free) legal representation for the victim	79
4.4. Monitoring and enforcement of protection orders	81
4.4.1. Protection order registration	81
4.4.2. Informing the victim of the protection order decision	81
4.4.3. Authority responsible for monitoring compliance	83
4.4.4. Monitoring activities	84
4.4.5. Prioritizing (emergency) calls of protection order violation	86
4.4.6. Evidentiary requirements for the establishment of a violation	87
4.4.7. Enforcement procedure	87
4.4.8. Discretionary power of the police and other monitoring authorities to report violations	88
4.4.9. Criminalization of civil and emergency barring order violation	89
4.4.10. Possible reactions and sanctions upon violation	91
4.4.11. Contact initiated by the victim	92
4.4.12. Training of the monitoring authorities	92
4.5. Types, scope, duration, and effectiveness of protection orders	93
4.5.1. Types of protection orders	93
4.5.2. Most popular types of protection orders	95
4.5.3. Legal limitations to scope protection orders	95
4.5.4. Legal requirements for the formulation of protection orders	96

4.5.5. <i>Delineation of a prohibition to enter an area</i>	96
4.5.6. <i>Legal limitations to the duration of protection orders</i>	97
4.5.7. <i>Average duration of civil and criminal protection orders</i>	99
4.5.8. <i>Empirical information on the number of protection orders per year</i>	100
4.5.9. <i>Empirical information on victim and offender characteristics</i>	101
4.5.10. <i>Empirical information on protection order effectiveness</i>	102
5. Conclusion	102
 CHAPTER 3. THE LEVEL OF PROTECTION IN THE EU MEMBER STATES: TOWARDS STANDARDIZED CRITERIA	 105
1. Introduction	105
2. Methodology	105
2.1. <i>From international human rights standards and national reports to key indicators</i>	105
2.2. <i>From key indicators to standardized criteria</i>	107
3. Limitations	108
4. Results per theme	110
4.1. <i>Areas of law</i>	110
4.2. <i>Interrelatedness of protection orders with other (substantive) legal proceedings</i>	113
4.3. <i>Availability of protection orders in all stages of the criminal procedure</i>	116
4.4. <i>Victims covered by protection orders</i>	117
4.5. <i>Persons initiating or applying for protection orders</i>	120
4.6. <i>Evidentiary requirements</i>	124
4.7. <i>Ex parte protection orders</i>	124
4.8. <i>Immediate effect</i>	125
4.9. <i>Service of the verdict</i>	126
4.10. <i>Protection orders and children</i>	127
4.11. <i>Mutual protection orders</i>	130
4.12. <i>Length of the proceedings</i>	132
4.13. <i>Financial costs of protection orders</i>	133
4.14. <i>(Free) legal representation for the victim</i>	135
4.15. <i>Protection order registration</i>	138
4.16. <i>Informing the victim</i>	139
4.17. <i>Authority responsible for monitoring</i>	140
4.18. <i>Monitoring activities</i>	142
4.19. <i>Prioritizing (emergency) calls of protection order violation</i>	143
4.20. <i>Evidentiary requirements for the establishment of a violation</i>	145
4.21. <i>Discretionary power to report violations</i>	146
4.22. <i>Criminalization of civil and emergency barring order violation</i>	147
4.23. <i>Possible reactions and sanctions upon violation</i>	149
4.24. <i>Contact initiated by the victim</i>	150
4.25. <i>Training of the monitoring authorities</i>	151
4.26. <i>Types of protection orders</i>	153
4.27. <i>Legal limitations to the scope of protection orders</i>	154
4.28. <i>Delineation of a prohibition to enter an area</i>	154
4.29. <i>Legal limitations to the duration of protection orders</i>	156
4.30. <i>Empirical information on the number of protection orders issued</i>	157
5. Standardized criteria	158
5.1. <i>Standardized criteria</i>	158

5.2. <i>Standardized criteria per Member State</i>	160
5.3. <i>Promising practices</i>	161
5.4. <i>Interesting practices</i>	162
6. <i>Conclusion</i>	163

CHAPTER 4. THE FUNCTIONING OF PROTECTION ORDERS IN PRACTICE:

THE VICTIMS' PERSPECTIVE	165
1. Introduction	165
2. Protection order functioning and effectiveness: the experts' perspective	165
2.1. <i>Problems with protection order legislation</i>	166
2.2. <i>Problems with the protection order procedure</i>	166
2.3. <i>Problems with protection order monitoring</i>	167
2.4. <i>Problems with protection order enforcement</i>	168
2.5. <i>Problems with protection order effectiveness</i>	169
3. Methodology	169
3.1. <i>Selection of the participants</i>	169
3.2. <i>Sample characteristics</i>	170
3.3. <i>Interview protocol and procedure</i>	171
3.4. <i>Analysis</i>	173
4. Limitations	173
5. Results	174
5.1. <i>History of violence</i>	174
5.2. <i>Incident that resulted in a protection order</i>	176
5.3. <i>Police response</i>	178
5.4. <i>Response of the public prosecution service</i>	181
5.5. <i>Pre-trial protection orders</i>	183
5.6. <i>The trial stage</i>	188
5.7. <i>(Post-trial) protection orders</i>	190
5.8. <i>Effectiveness protection orders</i>	192
5.9. <i>Looking back</i>	197
6. Conclusion	201

CHAPTER 5. THE EUROPEAN PROTECTION ORDER IN THE LIGHT OF THE NATIONAL FINDINGS

THE NATIONAL FINDINGS	205
1. Introduction	205
2. The Directive on the European protection order	206
2.1. <i>Background of the European protection order Directive</i>	206
2.2. <i>Scope of the European protection order Directive</i>	206
2.3. <i>Recognition procedure under the EPO Directive</i>	207
3. Regulation on protection measures in civil matters	209
3.1. <i>Background of the Regulation on protection measures in civil matters</i>	209
3.2. <i>Scope of the Regulation on protection measures in civil matters</i>	209
3.3. <i>Recognition procedure under the Regulation on protection measures in civil measures</i>	210
4. Differences between the Directive and the Regulation	211
4.1. <i>Procedures for recognition</i>	211
4.2. <i>Grounds for refusal</i>	212
4.3. <i>Aim of the original order</i>	213
4.4. <i>Physical presence protected person</i>	213
4.5. <i>Assessment of the duration of the victim's stay</i>	214

4.6. <i>Assessment of the need for protection</i>	214
4.7. <i>Possibility to limit duration</i>	215
4.8. <i>Prohibitions under the Regulation and the Directive</i>	215
5. Possible problems in the implementation of the Directive and the Regulation	218
5.1. <i>Challenges related to interpretation difficulties</i>	218
5.1.1. <i>Uncertainty with regard to commuters</i>	218
5.1.2. <i>Splitting the protection order</i>	219
5.1.3. <i>Contact that is still allowed</i>	220
5.1.4. <i>Lack of alternative measures</i>	220
5.2. <i>Challenges related to national differences</i>	221
5.2.1. <i>Quasi-criminal protection orders</i>	221
5.2.2. <i>From designated streets to radiuses (and back)</i>	222
5.2.3. <i>Lack of legal basis to provide for an autonomous criminal order</i>	223
5.2.4. <i>Criminal or civil sanctions in response to non-compliance</i>	224
5.2.5. <i>Lack of civil protection orders</i>	225
5.2.6. <i>Lack of sanctions to violations of criminal orders</i>	226
5.2.7. <i>Sanctioning when there is no alternative order in the executing state</i>	226
6. Conclusion	227
CHAPTER 6. CONCLUSIONS AND RECOMMENDATIONS	229
1. Introduction	229
2. Mapping protection orders in 27 EU Member States	231
2.1. <i>Areas of law</i>	231
2.2. <i>Protection order procedures</i>	232
2.3. <i>Monitoring and enforcement of protection orders</i>	233
2.4. <i>Substantive differences</i>	234
2.5. <i>Empirical information on protection orders</i>	234
3. Assessing the level of protection provided by the national protection order laws	235
4. The functioning of protection orders in practice	237
5. The functioning of the EPO and the EPM in the light of the national findings	238
5.1. <i>Challenges related to the interpretation of the two instruments</i>	239
5.2. <i>Challenges related to national differences</i>	240
6. Future directions to improve the level of protection for victims (recommendations)	241
6.1. <i>Recommendations on the level of the EU Member States</i>	243
6.2. <i>Recommendations on the level of the EU</i>	247
6.3. <i>Recommendations for future research</i>	247
ANNEX 1. TEMPLATE NATIONAL REPORTS	249
ANNEX 2. STANDARDIZED CRITERIA PER MEMBER STATE	259
ANNEX 3. SELECTION PROCEDURE PER MEMBER STATE FOR THE VICTIM INTERVIEWS	263
ANNEX 4. INTERVIEW PROTOCOL VICTIM INTERVIEWS	269

Research teams

INTERVICT – Tilburg University

Dr. Suzan van der Aa
Dr. Lorena Sosa
Dr. Felix Ndahinda

University of Helsinki

Prof. Dr. Johanna Niemi
Sini Majlander
Ida Lindfors

APAV – Victim Support Portugal

Ana Ferreira
Joana Menezes
Frederico Marques

Seconda Università degli Studi di Napoli

Dr. Anna Baldry
Lotte de Geus

National experts

Austria	Rosa Logar	Latvia	Iveta Brinuma
Belgium	Anke van Vossolle	Lithuania	Rita Zukauskiene
Bulgaria	Miriana Ilcheva	Luxembourg	François Moysse
Cyprus	Andreas Kapardis	Malta	Roberta Lepre
Czech Republic	Vladimir Vedra	Netherlands	Suzan van der Aa
Denmark	Birgit Feldtmann & Eva Ancher Svensson	Poland	Slawomir Buczma
Estonia	Vadim Poleshchuk	Portugal	Ana Ferreira & Frederico Marques
Finland	Johanna Niemi & Ida Lindfors	Romania	Iustina Ionescu
France	Catherine Blaya	Slovakia	Iveta Brinuma
Germany	Heinz Schöch	Slovenia	Martin Buzinger
Greece	Vasiliki Artinopoulou	Spain	Teresa Freixes
Hungary	Judit Wirth	Sweden	Lena Landström
Ireland	Orlagh O'Farrell	United Kingdom	Marsha Scott
Italy	Anna Baldry & Lotte de Geus		

List of abbreviations and acronyms

APAV	Associação Portuguesa de Apoio à Vítima (Portuguese Victim Support Association)
AWARE	Abused Women's Active Response (alarm system)
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
DV	Domestic violence
EBO	Emergency barring order
ECtHR	European Court of Human Rights
EPM	Protection measures in civil matters (EU Regulation 606/2013)
EPO	European Protection Order (EU Directive 2011/99/EU)
EU	European Union
GPS	Global positioning system
i	'Interesting' practice
INTERVICT	International Victimology Institute Tilburg (Tilburg University)
IPV	Intimate partner violence
M	Information missing
MS	Member States
n	Number of respondents included
n/a	Not applicable
NGO	Non-governmental organization
PO	Protection order
POEMS	Protection Orders in the European Member States (study)
PPS	Public prosecution service
TFEU	Treaty on the Functioning of the European Union
VAW	Violence against women

Country abbreviations

AT	Austria	IT	Italy
BE	Belgium	LT	Lithuania
BG	Bulgaria	LV	Latvia
CY	Cyprus	LU	Luxembourg
CZ	Czech Republic	MT	Malta
DE	Germany	NL	Netherlands
DK	Denmark	PL	Poland
EE	Estonia	PT	Portugal
EL	Greece	RO	Romania
ES	Spain	SE	Sweden
FI	Finland	SI	Slovenia
FR	France	SK	Slovakia
HU	Hungary	UK	United Kingdom
IE	Ireland		

Executive summary (English)

1. Introduction

Many victims of repetitive violence, such as domestic violence or stalking, have an increased need for protection against their offender. One way of safeguarding them is to issue a *protection order*. A common example is a protection order that prohibits the offender to enter a certain area – e.g., the street where the victim lives – or to contact the victim. In the present study, the following definition of the term protection order is used:

A protection order is a decision, provisional or final, adopted as part of a civil, criminal, administrative or other procedure, imposing rules of conduct (prohibitions, obligations or limitations) on an adult person with the aim of protecting another person against an act that may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity.

Until recently, protection orders were only valid on the territory of the Member State that issued the order. Victims who travelled or moved to another Member State were forced to initiate new proceedings to acquire a substitute protection order in the new country of residence. With the coming into force of Directive 2011/99/EU (the European Protection Order, hereafter: EPO) and Regulation 606/2013 (on the mutual recognition of protection measures in civil matters, hereafter: EPM) this situation has changed. These two instruments provide a legal basis for EU Member States to recognize a protection order that was granted in another Member State. From now on, criminal and civil protection orders issued in a particular EU Member State have to be recognized in all other EU Member States.

In the case of the EPO, the new state of residence has to replace the original protection order with a measure under its own law that corresponds ‘to the highest degree possible’ with the original measure. This means that the replacement order does not have to be identical to the original order. The rationale is that the executing state provides the victim with the *same level* of protection it would provide its own citizens in a similar situation.

The problem is that, at the moment, we have no idea about how victim protection is constructed in the EU Member States. There seems to be a plethora of protection order schemes, but these schemes have never been the subject of dedicated research. The available data, nevertheless, suggest that there are enormous discrepancies amongst protection order laws and levels

of protection across the EU. The question of whether the EPO and the EPM are still able to function well in those circumstances then becomes relevant.

Another feature of protection order legislation that has largely remained in the dark is how they function in practice. Even though protection orders have been in existence for quite some time now, and even though some of them are imposed on a regular basis, their effectiveness is contested and discussions are dominated by assumptions instead of actual data.

The current research project tried to address these voids and to give an accurate, in-depth and up to date reflection of the state-of-the-art in protection order legislation in the European Member States.

2. Research questions

The goals of this study were fivefold. The first goal was to provide an accurate and up-to-date reflection of national legislation and practices in the field of protection orders. With the help of 27 national reports, written by legal experts, we tried to meticulously map and compare the relevant laws and practices in the Member States. The second goal was to develop an analytical perspective on the level of protection provided by the Member States. Based on victimological literature and emerging norms in international legislation, we formulated indicators of what constitutes appropriate legal protection and assessed whether the Member States were up to par with these 'standardized criteria'. We also identified promising practices and possible gaps in protection. The third goal was to establish the functioning and enforcement of protection orders in practice. An explorative study, consisting of 58 victim interviews from Finland, Portugal, Italy and the Netherlands, was conducted to learn more about victims' experiences with criminal protection orders. A fourth goal was to assess how the EPO and the EPM would function in the light of the varying state practices, and a fifth goal was to formulate recommendations on the EU and national level that would help increase the level of protection provided to victims of violence.

The five goals were expressed in the following research questions:

- 1) How are protection orders regulated in the 27 EU Member States?
 - a. *In which areas of law can protection orders be adopted?*
 - b. *How are the procedures through which protection orders can be adopted organized?*
 - c. *How are protection orders monitored and enforced?*
 - d. *How are protection orders regulated with regard to their substance (e.g., duration)?*
 - e. *What empirical information relating to protection orders is available?*

- 2) What is the level of protection provided by the 27 different protection order schemes?
 - a. *What key indicators can be used to assess the level of protection?*
 - b. *How can we develop these key indicators into standardized criteria?*
 - c. *Based on the standardized criteria, what level of protection do the 27 MS provide?*
 - d. *What are promising practices in this regard? And where are gaps in protection?*
- 3) How do protection orders function in practice?
 - a. *How do legal experts evaluate their functioning?*
 - b. *How do victims evaluate their functioning?*
- 4) How can the EPO and the EPM function in the light of the national findings?
 - a. *What interpretative problems can we anticipate given the text of the two instruments?*
 - b. *What problems can we anticipate based on the different legal traditions in the 27 MS?*
- 5) What are possible future directions in order to increase the level of protection for victims?
 - a. *What recommendations can be made on the level of the EU Member States?*
 - b. *What recommendations can be made on the EU level?*

3. Mapping protection orders in 27 EU Member States

- 1) How are protection orders regulated in the 27 EU Member States?
 - a. *In which areas of law can protection orders be adopted?*
 - b. *How are the procedures through which protection orders can be adopted organized?*
 - c. *How are protection orders monitored and enforced?*
 - d. *How are protection orders regulated with regard to their substance (e.g., duration)?*
 - e. *What empirical information relating to protection orders is available?*

With the help of 27 national reports written by legal experts from the EU Member States, a comparative description of the national laws on protection orders was made. It turns out that all Member States have some form of protection order scheme in place, mostly to counter repeat victimization by physical, mental, or sexual violence and stalking. The main *areas of law* through which protection orders can be procured are: civil, criminal and ‘emergency barring order’ law.

Criminal protection orders: From the national reports, it appears that all Member States provide for criminal protection orders, albeit that three countries have chosen to create a trajectory separate from the criminal proceedings. In Finland, Denmark and Sweden these ‘quasi-criminal’ protection orders can even be issued without suspension or prosecution for a crime. In other countries, criminal protection orders are inextricably linked to the criminal proceedings against the suspect.

Criminal protection orders are generally available in both the pre- and the post-trial stage, but some Member States allow them in one of these stages only. It is also common practice to allow all victims of violence access to criminal protection orders. Some Member States, however, have limited their availability to certain types of victims, such as victims of domestic violence or intimate partner violence.

Civil protection orders: All Member States provide for civil protection orders. Civil protection orders can generally be obtained in accelerated proceedings, independent from proceedings on the merits of the case, but some Member States have connected them to divorce or other substantive proceedings. Civil protection orders are, furthermore, sometimes limited to a certain type of victim only (e.g., victims of domestic violence or intimate partner violence).

Emergency barring orders: Emergency barring orders – as defined in the current study – are only available in 12 Member States: the Netherlands, the Czech Republic, Austria, Luxembourg, Belgium, Italy, Hungary, Germany, Denmark, Finland, Slovenia, and Slovakia. They can immediately be imposed in emergency situations, independent of the wishes of the victim, and independent from criminal proceedings, and they have *inter alia* the effect of removing the violent person from the family home for a limited amount of time, during which the victim can apply for prolonged protection. Emergency barring orders are usually only available to victims who share a common household with the violent person or who cohabit with this person. Only in Austria can emergency barring orders be imposed on non-cohabiting violent persons and stalkers as well.

The fact that Member States allow for civil, criminal, and (sometimes) emergency barring orders on paper does not mean that these options are actually used in practice. Some Member States have a strong preference for the use of civil protection orders, with criminal protection orders being a mere theoretical option, and vice versa.

Protection order *procedures* are largely organized along the same lines across the EU. Civil protection orders can generally be requested by a civil claimant through civil summary proceedings, while criminal protection orders are usually imposed by criminal (investigative) courts as a coercive measure, or a condition to a suspended detention or prison sentence. Finally, emergency barring orders are adopted in very short and simple procedures, usually by the police or the public

prosecution service. They can be imposed in threatening situations, without an actual crime having taken place. While civil protection orders and emergency barring orders can often be imposed *ex parte*, criminal protection orders generally require the hearing of the offender first.

On a more detailed level, however, important procedural differences appear, for instance, in relation to the range of persons who can apply for protection orders, the admissibility of *ex parte* protection orders, the immediate effect of protection orders, the automatic inclusion of mutual children in protection orders, the admissibility of mutual protection orders, and the length of protection order proceedings.

When it comes to the *monitoring and enforcement* of protection orders, an EU-wide trend seems to be that monitoring and enforcement is under-developed in most Member States. In general, victims have to monitor protection order compliance themselves, and specialized training for monitoring authorities is lacking. Furthermore, many legal experts criticized the leniency with which breaches of protection orders are sanctioned in practice.

In addition, the Member States have different practices with regard to *inter alia*, the registration of protection orders, the supply of information to victims, the authority responsible for monitoring compliance, the prioritization of calls relating to protection order violation, the enforcement procedures, and the criminalization of non-compliance with civil protection orders or emergency barring orders.

Substantive differences relating to the content of protection orders surfaced as well. While some Member States allow the competent authorities great discretion in their choice and delineation of the most appropriate protection orders by using 'open norms', others have limited the selection of protection orders available by maintaining exhaustive lists of conditions. The general picture is, nevertheless, that most jurisdictions have the possibility to impose the three prohibitions mentioned in the Directive and the Regulation: the prohibition to contact the protected person; the prohibition to enter certain areas, and the prohibition to approach the protected person. Still, there are Member States that do not have all these options available, at least not in all areas of law.

Empirical information on protection orders, in the way of reliable and publicly available statistical data on the number of protection orders requested and issued is generally lacking, with many Member States reporting that there are no statistics available at all, or that the statistics only cover certain protection orders or certain parts of the country. Only Spain provides for nationwide estimations of all types of protection orders available, collected on a yearly basis. Empirical research into the effectiveness of protection orders was even more exceptional.

4. Assessing the level of protection provided by the national protection order laws

- 2) What is the level of protection provided by the 27 different protection order schemes?
 - a. *What key indicators can be used to assess the level of protection?*
 - b. *How can we develop these key indicators into standardized criteria?*
 - c. *Based on the standardized criteria, what level of protection do the 27 MS provide?*
 - d. *What are promising practices in this regard? And where are gaps in protection?*

The second objective of the POEMS study was to assess the level of protection provided to victims in the different Member States based on their protection order regimes. In order to make an adequate comparison of all the different protection order regimes, we first had to develop indicators of what constitutes appropriate legal protection. With the help of international (human rights) legislation, the national reports, and victimological research, key indicators were selected that could serve as a guideline. The Member States could subsequently score 'insufficient', 'sufficient', 'good' or 'very good / promising' on these indicators, turning them into standardized criteria. In addition to these four scores, we also identified 'interesting' practices that have an intuitive appeal but that warrant further study before they can be recommended across the board.

The scores of the European Member States on the individual key indicators can be found in a table on pages 260-262. Based on the standardized criteria, we conclude that there is not a single EU Member State that provides victims with optimal protection. In each legal system under study, there were points for improvement, and Member States should strive to at least provide 'sufficient' protection on each key indicator. Every score below this level is considered a gap in the protection of victims.

As 'promising' practices – practices that go beyond the minimum protection that all Member States should provide victims at the very least – we identified the following practices:

- 1) *Combining emergency barring orders with a support plan for both victim and offender.*
- 2) *Allowing the authorities to expand the scope of the emergency barring order beyond the family home, e.g., to also include the place where the victim works or the surroundings of the school the children attend.*
- 3) *Allowing the authorities to expand the range of persons against whom an emergency barring order can be issued, including persons who does not cohabite with the victim.*
- 4) *Using an objective (standardized) risk assessment (instrument) when assessing the appropriateness of emergency barring orders.*

- 5) *Providing victims with an increased risk of repeat victimization with free legal representation and support.*
- 6) *Delineating the prohibition to contact the protected person with the help of standardized formulations as a point of departure, after which case-specific conditions can be formulated.*
- 7) *Indicating the prohibited area (also) with the help of maps.*
- 8) *Having specialized training available as part of continued education for all monitoring agents.*
- 9) *Recording all civil, criminal and emergency barring orders issued nationwide on a yearly basis in a central registry.*
- 10) *Facilitating the continued contact between the restrained parent and his children for the duration of the civil and criminal protection order, while guaranteeing the safety of the victim (e.g., with the help of meeting centers)*
- 11) *Hearing claimants and defendants in civil proceedings in separate sessions in order to avoid a confrontation between the two parties.*

'Interesting' practices were:

- 1) *Introducing quasi-criminal protection orders that can be imposed without suspicion of a crime through a separate and short trajectory.*
- 2) *Introducing criminal protection orders that can be imposed upon the acquittal of the suspect.*
- 3) *Expanding the range of persons who can apply for civil (and criminal) protection orders on behalf of the victim, while the victim retains the right to discontinue these proceedings.*
- 4) *Introducing civil protection orders that can be imposed solely on the basis of a written (statutory) declaration of the victim*
- 5) *Introducing civil protection orders that can be obtained by victims who joined the criminal proceedings as injured parties*
- 6) *Allowing the reversal of the burden of proof of the violation of a civil protection order (when violation is only subject to civil means of enforcement)*
- 7) *Allowing for continued contact between the barred parent and his children for the duration of the emergency barring order.*

5. The functioning of protection orders in practice

- 3) How do protection orders function in practice?
 - a. *How do legal experts evaluate their functioning?*
 - b. *How do victims evaluate their functioning?*

The functioning of protection orders in practice was not only commented on by the 27 legal experts, but also by 58 female victims of intimate partner

violence and stalking by their ex-partners. In the four partner states (Finland, Italy, Portugal and the Netherlands), victims were asked about their opinion and experiences in relation to *criminal (and quasi-criminal)* protection orders.

The results were varied, with victims reporting positive, but also negative experiences. Negative experiences were first of all reported in relation to the procedure by which the protection orders were procured. Many victims criticized the fact that they were (initially) not being taken seriously by the police; the burdensome evidence collection; the long processing time before a protection order was finally issued; and the lack of sympathy on the part of some public prosecutors. Furthermore, they dreaded the (compulsory) confrontation with the offender during the trial. Once a protection order was in place, the lack of proactive monitoring of protection orders on the part of the authorities; the reluctance of the authorities to intervene once a protection order was breached; and the ineffectiveness of the protection orders were disapproved of.

In relation to the (in)effectiveness of protection orders, it is interesting to note that 69% of our sample reported a breach of the order, mostly within one or two weeks after the order was issued. Still, in many of the cases in which the protection order was breached, the frequency of the violence had reduced and/or the violence had become less intrusive.

An unexpected advantage of protection orders was their *designative* function: for the victims they meant an official acknowledgement of their victimization, which, to some of them, was valuable in itself, regardless of the effect of the protection order on the behaviour of their ex-partner.

6. The functioning of the EPO and the EPM in the light of the national findings

- 4) How can the EPO and the EPM function in the light of the national findings?
 - a. *What interpretative problems can we anticipate given the text of the instruments?*
 - b. *What problems can we anticipate based on the different legal traditions in the 27 Member States?*

In 2011 and 2013, the EU legislator introduced two instruments that allow for the mutual recognition of protection orders throughout Europe. The EPO Directive deals with mutual recognition of protection orders in criminal matters, whereas the EPM Regulation covers protection orders in civil matters. A fourth aim of this study was to identify possible problems with the implementation of the two mutual recognition instruments in the Member

States after the implementation deadline of 11 January 2015. Based on a close reading of the two instruments and of the information contained in the national reports, we distinguished two types of *potential* problems or challenges:

- 1) Challenges related to the interpretation of the two instruments
- 2) Challenges related to the national differences in protection order legislation and practice

With regard to the first type of challenges ('challenges related to the interpretation of the two instruments') we found four issues that warrant further contemplation, because they may give rise to interpretative differences and problems in practice. The first is the question of whether commuters fall under the scope of the EPO Directive and whether the Directive allows for protection orders to be 'split' (with one part of the protection order remaining effective in the issuing state, while another part is recognized in the executing state). The second and third challenge relate to the interpretation of article 11(3) of the EPO Directive, which regulates the situation in which 'there is no available measure at a national level in a similar case' in the executing state. How broadly or narrowly should this stipulation be interpreted? And once the executing state decides that it has no alternative measure available, what is the issuing state allowed to do in the case of a breach? A final challenge that the competent authorities working with the two instruments may be faced with in the future is the question of what to do with forms of contact that are *not* prohibited under the original order, for instance, contact in matters relating to the children.

The second category of challenges ('challenges related to the national differences') could first of all arise because some Member States have systems that do not fit nicely into the dichotomy of criminal and civil protection measures that the EPO Directive and the EPM Regulation seem to presuppose. Another challenge is the transposition from prohibitions to enter an area that are based on naming the exact streets where the violent person is no longer allowed to come into 'radius-based' prohibitions. It requires an estimation of the ambit of the original order, which can be difficult for an authority that was not involved in its original adoption. This translation exercise may, furthermore, unintentionally extend the prohibited area, exacerbating the burden imposed by the original prohibition upon the violent person. In addition, it will be difficult to substitute a civil protection order from a country that has *criminalized* breaches with a similar measure in countries that *only have civil sanctions* available. A final impediment to the implementation of the EPO Directive is that criminal protection orders are usually inseparably connected to criminal proceedings. In the majority of Member States they are not 'autonomous' measures, meaning that they cannot be imposed outside the context of criminal proceedings. In countries where the protection orders are

intertwined with criminal proceedings, it is quite possible that there is no legal basis for the ‘replacement order’ under the mutual recognition procedure of the EPO. National legislators and courts need to keep these limitations in mind and – if necessary – adapt their laws and practices accordingly to accommodate a proper implementation of the two instruments.

7. Future directions to improve the level of protection for victims (recommendations)

- 5) What are possible future directions in order to increase the level of protection for victims?
 - a. *What recommendations can be made on the level of the EU Member States?*
 - b. *What recommendations can be made on the EU level?*

Over the past two decades many Member States have developed their protection order laws to serve the needs of victims of violence. All these efforts have been linked to the increased awareness of (domestic) violence and the need for immediate protection in the face of an imminent risk of violence. In doing so, some Member States have followed the Austrian model and combined emergency protection orders and adjusted civil protection orders to tackle, *inter alia*, domestic violence and intimate partner violence situations. Another group of Member States have emphasized protection in the context of criminal proceedings, while yet others have tried to strengthen protection orders across the board (both civil and criminal).

The observation that Member States have put an emphasis on the development of either the civil or the criminal protection orders is a concern in itself. Civil and criminal protection orders each function best in different situations and can serve different purposes. The same is true for emergency barring orders.

Our conclusion is that both civil and criminal protection orders are needed, as well as emergency barring orders and that these should be available to the widest range of victims possible.

The EPO Directive and the EPM Regulation are positive steps in the cross-border protection of persons against violence and stalking. However, there are concerns about the practical implementation of these measures in the Member States, especially because of the differences in the national protection instruments and approaches.

In fact, the variation in approaches and laws in the Member States could be considered the main obstacle to consistent protection in the European Union, also for ‘domestic’ victims. There is reason to believe that these discrepancies can have an impact on the efficiency and effectiveness of the protection provided. Steps should be taken to try to come to an approximation

of national laws and to increase the level of protection provided by national protection order laws and practices, both on a national and EU level. On pages 243-247 there is an extensive list of detailed recommendations that may help Member States in achieving these goals; below is merely a summary of some (overarching) recommendations.

The recommendations on the level of the Member States range from having civil, criminal and emergency barring orders available, on paper and in practice, for all victims; to making protection orders available free of charge; to allowing protection orders to come into effect within the shortest time possible, and to formulating the scope and duration of protection orders with care. Depending on the seriousness and the risk of the violence, more proactive forms of monitoring should be considered (including the possibility of electronic monitoring) and emergency calls of protection order violations should be prioritized. The breaches of all types of protection orders should carry effective and dissuasive sanctions, and the competent authorities should not shy away from actually imposing these sanctions and consequences upon violation.

Furthermore, civil protection orders should be available independent of the instigation of a proceeding on another issue, such as divorce proceedings; the proceedings through which these orders can be obtained should be simple and a prolongation of the order should be possible. Criminal protection orders should be available in all stages of the criminal procedure (pre-trial, post-trial, and post-sentencing) and should as a standard be considered in cases with a continued risk of violence.

Member States should also provide adequate and specialized training on protection orders to persons working with victims on a professional basis, e.g., the police, prosecutors, judges, and social workers, as part of their continued education. Protection orders and the violation of these should also be registered carefully in a nationwide, central registry system.

On the level of the European Union, we recommend to not only carefully monitor the implementation and effectiveness of the EPO Directive and the EPM Regulation, but to also explore possibilities for (soft-law) measures for the approximation of national laws.

Executive summary (French)

1. Introduction

Plusieurs victimes de violence récurrente, telles que la violence domestique ou le harcèlement, nécessitent une réelle protection contre le délinquant. Une des mesures prise dans ce sens est de délivrer une ordonnance de protection. L'exemple le plus fréquent est une ordonnance de protection interdisant le délinquant de se rendre dans une certaine zone délimitée – par exemple, la rue dans laquelle la victime habite – ou de contacter la victime. Dans la présente étude, nous utiliserons la définition de l'ordonnance de protection qui suit :

Une ordonnance de protection est une décision, provisoire ou définitive, adoptée dans une procédure civile, administrative, pénale ou autre, imposant des règles de conduite (interdictions, obligations ou limitations) à une personne adulte dans le but de protéger une autre personne contre un acte pouvant mettre en péril sa vie, son intégrité physique ou mentale, sa dignité, sa liberté individuelle ou son intégrité sexuelle.

Jusqu'à une période récente, les ordonnances de protection étaient uniquement valables dans les limites territoriales de l'Etat membre ayant émis l'ordonnance. Les victimes qui voyageaient ou émigraient dans un autre Etat membre étaient obligées d'initier de nouvelles procédures en vue d'acquiescer une Ordonnance de protection de substitution dans le nouveau pays de résidence. L'entrée en vigueur de la Directive 2011/99/EU (Décision de Protection Européenne, ci-après: DPE) et du Règlement 606/2013 (sur la reconnaissance mutuelle des mesures de protection en matière civile, ci-après: MPE) a changé la donne. Ces deux instruments juridiques permettent aux Etats membres de l'UE de reconnaître, juridiquement, une ordonnance de protection émise dans un autre Etat membre. Dorénavant, un Etat membre de l'UE est dans l'obligation de reconnaître les ordonnances de protection pénales et civiles rendues dans un autre Etat membre.

En ce qui concerne les DPE, ce dernier Etat doit, conformément à sa législation, remplacer l'ordonnance de protection initiale par une mesure correspondant, « dans la mesure la plus large possible », à la mesure de protection adoptée dans l'Etat d'émission. Ceci signifie que l'ordonnance de substitution ne doit pas nécessairement être identique à l'ordonnance initiale. La logique est simplement que l'Etat exécutant doit offrir à la victime le même niveau de protection offert à ses propres ressortissants dans les mêmes conditions.

Le problème est que, à l'heure actuelle, nous n'avons aucune idée globale sur les formes de protection disponibles dans les Etats Membres de l'UE. Il semble qu'il existe une multitude de mesures de protection, mais l'ensemble de ces mesures n'a jamais été soumis à une étude approfondie. Les quelques données disponibles suggèrent qu'il existe d'énormes divergences entre les lois relatives aux ordonnances de protection et les niveaux de protection à travers l'UE. De ce fait, il importe de savoir si la DPE et le MPE peuvent efficacement fonctionner.

Un autre aspect de la législation relative à l'ordonnance de protection qui reste à élucider est de savoir comment elle fonctionne dans la pratique. Même si les ordonnances de protection existent depuis un certain temps, et en dépit du fait que certaines d'entre elles sont émises régulièrement, leur efficacité est contestée et les débats qui y ont trait sont dominés par des suppositions plutôt que par des données empiriques.

Le présent Projet de recherche vise à combler ces lacunes en conduisant une étude approfondie et actualisée des législations relatives aux ordonnances de protection au sein des Etats membres de l'UE.

2. Questions de recherche

Les objectifs de la présente étude se résument en cinq points. Le premier objectif est de dresser une image réelle et actualisée des législations et pratiques nationales relatives aux ordonnances de protection. Se basant sur 27 rapports nationaux écrits par des experts juristes, nous avons essayé de documenter et comparer les législations et pratiques pertinentes des Etats membres. Le deuxième objectif est de développer une perspective analytique sur le niveau de protection offert par les Etats membres. Sur la base de la littérature dans le domaine de la victimologie et des normes émergentes en droit international, nous avons formulé des indicateurs permettant d'évaluer une protection juridique adéquate et examiné la conformité des législations nationales à ces « critères standardisés ». Nous avons également identifié les pratiques prometteuses et les lacunes en matière de protection. Le troisième objectif est de déterminer le fonctionnement et l'exécution des ordonnances de protection dans la pratique. Une étude exploratoire portant sur 58 interviews de victimes en Finlande, au Portugal, en Italie et aux Pays-Bas a été conduite dans le but d'avoir une idée sur les expériences vécues des victimes concernant les ordonnances de protection en matière pénale. Le quatrième objectif est d'évaluer comment la DPE et le MPE fonctionnent dans la pratique, au vu des pratiques étatiques divergentes, et le cinquième objectif est de formuler des recommandations aux niveaux national et européen afin de renforcer le niveau de protection offerte aux victimes de violence.

Les cinq objectifs ont été reformulés selon les questions de recherches suivantes :

- 1) Comment les ordonnances de protection sont-elles règlementées dans les 27 Etats membres?
 - a. *Dans quels domaines du droit les ordonnances de protection peuvent-elles être adoptées?*
 - b. *Comment sont organisées les procédures menant à l'adoption des ordonnances de protection?*
 - c. *Comment les ordonnances de protection sont-elles contrôlées et exécutées?*
 - d. *Comment les ordonnances de protection sont-elles règlementées en ce qui concerne le fond (par exemple, la durée)?*
 - e. *Quelles données empiriques sont disponibles en ce qui concerne les ordonnances de protection?*
- 2) Quel est le niveau de protection offert par les 27 différents systèmes des mesures de protection?
 - a. *Quels indicateurs clés peuvent être utilisés pour mesurer le niveau de protection?*
 - b. *Comment pouvons-nous élaborer sur ces indicateurs clés pour en déduire des critères standardisés?*
 - c. *Sur la base de ces critères standardisés, quel est le niveau de protection disponible dans les 27 Etats membres?*
 - d. *Quelles sont les pratiques prometteuses en la matière ? Et où y-a-t-il des lacunes en matière de protection?*
- 3) Comment les ordonnances de protection fonctionnent-elles dans la pratique?
 - a. *Comment les experts en matière juridique peuvent-ils évaluer leur fonctionnement?*
 - b. *Comment les victimes évaluent-elles leur fonctionnement?*
- 4) Comment la DPE et le MPE fonctionnent-ils à la lumière des résultats nationaux?
 - a. *Quels problèmes liés à l'interprétation pouvons-nous anticiper, au regard du contenu des deux instruments ?*
 - b. *Quels problèmes liés aux différences en matière de traditions juridiques au sein des 27 Etats membres pouvons-nous anticiper ?*
- 5) Quelles sont les orientations futures en vue d'améliorer le niveau de protection des victimes ?
 - a. *Quelles recommandations peuvent être formulées au niveau des Etats membres de l'UE?*
 - b. *Quelles recommandations peuvent être formulées au niveau de l'UE ?*

3. Le mapping des ordonnances de protection dans les 27 Etats membres de l'UE

- 1) Comment les ordonnances de protection sont-elles réglementées dans les 27 Etats membres?
 - a. *Dans quels domaines du droit les ordonnances de protection peuvent-elles être adoptées?*
 - b. *Comment sont organisées les procédures menant à l'adoption des ordonnances de protection?*
 - c. *Comment les ordonnances de protection sont-elles contrôlées et exécutées?*
 - d. *Comment les ordonnances de protection sont-elles réglementées en ce qui concerne le fond (par exemple, la durée)?*
 - e. *Quelles données empiriques sont disponibles en ce qui concerne les ordonnances de protection?*

Se basant sur 27 rapports nationaux dressés par des experts juristes ressortissants des Etats membres de l'UE, une description comparative des législations nationales relatives aux ordonnances de protection a été effectuée. Il en résulte que tous les Etats membres ont une certaine forme d'ordonnance de protection, surtout en vue de prévenir une revictimisation à travers la violence physique, mentale, sexuelle ou le harcèlement. Les principaux domaines du droit à travers lesquels les ordonnances de protection sont rendues sont: le droit civil, le droit pénal et les législations relatives aux ordonnances d'urgence d'interdiction.

Les ordonnances de protection pénales: les rapports nationaux montrent que tous les Etats membres disposent des législations prévoyant des ordonnances de protection pénales, à l'exception de trois Etats ayant opté pour des mesures disjointes des procédures pénales. La Finlande, le Danemark et la Suède disposent des ordonnances de protection quasi-pénales pouvant être délivrées sans qu'il y ait une poursuite pénale. Dans d'autres pays, les ordonnances de protection pénales sont nécessairement liées aux poursuites pénales à l'encontre de personnes suspectées d'avoir commis un crime.

Les ordonnances de protection pénales peuvent généralement être rendues avant ou après le procès, mais dans certains Etats membres, elles ne peuvent être rendues que pendant une de ces phases. Une pratique courante consiste à rendre des ordonnances de protection pénales en faveur de toutes les victimes de violence. Cependant, quelques Etats membres ne rendent ces ordonnances qu'en faveur de certaines catégories de victimes, telles que les victimes de violence domestique ou conjugale.

Les ordonnances de protections civiles: tous les Etats membres disposent des législations prévoyant des ordonnances de protection civiles. Ces ordonnances peuvent généralement être obtenues grâce à des procédures d'urgence,

indépendantes des procédures sur le fond de l'affaire, mais certains Etats membres maintiennent des liens entre ces ordonnances et une procédure de divorce ou une autre procédure portant sur le fond de l'affaire. Les ordonnances de protection civiles sont, également, souvent limitées à quelques catégories de victimes (par ex. les victimes de violence domestique ou conjugale).

Ordonnances d'urgence d'interdiction: ces dernières – telles que définies dans la présente étude – sont seulement disponible dans 12 Etats membres : Pays-Bas, République Tchèque, Autriche, Luxembourg, Belgique, Italie, Hongrie, Allemagne, Danemark, Finlande, Slovénie et Slovaquie. Elles peuvent être immédiatement imposées en cas d'urgence, indépendamment de la volonté des victimes et en dehors de toute procédure pénale ; et elles ont comme conséquence l'expulsion de la personne violente du domicile conjugal pour une période déterminée pendant laquelle la victime peut requérir une protection à long terme. Les ordonnances d'urgence d'interdiction sont généralement prises en faveur des victimes partageant un domicile conjugal avec la personne violente ou cohabitant avec cette personne. L'Autriche constitue une exception où les ordonnances d'urgence d'interdiction peuvent également être imposées aux personnes violentes et harceleurs ne partageant pas de domicile avec la victime.

Le fait que les Etats membres prévoient des d'ordonnances de protection civiles, pénales ou (parfois) des ordonnances d'urgence d'interdiction ne signifie pas qu'elles sont exécutées dans la pratique. Certains Etats membres préfèrent utiliser les ordonnances de protection civiles, les ordonnances pénales étant alors simplement une éventualité théorique et vice-versa.

Les procédures relatives aux ordonnances de protection sont en grande partie organisées de façon similaire à travers l'UE. Les ordonnances de protection civiles sont généralement requises par un plaignant dans une procédure civile en référé, alors que les ordonnances de protection pénales sont prises par des juridictions (ou au cours des enquêtes) pénales comme une mesure contraignante ou une condition pour une sentence de détention ou de détention avec sursis. Les ordonnances d'urgence d'interdiction, enfin, sont prises au cours des procédures sommaires et simplifiées, d'habitude par la police ou le ministère public. Elles peuvent être imposées dans des situations de danger réel, sans qu'un crime n'ait été commis. Alors que les ordonnances de protection civiles et les ordonnances d'urgence d'interdiction peuvent souvent être imposées *ex parte*, les ordonnances de protection pénales généralement requièrent une audition préalable du suspect.

Cependant, au regard de certains détails, les procédures diffèrent, par exemple, concernant les personnes pouvant requérir les ordonnances de protection, l'admissibilité des ordonnances de protection rendues *ex parte*, l'effet immédiat des ordonnances de protection, l'inclusion automatique des

enfants communs dans les ordonnances de protection, l'admissibilité des ordonnances de protection mutuelles et la durée procédurale des ordonnances de protection.

Concernant la surveillance et l'exécution des ordonnances de protection, une tendance au niveau de l'UE montre que le monitoring et l'exécution sont plutôt déficients dans la plupart des Etats membres. De manière générale, il revient aux victimes de s'assurer du respect des ordonnances de protection et il n'existe aucune formation spécialisée pour les agents de surveillance. Nombre d'experts nationaux ont critiqué la clémence caractéristique des sanctions pour violations des ordonnances de protection dans la pratique.

Par ailleurs, les Etats membres font état de divergences dans la pratique liée, entre autres, à l'enregistrement des ordonnances de protection, le partage d'information avec les victimes, les autorités habilitées à assurer le suivi de leur respect, la priorisation des appels faisant état de violations des ordonnances de protection, les procédures d'exécution, et la criminalisation du non-respect des ordonnances de protection civiles ou des ordonnances d'urgence d'interdiction.

Des divergences portant sur le fond – le contenu des ordonnances de protection – ont également été identifiées. Alors que certains Etats membres usent de formulations ouvertes et investissent les autorités compétentes de larges pouvoirs discrétionnaires en ce qui concerne le choix ou la détermination des ordonnances de protection les plus appropriées, d'autres ont limité les possibilités de choisir des ordonnances de protection en usant des listes exhaustives de conditions. Tout compte fait, la tendance généralisée est que la plupart de juridictions ont la possibilité d'imposer les trois interdictions mentionnées dans la Directive et le Règlement: l'interdiction de contacter la personne protégée ; l'interdiction de se rendre dans certaines zones délimitées, et l'interdiction d'approcher la personne protégée. Malgré cela, il existe des Etats membres ne disposant pas de toutes ces options, du moins dans tous les domaines du droit.

Des données empiriques sur les ordonnances de protection, notamment en matière de statistiques fiables et publiquement accessibles sur le nombre d'ordonnances de protection requises et délivrées, sont en général absentes ; plusieurs Etats membres ayant rapporté que des données statistiques sont totalement absentes ou, que les statistiques ne couvrent que certaines catégories d'ordonnances de protection ou certaines régions du pays. Seule l'Espagne dispose d'estimations annuelles au niveau national sur la base de toutes les catégories d'ordonnances de protection disponibles. La recherche empirique sur l'efficacité des ordonnances de protection reste encore beaucoup plus rare.

4. Evaluation du niveau de protection offerte par les législations nationales relatives aux ordonnances de protection

- 2) Quel est le niveau de protection offert par les 27 différents systèmes des mesures de protection?
 - a. *Quels indicateurs clés peuvent être utilisés pour mesurer le niveau de protection?*
 - b. *Comment pouvons-nous élaborer sur ces indicateurs clés pour en déduire des critères standardisés?*
 - c. *Sur base des critères standardisés, quel est le niveau de protection disponible dans les 27 Etats membres?*
 - d. *Quelles sont les pratiques prometteuses en la matière? Et où y-a-t-il des lacunes en matière de protection?*

Le deuxième objectif de POEMS est d'évaluer le niveau de protection offerte aux victimes dans les différents Etats membres sur base de leurs régimes respectifs en ce qui concerne les ordonnances de protection. Pour effectuer une comparaison adéquate de différents régimes d'ordonnances de protection, nous devons d'abord établir des indicateurs sur ce qui constitue une protection juridique adéquate. Sur la base des instruments internationaux, des rapports nationaux et de la recherche dans le domaine de la victimologie, des indicateurs ont été sélectionnés, pouvant servir de ligne directrice. Les scores pour les Etats membres varient entre «insuffisant», «suffisant», «bon», «très bon/prometteur» sur ces indicateurs, offrant ainsi des critères standardisés. En plus de ces quatre scores, nous avons également identifié des pratiques «intéressantes», qui sont intuitivement attrayantes, mais nécessitent une étude approfondie avant qu'elles ne soient recommandées comme modèles.

Les scores des Etats membres concernant des indicateurs spécifiques sont résumés dans un tableau aux pages 260-262. Sur base des critères standardisés, nous pouvons conclure qu'aucun Etat européen n'offre aux victimes une protection optimale. Dans chaque système juridique couvert par la présente étude, il y a des aspects nécessitant des améliorations, et les Etats membres devraient accroître leurs efforts en vue d'offrir une protection suffisante pour chaque indicateur clé. Chaque score en-dessous de ce niveau étant considéré comme un manquement dans la protection offerte aux victimes.

Comme pratiques prometteuses – des pratiques allant au-delà du niveau minimal de protection que les Etats membres devraient offrir aux victimes – nous avons identifié les pratiques suivantes:

- 1) *Combiner les ordonnances d'urgence d'interdiction avec un plan d'appui à la victime et au délinquant.*
- 2) *Permettre aux autorités d'étendre la portée des ordonnances d'urgence d'interdiction, par exemple d'inclure aussi le lieu de travail de la victime ou le périmètre environnant l'école fréquentée par les enfants.*

- 3) *Permettre l'imposition d'ordonnance d'urgence d'interdiction pour une personne ne cohabitant pas avec la victime.*
- 4) *Utiliser un instrument objectif (standard) d'évaluation de risque dans le processus visant à évaluer l'opportunité d'imposer les ordonnances d'urgence d'interdiction.*
- 5) *Mettre à la disposition des victimes encourant un risque réel de revictimisation une représentation juridique et un soutien à titre gratuit.*
- 6) *Préciser l'interdiction de contacter la personne protégée en usant de formulations standardisées comme point de départ, avant de formuler les conditions spécifiques à chaque cas d'espèce.*
- 7) *Indiquer les zones interdites en usant de cartes.*
- 8) *Prévoir une formation spécialisée, faisant partie d'une éducation continue pour tous les agents du monitoring.*
- 9) *Répertorier annuellement toutes les ordonnances civiles, pénales ou d'urgence d'interdiction dans un registre centralisé.*
- 10) *Faciliter le contact continu entre les parents et les enfants, tout en garantissant la sécurité de la victime (par exemple en usant des centres de rencontre).*
- 11) *Séparer les sessions d'audition des demandeurs et des défendeurs pendant les procédures civiles pour éviter les confrontations entre les deux parties.*

Les pratiques intéressantes sont:

- 1) *Des ordonnances de protection quasi-pénales pouvant être imposée en dehors de toute suspicion de commission d'un crime au moyen d'une trajectoire indépendante et courte.*
- 2) *Des ordonnances de protection pénales pouvant être imposées malgré l'acquittement du suspect.*
- 3) *L'assouplissement des conditions portant sur les personnes pouvant requérir les ordonnances de protection civiles (et pénales) pour la victime, tout en réservant à celle-ci le droit d'y mettre fin.*
- 4) *Les ordonnances de protection civiles peuvent être imposées sur la seule base d'une déclaration écrite (solennelle) de la victime.*
- 5) *Des ordonnances de protection civiles pouvant être obtenues par une victime s'étant jointe aux procédures pénales comme partie lésée.*
- 6) *Le renversement de la charge de la preuve pour violation d'une ordonnance de protection civile (lorsque la violation n'est exécutoire qu'à travers des mesures civiles).*
- 7) *Le contact continu entre le parent prescrit et ses enfants pendant la durée de l'ordonnance d'urgence d'interdiction.*

5. Le fonctionnement des ordonnances de protection dans la pratique

- 3) Comment les ordonnances de protection fonctionnent-elles dans la pratique?
- a. *Comment les experts en matière juridique peuvent-ils évaluer leur fonctionnement?*
 - b. *Comment les victimes évaluent-elles leur fonctionnement?*

Le fonctionnement des ordonnances de protection dans la pratique a été non seulement examiné à partir des remarques par les 27 juristes experts mais aussi par 58 victimes féminines de violence conjugale ou de harcèlement par leurs ex-partenaires. Dans les quatre pays dont sont issues les partenaires dans le présent projet (Finlande, Italie, Portugal et Pays-Bas), des victimes ont été consultées pour exprimer leur opinion et expériences relatives aux ordonnance de protection pénales.

Les résultats sont contrastés : les victimes ayant partagé des expériences aussi bien positives que négatives. Des expériences négatives ont été rapportées, principalement concernant les procédures à travers lesquelles les ordonnances de protection sont délivrées. Plusieurs victimes ont déploré le fait qu'elles n'étaient pas (initialement) prises au sérieux ; l'expérience éprouvante de la collecte des preuves ; la longue période d'attente avant qu'une décision de protection ne soit rendue ; et l'absence de sympathie de la part de certains officiers du ministère public. Par ailleurs, elles redoutaient la confrontation (obligatoire) avec le délinquant pendant le procès. Une fois qu'une décision de protection était prononcée, l'absence d'un monitoring proactif par les autorités, leur hésitation à intervenir une fois que ces ordonnances étaient violées et l'inefficacité de certaines ordonnances de protection ont été dénoncées.

Concernant l'inefficacité des ordonnances de protection, il est important de noter que 69% de l'échantillon ont rapporté des cas de violation d'ordonnances, surtout au cours de la ou des deux semaines après qu'elles ne soient prononcées. Néanmoins, dans plusieurs cas de violation d'ordonnances de protection, la fréquence de la violence avait diminué et/ou la violence était devenue moins intrusive.

Un avantage inattendu des ordonnances de protection était la capacité de reconnaissance offerte aux victimes : elles se sentaient reconnues comme victimes, ce qui était crucial en soit pour certaines d'entre elles, indépendamment de l'effet de l'ordonnance sur le comportement de l'ex-conjoint.

6. Le Fonctionnement des OPE et des MPE à la lumière des résultats nationaux

- 4) Comment la DPE et le MPE fonctionnent-ils à la lumière des résultats nationaux?
 - a. *Quels problèmes liés à l'interprétation pouvons-nous anticiper, au regard du contenu des deux instruments?*
 - b. *Quels problèmes liés aux différences en matière de traditions juridiques au sein des 27 Etat membres pouvons-nous anticiper?*

En 2011 et 2013, le législateur européen a introduit deux instruments qui permettent la reconnaissance mutuelle des ordonnances de protection dans toute l'Europe. La Directive DPE porte sur la reconnaissance mutuelle des ordonnances de protection en matière pénale, alors que le Règlement MPE couvre les ordonnances de protection en matière civile. Le quatrième objectif de la présente étude est d'identifier les problèmes éventuels émanant de la mise en œuvre des deux instruments de reconnaissance mutuelle dans les États membres après la date limite de mise en œuvre du 11 Janvier 2015. Sur la base d'un examen approfondi des deux instruments et des informations contenues dans les rapports nationaux, nous avons identifié deux types de problèmes ou défis *potentiels*:

- 1) les défis liés à l'interprétation des deux instruments ;
- 2) les défis liés aux différences nationales au niveau législatif et pratique concernant les ordonnances de protection.

En ce qui concerne le premier type de défis («défis liés à l'interprétation des deux instruments»), nous avons identifié quatre questions qui méritent d'être examinées, car elles peuvent donner lieu à des différences d'interprétation et des problèmes dans la pratique. La première question est de savoir si les personnes faisant la navette entre pays entrent dans le champ de la Directive DPE et si la Directive permet que les ordonnances de protection soient «scindées» (une partie de l'ordonnance de protection restant applicable dans l'État d'émission, tandis qu'une autre partie est reconnue dans l'État d'exécution). Les deuxième et troisième questions portent sur l'interprétation de l'article 11(3) de la Directive DPE, qui régit la situation dans laquelle «il n'y a pas de mesure disponible au niveau national dans une affaire similaire» dans l'État d'exécution. Dans quelle mesure cette disposition doit-elle être interprétée strictement ou largement ? Et une fois que l'État d'exécution décide qu'il n'a pas d'autre mesure disponible, qu'est-il permis à l'État d'émission de faire en cas de violation? Une dernière question à laquelle les autorités compétentes travaillant avec ces deux instruments pourront faire face dans le futur est de déterminer l'attitude à prendre en cas de contacts non proscrits dans l'ordonnance initiale, par exemple, le contact pour des questions relatives aux enfants.

La deuxième catégorie de défis («défis liés aux différences nationales») puise sa source dans le constat que certains États membres disposent de systèmes ne répondant pas à la dichotomie entre mesures de protection civiles et pénales; une présupposition centrale dans la Directive DPE et le Règlement MPE. Un autre défi est de transposer les interdictions d'entrer dans une zone - qui consistent à nommer les rues exactes dans lesquelles la personne violente n'est plus autorisée à se rendre – en interdictions basées sur la délimitation d'un certain périmètre. Ceci nécessite une estimation de la portée de l'ordonnance initiale, un exercice pouvant s'avérer difficile pour une autorité n'ayant pas participé à son adoption. En outre, cet exercice de transposition peut étendre involontairement la zone interdite, ce qui pourrait aggraver le fardeau imposé par l'interdiction initiale à la personne violente. Par ailleurs, il sera difficile de substituer une ordonnance de protection civile émise par un pays ayant *criminalisé* les violations par une mesure similaire dans des pays qui *ont uniquement des sanctions civiles* pour ce cas de figure. Un dernier obstacle à la mise en œuvre de la Directive DPE réside dans le fait que les ordonnances de protection pénales sont, habituellement, inséparablement liés à une procédure pénale. Dans la majorité des États membres, elles ne constituent pas des mesures «autonomes», ce qui signifie qu'elles ne peuvent pas être imposées en dehors d'une procédure pénale. Dans les pays où les ordonnances de protection sont intimement liées à une procédure pénale, il est fort probable qu'il n'y ait pas de base juridique pour l'adoption d'une «ordonnance de substitution» en vertu de la procédure de reconnaissance mutuelle sous la DPE. Les législateurs nationaux et les tribunaux doivent garder ces limitations à l'esprit et, si nécessaire, adapter leurs lois et pratiques pour mieux permettre une réelle mise en pratique de ces deux instruments.

7. Les orientations futures visant à améliorer le niveau de protection des victimes (recommandations)

- 5) Quelles sont les orientations futures en vue d'améliorer le niveau de protection des victimes?
 - a. *Quelles recommandations peuvent être formulées au niveau des États membres de l'UE?*
 - b. *Quelles recommandations peuvent être formulées au niveau de l'UE?*

Au cours des deux dernières décennies, de nombreux États membres ont adopté des lois relatives aux ordonnances de protection pour répondre aux besoins des victimes de violence. Tous ces efforts ont été le résultat de la prise de conscience accrue concernant la violence (domestique) et la nécessité d'une protection immédiate face à un risque imminent de violence. Ce faisant, certains États membres ont suivi le modèle autrichien et combiné des ordonnances d'urgence de protection avec des ordonnances de protection

civiles ajustées en vue de faire face, entre autres, à la violence domestique et aux situations de violence conjugale. Un certain nombre d'États membres ont mis l'accent sur la protection dans le cadre de procédures pénales, tandis que d'autres ont essayé de renforcer les ordonnances de protection dans tous les domaines (civil et pénal).

L'observation selon laquelle des États membres ont mis l'accent sur le développement d'ordonnances de protection civiles ou pénales est en soi préoccupante. Les ordonnances de protection civiles et pénales opèrent mieux dans des situations différentes et peuvent servir à des fins différentes. Il en est de même pour les ordonnances d'urgence d'interdiction.

Nous en concluons que les ordonnances de protection civiles et pénales sont toutes nécessaires, ainsi que les ordonnances d'urgence d'interdiction et que ces dernières devraient être disponibles pour le plus grand nombre de victimes potentielles encourant le risque de revictimisation.

La Directive OPE et le Règlement MPE représentent des étapes positives dans la protection transfrontalière des personnes contre la violence et le harcèlement. Cependant, il existe des doutes quant à la mise en œuvre pratique de ces mesures dans les États membres, en particulier en raison des différentes approches et instruments nationaux de protection.

En effet, les divergences en termes d'approches et de législations d'États membres pourraient être considérées comme le principal obstacle à une protection cohérente au sein de l'Union européenne, même pour les victimes «nationales». Il y a raison de croire que ces écarts peuvent avoir un impact sur l'efficacité des mesures de protection. Des mesures devraient être prises aussi bien au niveau national qu'eupéen pour tenter de parvenir à un rapprochement des législations nationales et d'améliorer le niveau de protection prévu par les législations et pratiques nationales relatives aux ordonnances de protection. Une longue liste de recommandations détaillées est dressée aux pages 243-247 pouvant aider les États membres à atteindre ces objectifs; ci-dessous n'apparaissent que certaines recommandations générales.

Les recommandations aux États membres couvrent la nécessité d'avoir des ordonnances civiles, pénales et d'urgence d'interdiction, sur papier et dans la pratique, pour toutes les victimes encourant un risque de revictimisation; rendre des ordonnances de protection susceptibles d'être obtenues à titre gratuit; permettre l'entrée en vigueur des ordonnances de protection dans les plus brefs délais, et formuler la portée et la durée des ordonnances de protection avec soin. Selon la gravité et le risque de violence, des formes plus proactives de surveillance devraient être envisagées (y compris la possibilité de la surveillance électronique) et des appels d'urgence en cas de violations

des ordonnances de protection devraient être prioritaires. Les violations de toutes sortes d'ordonnances de protection devraient être passibles de sanctions efficaces et dissuasives, et les autorités compétentes ne devraient pas hésiter à effectivement imposer ces sanctions et les conséquences en découlant en cas de violation.

En outre, les ordonnances de protection civiles devraient être disponibles, indépendamment de l'initiation d'une procédure sur une autre question, par exemple une procédure de divorce; les procédures à travers lesquelles ces ordonnances peuvent être obtenus doivent être simples et une prorogation devrait être possible. Les ordonnances de protection pénales devraient être disponibles à toutes les étapes de la procédure pénale (avant le procès, après le procès, et après le prononcé de la sentence) et devraient être considérées dans les cas où le risque de violence persiste.

Les États membres devraient également fournir une formation adéquate et spécialisée sur les ordonnances de protection aux professionnels travaillant avec les victimes, par exemple, la police, les procureurs, les juges et les travailleurs sociaux, dans le cadre de leur formation continue. Les ordonnances de protection et la violation de celles-ci devraient également être enregistrées avec soin dans un système de registre national centralisé.

Au niveau de l'Union européenne, nous recommandons de surveiller attentivement non seulement la mise en œuvre et l'efficacité de la Directive DPE et du Règlement RPE, mais aussi d'explorer les possibilités d'adopter des instruments juridiques non-contraignants visant un rapprochement des législations nationales.

Chapter 1

Introduction

1. Introduction

Victims of crimes that are characterized by their repetitive nature, such as stalking and intimate partner violence, have an increased need for protection against their offender. In comparison to victims who are affected by single-incident crimes, they run a greater risk of being confronted by their offender again and the chances of repeat victimization by this same person are higher as well. Due to the repetitive nature of the violence, these victims remain under a constant threat and protection against the offender is of great importance.¹

One way in which protection can be procured is by physically incapacitating violent persons: by placing them in detention they can be prevented from attacking or harassing their victims anew. A less invasive alternative, however, is to issue a *protection order*, in which case a judicial authority orders the violent person to leave the victim in peace. A common example is a protection order that prohibits the offender to enter a certain area – e.g., the street where the victim lives – and to contact the victim. The advantage of protection orders is that they allow the suspect or convicted person to remain out of prison or a detention centre, while providing victims with the protection they desire most.

In many EU Member States, the increased attention for domestic violence and other forms of interpersonal violence has recently led to the introduction of dedicated laws that include protection order provisions, while still new legislative proposals are being discussed at this very moment. Protection orders have gained even more popularity now that various international and EU bodies have promoted a (well-functioning) system of protection orders, the absence of which can even constitute a violation of international human rights treaties.

¹ Victimological studies have, for instance, shown that the primary reason for female victims of IPV to report the violence to the police is to secure protection for themselves and their children; retributive motives were only of secondary importance. In Johnson, Ollus & Nevala's study, for instance, 88% of the female victims who sought legal intervention were after protection, against 43% who (also) wanted the offender to receive punishment for his actions (H. Johnson, N. Ollus & S. Nevala, *Violence against women: An international perspective*, New York: Springer, 2008). *Victims of single-incident crimes, however, can have a need for protection against future confrontations with their offender as well (e.g., a rape victim).*

International human rights law requires not only that the states do not violate human rights themselves, but also that they take positive steps to ensure that human rights are not violated in horizontal relationships – between individuals – either. Although interpersonal violence perpetrated by individuals usually belongs to the realm of national criminal justice systems, a systematic and discriminatory non-enforcement of violent crimes may constitute a violation of international human rights nevertheless, for example if violence against women is systematically not investigated or prosecuted. These positive obligations include, first, that the state must have an adequate legal framework in place to guarantee that human rights are respected, and second, that the laws are enforced with due diligence.²

It is only recently, however, that we explicit references to the role of protection orders in international human rights law can be found. The CEDAW Committee was the first to highlight this issue. In clarifying the term ‘due diligence’ the Committee has ruled several cases in which protection orders played a role.³ Especially in the case of *A.T. v Hungary*, the absence of any protection measures in the Hungarian legislation was central to the finding that the CEDAW Convention had been violated.⁴

Since 2009, the European Court of Human Rights has also taken up the flag for protection orders in several decisions. In the case of *E.S. v. Slovakia*, for instance, the Court stated that the separation order concerning the apartment of the two spouses should have been available immediately because of the domestic violence situation.⁵ Also, in *Kalucza v Hungary*, the Court held that the one-and-a-half years it had taken to get a protection order exceeded the reasonable time for acquiring such an order.⁶ In *Mudric v Moldova*, the non-enforcement of protection orders was a central element in establishing a violation of Article 3 of the Convention.⁷

The Council of Europe has also made significant progress in the field of protection orders. The recently introduced Convention on Violence against Women and Domestic Violence (Istanbul Convention) explicitly mentions protection orders as part of the due diligence standard, and obliges signatory states to introduce protection orders and emergency barring orders in their legislation.⁸ Articles 52 and 53 of the Convention are quite specific about

² In addition, there must be an effective remedy available for victims of human rights violations.

³ See, for instance, CEDAW, *Goecke v Austria*, (2007) UN Doc. CEDAW/C/39/D/5/2005.

⁴ See CEDAW, *A.T. v Hungary*, (2005) UN Doc. CEDAW/C/32/D/2/2003. In this case the applicant specifically asked for interim protection and the barring of the ex-partner from her home.

⁵ ECtHR 15 September 2009, *E.S. and others v Slovakia*, App. No. 8227/04 (at 43).

⁶ ECtHR 24 April 2012, *Kalucza v Hungary*, App. No. 57693/10.

⁷ ECtHR 16 October 2013, *Mudric v The Republic of Moldova*, App. No. 74839/10.

⁸ By 30 November 2014, out of the fifteen states that had ratified the Convention, seven were

what kind of protection the states should offer to victims of violence. They leave open, however, through what procedures protection orders should be organized.

A final factor that has given the attention for protection orders a new impetus was the coming into force of the EU Directive on the European Protection Order (EPO) and the Regulation on the mutual recognition of protection measures in civil matters (EPM). Until recently, protection orders were only valid on the territory of the Member State that issued the order. Victims who travelled or moved to another Member State were forced to initiate new proceedings or to acquire a substitute protection order in the new country of residence, something that could seriously inconvenience the victim. As a result, the victims' freedom of movement could be hindered.

With the coming into force of Directive 2011/99/EU (the European protection order) and Regulation 606/2013 (on the mutual recognition of protection measures in civil matters) this situation has changed. The two instruments provide a legal basis for EU Member States to recognize a protection order that was granted in another Member State: From now on, criminal and civil protection orders issued in one EU Member State have to be recognized in the other EU Member State.

In the case of the EPO the latter state has to replace the original protection order with a measure under its own law that corresponds 'to the highest degree possible' with the original order. This means that the replacement order does not have to be identical to the original order, which could be problematic, given the national differences in type and scope of protection orders and the different proceedings under which they may be adopted. The rationale is that the executing state provides the victim with the same level of protection it would provide its own citizens in a similar situation. So if the executing state does not afford (sophisticated) protection orders to its own citizens, it is not obliged to introduce any for the sake of foreign victims either.

2. Research questions

All the above developments have placed protection orders high on the political agendas, with a growing number of countries introducing new protection measures in their legal system or exploring ways of reinterpreting pre-existing measures.

EU Member States (Austria, Denmark, France, Italy, Portugal, Spain and Sweden). Twelve more EU Member States had signed the Convention. It is expected that all EU Member States will join the Convention.

The problem is that, at the moment, we lack an overview of how victim protection is constructed in the EU Member States. There seems to be a plethora of protection order schemes in the EU Member States, but these schemes have never been the subject of dedicated research.⁹ This problem is exacerbated by the fact that many countries have changed their protection order laws lately. The available data, nevertheless, suggest that there are enormous discrepancies amongst protection order laws and levels of protection across the EU.¹⁰ The question of whether the EPO and the EPM are still able to function well in those circumstances then becomes relevant.

Another feature of protection orders that has largely remained in the dark is how they function in practice. The available empirical literature on protection order effectiveness and functioning is not only scant, but also derives almost exclusively from Anglo-Saxon countries.¹¹ These findings cannot easily be generalized to European legal systems. As a result, we do not know how victims in Europe perceive the procedures through which protection orders can be procured and whether protection orders are effective in reducing the violence. Even though protection orders have been in existence for quite some time now, and even though some of them are imposed on a regular basis, their functioning is contested and discussions are dominated by assumptions instead of actual data.

The current research tries to address these voids by giving an accurate, in-depth and up-to-date reflection of the state-of-the-art in protection order legislation in 27 European Member States.¹² Its aims are fivefold. The first goal is to provide an EU-wide review of existing protection order legislation and practices, including the procedures by which protection orders can be issued. The second goal is to assess the level of protection provided by the different systems. We will develop a comparative and analytical perspective of the existing protection order laws, develop indicators of what constitutes appropriate legal protection and identify promising practices and gaps in protection. The third goal is to learn more about the actual functioning and enforcement of protection orders in practice (victim experiences, effectiveness). The fourth goal is to hypothesize how the EPO and the EPM will function in the light of the national differences and the fifth is to explore future directions on the national and on the EU level that would help increase

⁹ See S. van der Aa, 'Protection orders in the EU Member States: Where do we stand and where do we go from here?', *European Journal of Criminal Policy and Research* (open access), 2011.

¹⁰ Van der Aa (2011), *op. cit.*

¹¹ For an overview of (Anglo-Saxon) effectiveness studies, see B. Russell, 'Effectiveness, victim safety, characteristics and enforcement of protective orders', *Partner Abuse* (3) 2012, p. 531-552.

¹² Unfortunately, at the time of writing the research proposal, Croatia had not yet acceded to the European Union yet and is therefore excluded from the current study.

the levels of protection provided to victims of violence. These five goals have been expressed in the following research questions:

- 1) How are protection orders regulated in the 27 EU Member States?
 - a. *In which areas of law can protection orders be adopted?*
 - b. *How are the procedures through which protection orders can be adopted organized?*
 - c. *How are protection orders monitored and enforced?*
 - d. *How are protection orders regulated with regard to their substance (e.g., duration)?*
 - e. *What empirical information relating to protection orders is available?*
- 2) What is the level of protection provided by the 27 different protection order schemes?
 - a. *What key indicators can be used to assess the level of protection?*
 - b. *How can we develop these key indicators into standardized criteria?*
 - c. *Based on the standardized criteria, what level of protection do the 27 MS provide?*
 - d. *What are promising practices in this respect? And where are gaps in protection?*
- 3) How do protection orders function in practice?
 - a. *How do legal experts evaluate their functioning?*
 - b. *How do victims evaluate their functioning?*
- 4) How can the EPO and the EPM function in the light of the national findings?
 - a. *What interpretative problems can we anticipate given the text of the two instruments?*
 - b. *What problems can we anticipate based on the different legal traditions in the 27 MS?*
- 5) What are possible future directions in order to increase the level of protection for victims?
 - a. *What recommendations can be made on the level of the EU Member States?*
 - b. *What recommendations can be made on the EU level?*

3. Definition protection order

There is no universally accepted definition of the term ‘protection order’. The problem is that most definitions are based on national legislation and cannot be easily transposed to other jurisdictions. Some countries, for instance, allow criminal courts to impose restraints upon a suspect with the aim of protecting the victim as a condition to a suspended sentence, while others

impose protection orders as autonomous measures through trajectories that are separated from the criminal proceedings. In the UK and Ireland, protection orders can even be imposed upon the acquittal of the accused.

A factor that complicates matters even further is the fact that there are various synonyms or closely related terms of 'protection order' in circulation, such as: 'protective orders', 'restraining orders', or 'injunction orders'. In addition, protection orders cannot only be imposed through criminal proceedings, but can play a role in administrative and civil proceedings as well. This necessitates the adoption of an all-encompassing definition, able to cover the wide variety of relevant situations. In the present study, the following definition of the term protection order is used:

A protection order is a decision, provisional or final, adopted as part of a civil, criminal, administrative or other procedure, imposing rules of conduct (prohibitions, obligations or limitations) on an adult person with the aim of protecting another person against an act that may endanger his/her life, physical, psychological or sexual integrity, dignity, or personal liberty.¹³

Of relevance are legal instruments that impose rules of conduct aimed at influencing the behaviour of the offender. Measures that involve the physical incapacitation of the offender or that fall under the category of 'target hardening' (e.g., witness protection programs) fall outside the scope of the current study.

Furthermore, neither the legal qualification of the protection order, nor the area of law through which the protection order was imposed is relevant. What matters is that the court or another judicial authority has imposed certain restrictions on a person with the *aim of protecting another person*. Some orders that impose rules of conduct have different goals. The aim of certain 'behavioural' orders is not so much to protect the victim, but rather to protect law enforcement purposes. This is, for instance, the case when the suspect is told by an investigative judge not to contact the victim to make sure that the victim can still serve as a reliable witness, or when the police summon a hooligan to leave the surroundings of a football stadium in order to uphold the public order. When a behavioural order is solely based on alternative motives, it does not meet the definition of a protection order as used in this study. However, when an order serves multiple purposes – *including* the protection of the victim – it can still classify as a protection order.¹⁴

¹³ See Van der Aa (2011), *op. cit.* and S. van der Aa, K. Lens, F. Klerx, A. Bosma & M. van den Bosch, *Aard, omvang en handhaving van beschermingsbevelen in Nederland*, Den Haag: WODC 2013, p. 143.

¹⁴ Criminal protection orders can, for instance, also be aimed at the rehabilitation of the offender by allowing him to remain in freedom instead of being detained. Even though these orders

Finally, protection orders that were issued within the context of compulsory psychiatric care (e.g., within the domain of administrative law) will not be dealt with within this report either, nor will protection orders issued against juvenile delinquents.

4. About the report

We have chosen to use a ‘gendered’ terminology throughout the report. This means that the victim will usually be referred to as a female (‘she’), while the offender or violent person is mostly of the male sex (‘he’). We have opted for this terminology first of all because it increases the readability of the report. Instead of being forced to always use the plural form (‘they’) – or the ever so tedious ‘he or she’ – this allowed for more variation in the text. It also represents the gendered reality of most situations of violence in which protection orders could be of use. Crimes such as stalking, intimate partner violence and sexual harassment are nowadays classified as forms of *violence against women*, expressing the fact that, on the whole, women are affected most by this type of behaviour. The exact opposite is true when it comes to the perpetration of violence against women: in most cases the offender is male. Because of this reality, the use of a gendered terminology has more and more become standing practice in research on violence against women.¹⁵

We would, however, like to emphasize here that all forms of violence against women can be perpetrated against male victims as well, and that there are also numerous female offenders who commit abusive acts just the same. The fact that we have used a gendered terminology should by no means be interpreted as a sign that we propose a gendered use of protection orders in the sense that they should be exclusively available to female victims or that they should be imposed on male offenders only. Quite the contrary: When it comes to protection orders, we strongly believe that in principle a *gender-neutral* approach should be favoured, and that men and women should *equally* be able to benefit from their protective potential.

Another caveat needs to be made when it comes to the particular perspective that we have chosen in the current report: namely the *victims’ perspective*.

may be imposed with an additional (rehabilitative) motive in mind, the fact remains that the protective motive plays a role as well. After all, if the release of the suspect or offender was exclusively inspired by rehabilitative aims, he could have been set free without protective conditions being attached to his release.

¹⁵ See, for instance, the FRA study on different forms of violence against women (European Union Fundamental Rights Agency, *Violence against Women: An EU-wide survey*, Luxembourg: Publications Office of the European Union 2014).

This means that the needs and interests of the victims have been our primary point of departure and not the rights of the defendants or the suspects. This particular perspective has had an influence on some of the findings in the report, in particular with regard to certain normative choices we had to make. We fully realize that some of our choices may have an impact on the rights of the violent person, and, at times, we have pointed out the need for a more thorough assessment of the consequences the choices might have on the violent person and his right to a fair trial. However, a more in-depth discussion of all the possible human rights implications for the defendant falls outside the scope of this report.

5. Outline of the report

The report is structured as follows: In chapter 2 an overview is provided of the legislation on protection orders in 27 EU Member States. In addition to a country-by-country summary of protection order laws it also discusses certain cross-cutting themes with the (descriptive) aim of mapping the different protection order regimes in Europe. In chapter 3 the levels of protection provided by the different national protection regimes will be compared. This requires the development of objective, standardized criteria against which the different protection order approaches can be measured. In chapter 4 the functioning of protection orders in practice is assessed with the help of victim interviews. How effective are protection orders in stopping or reducing the violence? What practical issues do victims encounter in obtaining protection orders? In chapter 5 the EPO and the EPM are discussed in the light of the national findings on protection orders. It aims to make an inventory of possible difficulties that might arise in the implementation of the two mutual recognition instruments, given the discrepancies between national protection order laws. Some concluding remarks can be found in Chapter 6, together with recommendations that aim to increase the level of protection provided to victims of violence.

Chapter 2

Mapping protection order legislation in the EU Member States

1. Introduction

Although protection orders have been in existence for quite some time now, we lack a clear overview of the exact manner in which protection orders are regulated in the different European Member States. There have been some comparative studies in the past,¹⁶ but these studies only dealt with protection orders laterally. They failed to provide a meticulous inventory of all the options that the criminal, civil and administrative laws of the Member States offer in this respect, nor did they gather in-depth information on the conditions, procedures and settings that allow for protection orders to be imposed. As a result, our knowledge on protection order legislation in Europe is rather limited.

The aim of this chapter is to provide a reliable and in-depth EU-wide review of existing protection order legislation and practice. It does so by analyzing 27 national reports in which legal experts have commented on protection order regimes in their native countries. In addition to substantive and procedural legislation and policy guidelines, these reports also contain information on current debates about victim protection legislation and procedure, proposals for reforms, and research that has assessed the effectiveness of national protection order provisions. Furthermore, these reports distinguish between promising or negative practices in the national approaches to victim protection. These, however, will be discussed in the next chapter (Chapter 3).

The chapter is structured as follows: in section two the research methodology will be explained: How were the national experts selected? How was the quality and the consistency of the national reports guaranteed? And how were the reports eventually analyzed? This section also discusses the limitations of the chosen research method. The third section provides a summary of protection order legislation per Member State. This summary is only meant as a preliminary introduction. The idea is to give the reader an impression of the most important types of PO legislation in the different Member States and to place the information in the remainder of the chapter into context.

¹⁶ See S. van der Aa, 'Protection orders in the European Member States: Where do we stand and where do we go from here?', *European Journal of Criminal Policy and Research* (open access), 2011, for an overview of these studies.

More detailed information can be found in the national reports themselves, which are available on the internet.¹⁷ Together with the national reports, the third section provides an up to date reflection of protection order legislation throughout Europe. The fourth section focuses on certain cross-cutting themes. Instead of concentrating on the individual Member States, the trends and practices that transcend national jurisdictions are discerned, but still with the (descriptive) aim of mapping protection order legislation.¹⁸ Questions such as: In which areas of law are protection orders generally regulated? Can protection orders be issued in all stages of the criminal procedure? Can they be imposed on an *ex parte* basis? will be touched upon. The main findings are then summarized in the conclusion (section five).

2. Methodology

2.1. Research methods

In order to make the inventory two research methods were used:

1) The research team first conducted an exploratory literature review of all the accessible legal and empirical literature on protection orders in the 27 EU Member States. The researchers reviewed literature both in English and in their native languages, focusing on their respective national systems, but also articles focusing on protection orders in other states or providing a comparative view among different states. This literature review gave a first impression of the legal situation in the 27 European countries and highlighted different aspects that were later incorporated in the template for the national reports that all national experts were required to complete (see next research method).

2) The core information was derived from 27 national reports written by legal experts from the EU Member States.¹⁹ In order to guarantee that the reports were consistent and that all the relevant information was included, the experts were provided with a clear and unambiguous template (see Annex 1), developed by the research team. This served as a guideline on which the experts had to base their narratives.

¹⁷ These reports can be found on <http://poems-project.com>.

¹⁸ The normative assessment of these trends and practices will follow in the next chapter.

¹⁹ We included only 27 Member States, because at the time of writing the research proposal, Croatia had not yet acceded to the European Union.

2.2. Selection of the legal experts

Experts eligible for inclusion in the study had to meet the following criteria:

- They had to be lawyers. In exceptional circumstances non-lawyers could be included as well, but only if they were well acquainted with their national legislation.
- They had to have both legal analysis skills and practical knowledge in the area of violence against women, interpersonal violence, domestic violence and/or crime victimization.
- They had to have a good command of the English language.

The research partners were each responsible for finding an expert in the Member State assigned to them.²⁰ In general, the researchers selected experts they had already worked with successfully in the past. On completion of the report, the experts were remunerated for their services.

2.3. Materials

The task of the national experts was to write an analytic national report based on a set of guiding questions developed by the research team. The aim was to describe the regulation and functioning of protection orders in different areas of law (criminal, civil and administrative law), including statistical data, case law, and findings from evaluations of the effectiveness of protection orders, if available. The reference period was 31 August 2013. Meaning that, in principle, only information on protection order legislation that was in force on that date should be represented in the national reports.²¹

In addition, national experts were asked to express their own views regarding the positive and negative aspects on the imposition, monitoring and enforcement of protection orders in their own system. Finally, the national experts had to identify any promising practices and make recommendations for their improvement. For the complete template, see Annex 1.²²

²⁰ The division of Member States was as follows: University of Naples (Austria, Bulgaria, Cyprus, France, Lithuania), APAV (Czech Republic, Germany, Poland, Slovenia, UK), University of Helsinki (Denmark, Estonia, Greece, Latvia, Romania, Sweden), and INTERVICT (Belgium, Hungary, Ireland, Luxembourg, Malta, Slovakia, Spain).

²¹ In some exceptional circumstances, we have reported on legislation that came into force on a later date to avoid misrepresentations of the Member States. For instance, in the case of Latvia, the fact that civil protection orders were introduced in 2014 was included.

²² This Annex contains only the questions that the experts had to fill out. The complete guidance document (including glossary and introduction) can be found on the website (<http://poems-project.com>).

2.4. Quality control on the reports

Several mechanisms were necessary to guarantee the quality of the national reports. The first problem was that legal concepts are not consistent between jurisdictions and states. The use of legal terms in the template report sometimes gave rise to certain definitional questions. In order to guarantee that all national experts had a similar understanding of these legal terms and concepts the template report contained a glossary with a brief definition of the legal terminology used. The experts were also presented with the finalized Dutch report as an example. This provided further clarification on how certain questions and concepts had to be interpreted.

Furthermore, the first drafts of the national reports (deadline 31 August 2013) were subjected to quality control by one of the research members. In case certain sections of the report were unclear, the experts were asked to clarify these sections and to provide supplementary information. Each partner was assigned a group of member states and was in charge of collecting and checking their national reports for missing information and possible inconsistencies.²³ After the controlling process, all reports were returned to the national experts for further clarification and completion. Based on the feedback, the experts were asked to adjust the national report and to send in a final version (deadline 17 November 2013).²⁴

2.5. Data analysis and reporting

The data analysis was based on the final national reports and the primary analysis was done by two researchers. They read the national reports independently from each other and pinpointed certain themes or clusters of answers. These themes formed the basis of the descriptions below. Countries with a similar approach were grouped together and countries that deviated from these ‘mainstream’ approaches were singled out and discussed separately.

The primary analysis also led to the (basic) categorization of protection orders into civil, (quasi)criminal and emergency barring orders that is used throughout the report. The researchers found this distinction helpful in structuring the information, since protection orders originating in the different areas of law have to follow through different procedures, application requirements, enforcement mechanism, et cetera.

The national reports that seemed inconsistent were discussed amongst the researchers to make sure that both researchers agreed on the final interpretation. This led to the first draft of the current chapter, which was then

²³ See footnote 20 on page 41.

²⁴ Not all final reports were submitted on this deadline. The last report was received on 17 November 2014.

checked by the other members of the research team.

Finally, after the results had been analyzed and a first draft version of the chapter had been produced, the chapter was sent to the national experts, who were invited to double-check the findings and see if their countries were correctly represented in the tables and in the text. Sixteen experts replied.²⁵ Based on their feedback, some final adjustments were made.

2.6. Research limitations

Some caveats are needed here. First of all, designing a template capable of covering the wide variety of legal systems and measures of protections existing within Europe is not an easy task. It is possible that the template report left situations uncovered or that it left little room for details pertaining to systems that deviate from the most common ones in Europe.

Also, the fact that not all experts were equally versed in the English language and that perhaps not all definitional issues were tackled may have had its bearing on the results. Certain questions, answers and interpretations may have got 'lost in translation'. Despite the quality control some inconsistencies in the national reports were overlooked. Whenever that was the case, we indicated this in the report, stating that information was 'missing' or 'unclear'.

A final problem was that some questions had been misinterpreted by the experts. These questions were mostly excluded from further analysis. If they were reported – because they touched upon an important issue – we indicated that there had been interpretative problems and advised the reader to interpret the results 'with care'.

3. Results per Member State

3.1 Austria

Civil POs: Austria's main system to tackle domestic violence and stalking is based in civil and police law. It consists of three main measures. Firstly, an emergency barring order (EBO) issued by the police, laid down in the Security Police Act. Secondly, victims can request a civil law protection order (PO) to protect them after the police barring order expires or independently from an EBO. The civil law protection orders are civil injunctions, mandating the eviction of the abuser of domestic violence from the house, the prohibition of contacting the victim and the prohibition of stalking the victim. Last,

²⁵ These were the experts from: Denmark, Germany, Sweden, Finland, Portugal, Netherlands, Romania, Belgium, Hungary, Cyprus, Slovenia, Austria, Estonia, Bulgaria, France, and Luxembourg.

but not least, the establishment of Intervention Centers in all provinces to provide immediate and pro-active support to all victims in connection to (or independent from) protection orders.

Criminal POs: In criminal (procedural) law there are several possibilities to impose protection orders. They can be adopted as a condition to release from pre-trial detention; a condition to an out-of-court settlement; a condition to a suspended sentence; or a condition to a conditional release from prison. However, these measures are primarily aimed at rehabilitating the offender/suspect rather than at protecting the victim, and, historically, criminal protection orders have been rarely imposed in the Austrian criminal justice system in order to prevent violence against women and domestic violence.

Emergency barring orders: The police EBO and the civil law PO can both be adopted independently, but they were originally introduced with the idea of complementing one another. Thus, the intention is that the initial short-term protection order by the police will be followed by a civil court order at the request of the victim in order to prevent a gap in protection.

The Austrian model of preventive measures, effectively connecting the police, civil court measures, social support and (legal) advice for victims, has been replicated in several other European member states, including Germany, the Netherlands, and the Czech Republic.

3.2 Belgium

In Belgium, protection orders can be imposed through criminal, civil and 'emergency barring order' law.

Civil POs: First of all, civil law provides for restraining orders (e.g. for the victims of stalking) through preliminary injunctions, at the request of the victim. The violation of civil protection orders is not criminalized.

Criminal POs: In criminal law, protection orders can be imposed in all stages of the criminal procedure (before, during and after the trial) and through different legal provisions. For instance, criminal POs can be adopted in connection to out-of-court settlements (probation, conditional dismissal or mediation), conditional release from pre-trial detention (during the investigation phase) or during the trial, they can be adopted as conditions to the conviction or in connection to other measures being adopted. POs can also be adopted during the enforcement stage.

Emergency barring orders: Although in most cases protection orders are regulated by generic laws, the 'short term barring order for cases of domestic violence' (*huisverbod*) was established by a specific law (Law of May 15th 2012 concerning the temporary barring order in case of domestic violence). This

new temporary barring order is situated at the intersection of criminal law, civil law and administrative law. Its purpose is to protect victims of domestic violence, create a cooling-off period, and offer a chance for support.

3.3 Bulgaria

In Bulgaria, protection orders can be imposed through civil, criminal and administrative law.

Civil POs: In relation to civil law, two types of protection orders can be adopted: protection orders specific for cases of domestic violence, introduced by the Law on Protection against Domestic Violence of 2005, and protection orders as interim measures in divorce proceedings. Before the adoption of the PO specifically created for cases of domestic violence, interim measures were considered the most effective manner to provide protection to victims of domestic violence.

Criminal POs: Within criminal law, protection orders are usually adopted in the form of restraining orders taken as (pre-trial) coercive measures. The imposition of post-trial criminal protection orders by the courts only occurs as a part of probationary measures. Remarkably, the violation of criminal POs and POs imposed in divorce proceedings does not carry a penalty.

Finally, the police can issue so-called *go orders* according to the administrative law regulating the structure and functioning of the police. In Bulgaria, these go orders are applicable to any crime or violation of the public order. They are imposed by means of a written notice or a verbal warning.

3.4 Cyprus

In Cyprus, protection orders can be issued under generic and dedicated laws. Protection orders specific for cases of domestic violence are regulated both by the (criminal) law on Domestic Violence as well as by the legislation on child pornography and for the prevention and eradication of sexual abuse and exploitation of children.

Civil POs: A civil protection order can be requested before the Family Court in relation to divorce or dissolution of marriage proceedings, but it expires upon the dissolution of the marriage. Furthermore, it only relates to the exclusive custody of the child and to the temporary barring of the offender from the family home.

Criminal POs: Within criminal law, protection orders can be issued when a suspect has been charged or sentenced for acts of domestic violence. These protection orders can then take the form of an additional or alternative measure to the sanction. The police may apply to a District Court for a temporary protection order to impose limits on an offender's access to the

victim. In addition, family members can make a request to the court under oath for a ‘temporary exclusion of a suspect order’. Furthermore, protection orders can be requested by the prosecutor or the Attorney General, a family counsellor or another person acting on behalf of the victim.

3.5 Czech Republic

Following amendments in 2006 by a national act for the protection against domestic violence, the Czech system has adopted a model inspired by the Austrian system. There are three possibilities for issuing a protection order in cases of domestic violence and stalking according to Czech law: civil protection orders, criminal protection orders, and emergency barring orders (known as ‘police go orders’).

Civil POs: Civil law allows for interlocutory orders at the request of the victim or a representative of the victim, for a period of 1 month, with the possibility of extension by initiating substantive proceedings (e.g. on divorce).

Criminal POs: Protection orders within criminal proceedings are mainly temporary measures issued in the pre-trial stage in order to protect the victim and prevent the suspect from committing further crimes during the process. These were introduced in 2013. Any breach of the protective measures may lead to criminal sanctions. Post-trial POs can be imposed as well, as an additional penalty.

Emergency barring orders: In addition, the Czech Republic established an emergency barring order under police law, which bars the offender from the household for a period of 10 days. This period is automatically extended if the victim applies for civil protection and ends once the civil court has ruled a verdict. The law covers married and unmarried, different-sex as well as same-sex partners but only applies to cohabiting couples. Among these three types of protection orders, police emergency barring orders are most commonly issued.

3.6 Denmark

In Denmark protection orders can (in theory) be found in different areas of law criminal, civil and administrative law.

(Quasi-) criminal POs and emergency barring orders: Most protection orders are, however, based on a specific administrative law that was recently adopted.²⁶ It introduced three possible types of protection orders: restriction orders that prohibit the violent person to contact the victim (*tilhold*),

²⁶ Although in Denmark, these protection orders are classified under administrative law, for the purpose of comparability, this study will categorize them as ‘quasi-criminal’ protection orders (see section 4.2.2).

prohibitions to be at certain places (*opholdsforbud*) and home exclusion orders (*bortvisning*). The three types of protection orders are issued under the jurisdiction of the Chief of Police, who is both part of the police and the public prosecution service.

Besides these specifically regulated orders, certain forms of protection orders can be imposed in connection with regular criminal proceedings, for example in connection with suspended sentences.

3.7 Estonia

Estonia allows for the imposition of protection orders under generic civil and criminal law.

Civil POs: The Code of Civil Procedure provides for two possible ways to impose a PO: as a provisional measure for securing action or as a measure for the protection of individual rights.

Criminal POs: Under criminal law POs may be imposed preceding or during the trial, as a temporary restraining order for the protection of the private life or other individual rights of a victim, as a means of securing criminal proceedings or, as in the case of civil protection orders, they can be imposed as restraining orders on a convicted offender on the basis of a victim's petition.

3.8 Finland

In Finland, protection orders can be issued under civil and (quasi)criminal law.

Civil POs: Civil protection orders, in the form of civil injunctions, are used in practice in cases of domestic violence, but not very often.

(Quasi-) criminal POs and emergency barring order: Quasi-criminal protection orders are most commonly used in cases of domestic violence. They are a sort of precautionary measures which, although regulated within criminal procedural law, are not truly criminal in nature. The most commonly used types of POs are regulated in the Act on Restraining Orders (898/1998) which contains different types of *restraining* and *barring* orders: the *basic*, the *extended* and the *temporary restraining* order, the *barring* order and the *temporary barring* order (emergency barring order). These orders can be obtained through a separate (quasi-criminal) trajectory before the district courts, independent of criminal proceedings. In addition, within criminal law, a 'travel ban' can be imposed in cases of domestic violence, prohibiting a person to stay in a certain area or contact a person.

3.9 France

In France, POs can be imposed within the framework of criminal proceedings,

but the French legislator has clearly focused on the area of civil law when it comes to POs.

Civil POs: Within civil law, the person seeking protection has to lodge a complaint to the family affairs' judge. Contrary to many other countries, civil POs can only be issued in cases of domestic violence (art. 515-9 of Civil Code) involving only (former) spouses or registered partners.

In 2010, the French legislator introduced a new type of civil emergency PO (articles 1136-3 to 1136-13 Code of Civil Procedure). Since the enactment of this new legislation, the police as well as the gendarmerie have an obligation to inform the victims of their rights and to explain to them that they can request a PO from the family affairs' judge.

Criminal POs: In the context of criminal proceedings, POs can be issued as a condition to suspension of pre-trial detention or as a condition to a suspended sentence. Criminal POs are, however, deemed less appropriate, since the aim of criminal prosecution is to punish the perpetrator whereas protection orders aim to prevent further violence. According to the French expert, a civil action 'allows for the consequences of a breakdown in a couple's relationship to be resolved'.

3.10 Greece

Protection orders in Greece are imposed within civil and criminal law. There are generic POs which apply to all victims, and dedicated POs designated to victims of IPV, stalking and juvenile victims of human trafficking and sexual abuse only. These latter POs can be imposed both by civil and by criminal courts.

Civil POs: Within civil law, protection orders can be found in the form of injunctions. The courts may impose Temporary Orders and Injunction Orders in cases of emergency 'if someone's personality is violated' in order to avoid future risk or danger. In addition, there are specific legal provisions for the protection of victims of family violence and stalking, prohibiting the defendant to approximate certain places, to stay in the family home, to contact the victim or to come within a certain distance of the victim.

Criminal POs: Within criminal law, protection orders can be found in the form of a condition to avoid pre-trial detention. Post-trial POs are rare. Although the Greek legislation does allow for certain conditions to be attached to a suspension of the sentence – including the condition not to communicate with certain persons – the expert does not elaborate on this. Dedicated POs for the protection of IPV and juvenile victims of trafficking and abuse can be imposed within the context of criminal law as well.

3.11 Germany

Protection orders can be found in civil, administrative (emergency barring order) and criminal law. They are mainly regulated in generic laws, with the exception of the Protection against Violence Act (*Gewaltschutzgesetz*) (2001).

Civil POs: The *Gewaltschutzgesetz*, fashioned after the Austrian model, provides for the possibility to issue protection orders at the request of the victim. This is the most important way of imposing protection orders, enabling the Family court to impose various POs in an accelerated procedure. All civil protection orders are backed by criminal sanctions if the aggressor breaches them.

Criminal POs: Protection orders can also be imposed in criminal proceedings, as conditions to a suspended prison sentence and to an early release from prison. They can also be imposed as security measures after an entire prison sentence has been served or after preventive detention

Emergency barring orders: Regarding administrative law, as a consequence of the adoption of the Protection Against Violence Act, police acts of the 16 federal states were amended in order to allow the police to issue emergency barring orders (EBO). Differences in regulation among the federal states relate to the duration of the orders and who has the legal capacity to formally approve them and the procedure to follow. In line with the requirements of the Protection against Violence Act, the issuing of the EBO generally leads to contacting professional support organizations in connection to the case, although this engagement varies per federal state. For instance, in Berlin, the victim concerned must give her consent to allow her personal data to be transmitted by the police to the support service so that they can contact the victim.

3.12 Hungary

Protection orders are regulated in Hungary by civil law and criminal (procedural) law. The police can also issue an emergency barring order, which is called a Temporary Preventive Restraining Order.

Civil POs: Under civil law, there is one, recently introduced, measure that can provide victims with protection: the Preventive Restraining Order (PRO). This measure can be issued by the court *ex officio* if a Temporary Preventive Restraining Order (see below) was issued by the police, or upon the request of the victim or his/her relatives if they directly applied for a PRO at the Court. The PRO is a dedicated protection order, only available for certain victims (e.g., relatives, (former) spouses, etcetera).

Criminal POs: Criminal POs can be issued in the form of barring orders as a coercive measure, or as a criminal law behaviour rule that the perpetrator is obliged to observe as part of probation. In theory, protection orders can

be issued in all stages of the criminal procedure, however, in practice, the post-trial behaviour rule does not seem to be applied, leaving only pre-trial protection orders.

Emergency barring order: The Hungarian legislator has also opened up the possibility to temporarily remove the offender from the family home in urgent situations of domestic violence. This measure, called Temporary Preventive Restraining Order, can be issued by the police *ex officio* or at the request of the victim.

3.13 Ireland

In Ireland, protection orders are provided for both in civil laws dedicated to domestic violence and generic criminal laws.

Civil POs: Within civil law, domestic violence legislation provides for four different protection orders, with measures ranging from prohibitions to engage in violence and threats, to barring the abuser from any contact with the victim for up to 3 years. Applications for domestic violence safety, protection, barring or interim barring orders are brought before the local District Court Office (or the Dublin District Family Law Court).

Criminal POs: Under criminal law, a court can impose a *restriction on movement order*, which can be requested by the police. A restriction on movement order can be issued as a condition to suspension from pre-trial detention (i.e. where an offender is granted bail) or as a condition for a suspended sentence, in the case of certain offenses where the offender is charged or may be sentenced to imprisonment of three months or more.

In addition, a 'protection of persons' order (maximum 7 years) can be imposed, prohibiting the offender from harassing or intimidating a protected person. These protection orders can be issued even when a conviction is not obtained.

3.14 Italy

In Italy, protection orders can be found in civil, administrative (emergency barring orders) and criminal law. Although criminal law contains protection orders for all victims, there are also provisions that exclusively apply to victims of domestic violence and stalking. Protection orders under civil and administrative law are always dedicated protection orders, protecting only victims of stalking, domestic violence, and sexual violence.

Civil POs: Civil law provides for special protection of victims of DV and stalking, via interlocutory proceedings. The interested party asks for the PO and the civil judge can decide, even in the absence of the defendant.

Criminal POs: Within criminal law, there are seven pre-trial measures that can

have a special protection order attached to them. Post-trial protection orders do not exist in Italy, at least they are never imposed in practice. Two types of measures, barring from the family home and prohibition to approach places frequented by the victim, are commonly used in cases of DV and stalking.

Emergency barring orders: In administrative law there is a preventive form of PO for cases of stalking, domestic violence, injuries and threats, called *ammonimento*, a form of short-term barring order that requires the offender to leave the family home and stay away from the victim and dependent children. It may also be used to prohibit the offender to approach the victim or to establish contact. This order is issued in emergency situations, based on the request of the victim, and following the assessment of the situation by the police, although the formal authorization is given by the head of police.

In addition, there is an emergency barring order, called the *police go order*, a notice given by the police to a person as a warning, in order to stop a violent event or prevent it from happening, which also allows the police to send the abuser out of the house. The difference is that this can be executed without the consent of the victim. The authorization of the prosecutor is, however, required.

3.15 Latvia

Civil POs: Very recently, on 31 March 2014, civil protection orders were introduced in Latvia in order to secure and guarantee victim rights. There are currently emergency protection orders and special civil procedures available for victims who seek protection through courts. Additionally, the police have received more power to protect victims and enforce protection orders. However, due to the reference period of the current study (30 August 2013) on which the experts were supposed to report, more detailed information on Latvian civil protection orders is missing.

Criminal POs: Protection orders in Latvia that are regulated by generic criminal (procedural) law may be imposed, depending of the stage of the proceedings, by the judge, the prosecutor or the investigator, but protection orders can only be issued from the moment there is an indictment.

Protection orders are normally issued at a post-trial stage, either as part of probationary supervision or as a suspended sentence. Probationary supervision is considered an additional punishment by which, once that imprisonment has ceased, the perpetrator will continue to face coercive measures, for instance, refraining to contacting the victim and approaching certain areas. This possibility to have POs imposed as an additional punishment exists only in cases involving sex offenders but will change as of 1 January 2015 when a new legislative bill comes into force. Until that moment, the only legal provision that allows for post-trial POs is the conditional release from prison.

3.16 Lithuania

In Lithuania, protection orders can be found in civil, administrative (emergency barring order) and criminal law. Civil and criminal protection orders are regulated in generic laws, emergency barring orders are available for victims of domestic violence only.

Civil POs: Within civil law, protection orders can be issued as provisional measures pending the outcome of proceedings such as divorce and marriage dissolution.

Criminal POs: The criminal justice system provides for protection orders at the pre-trial and post-trial stage. POs can be issued before the trial, providing a range of measures, including both civil and criminal ones, as well as social assistance. Following a conviction, protection orders can be granted as a conditional sentence or as an additional measure. In addition, the law on domestic violence adopted in 2008 introduced the possibility to issue the prohibition to be in the vicinity of the victim as a possible criminal sanction in cases of domestic violence.

Emergency barring order: The short-term emergency barring order is regulated in an act specifically dedicated to countering domestic violence. This short term barring order is an administrative law measure.

3.17 Luxembourg

The legal system provides for protection orders in generic civil and criminal law and in one specific law on domestic violence (emergency barring orders).

Civil POs: Within civil law, two types of protection orders can be provided: barring the abuser from the family home, and a general injunction.

Criminal POs: In Luxembourg, protection orders can only be issued in relation to certain categories of crimes such as domestic violence, assault and battery or trafficking in human beings. Protection orders can only be issued in addition to the sentence in the context of a trial for assault and battery against a person with whom the defendant is living.

Emergency barring orders: A dedicated administrative law introduced a short term barring order issued by the police with the authorization of the Public Prosecution Service for cases of domestic violence.

3.18 Malta

Protection orders in Malta are regulated in civil and criminal law, but the emphasis lies on criminal (procedural) law.

Civil POs: The Civil Code provides for the issue of protection orders in

proceedings for personal separation but only where there is evidence of acts of domestic violence. It can be obtained in *limine litis* or *pendente lite*. The application for such PO can be made by either party to the case or, alternatively, the court itself may issue an order of its own accord.

Criminal POs: Criminal protection orders are regulated by generic criminal law. In criminal law, a court may issue a protection order during the proceedings or a restraining order as an alternative or additional measures to the sentence. Relevant provisions are found in the Criminal Code: section 412C deals with protection orders, while Section 382A provides for the issue of a restraining order which has a similar effect as a protection order.

3.19 Netherlands

In the Netherlands, protection orders can be found in civil, administrative (emergency barring order) and criminal law. These protection orders are mainly regulated in generic laws. The only exception is the short term barring order (*huisverbod*), which falls under administrative law. This type of PO is regulated in an Act specifically dedicated to countering domestic violence (*Wet tijdelijk huisverbod*).

Civil POs: Civil law has only one possibility to impose a PO, namely via interlocutory proceedings. This procedure is officially an interim procedure, but in practice it is never followed up by substantial proceedings, so the outcome of the interim proceedings is usually final. The civil PO can be seen as an injunction order.

Criminal POs: The most complex system of POs can be found in Dutch criminal (procedural) law. In the Netherlands, there are no less than fourteen legal measures within criminal (procedural) law that can form the basis of a PO. Although these measures have different purposes (e.g., to ensure that the offender can await his or her trial in freedom), these measures can have a protection order as a condition attached to them. These orders can be issued during all stages of the criminal procedure: both pre-trial, during trial and post-trial

Emergency barring orders: With the help of the administrative temporary barring Act, persons who (are likely to) commit domestic violence can be temporarily evicted and barred from the family home. During the barring period, help is provided to both the victim (e.g., social services) and the offender (e.g., probation services).

3.20 Poland

The Polish legal system also offers protection orders in civil, criminal, and administrative (emergency barring order) law.

Civil POs: In cases involving divorce or separation a civil judge may impose an eviction order on a defendant whose behavior has a negative impact on his cohabiting spouse or partner.

Criminal POs: In Poland, protection measures that are related to a situation of threat or violence are imposed almost exclusively within criminal proceedings. Depending on the stage at which the criminal proceedings are, they may be issued as preventive measures (pre-trial and trial phase proceedings) or as measures that accompany the judgment.

With the coming into force of the Domestic Violence Act in 2005, an administrative procedure was established aimed at supporting victims of domestic violence. This allows the police to arrest a violent person for 48 hours and send within 24 hours a request, to the prosecutor or the court, to ban the violent person from the family home. The eviction, although administrative in nature, should follow the rules of the civil procedure.

3.21 Portugal

Civil POs: In Portugal POs are mainly, if not exclusively, issued in criminal proceedings. Although it is possible to apply for POs in civil proceedings, this rarely happens in practice.

Criminal POs: The criminal POs are regulated both in generic laws - the Code of Criminal Procedure and the Penal Code - and in a specific law - the Domestic Violence Act and they cover all stages of the criminal procedure. They are usually imposed as 'coercive measures', but they can also be issued as conditions to suspended pre-trial detention, provisional suspension of proceedings, suspended sentence and conditional release. For the crime of domestic violence, they can also be issued as an accessory penalty.

The public prosecutor plays a central role in the procedures leading up to a protection order. Although the PO can only be issued by an (investigative) judge, the public prosecutor has the initiative. Victims can only request a PO if they are so-called 'assistants' to the proceedings (accessory prosecutor). In domestic violence cases and in the event of particular urgency and risk the police can also apply for the issue of a protection order on behalf of the victim.

3.22 Romania

In Romania, victims can request protection orders under civil and criminal law.

Civil POs: In civil law, protection orders are regulated exclusively in a dedicated law for the prevention and combating of violence in the family.

Criminal POs: In criminal law, persons who have been convicted for at least one

year in prison for acts of violence against family members face a prohibition to return to the family home for a limited time. In addition, there is also the possibility of imposing POs as a condition to a suspended sentence under supervision. However, a conviction to imprisonment for at least one year for acts of violence against a family member remains necessary for the above to be imposed.

3.23 Slovenia

In Slovenia, protection orders are regulated through criminal law, civil law and administrative (emergency barring order) law. There are generic protection orders and protection orders specifically dedicated to victims of family violence.

Civil POs: Within civil law, protection orders are issued on the basis of the Family Violence Prevention Act. This dedicated law allows for the issue of various protective measures, such as the prohibition to enter the victim's residence, to enter areas that the victim frequents or to contact him/her in any way. These orders are only available for victims of family violence.

Criminal POs: Within criminal law, protection orders can be issued during criminal proceedings, in the context of a suspended sentence, a conditional release from prison, a conditional waiver of prosecution and a conditional release from pre-trial detention. The victims of all sorts of crimes can be protected under these POs.

Emergency barring orders: Under administrative law, a police officer can issue an emergency barring order, prohibiting the person who endangers the 'life, personal safety or freedom of a person with whom (s)he is or was in a close relationship' to approach a certain person, place or area (including the family home). The order lasts for 48 hours, after which it can be prolonged by the District Court with another 10 days (and later, on the victim's motion, another 60 days).

3.24 Slovakia

The Slovak Republic has different types of protection orders in various areas of law, including civil, administrative, and criminal law. No protection order has been introduced by means of a dedicated law so far, so only generic legislation applies.

Civil POs: In civil law, POs can be issued via interlocutory proceedings, which are expected to be followed by proceedings on merits. If the victim does not file a petition to commence proceedings on merits within the time specified by the law, the preliminary measure ceases to be in effect.

Criminal POs: Under criminal law, the court may issue a post-trial PO as part of

probationary supervision in the case of a suspended imprisonment sentence. Pre-trial protection orders do not exist within the Slovak jurisdiction.

Emergency barring orders: Under administrative law, police officers are authorized to temporarily bar a person who (is suspected of) committing an act of domestic violence from the family home. Filing a motion in a court for a preliminary measure under the Code of Civil Procedure automatically extends the police barring order until the court's decision becomes enforceable.

3.25 Spain

In Spain, protection orders for cases of domestic violence were introduced by means of dedicated laws in the area of civil and criminal law.

Civil and criminal POs: The law on the protection order for victims of domestic violence introduced article 544ter to the Code of Criminal Procedure, enabling victims of domestic violence to obtain precautionary protection orders until a definitive decision was reached. A second dedicated law, on Comprehensive Protection Measures against Gender-Based Violence, enhanced the existing protection orders, providing women with complete and integrated protection against their abusive male partners and gave the courts the possibility to include criminal, civil and social measures.

These protection orders, although regulated by the Code of Criminal Procedure, are issued by means of an expeditious and simple judicial procedure before the specialized Courts for Violence against Women (within 72 hours after application). These Courts have competence to act in civil and criminal matters.

3.26 Sweden

In Sweden POs can be found in the areas of criminal and civil law.

Civil POs: Civil POs are found within family law. POs are regulated in the Marriage Code (*Äktenskapsbalken* (1987:230)) and the Cohabitants Act (*Sambolagen* (2003:376)), which means that they are only available in cases of divorce or separation. In divorce cases, the family law court can prohibit spouses from visiting each other until the divorce is final and/or until the division of property is settled. There are corresponding rules for cohabitants.

(Quasi-) criminal POs: The most commonly used POs are regulated in a specific law, the Contact Ban Act (*Förordningen* (1988:691) *om kontaktförbud*) which regulates four types of POs (in ascending order of strictness); a restraining order, an extended restraining order, a special extended restraining order and a barring order. POs can be obtained through a quasi-criminal procedure. It is the public prosecutor who is authorized to impose a Contact Ban with the aim of preventing crimes such as stalking or harassment, but formally it is not even required that an actual criminal offence has been committed. If the

victim disagrees with the prosecutor's decision (s)he can appeal his decision in court.

3.27 United Kingdom

Within the United Kingdom protection orders can be issued under civil and criminal law.

Civil POs: In *England and Wales* protection orders can be adopted within civil law, based on the Family Law Act (1996), the Domestic Violence Crime and Victims Act (2004) and the Protection from Harassment Act (1997), in the form of non-molestation orders (NMO) and occupation orders. NMOs prevent a victim of domestic violence from being molested by a partner or a close family member. Occupation orders specify who can live in the family home, preventing the abuser from living in the family home, and entering other specified areas too. If the abusers ignore the order, they can be arrested for breaching it.

Similar to England and Wales, *Northern Ireland* provides for civil protection orders in the form of non-molestation orders and occupation orders as well, regulated by the Family Homes and Domestic Violence Order (1998) and the Protection from Harassment Order (1997).

In *Scotland*, protection orders can be issued as civil interdicts, a judicial remedy granted by the courts prohibiting the commencement or continuation of a certain act or activity, or by means of a non-harassment order, against a partner/ex-partner, their family or any third party behaving in a way that frightens or causes distress.

Criminal POs: All four British jurisdictions allow the imposing of protection orders within criminal law as part of a bail to ensure that the defendant attends the next court hearing, does not commit any new offences in the meantime, and does not interfere with any witnesses or obstruct the course of justice. In the post-trial phase, protection orders can be imposed as restraining orders (England & Wales, Northern-Ireland) or non-harassment orders (Scotland). Restraining orders can be issued in England and Wales not only on conviction, but also on acquittal for any criminal offence if evidence suggests that it is necessary to protect persons from harassment or conduct that will put them in fear of violence. The restraining orders upon acquittal were introduced in order to guarantee a more proactive approach on the part of the courts, avoiding delay and increased costs to the legal aid budget (when victims have to apply for civil protection orders instead), but also providing a more seamless process of providing protection to victims. In cases where there is clear evidence that the victim needs protection, but there is insufficient evidence for a conviction, these orders can be imposed.

For the remainder of this chapter it is important to note that the four countries within the UK will be dealt with collectively (under the heading ‘UK’), unless a different approach requires their separate discussion.

4. Results per cross-cutting theme

4.1. Introduction

The previous section gave a brief overview of the manner in which the European Member States regulated protection orders, and already some important differences appeared. But with 27 Member States reporting extensively on their national laws and practices it is easy to mistake the forest for the trees. In order to facilitate a meaningful comparison of 27 jurisdictions, the remainder of this chapter will therefore summarize the most important results per cross-cutting theme.

The downside of a thematic approach, however, is that sometimes the results appear more straightforward than they really are. When taken out of the national context certain results can easily be misinterpreted or lack relevant nuances. In other words, a thematic approach sometimes provides a false sense of simplicity and uniformity, all the more when – for reasons of clarity – the results are visualized with the help of tables. Although efforts were made to nuance the findings and to put them into context, the country-per-country summary in section three, together with the national reports on the website, remains vital to gain a deeper understanding of the cross-cutting issues discussed below.

4.2. General information

4.2.1. Types of behavior for which protection orders are issued

When it comes to the undesirable behavior that POs aim to tackle, most experts indicate that POs are usually imposed because of assault, threats of violence, stalking, and sexual violence. Most often, these crimes take place within the interpersonal or domestic sphere, between (former) partners. Criminal protection orders related to stalking incidents are only imposed in countries that have actually criminalized stalking. In other words, in countries where stalking does not constitute a crime, stalking behavior cannot be countered with the help of criminal protection orders.

4.2.2. Areas of law

The template report first aimed to identify the different areas of law (criminal, civil, emergency barring order, and other) through which protection orders can be imposed. Table 2.1 gives an abridged representation of the answers provided by the experts. It shows that most EU MS have at least some form

of civil and criminal protection orders in place with one exception: Latvia. According to the Latvian expert, there were no civil protection orders at the time of the research. On 31 March 2014, however, civil protection orders were introduced in Latvia as well.²⁷

Civil POs: Civil protection orders can generally be imposed as (preliminary) injunction via interlocutory proceedings, although these protection orders are sometimes dependent on other (substantial) proceedings, such as divorce proceedings or proceedings on the merits of the case (see section 4.2.4 below).

Criminal POs: In relation to criminal law, all member states provide for the possibility of imposing measures that prohibit a person from entering or staying in certain areas or contacting the victim. These measures can, for instance, be adopted as (pre-trial) coercive measures or bail, in order to prevent the suspect from interfering with the criminal procedure, or as restraining orders to prevent the suspect from harassing certain persons. These measures can also be imposed as conditions to probation, as conditions to a conditional/suspended sentence or as conditions to a conditional leave from prison.

In Finland, Denmark and Sweden, protection orders can be imposed by the public prosecutor, the 'Chief of Police', or a district court, but they are not necessarily *criminal* protection orders. In fact, the procedure by which these orders can be imposed is separated from criminal prosecution and can even be initiated without suspension or prosecution of a crime. For this reason it is better to refer to the Finnish, Danish and Swedish protection orders as semi- or quasi-criminal protection orders. However, since the protection orders are most closely linked to the area of criminal law, the current study will still classify them as such.²⁸

A comparable situation is found in Spain. The Spanish criminal and civil protection orders are also imposed via a simple and quick judicial procedure (max. 72 hours after application) by the judge of Special Courts on Gender Based Violence at the request of the prosecutor, the victim, the victim's relatives or the court *ex officio*. The protection order may include both criminal and civil measures and the rules of a criminal procedure apply.

Emergency barring orders: Emergency barring orders are normally regulated under legislation dedicated to domestic violence (and stalking), and allow law enforcement officers to evict the abuser from the family home for a short

²⁷ Due to the recent introduction of these civil protection orders, more detailed information on the Latvian law is unfortunately missing from the current report.

²⁸ The Danish legislator itself has classified these types of protection orders under administrative law. For purposes of comparability, however, they will be discussed in the current report under the 'quasi-criminal' heading.

period of time. These emergency barring orders are sometimes classified under administrative or police law (e.g., NL, DE, AT, CZ, SI, SK), whereas other experts rather qualify the emergency barring order as a *sui generis* area of law (e.g., BE). In order to enable a meaningful comparison between jurisdictions, the emergency barring orders are therefore presented as a distinct category, without referral to the area of law they are regulated in. Emergency barring orders will be entered into in more detail in section 4.2.3 below.

Police POs: Another area of law in which POs can feature is police law. Police officers, in their general function as guardians of the public order, are authorized to give persons (informal) behavioral instructions and to escort persons out of a certain area. Usually these instructions are only valid for a limited amount of time (e.g., 24 hours). Since only few experts included this type of PO – and even those only marginally – they will not be discussed in the remainder of this chapter.²⁹

Table 2.1. Areas of law

	Criminal law	Quasi-criminal	Civil law	Emergency barring order
Member State	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FR, HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, RO, SI, SK, UK	DK, FI, SE	AT, BE, BG, CZ, CY, DE, DK, EE, IE, EL, ES, FI, FR, HU, IT, LT, LV, LU, MT, NL, PL, PT, RO, SI, SK, SE, UK	AT, BE, CZ, DE, DK, FI, HU, IT, LU, NL, SI, SK,

It is important to note that even though the laws in most MS provide for civil and criminal protection orders, this does not mean that both types of protection orders are actually used in practice. There is a marked difference between the laws on paper and their use in practice. Often Member States have certain preferences when it comes to the area of law in which to regulate protection orders. Some Member States prefer to offer protection orders via civil proceedings (e.g., FR, BG) – with criminal protection orders being practically absent or only a theoretical option – whereas other Member States opt for the criminal procedure (e.g., PT, PL) or favor an entirely different procedure through which protection orders can be procured (FI, DK, SE).

4.2.3. Emergency barring orders

Since emergency barring orders play a prominent role in many of the Member States that incorporated them, they will be systematically discussed throughout this chapter. Besides civil and criminal protection orders, they are

²⁹ Another type of PO mentioned was the one imposed in the context of compulsory psychiatric treatment (e.g., NL, SE). These POs also fall outside the scope of this report.

the third category of protection orders that is given structural attention. In this study, a protection measure qualifies as an emergency barring order if the following criteria are fulfilled:

- The order can be imposed in crisis situations of (immediate danger) of domestic violence.
- The order can be imposed without an arrest.
- The order can be imposed immediately (at the intervention of the police).
- The order can be imposed without the consent of the victim.
- The order has the effect of removing the violent person from the family home.
- The order typically lasts for a short period of time (for instance 2-3 weeks).
- The order is imposed with the aim of stopping the risk immediately and allowing for prolonged protection to be put in place.

Based on these criteria, the following twelve Member States are the only ones that have emergency barring order legislation in place: the Netherlands, the Czech Republic, Denmark, Austria, Luxembourg, Belgium, Italy, Hungary, Germany, Finland, Slovenia, and Slovakia.³⁰ See table 2.1 above. It shows that many Member States have embraced the Austrian emergency barring order model. During the time when the barring order is in force, the victim can apply for a 'regular' civil PO, which can provide for prolonged protection after the emergency barring order has expired. Ideally, the victim should be covered by a PO at all times.

4.2.4. Interrelatedness of protection orders with other (substantive) legal proceedings

Civil POs: The Member States have divergent practices when it comes to the interrelatedness of civil POs with other civil proceedings, such as divorce proceedings. In civil law the interim injunction procedure is often used as a framework to obtain POs. In 18 Member States, civil POs can be requested in an interim or accelerated procedure that is not connected to divorce proceedings or proceedings on the merits of the case. Although, in some MS, these proceedings should officially be followed by substantive proceedings, in practice the decision is usually final, because no substantial proceedings are initiated.³¹ Three Member States have a mixed system with some POs

³⁰ Member States that have not adopted the 'Austrian' approach often have their own process in which dangerous persons can quickly be removed from the family home. In France, both the victim and the police can apply for an (interim) emergency eviction in the civil court, which can be provided within four hours after the application. Lithuania has recently introduced temporary barring orders which closely resemble emergency barring orders, yet do not classify as such, because the police are not authorized to impose them *immediately*. The police have to forward their findings to a court that will in turn evaluate in accelerated proceedings whether the offender can be temporarily barred. In Sweden, Poland and Spain, interim barring orders can also be imposed relatively quickly (within a couple of days).

³¹ See, for instance, Belgium, the Netherlands, Germany, Italy and Austria. This is, however,

requiring additional procedures and others not, whereas three Member States always require additional proceedings.³²

Criminal POs: Criminal POs are generally always dependent on (the outcome of) criminal proceedings. As soon as the criminal investigation or prosecution stops, or as soon as the accused is acquitted, the criminal PO ceases to exist as well. There are some exceptions to this rule: in the UK and Ireland certain criminal POs can be imposed despite the acquittal of the accused. Finnish, Danish and Swedish POs can be procured without a criminal prosecution or conviction. These are separate, quasi-criminal trajectories.

Emergency barring orders: Emergency barring orders were designed with a view to prevention rather than punishment. In that sense, they are completely independent from other legal proceedings. In practice, however, barring orders can coincide with criminal proceedings, when the event triggering the barring order constitutes a crime.

Table 2.2. (In)dependence of protection orders from other proceedings

	Independent from other (substantive) proceedings	Mix of dependent and independent POs	Dependent on other (substantive) proceedings	Missing	N/A
Civil	AT, BE, CY, DE, EL, FR, HU, IE, IT, LU, NL, PL, RO, SK, UK	BG, EE, LT, CZ ¹	FI, MT, SE,	DK, ES, LV, PT	
Criminal	DK, FI, SE,	UK, IE	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FR, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SI, SK		
Emergency barring order	AT, BE, CZ, DE, FI, HU, IT, LU, NL, SI, SK			DK	BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PO, PT, RO, SE, UK

¹ Civil interim POs only last for 1 month. Prolonged POs (maximum 1 year) can only be issued if the claimant initiates substantive proceedings.

not the case in Slovakia, Ireland and Lithuania, where the interim proceedings are usually followed by proceedings on the merits of the case. In the Czech Republic, the interim order only lasts for the duration of one month, after which substantive proceedings have to be initiated in order for the PO to be (automatically) prolonged.

³² In the Czech Republic the claimant has to file a suit within one month, after which the temporary civil PO will expire, and in Sweden civil POs are always linked to divorce proceedings, proceedings on property division or proceedings involving cohabitantes.

4.2.5. Availability of protection orders in the stages of the criminal procedure

When it comes to criminal (procedural) law most jurisdictions have a variety of legal provisions through which protection orders can be imposed, covering all stages of the criminal procedures. Most Member States have at least the option to impose a PO as a 1) coercive measure, 2) as a condition to a suspension of pre-trial detention or bail, 3) as a condition to a conditional dismissal or waiver (out-of-court settlement), 4) as a condition to a suspended sentence, and 5) as a condition to an early release from prison. There are, however, some exceptions.

In Slovakia, Luxembourg, and Romania, for instance, protection orders can only be imposed *during* or *post-trial*. In Hungary, there is the possibility to have a so-called ‘behavioral rule’ imposed in the post-trial stage, but the expert indicates that ‘there does not seem to be any evidence of it being used’.

The Czech expert, on the other hand, claims that the possibilities to have a PO imposed are mainly limited to the *pre-trial* stage. Although prisoners in the Czech Republic can be released from prison under certain conditions, these conditions generally do not relate to the protection of the victim. In Italy and Greece, post-trial POs seem more theoretical as well.

A final observation is that in the UK and Ireland criminal POs can even be imposed as restraining orders *upon acquittal* of the suspect, when the court considers it necessary to protect a person from ongoing harassment. This is justified on the account of POs being considered preventative and not punitive.

Table 2.3. Protection orders in the stages of the criminal procedure¹

	All stages criminal procedure	Only pre-trial stage	Only post-trial stage
Member States	AT, BE, BG, CY, DE, EE, IE, EL, ES, FR, LV, LT, MT, NL, PL, PT, SI, UK	CZ, HU ² , IT ²	LU, RO, SK

¹ FI, DK, and SE not represented here, because POs are obtained independent from criminal proceedings

² Although legally it is possible to impose POs in the post-trial phase, in practice this never happens

4.2.6. Dedicated or generic protection orders.

The increased attention for the problem of domestic violence, interpersonal violence and stalking can be witnessed by the fact that many Member States

have introduced special legislation to counter this behavior.³³ An interesting question is whether these protection orders are available to all victims, or only to certain groups of victims. Table 2.4 shows which countries have introduced 'dedicated' protection orders (available in certain crimes or to certain victims) and which ones have opted for 'generic' protection orders (available to all victims).³⁴

Civil POs: Six Member States allow for all persons to apply for a civil PO. Other Member States limit the use of civil POs to a certain subset of persons, such as victims of stalking, family or domestic violence. Another requirement can be that civil POs are only available to (formerly) married persons, relatives, persons involved in divorce proceedings, or persons cohabiting with the offender.

Criminal POs: Criminal POs are typically available to a larger range of victims. Eighteen Member States have opened up criminal POs for all victims. Some even despite the fact that the laws introducing criminal POs were originally designed to counter violence against women or domestic violence (e.g., SE, FI). Other Member States have reserved this type of protection to certain types of crime only. In Germany, France, Spain, Romania, Cyprus and Luxembourg, for instance, criminal POs can only be issued in cases involving domestic violence, family violence, intimate partner violence or stalking. Victims of sexual violence committed by an acquaintance, for instance, cannot profit from these protection measures. A mixture of 'dedicated' and 'generic' protection orders is also possible. In Portugal and Poland, for instance, most POs are available to all victims, but some POs are exclusively reserved for victims of family violence or sexual crimes.

Spain also makes an interesting case study, because of the gender dimension of its PO legislation. At first, Spain regulated protection orders in specific relation to family violence within the Code of Criminal Procedure, yet later it passed a law changing the (interim) protection provided by protection orders by allowing the judge to adopt a broader range of measures, specifically

³³ AT ('Domestic Violence Act', 1997); LU ('Law on Domestic Violence', 2013); EL ('Law on Confronting Family Violence', 2006); SI ('Family Violence Prevention Act', 2008); BG ('Law on Protection against Domestic Violence', 2005); HU ('Act on restraining applicable in case of violence among relatives', 2009); ES (Organic Act on the protection order for victims of domestic violence', 2003; and 'Organic Act Comprehensive Protection Measures against Gender Violence', 2004); IE (Domestic Violence Act', 1996); LT ('Law on Protection against Domestic Violence', 2011); PL ('Act on the suppression of domestic violence', 2005); BE ('Law concerning the short term barring order in case of domestic violence', 2013); DE ('Protection against violence Act', 2001); PT ('Law for the prevention of domestic violence and protection and assistance to its victims', 2009); RO ('Law regarding the prevention and combating violence in the family', 2012); NL ('Short Term Barring Order Act', 2009); CZ ('Act on Protection against Domestic Violence', 2006).

³⁴ Including, for instance, victims who have been raped only once.

protecting *female* victims of domestic violence from their male (ex) partners. Although both male and female victims can find protection under this law, and although both male and female offenders can be held accountable, the penalties for gender violence committed by men are higher. These POs can be imposed by special gender based domestic violence courts, competent in civil and criminal matters.

Emergency barring orders: Emergency barring orders are usually only applicable to victims who share a joint household with the offender or who cohabit with him on a more than incidental basis. In Austria, however, emergency barring orders can also be imposed on aggressors who do not share a household with their victims (anymore), and on stalkers.

Table 2.4. Victims covered by protection orders

	All victims	Only for specific types of crimes or specific victims	Missing	N/A
Civil law	AT, CZ, EE, NL, SK, UK,	BE, BG, CY, DE, EL, ES, FR, HU, IE, IT, LT, LU, MT, PL, RO, SE, SI	FI, DK, LV, PT	
Criminal law	AT, BE, BG, CZ, EL, FI, HU, IE, LT, LV, MT,NL, PL ¹ , PT ¹ , SE, SI, SK, UK	CY, DE, DK, EE, EL, ES, FR, IT, LU, RO		
Emergency barring order	AT	BE, CZ, DE, DK, FI, HU, IT, LU, NL, SI, SK		BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ In Poland and Portugal, there are both general and dedicated criminal POs.

4.3. Protection order procedures

4.3.1. Protection order procedures

Civil POs: Civil protection order proceedings are more or less regulated along the same lines across Europe. Typically, a civil (interlocutory) proceeding is initiated by the claimant starting with the summons of the defendant. At a fixed date an oral hearing is planned in which both parties can bring their arguments and evidence forward.³⁵ The evidentiary burden usually lies with the parties, in particular the claimant. The civil court can rule a verdict immediately after the oral hearing has ended. In case the trial was held *in absentia*, the decision needs to be served on the defendant.

³⁵ In Spain and Austria, both parties are heard in separate sessions to avoid unnecessary contact.

Criminal POs: The Member States show more variation when it comes to the procedures through which criminal POs can be procured. Naturally, the procedural requirements vary per type of PO, for instance, whether the PO was imposed as a condition to a release from pre-trial detention, as a coercive measure, or as a condition to a conditional release from prison. Most criminal POs are imposed by an (investigative) judge or court on the request of the public prosecutor or the police, but courts can also impose criminal POs *ex officio*. With most criminal protection orders, the offender needs to be heard first and agree to the conditions.

A markedly different approach is found in Finland, Denmark and Sweden. There quasi-criminal POs are imposed through separate proceedings, which are comparatively simple and informal according to the experts. In these countries a party (victim, police, prosecutor or social welfare organization) can apply for a PO with the public prosecutor (SE), the Chief of Police (DK), or the district court (FI). All parties involved are informed of the application and can react to it, either in writing or during an oral hearing. The application is then investigated. Although the prosecutor, the Chief of Police, and the court can research some of the facts *ex officio*, providing evidence is mainly the responsibility of the parties. Once the investigation is finalized, the prosecutor, Chief of Police, or the court can issue a PO.

Spain follows a procedure similar to the Finnish one, however it is the judge of the special courts who imposes the protection order. An urgent hearing where all victims and the suspect are heard (separately) is mandatory, and must take place within 72 hours.

Emergency barring orders: Given their urgent nature, emergency barring orders are generally imposed through very short and simple procedures. Usually, when the police are called to a scene of domestic violence, they make a risk assessment and either impose an emergency barring order themselves or forward the case to a superior who decides what action to take immediately upon receipt of the notification. In general, the barred person is allowed to appeal this decision, but in some countries the case is automatically referred to a district court.³⁶

4.3.2. Persons involved in protection order procedures

Civil POs: Civil POs are generally obtained through a tripartite procedure: the claimant, the defendant and the civil court are the only parties involved. In

³⁶ See, for instance, Finland. In Finland the case has to be brought before a district court within 3 days, which in turn has to take up the case within 7 days of imposition. The emergency barring order is valid for a maximum of 10 days. After this period, a regular PO is imposed. In contrast to most jurisdictions that have emergency barring legislation in force, urgency is not an absolute prerequisite for imposing an emergency barring order in Finland.

Romania, Spain, Ireland and Hungary, however, persons other than the victim can also act as claimants (see section 4.3.3. below).

Criminal POs: When it comes to criminal POs, the main actors are: the police, the public prosecution service and the criminal (investigative) judges or courts. Usually the public prosecutor or the police can request a certain PO, but the judge has the exclusive competence to actually impose the order. This is true for most criminal POs. Some MS allow for certain POs to be imposed by the public prosecutor or even the police autonomously (e.g., HU, NL, SE, AT, CZ, UK), but these are generally less invasive POs, always requiring the explicit consent of the suspect.³⁷ Other organizations, such as probation services, can be consulted, but this is often optional and they generally have no decisive role. Criminal POs issued in the execution stage can also derive from the national Ministries of Justice or special execution courts.

Emergency barring orders: Emergency barring orders are generally imposed by the police. Sometimes the police are authorized to impose emergency barring orders autonomously (CZ, SK), but more often in collaboration with or after authorization of the public prosecutor or another higher ranked official (e.g., BE, NL, IT, FI, LU). In some countries the emergency barring orders are assessed by a higher ranked official or institution *after* the police have imposed one, so *ex post facto* (e.g., AT, SI, DE). Prolongation or alteration of the order commonly requires a court decision.³⁸

4.3.3. Persons initiating or applying for protection orders

Civil POs: In general, civil protection orders can only be applied for by the victim – within civil proceedings called claimant – or the victim’s representative. This is true for almost all jurisdictions that allow for civil protection orders. Some countries, however, have extended the range of applicants with the aim of helping a victim who would otherwise not apply for a civil PO herself. This is the case in Romania, Ireland, Malta, Bulgaria and Hungary.³⁹ Although in these countries other persons are allowed to apply as well, the victim’s wishes have to be taken into account at all times. Often the victim can even discontinue the proceedings that were started on her behalf. In the Czech Republic, there

³⁷ In Sweden and Denmark, the consent of the violent person is not required.

³⁸ In Austria and the Czech Republic, however, the emergency barring order is automatically prolonged if the victim applies for a civil protection order.

³⁹ In Romania, it is the public prosecutor and local family violence service providers; in Hungary it is the police and the victims’ relatives; and in Ireland it is the Health Service Executive who may seek a civil PO on behalf of the victim. In Malta, the civil court can impose a protection order of its own accord. In Bulgaria, siblings and relatives can apply, as well as the director of the local social protection directorate in exceptional cases. In Spain the public prosecutor can also apply for civil POs, but only if the couple has minor children. As of next year, the Czech Republic will also open up the possibility for others to apply for a civil PO.

is a draft bill proposing an extension of the range of persons: As of 2015, any person will be able to apply for civil POs on behalf of the victim.

Compared to criminal POs and emergency barring orders, victims are most influential in civil proceedings: They are a party to the proceedings and their application includes the preferred type, scope and duration of the PO. If the civil court wants to deviate from the application, it is generally only allowed to impose a PO that is less intrusive than the one the victim brought forward. In other words, the application is binding. The drawback is that the burden to initiate and enforce civil POs is also largely up to the victims.

Criminal POs: Victims play a much more modest role when it comes to criminal protection orders. Within the criminal procedure, law enforcement agents decide autonomously whether to request or impose a PO. In fact, in most cases, victims cannot even formally apply for a criminal PO. Nevertheless, victims are allowed to request the public prosecutors or (investigative) judges for a PO informally, or they may inform them of any desires in this respect, but they are not bound by such a request. In some cases, victims are consulted before certain POs are issued (e.g., UK, NL).⁴⁰ Exceptions are Malta, Cyprus, Estonia, Hungary, and possibly Romania, where victims (who join the criminal proceedings as injured parties) may formally request a protection order. Also, when victims act as private or auxiliary prosecutors they can apply for certain criminal POs themselves (e.g., PT, HU).

However, the victims in the Scandinavian and the Spanish systems appear to be most influential. In these countries not only the public prosecutor can apply for a criminal PO, but also the victim, the police, social workers, and in Spain even the victim's relatives. Although the Swedish victim has no direct influence on the prosecutor's decision, it is her choice to apply for a basic or a more extended PO and the prosecutors and courts are in principle obliged to hear her. She can also request the cessation or modification of a previously imposed PO or she can appeal the prosecutor's decision when she prefers a more extended PO. In Finland, the needs of the victim are always assessed, especially when the application originated from another person or organization. If the victim applies herself, she is at liberty to indicate which type of PO and which duration she prefers. The court will take these matters into consideration.

Emergency barring orders: Emergency barring orders are usually imposed autonomously by law enforcement authorities, on the basis of a risk assessment, without previous application by the victim, although the victim is at liberty to request one. Usually both partners are heard before the order

⁴⁰ In the Netherlands, police officers are obliged to inquire whether victims of domestic violence want a protection order or not. In Poland and Bulgaria, when the PO is issued as a condition to suspend prosecution, the victim even has to consent to the order.

is imposed, which allows the victim the time to express her feelings towards the order. It is, however, at the discretion of the authorities if and how they incorporate the victim's wishes. Typical of the emergency barring orders is that they can even be issued *against* the wishes of the victims involved when the assessment of the situation indicates (a risk of) violence.

Table 2.5. Parties that can formally apply for a protection order

	Victim	Police/PPS	Other parties	Missing	N/A
Civil law	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU MT, NL, PL, RO, SE, SI, UK	HU, RO	BG, CY, , HU, IE, RO	PT, LV, DK	
Criminal law	BG, DK, ES, FI, HU, MT, PT, RO, SE	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, HU, FI, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK, UK	CY, ES, FI, MT	FR	
Emergency barring orders	FI, DK, HU,	AT, BE, CZ, DE, DK, FI, HU, IT, LU, NL, SI, SK	FI, HU		BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

4.3.4. Application requirements

Civil POs: In general, civil POs can be obtained without many formal application requirements. In most Member States civil *interlocutory* POs can only be imposed when a case is urgent, but civil courts readily assume this urgency.⁴¹ Another requirement is that the court considers it plausible that the defendant acted unlawfully against the claimant or that there is a real threat of future unlawful behavior.⁴² For the application to be granted some courts appear easily convinced,⁴³ whereas other courts seem to have a higher evidentiary standard, requiring visible (physical) evidence.⁴⁴

⁴¹ This was, for instance, mentioned by the German, French, Dutch and Lithuanian experts.

⁴² See, for instance, the German, Dutch, Lithuanian, French, Estonian, Luxembourg and Italian reports.

⁴³ In Germany, a statutory declaration of the victim suffices and the only requirement mentioned by the Swedish expert is that the claimant has to apply for a PO. This suggests that the Swedish civil courts have an obliging attitude towards POs as well.

⁴⁴ See, for instance, the Bulgarian or the Hungarian report.

Criminal POs: The exact application criteria for criminal POs differ per type of PO or, more correctly, per procedure that formed the basis of a criminal PO. But there are some requirements that are important to most criminal POs in most Member States:

- 1) There must be a suspicion of a crime. Some countries have specified for which types of crimes POs can be considered. In Italy, for instance, pre-trial POs are only allowed for crimes that carry a maximum sentence of four years imprisonment.
- 2) The second criterion is that there should be a risk assessment before a criminal PO is issued. If there is no risk of reoffending against the same victim, a PO cannot be imposed. If, on the other hand, this risk of recidivism is high, the law enforcement authorities will have to abstain from imposing a PO as well and retain the suspect in custody or prison instead.
- 3) A proportionality test is the third criterion. This means that there should be a balance between the facts of the case, the protection needs of the victim and the rights of the defendant. The order must be least invasive to the defendant without jeopardizing the safety of the victim.
- 4) Some criminal POs require a formal declaration of the offender that he will obey the PO. This is the fourth criterion.

In countries that offer quasi-criminal POs through a separate trajectory (SE, DK, FI) the evidentiary requirements seem more relaxed than in other jurisdictions (there is no need for suspicion of a crime), but in these countries the principle of proportionality is of equal importance; the more extensive and invasive the PO, the more substantial the reasons for imposing one need to be.

Emergency barring orders: Most emergency barring orders cannot only be applied after a crime has been committed, but can also be imposed if a ‘clear and immediate danger’ presents itself, in order to prevent a crime from happening.⁴⁵ In order for an emergency barring order to be imposed, the offender and the victim usually have to live at the same address (or the offender has to reside there on a more than incidental basis)⁴⁶ and the continued presence of the person in the family home has to present a(n) (serious and) immediate danger for the persons left behind. This can be assessed by systematically reviewing risk factors (e.g., with the help of a risk assessment instrument) (NL, AT, CZ, SI), or at the discretion of the police (DE, HU, IT, SK).⁴⁷

⁴⁵ In contrast to other jurisdictions, the Finnish emergency barring order can also be imposed if the case is *not urgent*.

⁴⁶ In Austria, the emergency barring order can even be imposed if victim and offender are not living together, e.g., in cases of stalking by strangers.

⁴⁷ In Belgium, a risk assessment instrument is in development, but not in use at the time.

4.3.5. *Ex parte* protection orders

The question of whether Member States allow for *ex parte* protection was included in the report-template. Unfortunately, the term *ex parte* was interpreted differently by the national experts, giving rise to inconclusive answers, with many experts reporting only on the possibility of holding a trial *in absentia*. The reader is therefore advised to interpret the following results with care.

Civil POs: In most Member States, civil POs can be imposed on an *ex parte* basis, without hearing the defendant first and in his absence. This is usually only allowed when the defendant was properly summoned so that he at least had the opportunity to be present.⁴⁸ After the (interlocutory) trial, the defendant has to be served with a copy of the decision. As an additional requirement, some Member States only allow *ex parte* POs in cases of emergency and only for interlocutory trials, which then have to be followed by a full hearing within a short time frame (e.g., UK, IE, BG, DE). In Sweden, civil POs cannot be imposed on an *ex parte* basis.

Criminal POs: The rules are much stricter for POs issued within the context of criminal proceedings. In this case the majority of Member States do not allow for *ex parte* POs. Countries that do allow this only set aside the right to be heard in exceptional circumstances (the suspect cannot be found despite serious attempts; the case requires urgent intervention) and under the condition that the defendant can oppose the decision in subsequent hearings.⁴⁹

Emergency barring orders: Emergency barring orders, on the other hand, can generally be issued without hearing the offender first. In order to give effect to the rights of the barred person, he or she does have the opportunity to appeal the *ex parte* decision (see section 4.3.7 below). It is only in the Netherlands and (possibly) Austria that the offender cannot be temporarily barred from the family home without being heard first.⁵⁰

⁴⁸ Some countries have a slightly different approach. In Slovakia and the Czech Republic, for instance, it is normal to issue civil POs without a hearing and in the German (and possibly Cypriot) interim procedure neither a summons nor an oral hearing of the defendant is needed. Even hearing the claimant is unnecessary. The German civil courts can base a civil injunction on a statutory declaration of the victim and – if possible – a medical certificate. However, if the defendant contests the decision or if the case is ‘doubtful’, it needs to be reopened and an oral hearing is called for. In Hungary, the civil protection order can be issued on the *ex officio* referral of the case by the police. In that case, the parties do not have to be heard either.

⁴⁹ This may be different in Cyprus, where it (possibly) suffices that a prosecutor swears under oath that the offence is serious and that the victim is in need of protection.

⁵⁰ The Austrian expert was not sure whether the aggressor actually needs to be heard first or whether it is crucial that he is formally notified of the existence of the emergency barring order.

4.3.6. Immediate effect

Regarding the immediate effect of the protection orders, a caveat needs to be made as well. Many national experts had either reported on the question of whether the verdict needs to be serviced before an order could come into effect or on the question of whether an appeal defers its effect, but not both. Because of this, the results are not quantified in a table and the overall conclusions reported below need to be interpreted with care.

Civil POs: Within civil (procedural) law, most judges can declare the civil POs to have immediate effect, meaning that an appeal does not defer the effect of the protection order. In relation to the notification of the defendant, the experts report that when both parties are present during the oral hearing the PO is enforceable right away. In the case of the defendant being absent, the verdict needs to be served in person, but this generally does not defer the effect of the PO either.⁵¹

Criminal POs: With criminal POs two approaches can be discerned:

- 1) (Post-trial) POs that come into force as soon as they are imposed or as soon as the court of first instance rules them to have immediate effect. In other words, they have to be complied with regardless of an appeal.
- 2) (Post-trial) POs that only enter into force after a final judgment (*res judicata*). For example, if a no-contact order was issued as a condition to a suspended sentence, and the offender appeals the court decision, the offender is not obliged to desist from contacting the victim unless the first instance decision is upheld by an appellate court.

Emergency barring orders: Emergency barring orders are typically immediately effective, even though the barred person is often allowed to appeal the decision. The appeal does not defer the effect of the barring order, but the judge can revoke the order before its expiration date. With regard to the official notification of the barred person, the Belgium expert says that this is a prerequisite for the emergency barring order to come into effect.

4.3.7. Appealing a protection order decision

Civil POs: Civil protection orders can be appealed in all countries, although in Sweden the defendant needs to have a so-called 'leave to appeal'. Still, appealing the court order does not seem a very popular course of action. In Germany, for example, civil POs are only appealed in 3% of the cases.

⁵¹ This is not the case in Estonia and Ireland, however. There, the decision only comes into force after it is served to the person obliged to comply with the PO. In Austria, the court decision has to be served to both parties in order to come into effect, but if there is no known address of the offender, the decision can be published at court instead

Criminal POs: If the offender disagrees with a criminal PO, he can always challenge or appeal the PO.⁵² Most offenders, however, are not likely to challenge the PO decision, since this usually has direct negative consequences for him: He may face criminal prosecution or he may be remanded to detention or prison again. In other words, since the PO forms the condition for his freedom, challenging the PO decision in its entirety will be rather exceptional. In fact, many of these provisions can only be imposed if the offender voluntarily cooperates. Often the offender even has to explicitly consent to the conditions.

More often, the defendant will therefore try to influence the court's decision by calling the court's attention to negative consequences of the requested PO, such as the fact that the PO would no longer allow him to visit family, and friends or go to work. Many courts will try to take these factors into account: If a PO has disproportionately disadvantageous consequences for the offender, it will not be imposed.

Emergency barring orders: In most Member States emergency barring orders can also be appealed or revised, with two exceptions: Finland and Slovakia. Still the option of appeal is used very rarely because of the short duration of emergency barring orders. Often the decision on appeal comes after the barring order has expired.

4.3.8. Help during emergency barring order

The countries vary when it comes to support offered to the barred person and the person staying behind while the emergency barring order is in force. Of course, both victim and offender can always contact support services on their own initiative or they can be referred to these services by the law enforcement authorities. However, some ('Austrian-type') barring order schemes have more elaborate support plans, that at least charge the police with the task of informing the victim (and abuser) about available services, and in some cases, contacting the services directly.⁵³ Often this support exceeds the duration of the barring order, but the first contact is established while the barring order is still effective. Also, in some countries, if the barred person is unable to stay over with friends or relatives, the authorities will help this person find a temporary place of residence.⁵⁴

⁵² This may be different in Bulgaria and in Sweden the offender needs a 'leave to appeal'.

⁵³ For instance, in the Netherlands, all parties concerned – police, PPS, social services, etcetera – get together to draw up a custom-made support plan for both the barred and the protected person. In the Czech Republic, the so-called 'intervention centers' are automatically informed as soon as an emergency barring order is imposed. The Slovenian police also have to inform the local 'social work centers' which, in turn, have to inform the victim about available support.

⁵⁴ This is, for instance, the case in the Netherlands, Lithuania and Finland.

In practice, however, victims and offenders do not always receive the help they are entitled to. The Lithuanian expert, for instance, admits that although the police are officially obliged to contact victim support services in case of a barring order, in practice they expect the victims to contact these services themselves. Also, if the offender has no place to stay for the duration of the barring order, he is 'often simply released on the streets'. In Hungary, it appears as though the obligation to inform victims and offenders of their rights and options is not adhered to either.

4.3.9. Protection orders and children

Civil and criminal POs: In the majority of Member States, children are not as a rule included in the PO. Only if the offender has also threatened the life, health, liberty or privacy of the children, can the PO be extended to them as well, in which case parental or visitation rights can be superseded. In addition, in civil proceedings, the extension of the PO to the children usually has to be included in the application.⁵⁵ In Sweden and France, civil POs only apply to the (ex) partner, but additional measures can be taken to protect child victims. This is different in Ireland and Hungary, where dependent persons are included automatically.

If the restrained (ex)partner has visitation rights, protection orders that do not include the children can take these visitations rights into account. This is done by formulating the conditions in a way that still allows for contact between the children and the restraineed, while avoiding direct contact between the restraineed and the protected person. A visitation arrangement can, for instance, prescribe visits between the restrained parent and the children with the help of a third party. Another option is to arrange meetings in special centers dedicated to that end (e.g., FR, ES). While in Ireland (supervised) visitation is possible, in Hungary, the civil protection order automatically suspends visitation and parental rights of the abusive parent for the duration of the protection order (which only lasts for a maximum of 60 days⁵⁶).

Emergency barring orders: In the case of emergency barring orders, children are usually automatically included if they are living in the family home. In Belgium, however, the public prosecutor can decide that the barred person is still allowed to contact the children. In Austria, their situation would have to be investigated. If there are factors pointing to an immediate risk, an emergency barring order would have to be issued for the children as well.

⁵⁵ Bulgarian civil courts, however, can include the children *ex officio*.

⁵⁶ This used to be 30 days. As of March 15, 2014, the maximum duration of a civil PO was extended to 60 days.

Table 2.7. Inclusion of children in the protection order

	Children automatically included	Children not automatically included	Children never included	Missing	N/A
Civil law	HU, IE	AT, BG, CZ, DE, EE, EL, ES, IT, LT, MT, NL, PL, RO, SI, SK, UK,	FR, SE	BE, CY, DK, FI, LU, LV, PT	
Criminal law	IE	AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK		BE, FR	
Emergency BO	BE ¹ , DE, HU, IT, LU, NL, SI	AT, FI		CZ, DK, SK	BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ In Belgium, the public prosecutor can decide that the ‘no contact’ order does not apply to the children.

4.3.10. Mutual protection orders

Civil POs: In the Netherlands, Belgium, Malta, Spain, Slovakia, Germany, Bulgaria, the UK, Greece and Lithuania, mutual protection orders can be issued in civil proceedings, although this is exceptional. This can happen when both parties act as a claimant: the defendant argues that the claimant has behaved wrongfully against him/her as well (or instead) and requests the civil judge to impose a civil PO onto the initial claimant as well (or instead). If the civil judge considers the counterclaim plausible, both parties can be bound by a PO. In Sweden, protection orders issued in civil proceedings are always mutual.

Criminal POs: The situation is different for criminal protection orders. Criminal protection orders are never mutual in the majority of Member States, although there is no explicit prohibition in law. In general, legislation is constructed assuming that one person should be protected from another person. In theory, if both parties have committed criminal offenses against one another, it could be possible to impose mutual POs, but this never happens in practice.⁵⁷ The rationale behind criminal POs not being mutual is that the criminal investigation and prosecution revolves around the suspect or the offender, not the victim. Criminal justice authorities cannot impose criminal POs on victims.

⁵⁷ See, for instance, the Bulgarian report.

Emergency barring orders: Emergency barring orders only apply to the person who is barred from the family home; it is (s)he who is no longer allowed to contact the persons left behind. There is no mutuality, because the legislator only wanted to restrain the abuser. At most, victims are *advised* to refrain from contacting the barred person themselves.

Table 2.8. Mutual protection orders

	Mutual orders not allowed or only a theoretical option	Mutual orders allowed	No info available	Missing	N/A
Civil law	AT, CY, CZ, FR, HU, IE, IT, LU, SI	BE, BG, DE, EL, ES, LT, MT, NL, SE, SK, UK	EE, RO	DK, FI, LV, PL, PT	
Criminal law	AT, BG, CY, CZ, DE, ES, DK, FI, HU, IE, IT, LT, LV, MT, NL, PL, PT, SE, SI, SK		EE, RO	BE, EL FR, LU, UK	
Emergency barring orders	AT, BE, CZ, DE, DK, FI, IT, HU NL, SI, SK,			LU	BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

4.3.11. Length of the proceedings

Civil POs: The time it takes to have a civil PO imposed – from application to decision – varies considerably across the European Member States. In some Member States, having introduced simplified and accelerated procedures for emergency cases, some interim protection orders can be issued within 7 days, sometimes even within 24 hours. If the matter is less urgent, processing times of cases are considerably longer.⁵⁸ See table 2.9. This table only represents the processing times of the civil POs that can be obtained quickest.

Criminal POs: Specific information on the time involved in procuring a criminal PO is often lacking in the Member States. Of course, a lot depends on the procedure by which the criminal PO came about. Some POs can be imposed within days – e.g., as a condition to a release from pre-trial detention – while others require a final court decision. Another factor that plays a role is the average processing time of criminal procedures as such. There are indicators suggesting that there may be huge discrepancies between the Member States

⁵⁸ In France, for instance, approximately 26 days elapse between the time when a case is referred to the courts and the final decision, but temporary POs can be imposed within 4 hours.

in the average time it takes to issue a criminal PO.⁵⁹

In Member States where protection orders (for cases of domestic violence) have been adopted within quasi-criminal proceedings, the legislator typically intended to shorten the length of the proceedings. In Spain, protection orders must be adopted within 72 hours. The Swedish Prosecution Authority also set clear and short deadlines for criminal PO procedures.⁶⁰ In Finland, however, it is only stipulated that basic or extended POs must be ‘considered urgently’, and the Danish cases need to be ‘processed in a speedy manner’.

Emergency barring orders: POs are imposed quickest through the emergency barring procedures. The police can either impose an emergency barring order immediately after arriving at a scene of domestic violence or a superior takes this decision as soon as the relevant information is forwarded to him or her by the police.

Table 2.9. Time before a(n) (interim) protection order is issued

	Within 24 hours	Within 7 days	Within 30 days	Longer	No info	Missing
Civil POs	BE, FR	CZ, DE, EE, EL, ES, HU, IE, NL, SK, UK	AT, IT, LU, PL	CY, RO	BG	DK, FI, LT, LV, MT, PT, SE, SI

4.3.12. Financial costs of protection orders

Civil POs: With the exception of Hungary, Spain, the Czech Republic, Romania, Bulgaria, Luxembourg, Malta and Austria civil protection orders are not provided free of charge. Court fees must at least be covered, but these are generally not high. In Estonia, the civil court can even decide that the expenses relating to PO procedures be borne by the state – something that happens quite often in practice – and in Poland, the applicant has to pay a symbolic amount of €10. And although legal representation can be expensive, victims with low incomes can sometimes profit from Legal Aid schemes (see section 4.3.13 below). Despite these incentives, civil litigation is not without financial risk; the party who loses

⁵⁹ In Malta, for instance, a study on domestic violence cases found that criminal proceedings leading to a protection order take between 6 weeks and 3 months, and sometimes even longer. According to the Luxembourg expert, POs are generally issued within six months to one year after the beginning of criminal proceedings.

⁶⁰ Within one week of the application for a PO, the prosecutor has to make an official decision. In cases of barring orders or special extended restraining orders the time limit is set at four days. These time limits can be extended under special circumstances. An evaluation in 2008 showed that 62% of the PO decisions were made within one week and 77% within two weeks.

the trial often has to bear the costs of the other party as well. Some experts indicate that these costs can seriously hinder victims’ access to justice.

Criminal POs and emergency barring orders: The situation is different for criminal POs and emergency barring orders. These are usually provided free of charge without administrative costs or court fees attached to them. Costs could be incurred by hiring legal representation, but this is never compulsory in criminal and emergency barring order proceedings.

There are three exceptions to the rule that criminal POs come without costs. In Portugal, court fees are compulsory depending on the complexity of the criminal case in which these orders are considered. These fees have to be borne by the defendant, the assistant prosecutor or the complainant.⁶¹ In Hungary, it depends on whether the crime is subject to public or private prosecution. Private prosecution procedures do carry a fee.⁶² In Denmark, when the case actually ends up being brought before a criminal court, this court will decide on the costs, both with a view to the criminal proceedings and the (administrative) protection order.

Table 2.10. Financial costs of protection orders

	Free of charge	Legal costs / court fees	Missing	N/A
Civil law	AT, BG ¹ , CZ, ES, HU, LU, MT, RO	BE, BG, CY, DE, EE, FI, FR, IT, LT, NL, PL, SE, SI, SK, UK	EL, DK, IE, LV, PT	
Criminal law	AT, BE, BG, CZ, DE, EE, ES, FI, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK	DK, HU ³ , PT ²	CY, EL, FR, IE	
Emergency barring order	AT, BE, CZ, DE, DK, FI, HU, IT, LU, NL, SI, SK			BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ In Bulgaria, the POs under the DV Act are provided free of charge, while for other civil POs court fees are due.

² In Portugal, depending on the complexity of the case, court fees may be due.

³ In Hungary, private prosecution carries a fee.

⁶¹ Victims of crimes are exempted from paying these court fees if they benefit from free legal aid.

⁶² Since crimes such as ‘inflicting light bodily harm’ can only be prosecuted by a private prosecutor, the expert fears that victims will end up paying a (rather substantial) amount of money.

4.3.13. (Free) legal representation for the victim

Civil POs: Legal representation in civil (interlocutory) proceedings is only required by law in Lithuania, Malta and the Netherlands. In the other countries legal representation is not compulsory, although in practice the parties are often represented or it is strongly advised.⁶³

Claimants with low incomes or few financial resources can usually apply for free legal representation or state financed legal aid. Still, these claimants are often expected to pay an income-related contribution towards the costs.⁶⁴ People unable to meet this test of means cannot profit from these arrangements. In practice, there seems to be large differences among Member States in the frequency with which free legal representation in civil (interlocutory) proceedings is granted.⁶⁵

Criminal POs: Criminal cases and separate PO trajectories usually do not require victim representation, although the victim is allowed to be represented by another person. In Finland, the court can even appoint a legal representative. Only in Portugal, when the victim becomes an assistant to the procedure, is legal representation obliged.

With regard to free legal representation, a comparable system is used as in civil proceedings. Again the economic status of the victim is usually the decisive factor and again, some experts indicate that these Legal Aid schemes are only rarely used in practice.⁶⁶ Some jurisdictions, however, have created special rules for victims of certain types of crimes. Victims of sexual assault and violence (DE), victims of domestic violence (PT), victims of domestic violence, sexual violence and stalking (IT), victims of violent crime (AT), victims of human trafficking or domestic violence (EL), and victims of vice crimes and crimes of violence who have suffered permanent damage as a result of the crime (NL) can receive legal advice or representation free of charge, *regardless of their income*.

Emergency barring orders: In general, emergency barring orders do not require legal representation of the victim and free legal representation/advice is also not available.⁶⁷ In Austria, however, the Intervention Centers are

⁶³ This is, for instance, the case in Sweden, Germany, France, the UK, Ireland, Slovakia, and Lithuania. In Germany, for instance, in 50% to 55% of the civil cases the claimant is represented.

⁶⁴ See, for instance, the German, Swedish, French, Dutch, Greek and Lithuanian report.

⁶⁵ The Estonian and Czech experts, for instance, hold that free representation is highly exceptional – only in cases of extreme poverty – whereas the Swedish expert considers that the public legal aid system is often used by victims in practice. In Greece, victims of certain crimes, such as domestic or family violence, are always entitled to free legal representation. In Slovenia, victims of domestic violence are entitled to free legal representation when it is officially determined that they ‘were in danger’ by a center for social work.

⁶⁶ This was reported by the Latvian and Estonian expert.

⁶⁷ In some countries, such as the Netherlands, the absence of free legal help for victims after the

automatically notified by the police after interventions and provide pro-active support to victims, including support in their access to justice.

Table 2.11. Compulsory legal representation of the victim

	No legal representation required	Legal representation required	Missing	N/A
Civil law	AT, BG, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, LU, RO, SE, SI, SK, UK ²	LT, MT, NL	BE, CY, DK, LV, PL, PT	
Criminal law	AT, BG, CZ, DE, DK, EE, EL, ES, FI, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK	PT ¹	BE, CY, FR, IE	
Emergency barring order	AT, CZ, DE, DK, FI, HU, IT, LU, NL, SI, SK		BE	BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ Legal representation only required if the victim is an 'assistant' prosecutor.

² If a victim applies for a civil exclusion order in Scotland, she does need a solicitor.

Table 2.12. Free legal representation

	Free legal representation depending on income	Free representation depending type of crime	No free representation available	Missing	N/A
Civil law	BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, MT, NL, PL, SE, SI, SK, UK	AT, EL, RO, SI		BE, DK, LV, PT	
Criminal law	BG, CY, CZ, DE, EE, EL, ES, FI, HU, IT, LT, LU, LV, NL, PL, PT, SE, SK, UK	AT, DE, DK ¹ , EL, IT, PT, NL	MT, RO	BE, FR, IE, SI	
Emergency barring order	FI	AT, LU ¹	DE, NL	BE, CZ, DK, HU, IT, SI, SK	BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ In the case of LU and DK it is unclear whether free legal representation is available on the basis of income and/or crime or other factor

offender has been removed from the family home as a result of the emergency barring order has been criticized.

4.4. Monitoring and enforcement of protection orders

4.4.1. Protection order registration

Civil POs: National practices vary when it comes to the registration of civil POs. Where some countries maintain a central, nationwide registry of civil protection orders, others only register this type of POs on a regional or local basis or not at all. In that case the only evidence of a civil PO is the original transcript of the verdict and the copy both claimant and defendant received.

Criminal POs: Criminal POs are usually more meticulously registered, including nationwide registration in central electronic databases of the police and/or the public prosecution service. This enables the supervision of criminal POs. Probation services are also frequently informed when they play a role in the supervision of POs. The experts, however, signal various difficulties with criminal PO registration, sometimes resulting in the police not being aware of certain outstanding POs.⁶⁸

Emergency barring orders: Emergency barring orders are generally registered at a central (police) level. Only in Austria are emergency barring orders registered on the regional/local level.

Table 2.13. Registration of protection orders

	Nationwide, central registration	Regional or local registration	No or only incidental registration	Missing	N/A
Civil POs	ES, FR, IT, LT, SI	AT, DE, EL, IE, RO, UK	BG, CY, FI, HU, LU, MT, NL, SE, SK	BE, CZ, DK, EE, LV, PL, PT	
Criminal POs	BE, CZ, DE, DK, EE, ES, FI, HU, LT, LV, NL, PL, SE, SI	AT, EL, IT, RO	BG, CY, IE, MT, PT ¹	FR, UK, SK, LU	
Emergency barring orders	BE, CZ, DK, FI, IT, LU, NL, SI, SK	AT		DE, HU	BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ In Portugal, only the POs monitored by the Probation Services are centrally registered.

4.4.2. Informing the victim of the protection order decision

Civil POs: In civil proceedings, victims are in principle automatically informed of PO decisions. They can be notified of the judgment in person if it is delivered immediately after the oral hearing, but usually victims will (also) receive a copy of the court ruling afterwards.

⁶⁸ See, for instance, the Belgium, Romanian, Dutch, Portuguese, and Austrian reports.

Criminal POs: Victims in most countries are also automatically informed of criminal PO (conditions) in writing, with some exceptions. In the Netherlands, for instance, victims are not informed of POs that were imposed as a condition to a conditional dismissal, at least not as a rule. This is at the discretion of the individual public prosecutor.⁶⁹ In Latvia, although POs included in court decisions will automatically be sent to the victim, all other POs, such as the ones imposed by the Probation Service, are only forwarded upon the request of the victim. In Poland, it depends on the type of PO, the status of the victim, and his or her presence during the trial, whether (s)he will be informed.

The situation is (possibly) worse in Portugal, Austria, Ireland, Malta, and Cyprus where there is no (legal) obligation to inform the victim of a criminal PO. In Portugal, most courts will inform the victims anyway, and there are also other ways of becoming familiar with PO conditions, but informing the victim is not compulsory. This may be different in cases of domestic violence. In Austria, the expert stipulates that victims are often not informed of criminal protection orders and in Ireland there is no direct requirement to inform victims either, unless the order relates to the eviction of the offender and the victim is the owner of the home concerned.

Emergency barring orders: Emergency barring orders are usually also communicated to the victim automatically and immediately by the authorities imposing the order. They are communicated by letter and in person.

⁶⁹ Also, even though victims are automatically notified one week in advance of the first time a prisoner is on temporary leave, information on subsequent leaves is not forwarded to the victims.

Table 2.14. Informing the victim

	Automatically informed (after 'opt in')	Not informed or informed at the discretion of an official	Missing	N/A
Civil POs	AT, BG, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, MT, NL, RO, SE, SI, SK, UK		CY, BE, DK, LV, PL, PT	
Criminal POs	BE, BG, CZ, DE ¹ , DK, EE, EL, ES, FI, HU, IT, LT, LU, LV ¹ , NL ² , PL ² , RO, SE, SI, SK, UK	AT, CY, IE, PT, MT	FR	
Emergency barring orders	AT, BE, CZ, DE, DK, FI, HU, IT, LU, NL, SI, SK			BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ For some POs, only if the victim has indicated she wanted to be informed ('opt in').

² In NL and PL, the victim is automatically informed of most POs, but not all.

4.4.3. Authority responsible for monitoring compliance

Civil POs: The responsibility for monitoring compliance with civil POs usually lies with the claimant. As soon as (s)he establishes a violation, (s)he can contact the police, an attorney or the court. Only in Hungary⁷⁰, Ireland, Bulgaria and Romania are the police responsible for monitoring civil POs (as well). For this reason, a copy of the verdict is, for instance, sent to the superintendent of the local police station in Ireland.

Criminal POs: The police and/or probation services are responsible for monitoring PO compliance in most countries. It is important to note that although the official monitoring responsibility lies with the police, in practice it is mostly the victims themselves who (are expected to) report breaches.⁷¹ Latvian, Finnish and Danish institutions are not responsible for the active monitoring of POs. They solely rely on the victims to bring PO violations to light. In Portugal, coercive measures are not registered, and, insofar, not monitored by a government authority. This is different for GPS-assisted POs that are imposed as coercive measures; these are supervised by the probation service.

⁷⁰ In practice, monitoring will be left to the victim.

⁷¹ See, for instance, Estonia, Germany, Latvia, Italy, Hungary, UK, Greece, Romania, and Bulgaria.

Emergency barring orders: Most Member States with emergency barring legislation have put the police in charge of monitoring their compliance, but sometimes probation services and social services can also have a signaling function (e.g., the Netherlands). Again some experts indicate that it is usually the victims who report violations. One of the most elaborate monitoring programs exists in Austria and the Czech Republic where the police are obliged to check upon the victim and monitor compliance at least once during the first three days. Depending on the case, the police also have to arrange additional monitoring activities, such as sending patrol cars and contacting the victim about her safety. In Slovenia, the police also take a more proactive approach. They make up a plan with monitoring activities based on the level of danger.

Table 2.15. Authority responsible for monitoring protection order compliance

	Victim responsible	Police / PPS responsible	Probation service / social workers responsible	Missing	N/A
Civil law	AT, CY, CZ, DE, EE, EL, FR, IT, LT, LU, MT, NL, PL, SE, SI, SK, UK	BG, HU, IE, RO		BE, DK, ES, FI, LV, PT	
Criminal law	CY, CZ ¹ , DK, EL, FI, LV, MT, PT, UK ¹	BE, BG, DE, EE, ES, IT, LU, NL, PL, RO, SE, UK	DE, IE, HU, NL, PL, PT, SI ² , SK	AT, FR, LT	
Emergency BOs	DK, FI	AT, BE, CZ, DE, HU, IT, LU, NL, SI, SK			BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ Officially, there is no obligation to monitor POs, but probation officers may do this.

² POs 'with custodial supervision' are supervised by counsellors; information on other types of criminal POs is missing.

4.4.4. Monitoring activities

There are certain monitoring activities the police or the probation services can undertake to check whether the restrained person actually complies with the protection order. Extra surveillance, house visits and the use of GPS tracking devices are mentioned by the experts as examples of these activities.⁷² Also, the offenders and victims can be asked directly during their meetings with

⁷² In Scotland, the police have recently implemented a policy of visiting the victims within 24 hours after the criminal PO has been imposed and at irregular intervals for high-risk cases. There is also discussion on increased use of GPS monitoring.

probation officers or social workers whether there have been any violations.⁷³

Another option to monitor POs is to have the victim carry an alarm system. (S)he can push the alarm button as soon as the offender violates the order, which will immediately alert the police. Although strictly speaking the alarm system is not meant as a device to check compliance with criminal or administrative POs – its primary aim is to prevent revictimization – and although the alarm system cannot be imposed as part of a criminal procedure, the quick reaction of the police may increase the odds of catching the offender *in flagrante*. The availability of such alarm systems was mentioned by the Dutch, the Swedish, the Italian, the Spanish and the French experts.

In practice, however, POs are not actively monitored. In practically all Member States, the police have a more reactive approach instead; unless the PO is combined with electronic surveillance (GPS) they wait for the victim or victims' support organizations to report violations.⁷⁴ However, in the countries that have technical devices available, these are used only very rarely and only in the most serious cases.⁷⁵

This is different in Spain, which harbors the most elaborate monitoring system. Police stations (in the major cities) all have police units specialized in the protection of victims and there is a protocol regulating PO monitoring. Victims are provided with direct phone numbers that they can contact in case of an emergency or violation of the order. They can have alarm mechanisms installed, and – depending on the classification of the case as low, medium or high risk – they can also receive 24 hours a day police protection, or regular surveillance of home, workplace and school facilities. Furthermore, they can be provided with information and training on how to protect themselves, and the aggressor is informed of the fact that the police are on the case. Additionally, GPS can be used as a means to monitor PO compliance.

⁷³ In some Swedish areas, the victim is assigned a contact person who routinely takes up contact with the victim and asks whether the PO was violated.

⁷⁴ The Polish expert, however, reports that pro-active monitoring prevails.

⁷⁵ In Portugal, for instance, the number of domestic violence POs that are monitored with the help of GPS is increasing: from 3 in 2009 to 156 in 2012. This number, however, is still extremely low compared to all the domestic violence cases that are prosecuted each year.

Table 2.16. Availability of technical devices to monitor protection orders

	Technical devices (e.g. GPS) available	Technical devices not available	Missing
Member States	DE, ES, FR, IT, LT, NL, PL, PT, SE, UK	AT, CY, CZ, DK, EE, EL, FI, HU ¹ , IE LU ¹ , LV, MT, RO, SI, SK	BE, BG

- ¹ A bill introducing the possibility to use electronic monitoring systems is pending before the Luxembourg Parliament. There have been some pilots. In Hungary, there has been a pilot with electronic monitoring as well.

4.4.5. Prioritizing (emergency) calls of protection order violation

On the question of whether reports of PO violations, such as emergency calls by the victims to the police, are automatically given priority the responses vary. In Germany and Slovenia, emergency calls have a high priority, both on paper and in practice, but other experts reported that although it should work like that, in reality it is (probably) more obtuse.⁷⁶ In practice, the speed with which the police react (may) depend(s) on all sorts of factors, such as the location where the violation has occurred (rural or urban), on the workload of the police, on available police resources, etcetera. In Lithuania, the already understaffed police have been overwhelmed with the number of reports of domestic violence since the new Act came into force. This has a bearing on the actual prioritization of calls of PO violations.

Table 2.17. Prioritization of calls of protection order violation

	Priority on paper and in practice	Priority on paper, no info on practice	Priority on paper, (probably) not (always) in practice	No priority	No info/ unknown	Missing
Member State	AT ¹ , DE, PL, SI, SK, UK	CY, FR, NL	CZ, FI, HU, LT, SE	EE, IT, LV, MT, RO	BG, LU	BE, DK, EL, ES, IE, PT

- ¹ Only violations of emergency barring orders are prioritized. It is unknown whether violations of other protection orders are prioritized as well.

⁷⁶ The Swedish and Lithuanian expert express that the law on practice and the law on paper could vary in this respect. In Finland, although reports of PO violations are automatically given priority, a study showed that this does not mean that the police react any faster than in reaction to 'regular' calls of domestic incidents.

4.4.6. Evidentiary requirements for the establishment of a violation

Civil POs: Many experts suggest that violations of civil POs are relatively easily established, but national practices differ. In the Netherlands, for instance, it suffices if the bailiff is told by the victim or the victim's representative that a PO was violated. The bailiff will in turn collect the incremental penalty payment without a need for further evidence. If the offender disagrees with the claimant, (s)he can institute proceedings with the interlocutory judge to contest the claim. In that case, the violation has to be 'plausible'. Possibly, in Ireland, a single complaint by the victim may suffice as well. In other countries (e.g., FR, DE), however, the violation first needs to be established in a civil court after hearing both parties (again the criterion is 'plausibility' of the violation) before the sanction can be executed. Countries that have criminalized the violation of civil protection orders often require corroborating evidence in addition to the testimony of the victim and/or they apply an evidentiary similar standard to other crimes (e.g., AT, RO, CY).

Criminal POs: The evidentiary requirements for establishing the violation of a criminal PO generally do not differ from those of other crimes.⁷⁷ The violation has to be proven 'beyond reasonable doubt' (FI, CY) or it has to be 'legally and convincingly proven' (NL, LT, DE). Certain criminal POs, however, have more relaxed evidentiary requirements ('probably cause').⁷⁸ Simply a statement from the victim is insufficient; there has to be corroborating evidence.⁷⁹

Emergency barring orders: National practices also vary when it comes to proving breaches of emergency barring orders. In the Netherlands and the Czech Republic, for instance, the same rules apply as for any other crime, whereas in Germany the evidentiary requirements are less stringent. In Germany, the police have to make a rapid decision on the basis of victim/witness' information or their own perception whether there was a violation.

4.4.7. Enforcement procedure

Civil POs: Which procedures have to be followed in order for the civil PO to be enforced after a violation depends on whether or not the violation of the civil PO is criminalized (see section 4.4.9). Countries that have criminalized the violation of civil POs require the victim or his representative to report violations to the police, who then decide on further steps. In Austria the violation of a PO is an administrative offence punishable under administrative law (not an offence in the Criminal Code). In countries such as the Netherlands, Scotland, Slovakia, and Germany where violations are exclusively or concurrently

⁷⁷ See, for instance, the Czech Republic, Finland, the Netherlands, Lithuania, Germany, Greece, Romania and Denmark.

⁷⁸ See the Finnish and Dutch report.

⁷⁹ See, for instance, the Swedish, Slovenian and Austrian report.

sanctioned with a civil or administrative fine, they can (simultaneously) turn to the bailiff or the civil court.

Criminal POs: In the case of the violation of criminal POs, victims generally have to notify the police or the public prosecutor.⁸⁰ They will then take the necessary action by starting an investigation, informing the authority authorized to pass a sanction, or by imposing a sanction themselves.

Emergency barring orders: Again the police are the first that should be notified in the case of breach of an emergency barring order. This is similar in all the countries that have emergency barring orders available. However, there are national differences when it comes to the question of whether the police can issue an arrest warrant⁸¹ and whether they have to inform the public prosecution service (see section 4.4.8 below).

4.4.8. Discretionary power of the police and other monitoring authorities to report violations

Civil POs: If the violation of a civil protection order is criminalized, the police usually have no or very little discretionary power. For instance, if the police in Austria, the Czech Republic, Ireland, Germany, Estonia, Spain, France, Romania, Greece or Sweden hear about the violation of a civil PO – which constitutes a crime – they are obliged to investigate the matter and to report it to the public prosecutor or other authority. In countries where breach of civil protection orders does not constitute a crime, the police typically have more leeway in whether to inform superior authorities or not.⁸²

Criminal POs: With criminal POs, the monitoring authorities such as the police or the probation service usually have no discretionary power in reporting violations to the public prosecutor or the court. Once a violation has come to their attention they are obliged to pass this information on. Some experts, however, indicate that in practice the monitoring authorities sometimes assume discretionary powers and desist from reporting breaches of the PO.⁸³ In Latvia, the probation service does have some discretionary power, which allows them to issue a warning instead of reporting the breach. This is only

⁸⁰ This is, for instance, the case in the Netherlands, Lithuania, Spain, Luxembourg, Greece, Finland, Hungary, Estonia, Germany, Portugal, Sweden, Latvia, and Belgium.

⁸¹ In Belgium, for instance, non-compliance with the emergency barring order carries a penalty of maximum 6 months. An offender can only be arrested for criminal offences punishable with a statutory maximum of 1 year. In Austria, the offender can only be arrested after a repeat violation of the barring order.

⁸² This is, for instance, the case in Belgium, Lithuania, and the Netherlands.

⁸³ See, for instance, the Dutch, Lithuanian, Finnish and Italian reports. Whether the monitoring authorities report or not can depend on factors such as the seriousness of the violation, the intentions of the offender, the evidence substantiating the violation, and whether the victim initiated contact him- or herself.

allowed when the violation is minor.⁸⁴

Emergency barring orders: With the exception of Germany and (possibly) Denmark, all the countries that have emergency barring orders available oblige the police to report violations to the public prosecutor. Again, practice may differ from the law in which in reality police officers assume discretionary power and take other factors into account (e.g., NL, LT, IT). In Germany, the police are allowed to issue a warning without taking any further measures.

Table 2.18. Discretionary powers of the monitoring authorities to report violations

	Discretionary power	No discretionary power	Missing	N/A
Civil protection orders	BE, LT, NL	AT, BG, CZ, DE, EE, EL, ES, FR, IE, IT, RO SE, UK	CY, DK, FI, HU, LU, LV, MT, PL, PT, SI, SK	
Criminal protection orders	FI ² , LV ¹	AT, BG, CZ, DE, DK, EE, EL, ES, FI ² , IE, IT, LT, LU, MT, NL, PL, PT, RO, SE, SI, UK	BE, CY, FR, HU, SK	
Emergency barring orders	DE	AT, BE, CZ, FI, IT, NL, SI	DK, HU, LU, SK	BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ Except when the violation happens more often. In that case, the probation service is obliged to inform the court.

² When the violation is only minor, the police may assume discretionary power (in practice).

4.4.9. Criminalization of civil and emergency barring order violation

Civil POs: In the majority of the Member States the violation of civil POs is criminalized, meaning that this violation constitutes a criminal offense in itself. In some jurisdictions, minor violations are excluded (SE) or violations are only criminalized if they are ‘serious and repetitive’ (EE, CZ). The sanctions attached to these violations vary from a maximum of sixty days (HU) to one (EE, DE, SE) or two years (FR) imprisonment. A pecuniary fine can also be imposed instead of or in addition to a prison sentence. In Lithuania, Belgium, and the Netherlands civil protection orders can only be enforced through civil means of execution.

⁸⁴ Except when the violation happens more often. In that case, the probation service is obliged to inform the court.

Emergency barring orders: In contrast to Germany, the violation of temporary barring orders is criminalized in the Czech Republic, Lithuania, the Netherlands, Slovenia, Hungary, Austria and Belgium.⁸⁵ The pecuniary fines range from a maximum of €100 (BE) to a maximum of €20,250 (NL) and the imprisonment from a maximum of 12 hours (SI) to a maximum of two years (NL). Although fines are lowest in Belgium, in Slovenia, the maximum prison sentences are the most lenient. A person who violates conditions of the emergency barring order can receive an (administrative) fine of €300 to €800 or he can be placed in police custody, which lasts a maximum of 12 hours.

Table 2.19. Criminalization of civil and emergency protection order violation

	Violation criminalized	Violation not criminalized	Missing	N/A
Civil protection order	AT, BG ² , CZ, DE, EE, EL, ES, FR, HU, IE, IT, LU, MT, RO, SE, SK, UK ¹	BE, FI, LT, NL	CY, DK, LV, PL, PT, SI	
Emergency barring order	BE, CZ, DK, FI, HU, IT, LU, NL, SI, SK	AT ³ , DE		BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ In Scotland, the breach of a civil interdict does not necessarily constitute a criminal offence.

² In Bulgaria, only the violation of civil POs issued under the DV law are criminalized.

³ In Austria, the violation of an emergency BO is subject to administrative sanctioning.

Table 2.20. Range of sanctions: maximum imprisonment

	Maximum imprisonment term								Missing	N/A
	12 hours	2 months	3 months	6 months	1 year	2 years	3 years	5 years >		
Civil protection order violation		HU	IT	MT	DE, EE, ES, IE, RO, SE	FR, SK	CZ, BG	UK, LU	AT, CY, DK, EL, FI, LV, PL, PT, SI	BE, LT, NL
Emergency barring order violation	SI	HU		BE	FI	DK, NL	CZ	LU	AT, DE, IT, LT, SK	BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

⁸⁵ However, in Belgium, not all violations are covered by this criminalization. The attempt to violate an emergency barring order is, for instance, not made subject to criminal punishment. Nor is violation of the prolonged order. Only violation of the initial barring order imposed by the public prosecutor can constitute an offense in itself.

4.4.10. Possible reactions and sanctions upon violation

Civil POs: A standard reaction to violation of a civil PO would be to execute a civil fine or – if violation of a civil PO constitutes a crime – to prosecute the offender and impose a criminal fine. Actual (non-suspended) imprisonment as a result of a breach of civil POs is rather exceptional, causing some national experts to complain about the official reaction to violations.⁸⁶ In some jurisdictions, law enforcement agents can also issue an informal warning or parties can try to come to an agreement themselves.⁸⁷

Criminal POs: Upon violation of a criminal PO the competent authority can first of all decide to execute the underlying sanction. They could, for instance, decide to reopen prosecution, to end the suspension of pre-trial detention and remand someone into custody, or to execute the sentence that was originally suspended. More informal reactions, such as issuing a warning, reprimanding the offender, or changing the conditions of the PO, are also mentioned by the experts.

In Finland, Denmark and Sweden, the violation of a (quasi-criminal) PO is criminalized of itself and is usually sanctioned with a fine, but imprisonment is also an option.⁸⁸

Although many Member States officially do not allow for informal reactions, in practice the police and the public prosecution service sometimes assume discretionary power in this respect nevertheless.⁸⁹ The Bulgarian Code of Criminal Procedure, on the other hand, contains no sanction at all for violation of a criminal PO.

Emergency barring orders: Since the violation of an emergency barring order is usually criminalized, the offender can be arrested, prosecuted and sentenced before a criminal court. In fact, there are certain Dutch and Italian police districts that have agreed to always arrest the offender. In Austria, the police are obliged to charge the offender and impose an administrative fine. In case of repeat violation he can be arrested. In practice, however, certain offenders still get away with a warning or the case ends up in a dismissal. Informal reactions, such as warnings, are also possible and are even the

⁸⁶ See, for instance, the Bulgarian report.

⁸⁷ The claimant's attorney can, for instance, warn the offender and persuade him to cease violating the order.

⁸⁸ In Finland, in 52.5% of the cases in which POs were breached a fine was imposed, compared to 21.1% unconditional imprisonment, 22.5% conditional imprisonment and 3.9% without sentence. The fines mounted to €450 on average.

⁸⁹ In Italy, Poland, and Latvia, for instance, informal reactions are officially not permitted, but in practice the offenders are sometimes sent away with a warning. Even in countries that officially allow for informal reactions, there are different practices: informal reactions are, for example, an exception in Finland and Sweden, but seem more accepted in Germany.

most prevalent reaction to emergency barring order violation in Germany. In Slovenia, the first reaction from the police would be to remove the offender from the area, to inform the investigating judge. If the offender continues to violate the order they can impose a fine. Only if that does not suffice, the next step is to place the offender in police custody (max. 12 hours).

4.4.11. Contact initiated by the victim

Sometimes it is not only the offender who violates PO conditions; contact can be initiated by the victim as well. This is a particularly relevant problem in the case of emergency barring orders, since these orders are on occasion imposed against the wishes of the victims. Except when the contact is justified – e.g., in matters in relation to the children – contact initiated by the victim can have a negative impact on the enforcement of protection orders.

Often this affects the official reaction to PO violations. If the offender enters into a conversation that was started by the victim, the enforcement authorities will not consider this a violation of the PO or – if they do – they will be less inclined to enforce the PO.⁹⁰ The authorities will not execute the underlying penalty or start a prosecution and in some cases they can even decide to annul the PO. At best, they may issue a warning to prevent future contact from taking place. Possibly, the situation is different when the PO also aims to protect the children in a situation of domestic violence. In that case, the authorities may want to enforce the orders, if only to protect the children.

In Finland, Austria, Ireland, Cyprus and Spain a reaction to contact initiated by the victim officially always constitutes a violation of the PO, although in Cyprus, it is only considered a violation if the victim is a minor. However, in Finland, the complicity on the part of the victim is discounted in the degree of culpability of the defendant and may lead to an absolute discharge. Austrian police officers are not supposed to take victim initiated contact into account either, and still press charges against the offender, but in practice they may be less inclined to enforce the order.

4.4.12. Training of the monitoring authorities

With the exception of Germany, Spain, Ireland, Romania, Finland, Poland, Portugal and Austria, none of the other Member States offer the police or

⁹⁰ This is, for instance, the case in the Netherlands, Lithuania, Estonia, Denmark, Luxembourg, Slovakia, the Czech Republic, the UK, Sweden, Italy, Portugal, and Germany, and is likely the case in Hungary. The Belgium, French, Greek and Latvian experts indicate that there is not enough information on or practical experience with victim initiated contact to answer this question. In the Czech Republic, the fact that the victim has initiated the contact will diminish the culpability on the part of the offender, except for emergency barring orders: the offender remains liable for violations regardless of whether or not the home was entered with permission / on the initiative of the victim.

the probation service specialized training in how to monitor and enforce protection orders.⁹¹ The most elaborate training is offered in Austria and Spain, where the police are trained in all aspects of interventions in the area of violence against women and domestic violence in their basic training and in the form of further education. Spanish specialized prosecutors and courts receive intensive and repetitive training as well.⁹²

Table 2.21. Specialized training of monitoring authorities

	Specialized training	No specialized training	No information on training	Missing/unclear
Member States	AT, DE ¹ , ES, FI, IE, PL, PT, RO, SE ¹	BE, CZ, CY, DK, EL, FR, HU, IT, LT, LU, LV, MT, NL, SI, UK	EE, SK	BG

¹ In Germany, this training is only offered to specialized officers and in Sweden the specialized training of policemen depends on the local authority.

4.5. Types, scope, duration, and effectiveness of protection orders

4.5.1. Types of protection orders

Civil POs: It is impossible to give an exhaustive account of all types of civil POs that can be issued in the Member States. Most laws are not very detailed and the frequent use of ‘open norms’ allows the courts great liberty in formulating the exact conditions of the PO.⁹³ In most jurisdictions there is at least the possibility to impose a ‘no contact’ order and an order prohibiting the offender to enter a certain area.⁹⁴ Eviction from the home is another one of the basic measures that can be issued.

Criminal POs: Within the domain of criminal (procedural) law it is more common to find exhaustive or exemplary lists of POs that the public prosecutors or courts can choose from. A combination of exhaustive and ‘open’ provisions is also possible. Regardless of whether a country has restrained the liberty of

⁹¹ The Danish expert remarks that specialized training is not relevant, since the police in Denmark are not responsible for monitoring compliance.

⁹² The French expert indicates that there are plans to improve training and information facilities in the future.

⁹³ Some (dedicated) civil PO laws, however, do spell out the sort of PO that can be imposed. In Hungary, for instance, the dedicated civil POs always consist of a) the obligation to leave the family home, b) the no-contact order, and c) the suspension of all visitation and parental rights of minor children.

⁹⁴ Possibly, this is different in Sweden, where the conditions to a civil PO are limited to a restriction of ‘visiting one another’. Similarly, the Polish PO only allows for the eviction of the defendant.

law enforcement authorities or not, practically all countries allow for them to impose a ‘no contact’ order and a prohibition to enter an area.⁹⁵ It is only in Romania that the PO options at the hands of the criminal courts are limited to a prohibition to return to the family home.⁹⁶ In addition, courts and public prosecutors can also be authorized to impose other conditions, such as the prohibition to follow or observe the victim, a ‘travel ban’ (FI), a prohibition to use or purchase (fire)arms or a prohibition to move to a certain area (SK).

Emergency barring orders: Emergency barring orders usually include: 1) an obligation to leave the family home and to stay away, and 2) a prohibition to contact the persons staying behind. These two conditions are a ‘package deal’, except in Austria and Slovakia, where a general ‘no contact’ order is not a condition to the emergency barring order.⁹⁷ In Hungary, an emergency barring order also automatically suspends all visitation and parental rights regarding minor children.

Table 2.22. Types of protection orders

	No contact	Prohibition to enter an area	Obligation to leave the family home	Other	Missing	N/A
Civil law	AT, BG, CZ, DE, EE, ES, EL FR, HU, IE, IT, LU, MT, NL, RO, SI, SK, UK	AT, BG, CZ, DE, EE, EL, ES, FR, IE, IT, LU, MT, NL, RO, SI, SK, UK	AT, BG, CY, CZ, DE, EL, ES, FR, HU, IE, IT, LU, MT, PL, RO, SI, SK, UK	AT, BG, CZ, DE, EE, FR, HU, LU, LV, NL, RO, SE, SK, UK	BE, DK, FI, LT, PT	
Criminal law	AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LU, LV, LT, MT, NL, PL, PT, SE, SI, UK	AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK, UK	AT, CZ, CY, EL, HU, IE, IT, LU, MT, PL, PT, RO, SE, SK, UK	AT, BG, CY, CZ, DE, EE, ES, FI, LT, LV, NL, PL, PT, SE, SK, UK	BE, FR	
Emergency barring order	BE, CZ, DE, DK, FI, HU, IT, NL, SI	DE, DK, FI	AT, BE, CZ, DE, DK, FI, HU, IT, LU, NL, SI, SK	HU		BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

⁹⁵ The contact order typically includes all forms of contact, covering contact by telephone, mail, e-mail, or by proxy contact. The prohibition to enter an area is not only limited to the street where the victim lives, but can also include entire neighborhoods or other areas where the victim habitually resides, works or recreates.

⁹⁶ It is possible that in Slovakia, a prohibition to contact the victim is absent as well.

⁹⁷ In Belgium, the two conditions are usually imposed collectively, but the public prosecutor can decide to leave out the ‘no contact’ order.

4.5.2. Most popular types of protection orders

Despite the lack of statistical data, most experts indicate that ‘no contact’ orders are by far the most popular protection orders. Combinations of types of protection orders are also allowed and prevailing. This means that a ‘no contact order’ can be combined with a ‘prohibition to enter an area’ if the case so requires. The orders can be combined if there is sufficient reason to believe that a single type of protection would not suffice to combat the unlawful behavior. When it comes to combined protection orders, the combination of a ‘no contact order’ with a barring order seems most popular, also because emergency barring orders are usually inextricably linked to the prohibition to contact the persons remaining in the home.

4.5.3. Legal limitations to scope protection orders

Civil and criminal POs: In general, national laws contain very few legal limitations to the exact (geographic) scope of civil and criminal POs.⁹⁸ As a result, you can find examples of POs varying from 25 meters surrounding the victim’s home to POs prohibiting offenders to enter a village, town or city. There are some general restrictions though, for example:

- The principles of proportionality and necessity;
- The conditions of the PO can only relate to the behavior of the offender;
- The conditions cannot infringe on the freedom of religion or beliefs, or someone’s political freedom.

In practice, judges and public prosecutors take all sorts of factors into account, most of them related to the effectiveness of the protection, the proportionality of the order in relation to the unwanted behavior, and personal circumstances of the offender. As a result, the average scope of a prohibition to enter an area is rather limited. The scope of an order that prohibits someone to enter a certain area usually varies from the victim’s home to a maximum of 500 meters surrounding the victim’s home.⁹⁹ POs with a more extensive scope – covering villages, towns or cities – are very rare. Also if the offender works in a certain area or if his family and friends live there, the PO will be drafted in such a way that family and work relations may remain intact.

⁹⁸ This is, for instance, different in Slovakia, where the courts are only allowed to prohibit the offender to come within 5 meters of the victim’s house.

⁹⁹ In Germany, the average PO includes a radius of 100 meters surrounding the victim’s home, in France this is 400 meters, in Greece 500 meters, and in the Netherlands, the civil courts usually prohibit the defendant to enter one or more streets. In other countries this is often deemed too intrusive and the scope is mostly limited to the claimant’s home (e.g., Estonia, Lithuania) or the immediate vicinity of the claimant’s home or workplace (e.g., Finland, Sweden).

Emergency barring orders: In most countries, the scope of the emergency barring order is by its nature and by law only restricted to the family home and the immediate vicinity of the family home.¹⁰⁰ Only the Belgian public prosecutor and the Slovakian police are authorized to autonomously determine the scope of the barring order.

4.5.4. *Legal requirements for the formulation of protection orders*

Most experts indicate that there are no special formal requirements for the exact formulation of POs. This is true for civil, criminal and temporary barring orders. It is nevertheless assumed that PO decisions have to contain certain *basic elements*, including: the date of the PO decision, the authority that took the PO decision, the name of the person against whom a PO was issued, the name(s) of the protected person(s), the scope of the PO, the reasons for imposing a PO, the duration of the PO, the legal provisions that were applied, how to appeal the PO decision, and the sanctions for non-compliance with the order.

With the possible exceptions of Hungary and Bulgaria, the scope of the PO should, furthermore, be described as *precisely and unambiguously* as possible.¹⁰¹ In order to facilitate the precise delineation of POs Swedish public prosecutors and some civil courts in the Netherlands work with a standardized text that can be completed with case-specific information. This prevents misunderstandings as to the scope of the PO. Other experts make no mention of standardized POs.

4.5.5. *Delineation of a prohibition to enter an area*

Civil POs: National practices vary when it comes to the delineation of prohibitions to enter a certain area. In Germany, for instance, the civil courts only use radiuses to indicate the area that the defendant is no longer allowed to access.¹⁰² In other countries, civil courts prefer to clarify the scope of this type of prohibition with the help of a map, by naming the streets that surround the forbidden area, or by simply naming the home address of the victim. The Hungarian, Bulgarian, Maltese and Luxembourg experts complain about the lack of a clear delineation of civil protection orders.

¹⁰⁰ This is, for instance, the case in the Netherlands, Germany, Italy, Austria and Lithuania.

¹⁰¹ In this respect, some experts observe a difference between civil and criminal POs. Where in practice many civil judges make rather elaborate PO decisions, specifying exactly which behavior is prohibited and which not, criminal POs are often much more basic. In the Netherlands, for instance, the orders issued as a condition to a temporary leave from prison, often entail nothing more than that the prisoner 'is not allowed to contact the victim'.

¹⁰² This is usually 100 meters from the claimant's house. Frequent – but not exclusive – use of a radius is also found in Estonia.

Criminal POs: When it comes to criminal POs, the frequent use of maps to clarify the scope of the order is only found in Finland, Sweden and (possibly) Denmark. In Sweden there is even a prosecutor's guidebook that provides guidance on how to define the forbidden areas. In other countries, maps are seldom or never used within criminal proceedings, and the use of radiuses or the exact denomination of the victim's address and/or the forbidden streets is far more popular. Again, protection orders are not clearly delineated in Hungary, Bulgaria, Malta, and Luxembourg.

Emergency barring orders: In Germany and Slovenia, emergency barring orders are usually defined with the help of the victim's address and a radius ('barred person is not allowed to be within 200 meters of the victim's house'), whereas the Austrian police prefer naming the surrounding streets. Information on how the other countries delineate the prohibited area is missing.

4.5.6. Legal limitations to the duration of protection orders

Civil POs: Most countries have a statutory maximum regarding the duration of civil POs or they link the duration of the civil PO to the final settlement of substantive (divorce) proceedings. With the exception of Hungary, civil POs can be prolonged after this period has expired. In some countries there is no statutory maximum regarding the duration of civil POs. Although in practice most civil POs are issued for a determined period in those countries as well, in theory, the courts could still impose a civil PO without an expiration date.¹⁰³ See table 2.23 below.

Statutory maxima show considerable variation throughout Europe. In Hungary, the civil PO only lasts for a maximum of 60 days¹⁰⁴, without the option to extend it. In Spain the interim order lasts for 30 days maximum, after which the order needs to be renewed, adjusted or revoked by another judge. In the Czech Republic, the maximum is also set at one month, after which the claimant has to file for substantive proceedings in order for the civil PO to be prolonged with a maximum of one year. In France, a civil PO can be imposed for a maximum of four months, but this period can be prolonged if a formal request for divorce is lodged within those four months. In Slovenia, the maximum duration is 6 months (possibility of extension with another 6 months) and in Italy, the legal maximum duration of a civil PO was recently increased from 6 months to one year. In Austria, the maximum length of a civil eviction order is six months, but this can be prolonged if a divorce is applied for. Other civil POs carry a statutory maximum of 1 year. The longest civil POs can be applied for in Ireland: a 'safety order' can have a maximum duration of 5

¹⁰³ In fact, in the Netherlands, every now and then such indefinite orders are still imposed, but this is highly exceptional. In the UK, some interdicts/injunctions can be made 'until further order'.

¹⁰⁴ This statutory maximum has been increased on 15 March 2014. Before, it used to be 30 days.

years. In Sweden, Cyprus, and Lithuania civil POs are valid until the settlement of divorce proceedings.

Criminal POs: Criminal POs usually have a legally determined maximum duration as well, the length of which often depends on (the maximum length of) the procedure that leads up to the PO. POs as conditions to a release from pre-trial detention, for instance, end when the case is brought to trial. They have to be prolonged after a fixed period of time if the trial has not taken place yet. The longest POs are typically issued in the post-trial stage, and can vary from maximum 5 to 10 years.¹⁰⁵

The only (possible) exceptions to the rule that the maximum duration of criminal POs are regulated by law can be found in Cyprus, the Czech Republic, and Luxembourg.¹⁰⁶ POs imposed in the case of *internment* (BE), a waiver from prosecution (NL), and a provisional suspension of proceedings (PT) have no determined time limit either.

Besides a statutory maximum, some Member States have also defined the minimum duration of certain criminal POs. This is, for instance, the case in Belgium, Germany, Hungary and Portugal.

In Finland, Denmark and Sweden, the length of POs is also regulated by law and depends on the type of PO that is imposed. In Finland, a 'basic restraining order' carries a maximum duration of one year, while a barring order lasts for maximum three months. A Swedish PO can be imposed for a maximum of one year, but POs with electronic surveillance can be imposed for only six months. A Danish no-contact order can be issued for a maximum of five years, whereas a prohibition to enter an area or an emergency barring order last for a maximum of one year. All types of protection orders can be extended.

Emergency barring orders: The duration of emergency barring orders is generally clearly defined in law, including the maximum time with which they can be extended. On the whole they last for a maximum of 7 to 15 days.¹⁰⁷ They can be prolonged with a maximum of 2 weeks (AT), 28 days (NL), 3 months (BE) and 4 weeks (DK). The duration of the Hungarian emergency barring order is exceptionally short. It only lasts for 72 hours and cannot be extended. The police will, however, forward the case to a civil court *ex officio*. In Slovenia,

¹⁰⁵ A maximum of 5 years can, for instance, be found in Portugal and Germany. In the Netherlands, Belgium, and Spain criminal POs can last up to 10 years.

¹⁰⁶ The fact that the Czech Republic has no statutory maximum probably has to do with the fact that post-trial POs are mainly theoretical. The pre-trial POs expire when the case is brought to trial.

¹⁰⁷ This is the situation in Austria, Belgium, the Czech Republic, Finland, Hungary, Germany, Italy, Luxembourg and the Netherlands. In Denmark, the emergency barring order lasts for 4 weeks maximum.

the initial order ends after 48 hours, after which the District courts can decide to extend it, first to 10 days, and then, upon request of the victim, to 60 days. In Finland, the law does not specify the maximum duration of emergency barring orders, but they usually last for a maximum of 10 days.

Table 2.23. Maximum duration of protection orders

	Statutory maximum / upon decision divorce proceedings	No statutory maximum	Missing	N/A
Civil law	AT, BG, CY, CZ, EE, ES, FR, HU, IE, IT, LT, LU, MT, RO, SE, SI	BE, DE, NL, SK, UK	DK, EL, FI, LV, PL, PT	
Criminal law	AT, BE ¹ , BG, DE, DK, EE, ES, FI, HU, IE, IT, LT, LV ¹ , MT, NL ¹ , PL, PT ¹ , RO, SE, SI, SK, UK	CZ, CY, LU	EL, FR	
Emergency barring order	AT, BE, CZ, DE, DK, HU, IT, LU, NL, SI, SK	FI		BG, CY, EE, EL, ES, FR, IE, LT, LV, MT, PL, PT, RO, SE, UK

¹ Only some POs do not have a maximum duration defined in law.

4.5.7. Average duration of civil and criminal protection orders

Civil and criminal POs: In many European Member States statistical information on the average duration of protection orders is absent.¹⁰⁸ The scant information available suggests that the average duration of civil and criminal POs differs considerably throughout Europe. For civil protection orders, the average duration varies from 1 month to 36 months on average. The average duration of criminal POs varies per type of PO and ranges from 1 month to 60 months.¹⁰⁹

Although specific, empirical data are lacking, the experts indicate that the following factors are taken into consideration by civil and criminal courts or prosecutors when deciding on the length of a PO:

¹⁰⁸ There is, for instance, no information on these issues in: Austria, Spain, Denmark, the Czech Republic, the UK, Greece, Romania, Poland, Slovakia, Ireland and Cyprus.

¹⁰⁹ Compared to post-trial POs in other Member States, the countries with a separate, quasi-criminal PO procedure seem to impose POs with a lower average duration: In Sweden the POs generally last for 6 months, in Finland the majority (87.5%) of POs lasts for 1 year.

- the risk of violence within a certain time;
- the question of proportionality;
- the seriousness of the unlawful conduct;
- the nature / intrusiveness of the PO;
- the offender's personality and attitude towards the PO; and
- a track record of previous POs or PO violations

Especially the risk of future violence is mentioned by many experts as an important factor. If the risk of future threats and violence is high and can be expected to continue for a long time, lengthier POs are indicated; if the risk is expected to decrease rapidly, a shorter PO can suffice.

4.5.8. Empirical information on the number of protection orders per year

On the question of how many POs are issued on a yearly basis it turns out that reliable, publicly available and nationwide incidence numbers are hard to find, with many Member States reporting that there are no statistics available at all or that the statistics only cover certain POs, certain courts, or certain parts of the country.¹¹⁰ With the exception of Spain, none of the Member States keeps a record of all the POs available in their jurisdictions.

Civil POs: Civil POs feature least in national statistics. If there are nationwide estimations, these are often the result of an incidental study, instead of repetitive measurement, and they typically underestimate the true incidence of civil POs.¹¹¹ Only the Italian, Czech, UK, Slovenian and Spanish expert report nationwide statistics collected over several years. The reported statistics vary greatly, with the Dutch expert reporting 196 civil protection orders in 2011-2012, while the UK expert reports that in Ireland 7789 civil POs were issued in 2012.

Criminal POs: Only in Finland, Spain, Slovenia and Sweden are statistics on criminal protection orders produced on a regular basis. In Sweden there are approximately 4000 POs and in Finland approximately 1300-1500 issued per year.¹¹² In Slovenia, the number of criminal POs that were issued by the county

¹¹⁰ See, for instance, the German, Belgium, Lithuanian, Portuguese, Bulgarian, Cypriot, Maltese, Dutch, Estonian, Greek, Romanian, and French reports.

¹¹¹ A Dutch report, for instance, estimated that in the period 1 April 2011 to 1 April 2012, approximately 196 civil POs were imposed (Van der Aa e.a. 2013). The report indicates that this is probably an underestimation, given the fact that not all civil courts register their civil POs (p. 192). Likewise a French questionnaire that was sent to all courts showed that in the period from 1 October 2010 to 1 May 2011 584 civil POs were issued. The problem is that only 122 courts responded. In Poland, approximately 2700 persons were evicted from the family home as a result of a civil PO. And in Ireland, a total of 7789 civil POs were issued in 2012.

¹¹² These are only the POs issued in the quasi-criminal procedure. Information on civil protection orders is missing.

and district courts in criminal procedures fluctuated from 385 in 2010, to 120 in 2011, and 274 in 2012. There is no information on criminal POs imposed in the (post)trial phase.

Although other countries do not aggregate criminal PO statistics on a yearly basis, there have been incidental prevalence studies in the past. Again, numbers differ considerably. In the Netherlands, for instance, a one-off study revealed that in the period from 1 April 2011 to 1 April 2012 around 2300 criminal POs were imposed, but this number was probably an underestimation.¹¹³ In England & Wales, statistics on *breaches* of restraining orders are published. In the period 2012-2013 no less than 7374 breaches of restraining orders related to domestic violence were registered. Considerably lower numbers are, for example, found in Hungary and Latvia.¹¹⁴ In these countries, criminal POs are more a theoretical option than a true means of protecting victims.

Emergency barring orders: Statistics on emergency barring orders are more prevalent. The little information available points to frequent use and a growing popularity. In the Netherlands there were no less than 3529 emergency barring orders issued in 2012. In Hungary, the number of emergency barring orders has been rather stable over the past three years, ranging between 1423 and 1463. According to the Austrian Intervention Centers, a total of 8062 emergency barring orders were issued by the police in 2012. In the Czech Republic, the number of emergency barring orders has risen gradually over the past few years, from 862 in 2007 to 1407 in 2012. This gradual increase also shows from Slovakian statistics (226 in 2009; 228 in 2010; 277 in 2011). Interestingly, an opposite trend can be witnessed in Slovenia.¹¹⁵

4.5.9. Empirical information on victim and offender characteristics

In all areas of law and in all Member States, POs are generally imposed against male offenders on behalf of female victims. If statistics were provided, the man-woman ratio of restrainees was approximately 9 to 1.¹¹⁶ The overwhelming majority of protectees, on the other hand, consisted of females. Around 80 to 90% of the persons protected by a PO were female.¹¹⁷ There is also (scant) evidence that many offenders had prior police records.¹¹⁸

¹¹³ Not all legal provisions that could form the basis for a criminal PO were included in the study.

¹¹⁴ In Latvia there were around 40 criminal POs issued in 2011 and 2012.

¹¹⁵ There, the number of emergency barring orders gradually declined from 1080 in 2010, to 1034 in 2011 and 894 in 2012.

¹¹⁶ This was reported by the Austrian, Dutch, Czech, Swedish, German, Romanian, Irish, and Finnish experts. Only Italy reported slightly more female restrainees. In Italy, more than 80% of the restrainees are male. In Slovakia, on the other hand, no less than 98% of the restrainees was male.

¹¹⁷ See, for instance, the Dutch, Swedish, Romanian and German reports.

¹¹⁸ Only the Netherlands, Germany, Austria, Czech Republic and Finland provided statistics. In

4.5.10. Empirical information on protection order effectiveness

Evaluations of protection order effectiveness are scarce. In most EU Member States empirical information is lacking altogether.¹¹⁹ Although some of these experts are convinced of their (in-)effectiveness, they have only anecdotal evidence to substantiate their assumptions.

Countries in which protection orders have been the subject of empirical study are: Finland, Germany, Austria,¹²⁰ the UK and Sweden and the number of PO violations range from 30% to approximately 60% of all POs imposed. Many victims were, nevertheless, satisfied with the PO, because they felt they were better off than before the PO was in place. As a result, many of them felt safer and some also observed positive changes in themselves or in the offender. Still, there is a lack of robust evidence on the effectiveness of POs and research sometimes provides contradictory results.

5. Conclusion

This chapter aimed to map and represent the main characteristics of protection order legislation in the various European Member States. It showed that Member States usually allow for civil and criminal protection orders, but that the Austrian emergency barring order has also been of great inspirational value to many Member States. It also bears witness to the fact that national protection order legislation and practices have changed significantly over the past few decades. The growing attention for domestic violence and other forms of interpersonal violence has led to the coming into force of dedicated legislation, such as Domestic Violence Acts. Practically all Member States have recently introduced legislation that created new manners in which protection orders can be imposed and still new proposals are being discussed at this very moment.

the Netherlands, 76.7% of the persons who received a PO as a condition to a conditional suspension of pre-trial detention had prior police records. In Germany, approximately 27% of the persons who received a civil PO had a record (in 46.7% there was no information on prior police records). In Finland, 73% of the restrainees against whom a barring order was imposed had committed a crime in the six years preceding the imposition of the barring order, whereas in Austria only 22% of the persons against whom an EBO had been issued had a previous police record.

¹¹⁹ See, for instance, Latvia, Cyprus, the Czech Republic, Lithuania, Ireland, Romania, Bulgaria, Poland, Slovakia, France, Portugal, Estonia, the Netherlands, Belgium, Italy, and Hungary. In Slovenia there are only police statistics available on the number of violations of emergency barring orders. According to those statistics, around one-third of emergency barring orders are violated.

¹²⁰ The Austrian study, however, only measured the percentage of EBO violations according to police statistics. This does not take into account the number of violations that are not reported (*dark number*). In 2010 approximately 10% of the EBOs were violated and sanctioned.

Despite several common features, the Member States retain national differences in their particular approach to protection orders. Where some Member States allow victims to benefit from protection orders both in civil and criminal proceedings, others have a clear preference for one area of law. And where some protection orders include all victims of violence, others have narrowed the range of protected persons to a certain subset of victims only. Even the Member States that took over the Austrian-type emergency barring order display important variations when it comes to the duration of the order, the procedure and authorities by which the order can be imposed and prolonged, and support schemes attached.

This chapter was only descriptive in nature: Which (dis)similarities can be found when it comes to protection order legislation and practice throughout Europe? These particular characteristics, however, are bound to have a bearing on the position of victims within the various legal proceedings. How the differences and similarities between the various Member States have to be appreciated – which approach serves the victims' interests best? – will be discussed in the next, more normative chapter.

Chapter 3

The level of protection in the EU Member States: Towards standardized criteria

1. Introduction

The previous chapter mapped the legal situation in the different Member States. It was, however, not an assessment of the *level* of protection provided to victims in those Member States. From the previous chapter we could not conclude whether a victim is better protected in country A or country B. Now that we have an idea of the protection order regimes in the 27 EU Member States we can try to assess the level of protection these regimes provide to victims of crime, at least on paper.

An adequate comparison of the different protection levels also requires the development of objective, standardized criteria against which the different protection orders can be measured. In order to do this, indicators of what constitutes appropriate legal protection were identified.¹²¹ With the help of international human rights legislation, national reports, victimological literature, and legal reasoning, indicators were selected that served as a guideline. Countries could score 'insufficient', 'sufficient', 'good', or 'very good' on these indicators.

The chapter is structured as follows. In Section 2 the method used to develop the indicators and to classify the Member States along those indicators is explained. In Section 3 the limitations of the chosen approach are indicated, while the results of the analysis are presented in a thematic, country-by-country fashion in Section 4. Section 5 contains a summary of the identified standardized criteria, followed by some concluding remarks in Section 6.

2. Methodology

2.1. From international human rights standards and national reports to key indicators

The goal of this chapter is to move beyond mere description, and try to

¹²¹ Compare the study by M.E.I. Brienens & E.H. Hoegen, *Victims of Crime in 22 European criminal justice systems. The implementation of Recommendation (85)11 of the council of Europe on the Position of the victim in the Framework of Criminal Law Procedure* (diss.), Nijmegen: WLP 2000.

appreciate the findings of the previous chapter. Practically all themes discussed in the previous chapter have a (potential) bearing on the level of protection offered to the victims, but how can we classify countries along those themes and distinguish the right from the wrong approach? In other words, what is our analytic framework?

One of the main sources we used to identify commendable approaches is European and international (human rights) law. If the international legal community prescribes a certain approach, or even made it a human rights mandate, this is a strong argument in favor of the approach concerned. The problem with protection orders is that most European and international legal instruments have not paid much detailed attention to them.¹²² Only the recently introduced Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) has set more explicit criteria pertaining to protection orders (articles 52 and 53). It obliges signatory states, for instance, to introduce emergency barring orders or *ex parte* protection orders with immediate effectiveness. Other key indicators – such as the recommendation that mutual protection orders should be abandoned – can be derived from the Convention’s Explanatory Report.¹²³

We consider the Istanbul Convention an authoritative document in the field of protection orders and are confident that the Convention will become the new standard when it comes to fighting violence against women, and protection orders in particular. Therefore, whenever the Convention or its explanatory report recommends a certain approach, we followed up on this recommendation.

Nevertheless, however detailed the Convention may be in comparison to other international and European legal instruments, it still holds a rather limited set of criteria with regard to protection orders. The functioning of protection orders depends on many more factors than the ones covered by the Convention. In order to come up with a more complete set of indicators, other sources, such as victimological literature or literature on VAW, were also consulted. But even then, numerous lacunae remained. Since there was a lack of (authoritative) sources and international legal standards on this particular topic, we had to derive our inspiration mostly from the national reports used in the previous Chapter. Tapping into the information given by the experts,

¹²² The EU Victims’ Directive, for instance, only deals with the right to protection in a very general manner (art. 18). More detailed provisions are reserved for the protection of victims (from secondary victimization) during criminal investigations (art. 19 – 24). Protection orders as such barely feature in the Directive.

¹²³ See consideration 267 of the Convention’s explanatory report (to be found at http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Explanatory_Report_EN_210.pdf).

especially on problems encountered in day-to-day practice, we could identify additional factors that influence the level of protection and decide on the appropriate course of action.

2.2. From key indicators to standardized criteria

As explained before, this chapter has a normative character in that it classifies certain approaches to victim protection in ‘insufficient’, ‘sufficient’, ‘good’ or ‘very good’ (promising) approaches. Inevitably, this examination is of a more analytical nature, in contrast to the descriptive character of the previous chapter. As a result, some of the categorizations will give rise to debate. Is, for instance, the criminalization of the violation of a civil protection order really better than having the civil claimant enforce and execute the protection order him- or herself? There are things to be said for both approaches, and the Council of Europe Convention has deliberately left this up to the signatory states.¹²⁴

As explained before, where possible, we drew upon victimological literature and European and international (human rights) legislation in order to explain our preference for a certain approach. However, when there was a lack of relevant literature – which was often the case – or when the literature was inconclusive, we explained our choice in detail. We also carefully indicated when a preference was (to a large extent) based upon our own beliefs and assumptions, in which case we explained our line of reasoning. If, in our opinion, no single approach was clearly better than the other, we indicated this as well. In other words, when certain approaches seemed ‘tied’, the report says so.

Throughout the chapter there are country-by-country tables containing the Member States’ ‘scores’ on a particular theme. Although each table contains a specific key to the symbols, the scores can roughly be equated with the following labels:

- insufficient (-)
- sufficient (+/-)
- good (+)
- very good or promising (++)

Next to these four scores, we also felt the need to introduce one more option, namely ‘interesting’ practices (‘i’). These practices have a certain intuitive appeal, but require further study before we can recommend them across the board.

¹²⁴ Criminalization, for instance, brings along the advantage of not having to confront the offender yourself, but having the police do this for you instead. Some victims, on the other hand, may be reluctant to report a violation to the police out of fear for retaliation or because they do not want their (ex-)partner to have a criminal record.

The tables furthermore indicate when information was missing or unclear in the national report ('M'); when a certain criterion was not applicable in the national situation ('n/a'); and when the national experts had indicated that information on a particular topic was lacking ('no info').

3. Limitations

A first limitation is that the national reports did not contain structural information on the situation in practice. Our scoring is therefore mainly based on the law in the books. However, if country A provides ample protection to victims on paper, but underperforms in practice, a victim may in reality be better protected in country B, which scores poorly on paper, but at least guarantees the few rights it *has* codified. A genuine understanding of the workings of the law in practice – and consequentially of the actual level of protection – requires a different research design (e.g., an empirical study amongst victims) and falls outside the scope of this study. Chapter 4, however, will give an explorative overview of what the national experts and 58 victims have pointed out as problematic and exemplary practices in terms of the implementation of the law in practice.

Notwithstanding the lack of an exact evaluation of protection in practice, the fact that countries differ on a legislative level probably has implications for practice as well. Usually, a first step to realize effective protection for victims would be to create protection order provisions in law. Countries that have poorly developed protection order legislation will usually also underperform when it comes to protection order implementation and enforcement in practice, and *vice versa*.¹²⁵

A second limitation was caused by the manner in which we analyzed the results. Because national protection legislation and practices differ immensely when it comes to details (see Chapter 2), a meaningful comparison can only be made by using a thematic approach. Only on a more abstract level can standardized criteria be developed. For this reason, the same themes that were identified in the previous chapter now formed the basis of the discussion on these criteria.

Since Member States are only assessed on one aspect of their protection legislation at a time, the analysis may once again prove oversimplified for particular countries or in particular situations. For instance, the fact that a country does not provide for civil protection orders – which is usually a

¹²⁵ The latter situation is less straightforward. It often happens that countries have made remarkable progress in legislation, but are lagging behind when it comes to their real life performance.

negative aspect – may be compensated by the fact that its (quasi-)criminal protection order regime functions exceptionally well. On a whole, the system in this country may prove better for victims than that of a country that does provide for civil protection. In other words, the functioning of an entire protective system in a Member State may very well be more than a ‘sum of its parts’. However, since systems could not be analyzed as a whole, but were by necessity broken down into different parts, this could not be checked for.

A third limitation has to do with the fact that this study touched upon so many (controversial) issues, it was impossible to discuss each and every topic with the breadth and comprehensiveness it deserved. The question of the criminalization of civil protection order violation, for instance, would normally require a thorough analysis of the criteria for criminalization, of the legal context within which the provision operates, of relevant doctrinal discussions, legal theories, et cetera.¹²⁶ One could easily write a substantive PhD thesis on the issue. However, given that criminalization of protection order violation is only one of the many topics at hand, we had to limit ourselves to an abbreviated summary of (some of) the relevant arguments.

With regard to the selection of relevant arguments, we would like to draw the attention of the reader once again to the fact that the focus of the current study was on the *victim’s perspective*. In other words, we examined the different approaches adopted at a domestic level from the perspective of the protection of the victim. We do, however, acknowledge that at times the victims’ rights in relation to protection orders can have a negative impact on the rights of the defendant.¹²⁷ We therefore touched upon the rights and needs of the defendant as well, but these did not play a prominent role. When forced to choose between two alternative approaches, we generally opted for the alternative that benefits victims the most, unless principles of due process were evidently violated. Other, less straightforward infringements of defense rights warrant a separate discussion.

The fourth limitation is again a methodological one. Most standardized criteria were developed by taking a selection of questions from the template and scoring the responses per country. These criteria had to a) transcend national borders, b) be an indication of the level of protection, c) be included

¹²⁶ E.g., A. Ashworth, *Principles of Criminal Law*, Oxford: Oxford University Press 2009.

¹²⁷ See, for instance, J. Niemi (memo CoE) 2013 for a more detailed discussion on the implications of the emergency barring order on the rights of the person who is barred. In some cases, however, the needs of the defendant and those of the victim can concur. Think, for instance, of the need of the defendant for a place to stay for the duration of the emergency barring order. Without a place to sleep, the aggressor may be more likely to violate the order, thereby putting the victim at risk again. Arranging for sleeping accommodation does not only benefit the aggressor, but also the victim.

in at least half of the national reports, d) in a manner that was sufficiently clear and unambiguous. Only if these criteria were fulfilled, could the results be compared and quantified. Sometimes, however, countries showed evidence of a promising practice that could not be quantified, for instance because it is an entirely new approach that was not included in the template report. These practices are still mentioned, but not represented in the country-by-country tables.

Fifthly, despite the efforts to correctly represent the legal situation in the different Member States in the previous chapter, mistakes may have persisted. Since the classification of the current chapter was based on these previous findings, the same mistakes we made there were repeated here as well.

4. Results per theme

4.1. Areas of law

Chapter 2 distinguished three areas of law through which protection orders can be issued: civil law, (quasi-)criminal law, and ‘emergency barring order law’.¹²⁸ Ideally, Member States have all three possibilities available to victims, since each area of law has (dis)advantages over the other two areas.

Civil protection orders: Civil protection orders are advantageous in comparison to criminal and emergency barring order law, because they may ‘empower’ victims. By ‘empowering’ we mean that victims are no longer dependent on the willingness of the police or other criminal justice agency to cooperate, but they can take matters into their own hands and apply for a protection order autonomously. This becomes all the more important when a country has failed to criminalize certain behavior, for instance stalking or psychological violence. Victims of these crimes are left empty-handed when a country only offers protection orders via criminal proceedings. But even if a country has criminalized all relevant behaviors, it is still important to provide victims the opportunity to resort to a civil court. Due to prioritization and the principle of expediency, the police and the public prosecutor may not be able or willing to intervene.

On top of that, civil protection orders are often provided through accelerated proceedings, with less rigid evidentiary requirements (see Chapter 2). Also, civil protection orders do not burden the offender with a criminal record; something that can discourage victims from reporting violence to the police

¹²⁸ Strictly speaking, ‘emergency barring order law’ is not a different area of law, since emergency barring orders are, on a national level, often classified under civil, criminal or administrative law. However, for the purpose of this study, they are dealt with separately.

(e.g., because they do not want the father of their children to be stigmatized).

Criminal protection orders: Criminal protection orders also have certain benefits in comparison to those issued in civil proceedings. For most crimes, in contrast to civil proceedings, the victim can leave the investigation, prosecution and execution to the criminal justice authorities.¹²⁹ This can save the victim a lot of time, energy and stress. Many victims (of intimate partner violence) are furthermore afraid of their abuser, and would not dare to initiate a procedure themselves. On top of that, the threat of being detained or imprisoned again upon violation of a criminal protection order, may be a more effective deterrent than the sanctions attached to civil protection order infringements. Instead of merely having to deal with the victim, the offender now finds himself opposed by a professional governmental body, which in itself can discourage him from reoffending, but it also conveys a strong, normative message: intimate partner violence is a public concern instead of a private issue.

Another advantage is the fact that – in contrast to civil orders – most criminal protection orders are provided free of charge. Especially when legal representation is compulsory, the costs of initiating a civil lawsuit can be significant. Furthermore, the criminal procedure in some jurisdictions allows the victim to avoid confrontations with the offender. Where a civil procedure usually forces the victim to be present in one courtroom – literally being his adversary – the criminal procedure in some Member States allows victims to testify in the pre-trial phase, using the written statement in court, instead of calling the victim as a witness to the stand.¹³⁰ Some victims dread another confrontation with the offender, and the adversary position they are placed in because of this.

Quasi-criminal protection orders – such as the ones found in Finland, Denmark and Sweden – can be even more advantageous from a victim's perspective. Compared to the 'regular' criminal procedure, they are easily and quickly obtained through simple and informal proceedings. They can even be imposed as a precautionary measure, without suspension or prosecution of a crime, which mitigates the evidentiary burden for the victim and the public prosecution service. Since these protection orders are imposed in a separate trajectory, they do not necessarily result in a criminal record for the offender.

¹²⁹ This is not true for offences that are subject to private prosecution.

¹³⁰ Of course, in countries where the principle of immediacy forces the criminal judges to examine the evidence in court, this advantage no longer holds true. In some jurisdictions, you also have civil proceedings in which a written statement by the victim usually suffices to obtain a protection order (for instance, Germany) or where the claimant and the defendant are heard in separate sessions (for instance, Austria and Spain). In that case, the civil procedure may be more advantageous than the criminal one when it comes to avoiding confrontation with the offender.

On the other hand, these procedures also have significant drawbacks. The burden of initiating the procedure, of evidence collection and of monitoring falls on the victim solely. In many aspects the quasi-criminal procedures resemble the civil procedure, including all its disadvantages. Given these ambiguities, the quasi-criminal protection orders are seen as ‘interesting’ practices.

Emergency barring orders: Emergency barring orders provide for such a different sort of protection that it adds to the traditional protection armamentarium. Thanks to emergency barring orders, victims can be protected *immediately* in crisis situations. Their advantage over traditional criminal protection orders is that they can be issued as the result of a risk assessment, even before an offense is actually committed and even if there is no need to arrest the abuser. Given the preventative nature of emergency barring orders and their short duration, they thus do not have to live up to strict evidentiary requirements.

In comparison to civil protection orders, emergency barring orders are generally imposed more rapidly and they do not require the victim to file a civil lawsuit or a criminal complaint. By removing the offender from the family home without the cooperation or prior consent of the victim, the chances of retaliatory action against the victim may, furthermore, be reduced. The idea is that a vindictive offender will attribute blame to the law enforcement officials, rather than the victim who had no say in the temporary eviction from the home, especially when the imposition of the order derives from an objective risk assessment of the situation. Also, because no autonomous action is required on the part of the victim, emergency barring laws allow for justice authorities to intervene in situations that otherwise would go unnoticed. Victims who otherwise would not report the violence – either to the police or to a civil court – can now be protected, albeit for a short period of time.

It is especially when the emergency barring order comes with an elaborate support plan, for both the offender and the victim, that these orders prove a real bonus on top of traditional protection orders. Civil protection orders do not usually offer any additional support whatsoever and criminal orders only insofar as the suspect or the offender is concerned. All in all, having emergency barring order legislation in place is considered a good practice. If combined with a support scheme – which entails more than just informing the relevant authorities of the barring order – it becomes a ‘promising practice’. Whether Member States provide for support plans was unfortunately not structurally reported and is therefore not represented in table 3.1 below.

Table 3.1 indicates which countries provide for protection orders in which areas of law. The table only indicates whether civil, criminal, and emergency barring orders are provided *by law*. It is possible that in practice, certain types

of protection orders are only a theoretical option,¹³¹ but this could not be structurally checked for either.

Table 3.1 Areas of law

	Civil protection order	(Quasi) criminal protection order	Emergency barring order
AT	+	+	+
BE	+	+	+
BG	+	+	-
CZ	+	+	+
CY	+	+	-
DE	+	+	+
DK	+	i	+
EE	+	+	-
EL	+	+	-
ES	+	+	-
FI	+	i	+
FR	+	+	-
HU	+	+	+
IE	+	+	-
IT	+	+	+
LT	+	+	-
LV	+	+	-
LU	+	+	+
MT	+	+	-
NL	+	+	+
PL	+	+	-
PT	+	+	-
RO	+	+	-
SE	+	i	-
SI	+	+	+
SK	+	+	+
UK	+	+	-

Key to symbols: no protection orders within this area of law (-), protection orders available within this area of law (+), interesting practice (i)

4.2 Interrelatedness of protection orders with other (substantive) legal proceedings

Civil protection orders: Some jurisdictions only provide protection orders as an accessory measure connected to other, substantive legal proceedings. In the

¹³¹ E.g., Finland, Lithuania and Portugal when it comes to civil protection orders, and Bulgaria, Ireland, France for criminal protection orders.

Czech Republic, Finland, Malta and in Sweden, for instance, (prolonged) civil protection orders can only be issued in the context of divorce proceedings. The downside of this approach is that victims who are not involved in substantive proceedings cannot profit from civil protection. Victims who are harassed by a stranger, an acquaintance or a(n) (ex-)partner to whom they are not married or with whom they do not have a registered partnership are left empty-handed. At least, they cannot turn to a civil court with its potential advantages (see section 4.1) and are fully dependent on the (quasi-) criminal route. Also, if a victim has to wait for the outcome of substantive proceedings, before a protection order can be issued, this takes much longer than the interim procedures that are usually used as a vehicle to impose protection orders.¹³² For these reasons, countries where protection orders are interrelated to substantive (divorce) proceedings have a lower score.

Countries that have a mixed system – with some protection orders being independent and some linked to substantive proceedings – are harder to classify. As long as the independent protection orders potentially cover all scenarios – including harassment by strangers and acquaintances – there is no harm in allowing victims to obtain civil protection through substantive proceedings *as well*. In fact, allowing the victim to arrange a divorce and a protection order all at once may be more efficient than forcing the victim to go through another separate ‘protection order’ procedure, however quick that procedure may be. However, if the dependent protection orders are not offered *as an alternative* to the separate procedure or if the dependent protection orders together with the independent protection orders *do not cover all situations*, the aforementioned objections (longer processing time, some victims unable to profit from civil protection) reappear again. From the national reports we could not deduce whether countries with a ‘mixed’ system actually allow all victims access to the civil courts or whether some victims fall between the cracks. For this reason, we have decided to classify these countries as a plus-minus

Arguably, the best approach is to (alternatively) be able to obtain civil protection orders through separate, accelerated procedures without forcing the victim to go through proceedings on the merits of the case. This guarantees the quickest, simplest way in which to get a civil protection order.

Criminal protection orders: Judging from the national reports, criminal protection orders are as a rule dependent on (the outcome of) substantive criminal proceedings. If the suspect is acquitted or if the prosecution is stopped before the case reaches trial, the protection order is either not imposed or

¹³² In the Czech Republic, however, there is the possibility to obtain interim protection for the duration of one month, after which the temporary civil protection order expires. Within this month the claimant has to file a suit in order to become eligible for prolonged protection.

ceases to exist. From a human rights perspective and criminal law, this makes perfect sense. Once somebody is no longer a suspect, any possible limitations on his freedom and rights need to be lifted. However, from a victimological point of view, this is a negative outcome, depriving victims of a protective measure.

The only exceptions to the rule that criminal protection orders are always dependent on the substantive procedure are the quasi-criminal proceedings in Finland and Sweden, which form a separate trajectory through which protection orders can be imposed, and the protection orders in the UK and Ireland, which can even be imposed upon acquittal of the suspect.

The (dis)advantages of the quasi-criminal protection orders have been discussed above – they are seen as an interesting practice – but the UK and Irish approach deserves further analysis. From a victimological perspective, it is positive to be able to issue protection orders despite the acquittal of a suspect. Sometimes, a criminal conviction cannot be procured, despite serious suspicions against the suspect. The fact that a crime needs to be proven ‘beyond reasonable doubt’ forms a high threshold and causes certain offenders to be acquitted, despite their unlawful behavior. Nevertheless, by allowing criminal protection orders to be imposed, the UK legislator gave (alleged) victims a tool to protect themselves with even though the evidence proved insufficient for a conviction.¹³³ In our opinion, when the criminal investigation has not eliminated all suspicions and when the protection orders are not too invasive of the rights of the suspect, these protection orders can be legitimate and may be considered a good practice.

Emergency barring orders: In all the jurisdictions that apply emergency barring orders, these are independent from other proceedings, although they can coincide with or be prolonged by them.

¹³³ Whether the protection-orders-upon-acquittal are legitimate from the perspective of the suspect, is open to debate. This discussion falls outside the scope of the current study.

Table 3.2. (In)dependence of civil protection orders from other proceedings

	Civil protection orders		Civil protection orders
AT	+	IT	+
BE	+	LT	+/-
BG	+/-	LV	M
CZ	+/-	LU	+
CY	+	MT	-
DE	+	NL	+
DK	M	PL	+
EE	+/-	PT	M
EL	+	RO	+
ES	M	SE	-
FI	-	SI	+
FR	+	SK	+
HU	+	UK	+
IE	+		

Key to symbols: protection order dependent on substantive proceedings (-), mixed system of dependent and independent protection orders (+/-) protection orders not related to (outcome) substantive proceedings (+)

4.3. Availability of protection orders in all stages of the criminal procedure

It is best to have protection orders available in all stages of the criminal procedure. As long as the offender is detained or imprisoned, the chances of him harassing or assaulting the victim are small. However, as soon as he is (conditionally) set free, a protection order may be the only thing standing in the way of him reoffending. The general requirement that the released 'is not allowed to commit a crime' during probation may not be sufficient in that respect, in particular because approaching the victim is not a crime per se. A tailor-made protection order that clearly delineates which behaviors are no longer tolerated towards the victim is much clearer and underlines the importance of respecting the victim's rights to privacy and physical and emotional integrity.

Keeping this in mind, the fact that some Member States do not allow for protection orders in all stages of the procedure is worrisome. The same goes for Member States in which this is only a theoretical option.¹³⁴

In fact, protection orders as a condition to prevent physical incapacitation may be one of the few areas in which victims' and offenders' needs could actually coincide. Imagine an examining judge who has to decide on whether

¹³⁴ See, for instance, the Hungarian and Italian reports.

to release a suspect from pre-trial detention. If this judge thinks the risk of recidivism against the same victim is high, (s)he will probably not be inclined to release the suspect, but prefer to keep him detained instead. Only if (s)he is allowed to impose a protection order (one that is effective) might (s)he feel confident enough to set the suspect free. Adding protection orders to the armamentarium of (pre-trial) judges may therefore benefit not only the victim, but also the offender.

Table 3.3. Protection orders in all stages of the criminal procedure

	Criminal protection orders		Criminal protection orders
AT	+	IT ¹	+
BE	+	LT	+
BG	+	LV	+
CZ	-	LU	-
CY	+	MT	+
DE	+	NL	+
DK ²	M	PL	+
EE	+	PT	+
EL	+	RO	-
ES	+	SE ²	M
FI ²	M	SI	+
FR	+	SK	-
HU ¹	+	UK	+
IE	+		

¹ The Italian and Hungarian experts indicated that pre- or post-trial protection is only a theoretical option

² The Danish, Finnish and Swedish expert reported on the quasi-criminal POs, not traditional criminal POs.

Key to symbols: there is no legal option to impose a protection order in pre- or post-trial phase (-), there is an option to impose protection orders in all stages of the criminal procedure (+)

4.4. Victims covered by protection orders

On the question of whether Member States offer dedicated (available to a subset of victims) or generic (available to all victims) protection orders, the answers varied considerably. Some Member States have opened up protection orders for all victims, whereas others only allow access to protection orders for victims of certain crimes or victims with a certain status. We can broadly distinguish three approaches:

- 1) Protection orders are available to all victims
- 2) Protection orders are only available to certain victims
- 3) Some (basic) protection orders are available to all victims, a subset of victims has access to additional protection measures

How to value each approach in normative terms is a difficult question. Which approach is best?

Obviously, if you reserve protection orders to a limited group of victims only, you will deprive victims not belonging to that group of a measure that may possibly enhance their safety. The excluded group is disadvantaged in comparison to the group that does have access to this type of protection. For that reason, having protection orders that are not inclusive of all victims (option 2) scores a plus-minus.¹³⁵ Only having no protection orders available for any type of victim is worse. Table 3.4 shows that civil protection orders are especially susceptible to excluding certain victims who do not fit the criteria.

More complex is the choice between option 1 and option 3. In both situations, all victims have protection orders available, but in some countries, certain *vulnerable* victims receive *additional* protection. As can be witnessed from the previous chapter, it is a recent trend to identify particular groups of victims who – due to the nature of their victimization or to certain victim characteristics – are in need of special attention; in addition to the rights that apply to all victims, special policies are created for subsets of victims in order to meet their specific needs.¹³⁶

Although this development is understandable, excessive attention to specific groups of victims, rigidly established, may leave the needs of other overlooked types of victims uncovered. In an ideal world, all victims receive the – individually assessed and high-standard – protection they need, without them having to fulfill all sorts of criteria. From this perspective, it would be best to have the same high level of protection available to all victims.

This, however, assumes the widespread availability of high-standard protection orders. Given that nowadays most national governments are confronted with financial hardship, forcing them to cut-back on expenses, the prioritization

¹³⁵ It is self-evident that there is an important difference between Member States that have narrowly constructed the circle of victims with access to protection orders and those Member States that tried to ‘cast the net’ as wide as possible. In these latter countries, the problem will not be as serious as in the former ones. However, as soon as you start singling out a certain type of victim, you run the risk of overlooking other victims, however few they may be. We, therefore, believe it is best to at least have basic protection orders available for all victims.

¹³⁶ See, for instance, also the Council of Europe Convention on Violence against Women and Domestic Violence, which explicitly promotes a gendered approach to certain forms of violence.

of the protection of vulnerable victims may be justifiable.¹³⁷ In that case, it is important to carefully delineate which groups need extra protection. Victimological (empirical) research can be a helpful tool to establish which groups are particularly vulnerable to re-victimization by the same offender. A basic standard of protection, however, must be established and made available to all victims.

In short, there is no straightforward answer to whether it is best to offer the same (sort of) protection order for all victims or to place some victims in a 'more privileged' position. Much will depend on the circumstances. Is prioritization necessary because of social rather than financial concerns; are the vulnerable groups carefully selected based on up-to-date victimological research; and would the alternative be poor protection for all victims? Then prioritization is justifiable. However, if the public purse allows for all victims to receive equal protection of high quality, this is to be preferred. Because of these situational aspects, we could not conclusively decide which option is better than the other. For this reason, both option 1 and option 3 are given a plus (+).

One final remark in relation to emergency barring orders: they are usually only accessible for victims who cohabite with the offender. The Austrian emergency barring orders, however, offer protection to a larger circle of victims than regular emergency barring orders in that they include victims of *non-cohabiting* aggressors as well. Save the barring from the family home, all other conditions of the emergency barring order apply to these offenders. Just like offenders who reside in the same home as the victim, they are prohibited to contact the victim or to approach the victim's home. We consider this a promising practice (++) because it provides immediate protection to victims who would otherwise not qualify for such protection.¹³⁸ Instead of having to wait until a civil judge has granted a civil injunction or until the police and public prosecutor intervene, they can profit from the emergency measure that is usually only reserved for victims who share a household with the offender.

¹³⁷ On the other hand, protection orders are cheap compared to incarceration.

¹³⁸ According to the key to table 3.4 the Austrian approach would qualify for a (+), however, given the innovative nature of this approach we have decided to award it with a higher scoring (++).

Table 3.4. Victims covered by protection orders

	Civil protection orders	Criminal protection orders	Emergency barring orders
AT	+	+	++
BE	+/-	+	+/-
BG	+/-	+	-
CZ	+	+	+/-
CY	+/-	+/-	-
DE	+/-	+/-	+/-
DK	M	+	+/-
EE	+	+/-	-
EL	+/-	+/-	-
ES	+/-	+/-	-
FI	M	+	+/-
FR	+/-	+/-	-
HU	+/-	+	+/-
IE	+/-	+	-
IT	+/-	+/-	+/-
LT	+/-	+	-
LV	M	+	-
LU	+/-	+/-	+/-
MT	+/-	+	-
NL	+	+	+/-
PL	+/-	+	-
PT	M	+	-
RO	+/-	+/-	-
SE	+/-	+	-
SI	+/-	+	+/-
SK	+	+	+/-
UK	+	+	-

Key to symbols: no protection orders available for any victim (-), protection orders only available for a subset of victims (+/-), protection orders available for all victims and (possibly) additional protection orders available for a subset of victims (+), protection orders available for non-cohabiting victims as well (++)

4.5. Persons initiating or applying for protection orders

Equally challenging is the question of how to appreciate the range of persons who can initiate or apply for a protection order. In general, civil protection orders can exclusively be applied for by the victims themselves, whereas criminal protection orders and emergency barring orders are imposed autonomously by the criminal justice authorities. Both approaches have their pros and cons.

Civil protection orders: One of the advantages of the autonomy victims enjoy

in civil proceedings is that it has an empowering effect.¹³⁹ Victims are not dependent on the cooperation of the police or the public prosecutor to have a protection order imposed. They also have an important influence on the delineation of the resulting protection order. Instead of relying on criminal justice authorities to take into account their interests, they themselves formulate the protection order that serves their needs best.¹⁴⁰

A downside to the civil trial is that the burden of having to go to court falls on the victim alone. Starting civil proceedings can have significant implications, in terms of money, energy and stress. Furthermore, an offender may blame the victim for having initiated civil proceedings and may look for revenge.

Criminal protection orders: The (dis)advantages that their dependent role in criminal proceedings brings along form a mirror image of the ones discussed above in relation to civil protection orders. Rather than being self-reliant, the victim will have to secure the cooperation of criminal justice agents – which may be a daunting task – but once she succeeds, this also means that she does not have to confront the offender alone. She is supported in the collection of evidence and in the procedure that follows. Also, instead of being the direct adversary of the defendant, it is now the public prosecutor who opposes the offender. This may cause a vindictive offender to direct his feelings of revenge at the public authorities, rather than the victim.¹⁴¹

Furthermore, in the criminal procedure the victim is usually not involved in the formulation of the exact conditions of the protection order.¹⁴² To a large extent, she will have to rely on the sensitiveness of the criminal justice officials for that. At best, the victim is allowed to express her wishes with regard to the protection order the criminal justice authorities have in mind, but that is as far

¹³⁹ In fact, in the 1980s, their (potentially) empowering effect was exactly the reason why many authors perceived civil protection orders as a better alternative in the fight against VAW than the criminal procedure (e.g., J. Doomen & R. Kotting, 'Straatverboden in kort geding', *Nederlands Juristenblad* (60) 1985-4, p. 109-114).

¹⁴⁰ In this respect it is interesting to see that Dutch civil protection orders are significantly more likely to contain a combination of a no-contact order with a street prohibition (more than 68%), whereas criminal protection orders usually only consist of a prohibition to contact the victim (see S. van der Aa, M. Groenhuijsen & A. Pemberton, 'Strafrechtelijke beschermingsbevelen en mediation binnen het strafproces. Over nieuwe privaatrechtelijke ondertonen in het strafrecht', *Ars Aequi* (62) 2013, p. 546-557). This could indicate that while many victims prefer combined protection, the criminal justice system currently does not live up to their needs.

¹⁴¹ On the other hand, if the prosecution was a result of the victim filing a complaint – and not of the police catching the offender *in flagrante* or a report by a third party – retaliation may still be aimed at the victim.

¹⁴² Except, perhaps, in the situation in which the victim acts as a private prosecutor or where protection orders can be requested in criminal proceedings by victims who joined the proceedings as injured parties (see section 4.5).

as her competence goes. The authorities do not even have to take the victim's wishes into account. From that perspective, countries that oblige criminal justice agents to inquire after the victim's wishes – even if these wishes are not a decisive factor in the eventual formulation of the protection orders – perform better than countries that rely solely on the individual policeman, prosecutor or judge to estimate the victim's needs in this respect.¹⁴³

The above distinction between civil and criminal proceedings and the independent or dependent status of victims is the situation in most Member States. There are, however, Member States that have introduced interesting variations to this theme. In Romania, Ireland, Cyprus, Bulgaria, Hungary, and (in the near future) the Czech Republic, for instance, civil protection orders can be applied for by other parties as well, while the victim retains the right to discontinue proceedings that were started on her behalf. The advantage of allowing a broader range of persons access to civil courts is that victims who are unable or afraid to initiate civil proceedings themselves can still profit from these measures. Victims who fear retaliation or whose (violent) relationship with the offender shows certain dynamics that renders them unable to act independently may be helped by this alternative. It may prove an important push in the right direction, a stepping stone to further action, such as separation or filing a report with the police.¹⁴⁴

There may, however, be a risk involved in this approach as well. If the police have this power, it might be used as an excuse to avoid criminal prosecution, to divert the case away from the criminal trajectory and all the work that comes along with it, even when criminal prosecution should be due. Because of this uncertainty, these practices are considered 'interesting'.

A similar trend can be witnessed when it comes to criminal protection orders. Instead of upholding the state monopoly, victims (and other persons) in the Scandinavian and some other countries can actually *apply* for quasi-criminal protection orders themselves, thereby reducing their dependence on state actors. As long as 'traditional', *ex officio* criminal protection orders are still alternatively available,¹⁴⁵ this practice could be considered a promising

¹⁴³ Unfortunately, this difference in performance could not be expressed in a country-by-country table, since it did not structurally feature in the national reports.

¹⁴⁴ This may also be advantageous from the idea that offenders are less likely to retaliate or to blame the victim for a civil protection order if she did not initiate the proceedings. However, if the offender is aware that the victim has the power to abort the proceedings, he may still hold the victim responsible for the eventual protection order if the victim chooses to continue with the trial.

¹⁴⁵ If the quasi-criminal protection orders were the only option, without traditional *ex officio* criminal protection orders on the side, the disadvantages of not being able to rely on the police for evidence collection and of having to face the offender yourself reappear.

practice.¹⁴⁶ Since we do not know the impact of victim-initiated criminal protection orders on the willingness of criminal justice authorities to impose protection orders *ex officio* (it might have a deferring effect), these practices are, for the moment, only considered ‘interesting’.

Table 3.5. Persons initiating or formally applying for a protection order

	Civil protection orders	Criminal protection orders	Emergency barring orders
AT	+/-	+/-	+/-
BE	+/-	+/-	+/-
BG	i	+/-	n/a
CZ	+/-	+/-	+/-
CY	i	+/-	n/a
DE	+/-	+/-	+/-
DK	M	i	i
EE	+/-	+/-	n/a
EL	+/-	+/-	n/a
ES	+/-	i	n/a
FI	+/-	i	i
FR	+/-	M	n/a
HU	i	i	i
IE	i	+/-	n/a
IT	+/-	+/-	+/-
LT	+/-	+/-	n/a
LV	M	+/-	n/a
LU	+/-	+/-	+/-
MT	+/-	i	n/a
NL	+/-	+/-	+/-
PL	+/-	+/-	n/a
PT	M	i	n/a
RO	i	i	n/a
SE	+/-	i	n/a
SI	+/-	+/-	+/-
SK	+/-	+/-	+/-
UK	+/-	+/-	n/a

Key to symbols: victims exclusively authorized to apply or initiate (+/-), state authorities exclusively authorized to apply or initiate (+/-), both victim and state authorities authorized to apply for or initiate protection orders ('interesting practice') ('i')

¹⁴⁶ However, when victims can apply for criminal protection orders themselves, the risk of retaliation may increase again. On the other hand, when the (quasi-criminal) procedures are separated from criminal proceedings, the offender may feel less assaulted and less vindictive. Whether victims run a higher risk of revictimization in, for instance, the Swedish, Danish and Finnish systems compared to other – more traditional – systems remains unknown.

4.6. Evidentiary requirements

Although victims in civil proceedings have to prove the threat or infringement of a right, the general impression is that civil protection orders are relatively easy to obtain without too many formal application and evidentiary requirements. In contrast to criminal protection orders they, for instance, do not require the suspicion or conviction of a crime. It suffices if the claimant can demonstrate (i.e., make plausible) that the defendant acted unlawfully against the claimant or that there is a threat of future unlawful behavior. In Germany, Slovakia and the Czech Republic, the claim can even be based on a written declaration of the victim. From a victim's perspective, this is a positive development.¹⁴⁷

The evidentiary requirements of criminal protection orders are generally the most difficult to meet – except perhaps in Finland, Denmark and Sweden where there does not have to be a suspicion of a crime – and emergency barring orders the easiest. However, since these requirements were not structurally reported, we cannot summarize the findings in a country-by-country table.

The same is true for the question of whether or not Member States use an objective risk assessment (instrument) or apply a compulsory review of known risk factors when assessing the need for an emergency barring order. An objective assessment of risk is recommended, since it reduces the subjectivity involved in the decision making process. If it is left up to the discretion of the individual police officer or public prosecutor, those who are less susceptible to the plights of victims may not be inclined to impose emergency barring orders. This increases the risk of inequality before the law. An objective risk assessment makes this decision more objective. Ideally, this risk assessment (instrument) is standardized.

4.7. *Ex parte* protection orders

The key indicator of *ex parte* protection derives directly from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). According to Article 53(2), third indent, 'where necessary' protection orders should be 'issued on an *ex parte* basis which has immediate effect'. According to the explanatory report, *ex parte* means that protection orders can be issued 'on the request of one party only'.¹⁴⁸ According to a legal dictionary it furthermore means that the order was issued 'without notice to, and outside the presence of' the affected party.¹⁴⁹ In other words, one does not have to wait until the defendant is

¹⁴⁷ Whether the German option of not summoning the defendant or the Slovak and Czech custom of not holding hearings in civil summary proceedings at all deserves following from the defendant's perspective is more complex and will not be discussed in the context of this report. As indicated, we will mainly focus on the victim's perspective.

¹⁴⁸ See explanatory report, consideration 272.

¹⁴⁹ See <http://legal-dictionary.thefreedictionary.com>.

properly summoned and heard.

The rationale behind *ex parte* orders is that in urgent matters, when adequate notice of judicial proceedings would cause additional harm to the victim, they can provide immediate relief. As such, they can be of great importance to the protection of victims. *Ex parte* orders are therefore commendable on one condition: that due respect is paid to the rights of the defendant as well, e.g., by allowing him the opportunity to appeal the decision.¹⁵⁰

The question of whether Member States allow for *ex parte* protection was included in the report-template. Unfortunately, the term *ex parte* was interpreted differently by the national experts, giving rise to inconclusive answers, with many experts reporting only on the possibility of holding a trial *in absentia*.¹⁵¹ However, if judicial proceedings always require the prior notification or summons of the defendant, they may not result in *ex parte* orders, even if the orders were issued in the absence of the defendant. Because of these misinterpretations, the answers given by the experts were not deemed reliable and were, consequently, not included in a country-by-country table.

4.8. Immediate effect

The aforementioned Article 53(2) of the Istanbul Convention not only prescribes *ex parte* protection orders, but it also stipulates that these orders should have immediate effect (third indent). The Council does not elaborate on this requirement in its explanatory report, but it generally means that the order can immediately be enforced even though the judgment is still open to appeal.¹⁵²

From the victim's point of view, immediate effectiveness is a good practice. Victims do not have to wait until the judgment has become final (*res judicata*) and all legal remedies have been exhausted, in order to receive protection. From the side of the restrained, however, one could argue that immediate effectiveness can be at odds with the principles of due process, since the restrained has to abide by certain rules even though the judgment has not become final yet. If the appellate court rules in favor of the defendant, his freedom of movement has unjustly been limited for a while. This is particularly

¹⁵⁰ There may also be a temporal element that needs to be taken into account. *Ex parte* orders are only appropriate in cases where short-term, temporary relief is needed, for instance until the trial on the merits takes place. Allowing for long-term protection orders to be imposed without adequate notice could undermine the right to a fair trial (Article 6 ECHR). After all, the defendant is not given a proper chance to react to the petition of the victim.

¹⁵¹ The national experts should not be held accountable for this. In hindsight, the definition provided by the template report was ambiguous.

¹⁵² See, for instance, S. Meijer, 'De dadelijke uitvoerbaarheid van rechterlijke beslissingen', *DD* (8) 2013, p. 59-77.

harmful if the conditions of the order have a serious impact on the rights of the defendant and the average time before a case becomes final is long.¹⁵³

The Convention is somewhat ambiguous in whether it intends to allow immediate effectiveness for *ex parte* protection orders only, or whether other orders might qualify for immediate enforceability as well. We consider this option appropriate for more than just *ex parte* protection orders. As long as the proportionality of the measure is carefully considered, and the impact upon the defendant in case he is acquitted on appeal, we see no fundamental objections against opening up this possibility to more orders. In practice, magistrates will have to show restraint in applying this option and decide on a case-by-case basis whether immediate effectiveness is appropriate.

Again, the question in the template report appeared too ambiguous to base any reliable country-by-country conclusions on. Some experts only referred to the legal consequences of not having the verdict serviced (yet) without considering the (possibly) deferring effect of lodging an appeal. Apparently, the question was open to multiple interpretations. We therefore cannot say with 100% certainty that the experts who wrote that their protection orders were ‘immediately effective’ had understood that this also concerned the orders that were issued in (courts of) first instance. Because this ambiguity may have had an impact on the reliability of the results, they are not presented here per Member State.

4.9. Service of the verdict

A problem that is related to the (immediate) coming into force of a protection order is the question of whether the order needs to be serviced before it becomes effective. As mentioned by several national experts, servicing a verdict can be problematic, especially with offenders who have no known address.¹⁵⁴ What happens to the immediate enforceability of a protection order if the authorities fail to service the verdict to the defendant?

In some Member States the service of the verdict is required without it having a deferring effect on the order. In others, however, the service is a basic requirement without which the protection order does not come into effect. The idea is that the offender who is unaware of the existence of a protection order has no *mens rea* if – by accident – he finds himself in violation of its conditions.

Viewed again from the victim’s perspective, the first alternative is better. Although in practice most protection order violations cannot be prosecuted or sanctioned without the verdict being serviced first – you cannot blame

¹⁵³ If, for instance, a father is unable to contact his children or move around freely in substantial parts of his home town, the harm to the defendant could be substantial, especially if this situation continues for a long period of time.

¹⁵⁴ See, for instance, the Belgian, Austrian, French, Finnish and German reports.

a person for violating conditions he did not know about – there could be situations in which the offender was perfectly aware of the existence of a protection order and its conditions without the order being serviced on him, for example, perhaps the victim or a probation officer had informed him. In those, exceptional, cases, if the public prosecutor can establish prior knowledge, (s)he should be able to enforce the order, regardless of whether it was adequately serviced in the first place. If the authorities can prove prior knowledge – not only of the order, but also of its conditions – and they can prove the (criminal) intention to violate the order, we believe that a formality like the service of the verdict should not stand in the way of an official reaction.

4.10 Protection orders and children

Fighting domestic violence is a complex issue in itself, let alone when children are involved. In most Member States, when the violence not only affects the (ex)partner, but is also directed at the children, civil and criminal protection orders can be extended to include the children. Only in Sweden and France – where civil protection orders are exclusively reserved for the (former) partner – are additional measures to protect the children required. Because this is less efficient than having the children included in one and the same protection order, this practice is not commendable and scores a minus (-).

More complex is the situation in which the offender only directly assaults his (former) partner, but leaves the children alone. In such circumstances children suffer harm from witnessing the abuse of the parent, but are not direct victims of violations of their own physical, sexual and psychological integrity. From this perspective, the children need not *as a rule* be included in the protection order. In fact, parental (visitation) rights should often prevail, because these rights are not only beneficial for the restrained parent, but they also serve the interests of the children. If possible, children should have the possibility to sustain a meaningful relationship with both parents. This is the reason why the Hungarian and Irish practice to automatically suspend visitation and parental rights of the abusive parent for the duration of the civil protection order scores a minus as well.¹⁵⁵

In the case of the emergency barring order, however, in almost all Member States, children are automatically included. Given the short duration of the emergency barring order, this is justified. In our opinion, the short-lived infringement on parental rights will generally be proportionate. Furthermore, it will not be easy to devise ways in which the barred person can still see his children without contacting the person left behind within a timeframe of only

¹⁵⁵ The fact that the Hungarian civil protection order only lasts for a maximum of 60 days limits the impact of the prohibition on parental rights. Still, suspending contact between a parent and his children for two entire months can be considered rather long.

one or two weeks. This is why, in the case of the emergency barring order, we recommend automatic inclusion of children.

Still in Austria (and to a lesser extent Belgium) the situation of the children needs to be assessed and a different barring order that includes them can only be imposed if there are factors that point to an immediate risk for them as well. If the Austrian practitioners have found a way to guarantee that the conditions of the barring orders are observed, whilst still allowing for contact between the father and his children, e.g., by mobile phone, this could be an interesting approach. If, however, it turns out that in practice the conditions of the barring order are violated because of the continued contact, the Austrian legislator may want to reconsider the current priority that is given to parental rights.¹⁵⁶

Although parental rights generally need to be respected, practice shows that sometimes these rights are abused in order to circumvent a protection order.¹⁵⁷ If, for instance, a restrained and a protected person still need to maintain some form of contact for the sake of the children, the restrained person may seize that opportunity and discuss matters that are not related to the children instead. He may also react violently towards the ex-partner each time the children are transferred from one parent to the other or he may linger around the family home under the guise of wanting to see the children. However, rather than automatically extending the protection order and superseding parental rights, our recommendation would be to carefully delineate the conditions so as to take into account both the protective needs of the abused parent and the parental rights of the abusive parent. When appropriate, solutions that limit the contact between the parents yet enable the continued contact between the father and his children – such as meeting centers – should carefully be considered, imposed and facilitated (promising practice).

In practice, however, parental rights are often overlooked, resulting in protection orders that do not mention visitation rights or, conversely, visitation rights that do not consider outstanding protection orders. This creates tension and can seriously reduce the effectiveness of protection orders (or parental rights). If the authorities do not explicitly decide for the parties how to deal with these situations by creating a detailed visitation scheme and setting clear boundaries for the necessary contact, the risk of conflicting interpretations and violation of protection orders is high.

We therefore recommend that parental rights are, as much as possible and explicitly, taken into account when issuing protection orders and vice versa. In principle, (protracted) protection orders should allow for continued contact

¹⁵⁶ At this moment, we have no (empirical) information to see how the Austrian approach functions in practice.

¹⁵⁷ See also the victim interviews in Chapter 4.

between the violent parent and his children for the duration of the protection orders *if it does not impede the protection of the victim and if the violent person does not pose a threat to the children as well*. If this creates tension, the protection of the victim should be prioritized, after which alternative ways to allow for (safer) contact between the violent parent and children should be explored.

Table 3.6. (Automatic) inclusion of children in the protection order

	Civil protection orders	Criminal protection orders	Emergency barring orders
AT	+	+	i
BE	M	M	i
BG	+	+	n/a
CZ	+	+	+
CY	M	+	n/a
DE	+	+	+
DK	M	+	M
EE	+	+	n/a
EL	+	+	n/a
ES	+	+	n/a
FI	M	+	i
FR	-	M	n/a
HU	-	+	+
IE	-	-	n/a
IT	+	+	+
LT	+	+	n/a
LV	M	+	n/a
LU	M	+	+
MT	+	+	n/a
NL	+	+	+
PL	+	+	n/a
PT	M	+	n/a
RO	+	+	n/a
SE	-	+	n/a
SI	+	+	+
SK	+	+	+
UK	+	+	n/a

Key to symbols:

With regard to civil and criminal protection orders: children can never be included in the protection order, but require additional protection measures (-), children can be included in protection orders if the restrained person forms a threat to them as well (+), children are automatically included in protection orders (i)

With regard to emergency barring orders: children are automatically included in emergency barring orders (+), the need to include children in the barring order is assessed for the children separately (i)

4.11. Mutual protection orders

Mutual protection orders are civil protection orders that restrain both parties. Victims can either agree to the mutual protection order or the mutual protection order was the result of a counterclaim by the defendant. They are controversial for several reasons.¹⁵⁸ One concern is that the principle of due process is violated, especially when mutual orders are routinely imposed without evidence of unlawful behavior of *both* parties. Another objection is that it can send out a wrong message. Both the victim and the offender may interpret the order as a sign that the victim is to blame for the violence as well and that the two parties are equally accountable. Also, if the order is violated, the police may not know how to proceed, sometimes resulting in the arrest of none or both of the parties. Finally, they can have a negative effect in future proceedings. Because of these risks, and because of the recommendations of the Istanbul Convention,¹⁵⁹ we consider mutual protection orders unfavorable, thus they score a minus (-).¹⁶⁰ Of course, advising the victim not to initiate contact herself, because that could render the non-mutual protection order unenforceable, is allowed, but imposing mutual protection orders conveys the wrong message.

However, what about the situation in which the violence was clearly two-directional? Should the option to have both parties restrained and have both parties protected within one and the same procedure remain open? Allowing for mutual protection orders to be imposed in one and the same procedure is more practical and less time-consuming than forcing the defendant to lodge a counter-claim in another trial, thus confronting the two parties with one another yet again. We believe that mutual protection orders issued *within*

¹⁵⁸ See, for instance, E. Topliffe, 'Why civil protection orders are effective remedies for domestic violence but mutual protective orders are not', *Indiana Law Journal* (67), 1991-1992, p. 1039-1066.

¹⁵⁹ See consideration 267 of the explanatory report which also supports abandoning mutual protection orders.

¹⁶⁰ Arguably, mutual protection orders can also have advantages. They might, for instance, sometimes be more effective than regular, one-sided orders. For one, the effect may be that both parties feel 'heard'. Right or not, many offenders do not consider themselves the single cause of the violence and as a result also attribute blame to the victim. In fact, some of them may even feel abused or victimized themselves. In those circumstances, a mutual protection order may give the offender the feeling of being taken seriously. It may enhance the legitimacy of the verdict and make the offender more prone to respect the conditions. Also, from the side of the victim, a mutual protection order may clarify which behavior she is allowed to engage in towards the offender. We see that in practice, victims often initiate contact with the offender themselves, despite the presence of a protection order. This not only increases the risk of protection order violation on the part of the offender – why would he take a 'no contact' order seriously if the victim keeps calling him herself – but it also complicates the enforcement of these orders once the offender starts violating the conditions himself. In that sense, a mutual protection order may reduce the risk of reoffending, because victims know how (not) to behave as well.

the same proceedings should only be admissible in the following, exceptional circumstances:¹⁶¹

- Both parties agree to the order
- There has to be clear evidence of reciprocal abuse

Since we are not aware of any of the Member States applying mutual orders exclusively in the two circumstances mentioned above, we prefer to categorically reject the option of mutual protection orders.

The risk of victims being discouraged because of the threat of a mutual protection order is simply too high. That would be a shame, because a civil protection order could be the first step in ending the violence, even in a situation of mutual abuse. Without the risk of mutual protection orders hanging over their heads, victims can go to civil court, without having to worry about counter-claims. Defendants who do not agree with the order or who feel that the claimant is equally accountable for the violence can start another procedure.

Table 3.7. Mutual protection orders

	Civil protection orders		Civil protection orders
AT	+	IT	+
BE	-	LT	-
BG	-	LV	M
CZ	+	LU	+
CY	+	MT	-
DE	-	NL	-
DK	M	PL	M
EE	no info	PT	M
EL	-	RO	no info
ES	-	SE	-
FI	M	SI	+
FR	+	SK	-
HU	+	UK	-
IE	+		

Key to symbols: mutual protection orders not allowed or only a theoretical option (+), mutual protection orders allowed (-)

¹⁶¹ Allowing mutual protection orders to be imposed within the same procedure on a consensual basis is not enough. The permission of both parties needs to be substantiated with clear evidence of reciprocated violence, because otherwise there is a risk of victims agreeing to mutual protection orders to speed up the process and guarantee a positive verdict. Allowing simultaneous mutual protection orders solely on the basis of evidence of mutual abuse will not suffice either. Victims, who want to address the violence, but fear a mutual protection order, may be afraid to begin a civil procedure because of this.

4.12. Length of the proceedings

For a victim, having a protection order at her disposal within a matter of hours or days instead of having to wait months, is a huge advantage. Unless the offender is detained, the longer she has to wait for a protection order, the longer she remains vulnerable to revictimization. Although protection orders cannot guarantee 100% safety and although in some cases they even make matters worse, victims are generally better off *with* a protection order than *without* one. A short processing time is therefore of the essence.

Civil protection orders: With the above in mind, the Member States that have arranged for accelerated civil procedures in urgent cases (within 24 hours) are awarded with a double-plus (++). If a victim has to wait up to 7 days before the order is imposed, the score is a plus (+) and up to 30 days, a plus-minus (+/-). A longer processing time scores a minus (-).¹⁶²

Criminal protection orders: The processing time of criminal protection orders varies too much between Member States and between post- and pre-trial procedures to be quantified. The Member States therefore did not receive an individual score on this aspect. However, it is worth mentioning here that the Swedish, Danish, Finnish and Spanish jurisdictions have enacted exceptionally short deadlines by which protection orders need to be issued. These deadlines even apply in cases that are not serious enough to warrant a (conditional release from) pre-trial detention.¹⁶³ They can furthermore result in relatively serious prohibitions that can last for years. The expeditious nature of criminal protection order procedures in these countries is seen as a huge advantage.

Emergency barring orders: By definition the emergency barring orders are imposed extremely quickly. This is exactly the reason why they were created in the first place: to provide immediate protection. They score a double-plus (++) as well.

¹⁶² If protection orders in a certain jurisdiction can be issued both through accelerated procedures and through longer, substantial proceedings, only the fact that there are accelerated procedures in place counts. Even if in practice the accelerated procedures are seldom used, and the average time before a civil protection order is issued is substantially longer, the country will be given a plus. Again, in this chapter it is legislation that is most important, not whether the law is correctly implemented in practice.

¹⁶³ If a case is serious enough, expeditious intervention (i.e., by first arresting the offender and then setting him free again on the condition that he will not contact the victim) can be arranged in more European countries. What distinguishes the Swedish, Finnish, and Danish approach is that the quick intervention is also possible in more trivial cases and – in Finland, Denmark and Sweden – that the victims can apply for these orders themselves.

Table 3.8. Processing time of cases

	Civil protection orders		Civil protection orders
AT	+/-	IT	+/-
BE	+	LT	M
BG	no info	LV	M
CZ	+	LU	+/-
CY	-	MT	M
DE	+	NL	+
DK	M	PL	+/-
EE	+	PT	M
EL	+	RO	M
ES	+	SE	M
FI	M	SI	M
FR	++	SK	+
HU	+	UK	+
IE	+		

Key to symbols: orders take more than 30 days (-) orders are imposed within 30 days (+/-) orders are imposed within 7 days (+), orders are imposed within 24 hours (++)

4.13. Financial costs of protection orders

Court fees generally have two purposes: 1) remunerate for the services provided and 2) discourage frivolous lawsuits.

Civil protection orders: Although court fees are generally low, they can nonetheless constitute an insurmountable threshold for victims with a lower income. Of course, legal aid schemes can lighten the financial burden somewhat, but not all victims in need of financial support are eligible for legal aid (e.g., when means are measured per household and not individually).¹⁶⁴ In addition, forms for requesting free legal aid and representation often require technical information that is not within the grasp of those without knowledge of the legal system.¹⁶⁵ Questions such as: ‘Which rights have been violated?’ could deter victims from requesting support and attaining protection. Furthermore, even victims that are eligible for legal aid are not automatically exempted from paying court fees. In some Member States (e.g., the Netherlands) they are still expected to pay court fees, albeit that a special rate applies to them.

¹⁶⁴ Think of the victim who is still in the midst of her divorce and whose income is equated with that of her husband. Even though she herself may not be able to withdraw any money and afford court fees, her husband’s income could prevent her from profiting from legal aid schemes.

¹⁶⁵ L. Sosa, dissertation 2015 (forthcoming).

In these matters, we feel that the needs of the victims should prevail over the more general, societal needs that inspired the institution of court fees. Civil summary proceedings in which protection orders feature only make up a fraction of the total workload of civil courts. Dispensing the court fees in these particular cases, will not significantly affect the total budget of the civil judiciary in a country. There are plenty of other cases left to help pay the bills. In addition, persons who make wanton or false accusations still run the risk of having to pay for the costs of the defendant.

Although cases of a different nature – such as labor disputes or business conflicts – are important as well, the stakes are much higher when it comes to preventing revictimization that involves violence. In these cases one cannot afford to discourage a victim from participating in civil proceedings merely because of financial concerns.

For this reason, we feel the claimants who request a civil protection order should be exempted from paying court fees, in all circumstances. Member States that already provide these services for free to all victims are given a plus. All the other Member States score a minus.

Criminal protection orders: Protection orders imposed within a criminal procedure are usually free of charge, as are emergency barring orders. It is in Portugal, Denmark and Hungary only that court fees within criminal proceedings are sometimes obligatory.¹⁶⁶ Again, the plusses go to the Member States that provide protection orders free of charge (+), the others score a minus (-).

¹⁶⁶ In Hungary this depends on whether a crime is subject to private prosecution. Possibly, more Member States charge court fees when the victim acts as a private prosecutor, but the national experts did not report this.

Table 3.9. Court fees

	Civil protection orders	Criminal protection orders	Emergency barring orders
AT	+	+	+
BE	-	+	+
BG	-	+	n/a
CZ	+	+	+
CY	-	M	n/a
DE	-	+	+
DK	M	-	+
EE	-	+	n/a
EL	M	M	n/a
ES	+	+	n/a
FI	-	+	+
FR	-	M	n/a
HU	+	-	+
IE	M	M	n/a
IT	-	+	+
LT	-	+	n/a
LV	M	+	n/a
LU	+	+	+
MT	+	+	n/a
NL	-	+	+
PL	-	+	n/a
PT	M	-	n/a
RO	+	+	n/a
SE	-	+	n/a
SI	-	+	+
SK	-	M	+
UK	-	+	n/a

Key to symbols: protection orders (sometimes) carry a court fee (-), protection orders are provided free of charge (+)

4.14. (Free) legal representation for the victim

Legal representation can be a crucial protective factor for victims who participate in legal proceedings. Empirical research has shown that those victims who are unrepresented in civil proceedings are more likely to have their claim rejected and if it is granted, the protection order is less likely to contain all the appropriate conditions.¹⁶⁷ Furthermore, a lawyer can counterbalance the impact of cross-examination, (s)he can support the victim in the collection and presentation of the evidence, and (s)he can advise the victim in matters

¹⁶⁷ Finn & Colson (1990) in Topliffe (1991-1992), *op.cit.*

relating to court procedures.¹⁶⁸ All things considered, having legal counsel at one's disposal is generally positive.

This may be different when legal representation is made *compulsory* for participation in legal proceedings. Without a lawyer to present their case, Dutch, Maltese and Lithuanian victims are not allowed to initiate civil summary proceedings. Although both countries offer free legal representation to victims with low incomes, there are victims who cannot profit from such arrangements. For these victims, the – often substantial – honoraria of lawyers may discourage them from seeking legal relief. So unless compulsory legal representation is matched by an all-inclusive legal aid system, these countries run the risk of losing victims who cannot afford the financial risk of going to court. They are therefore awarded a minus (-).¹⁶⁹ The same goes for countries that do not have a legal aid system at all.

The situation is better in Member States where legal counsel is not compulsory, but where it is highly recommended and where victims can profit from legal aid schemes as well. Although having to present the case yourself is far from ideal, victims in countries where legal representation is not an eligibility requirement at least have the opportunity to initiate proceedings without being forced to take lawyers' fees into account.

Of course, much of the above depends on the actual functioning of the national legal aid Acts in practice. In countries where many victims are eligible and where there is a correction for unfair situations¹⁷⁰ victims are better off than in countries where only very few victims qualify. The more inclusive and generous the legal aid systems, the better the situation from the perspective of the victims. Countries without compulsory representation, but with legal aid legislation therefore score a plus (+) across the board. Arguably, Table 3.10 would have looked much less positive for some Member States if the functioning of legal aid in practice had been taken into account.¹⁷¹

¹⁶⁸ Topliffe (1991-1992), *op. cit.*

¹⁶⁹ The best situation would be the one in which legal representation is compulsory and victims never have to worry about the costs. Since that is never the case, we had to choose. It is unclear what is worse for victims: either not being represented (because representation is not compulsory) or not going to court because they worry about the costs. Possibly, the answer to this question also depends on the effects of these politics on the victims' access to justice. What if only a small portion of victims are deterred from going to court because of the obligatory costs of legal representation (making our objections mostly hypothetical), while a large portion is unrepresented in other countries (having possibly detrimental effects on the outcome of these trials)?

¹⁷⁰ Compare the situation in which a woman, who has married in community of property, wants to obtain a protection order against her high-earning husband.

¹⁷¹ In their reports, some experts hinted at the practical (mal)functioning of their national legal aid systems, but since this information was not reported in a structural fashion, these national

Against this backdrop, having free legal representation available for victims of certain crimes, *regardless of their income* and *in addition* to the traditional, income-related legal aid, is considered a positive development. Even though in these systems there are still victims who cannot profit from free legal representation and who as a result receive less favorable treatment, the overall number of victims who can, increases.

Table 3.10. Compulsory (free) legal representation¹⁷²

	Civil protection orders	Criminal protection orders
AT	+	+
BE	M	M
BG	+	+
CZ	+	+
CY	M	M
DE	+	+
DK	M	M
EE	+	+
EL	+	+
ES	+	+
FI	+	+
FR	+	M
HU	+	+
IE	+	M
IT	+	+
LT	-	+
LV	M	+
LU	+	+
MT	-	-
NL	-	+
PL	M	+
PT	M	+
RO	+	-
SE	+	+
SI	+	M
SK	+	+
UK	+	+

Key to symbols: no legal aid available and/or legal representation is compulsory (-), legal representation not compulsory, legal aid available (+)

differences could not be taken into account in table 3.10..

¹⁷² Unfortunately, there were too many ‘missings’ in the national reports to provide a country-by-country overview of free legal representation/assistance during emergency barring orders. Nevertheless, the Austrian approach of providing free legal aid to the persons staying behind deserves recommendation (++). These persons can, for instance, be helped in applying for prolonged (civil) protection.

4.15. Protection order registration

The practice of registering protection orders on a national level – only or in addition to registration on a regional level – is commendable, in particular because ‘no contact’-orders can be violated throughout the country. In that case, it could save the victim a lot of trouble if she could contact the nearby police station and report the violation without having to prove the existence of the protection order and its exact conditions. This might decrease the time it takes for the police to react to such emergency calls.

Besides the benefits for the immediate enforcement of existent protection orders, nationwide registration of protection orders is also advantageous in the phase *before* an order is imposed. Information on past protection order compliance could help the authorities in deciding on whether or not to impose another protection order in the case at hand. If, for instance, a criminal investigative judge contemplates releasing a suspect from pre-trial detention on the condition that he leave the victim alone, a track record of previous protection order violations might make him change his mind. Even protection orders that were previously issued in other parts of the country could be of relevance in this decision-making process. For this reason, it is not only important to register the type of protection order issued and its exact conditions, but to also note down protection order violations.¹⁷³

The advice to register protection orders in a nationwide, central database is not only sensible for criminal protection orders, and emergency barring orders, but also for civil ones. Especially, in jurisdictions where the violation of civil protection orders is criminalized, it can be helpful to allow the police access to the exact conditions the offender has to adhere to. Some policemen may feel ‘more’ authorized to intervene in situations of domestic violence if a civil protection order is in place. But also in countries where civil protection orders can only be enforced through civil means of execution a central registration be of help to the victims. Again, evidence of a previous (pattern of) protection order (violation) could help the civil judge in establishing the appropriate conditions and penalties attached to the current order.

¹⁷³ In the reports, we did not structurally check for the type of information that the Member States register exactly (only protection orders issued or also violations). Table 3.11 therefore only represents the fact that there is some kind of registration on protection orders.

Table 3.11. Registration of protection orders

	Civil protection orders	Criminal protection orders	Emergency barring orders
AT	+/-	+/-	+/-
BE	M	+	+
BG	-	-	n/a
CZ	M	+	+
CY	-	-	n/a
DE	+/-	+	M
DK	M	+	+
EE	M	+	n/a
EL	+/-	+/-	n/a
ES	+	+	n/a
FI	-	+	+
FR	+	M	n/a
HU	-	+	M
IE	+/-	-	n/a
IT	+	+/-	+
LT	+	+	n/a
LV	M	+	n/a
LU	-	M	+
MT	-	-	n/a
NL	-	+	+
PL	M	+	n/a
PT	M	-	n/a
RO	+/-	+/-	n/a
SE	-	+	n/a
SI	+	+	+
SK	-	M	+
UK	+/-	M	n/a

Key to symbols: no or incidental registration (-), regional or local registration (+/-), nationwide, central registration (+)

4.16. Informing the victim

In order for a protection order to function properly, it is crucial that the victim is informed of the exact conditions that the offender has to adhere to. Only then can the victim decide whether the order has been violated and whether she can report to the police or deploy civil means of execution. Victims should therefore always be automatically informed: 1) of the fact that a protection order was issued, 2) of the precise conditions attached to the protection order, and 3) of how to react to an observed violation.¹⁷⁴ Countries that convey this

¹⁷⁴ Only in the rare situation when a victim makes use of her right not to receive information on

information automatically to the victim score a plus (+). Countries that leave it up to the discretion of the court, public prosecutor, or other authority to inform the victim score a minus (-).

Table 3.12. Informing the victim

	Civil protection orders	Criminal protection orders	Emergency barring orders
AT	+	-	+
BE	M	+	+
BG	+	+	n/a
CZ	+	+	+
CY	M	-	n/a
DE	+	+	+
DK	M	+	+
EE	+	+	n/a
EL	+	+	n/a
ES	+	+	n/a
FI	+	+	+
FR	+	M	n/a
HU	+	+	+
IE	+	-	n/a
IT	+	+	+
LT	+	+	n/a
LV	M	+	n/a
LU	+	+	+
MT	+	-	n/a
NL	+	+	+
PL	M	+	n/a
PT	M	-	n/a
RO	+	+	n/a
SE	+	+	n/a
SI	+	+	+
SK	+	+	+
UK	+	+	n/a

Key to symbols: victim is not automatically informed (-), victim is automatically informed (+)

4.17. Authority responsible for monitoring

Making the police or another government agency responsible for the monitoring of protection order compliance has several advantages. First of all,

her case (right to 'opt out' in Article 6(4) EU Victim Directive) can a criminal protection order be issued without the victim's knowledge.

the police have more means to proactively monitor compliance than individual victims, especially when they are authorized to use electronic monitoring devices. Secondly, victims may feel better supported knowing that they are not the only ones responsible for protection order monitoring. They possibly feel more at ease knowing that the local policeman on the beat keeps their house under surveillance or makes an extra house visit every once in a while. Thirdly, police monitoring may also have a deterring effect on the offender. He may refrain from (further) violating the conditions after he has had an official warning or a house visit. He may realize he is no longer dealing with the victim alone, but that he has the entire police force to reckon with. A fourth reason for making the police responsible is that it may make the police more prone to react in the case of protection order violation. They know that if they fail to effectively monitor compliance, they risk being held accountable if the order is violated, especially if this violation results in serious injury on the part of the victim. From the victims' perspective, it is therefore a positive practice to put the police formally in charge of monitoring protection order compliance (+).

When it comes to the distribution of responsibility, a distinction should be made between civil protection orders on the one hand, and criminal protection orders and emergency barring orders on the other. In the case of civil protection orders, making victims solely responsible for the monitoring is less objectionable. After all, civil protection orders were issued on the request of the victim, without any governmental interference, in a 'horizontal' procedure. This is different for the criminal and emergency barring order procedures, which are characterized by a 'vertical' relation between the offender and the government. These procedures were instigated from the side of public agents, who thereby assumed responsibility for the (retaliatory) actions that might derive from these procedures.¹⁷⁵ As a result, the state authorities should also be formally responsible for protection order monitoring.¹⁷⁶

¹⁷⁵ It is well known, that sometimes a situation of domestic or intimate partner violence may escalate as a result of police interference.

¹⁷⁶ This may be different in Denmark, Sweden and Finland, where the quasi-criminal trajectory has important civil characteristics (e.g., the fact that it is mostly the victim who initiates proceedings). Still, because these procedures have criminal 'traits' as well, we recommend police monitoring in these jurisdictions as well.

Table 3.13. Authority responsible for monitoring protection order compliance

	Civil protection orders	Criminal protection orders	Emergency barring orders
AT	+/-	M	+
BE	M	+	+
BG	+	+	n/a
CZ	+/-	-	+
CY	+/-	-	n/a
DE	+/-	+	+
DK	M	-	-
EE	+/-	+	n/a
EL	+/-	-	n/a
ES	M	+	n/a
FI	M	-	-
FR	+/-	M	n/a
HU	+	+	+
IE	+	+	n/a
IT	+/-	+	+
LT	+/-	M	n/a
LV	M	-	n/a
LU	+/-	+	+
MT	+/-	-	n/a
NL	+/-	+	+
PL	+/-	+	n/a
PT ¹	M	+	n/a
RO	+	+	n/a
SE	+/-	+	n/a
SI ²	+/-	+	+
SK	+/-	+	+
UK	+/-	-	n/a

¹ In Portugal, only criminal POs with GPS are monitored by a state authority.

² In Slovenia, POs with 'custodial supervision' are monitored. Information on other POs is missing.

Key to symbols: victim is responsible for monitoring criminal protection orders (-), victim is responsible for monitoring civil protection orders (+/-), police and/or other authority are responsible for monitoring protection orders (+)

4.18 Monitoring activities

The national experts mentioned multiple ways in which the monitoring authorities can check protection order compliance. Amongst these examples were some that could qualify as 'good' or 'promising practices', such as the Swedish approach to routinely take up contact with the victim, and the alarm system that is given to the victim in the Netherlands, Sweden, Italy, Spain and

France. The elaborate monitoring system that was implemented in Spain could serve as an example to all Member States.

However, since only information on GPS-assisted or other forms of electronic monitoring were structurally reported, the country-by-country table below only provides data on whether or not a jurisdiction allows for offenders to be monitored with the help of technical devices. Countries that do not provide monitoring authorities with this type of equipment have a lower score (-) than countries that do have the possibility of electronic monitoring (+), even though, in practice, these technical devices may be used only rarely. The reason why electronic monitoring is considered a good practice is that it is practically the only means that allows for 24-hour proactive monitoring. Unlike electronic monitoring, all other forms of monitoring are either retrospective or they are labor-intensive and guarantee no full-time supervision.

Table 3.14. Availability of technical devices to monitor protection orders

	Criminal protection orders		Criminal protection orders
AT	-	IT	+
BE	M	LT	+
BG	M	LV	-
CZ	-	LU	-
CY	-	MT	-
DE	+	NL	+
DK	-	PL	+
EE	-	PT	+
EL	-	RO	-
ES	+	SE	+
FI	-	SI	-
FR	+	SK	-
HU	-	UK	+
IE	-		

Key to symbols: no electronic monitoring available (-), electronic monitoring available (+)

4.19. Prioritizing (emergency) calls of protection order violation

An immediate reaction to a call reporting the violation of a protection order is of great importance. First of all, because the victim could be at risk and in need of help. The fact that a protection order is in place, usually indicates that the offender has shown little respect for the physical or psychological integrity of the victim in the past and that there is a considerable risk that he will violate the victim's rights once more. Otherwise the protection order would not have

been issued in the first place! An instant response to these calls is therefore pivotal and should be given priority over (many) other calls for assistance.¹⁷⁷

The second reason why an immediate reaction is necessary is because it increases the likelihood of catching the offender in the act. This strengthens the victim’s case should the violation result in the execution of the underlying sanction or even a new prosecution. Having the statement of a policeman who personally witnessed the violation of a protection order is generally considered primary evidence that is not easily discarded in court.

A third reason for prioritizing these emergency calls is that it shows the offender that the police are taking protection orders seriously. It sets the norm that infringements are not tolerated and that the victim is not alone in her fight. This may deter him from engaging in future violations. A slow reaction or no reaction at all, may send the exact opposite message. This could disempower the victim, because the offender realizes he can get away with his misbehavior without it provoking any (serious) reaction on the part of the police.

In table 3.15 the countries that have not formally prioritized emergency calls of protection order violation are given a minus (-), whereas the countries that have receive a plus (+). The table does not take into account whether this formal prioritization is followed up in practice.

Table 3.15 Prioritization of calls of protection order violation

	Priority		Priority
AT	+	IT	-
BE	M	LT	+
BG	no info	LV	-
CZ	+	LU	no info
CY	+	MT	-
DE	+	NL	+
DK	M	PL	+
EE	-	PT	M
EL	M	RO	-
ES	M	SE	+
FI	+	SI	+
FR	+	SK	+
HU	+	UK	+
IE	M		

Key to symbols: no formal priority (-), formal priority (+)

¹⁷⁷ In particular over reports that concern material goods (theft, vandalism), but also (non-violent) violations of the public order.

4.20. Evidentiary requirements for the establishment of a violation

Once a protection order is violated, victims prefer to go through as few steps as possible, in order to have the underlying penalty executed. For civil protection orders, merely having to report to the bailiff that a violation took place (NL), instead of having to go to court again (FR, DE) or to provide corroborating evidence (AT) is to be preferred. In the second and third scenario, the burden of proof lies with the victim: she has to make the violation ‘plausible’ or prove there was a violation ‘beyond reasonable doubt’.¹⁷⁸ In the first scenario, the burden of proof is reversed: it is the offender who has to contest the claim and prove that the violation *did not* take place. Because of the advantage for the victims and because it was the behavior of the offender that gave rise to the issuing of the protection order in the first place – there has already been a trial in which the deviancy of his behavior was established – this reversal of the burden of proof is seen as an ‘interesting practice’.

Of course, there is a risk of false accusations. Vindictive victims may seize the opportunity to take revenge on their assailant and make frivolous claims of protection order violation. Still, this will probably only apply to a very small minority of victims. Most victims prefer to avoid another confrontation with their offender and not risk exposing themselves to retaliatory acts by making false claims. Another factor that may tip the scale in favor of the reversal of the burden of proof is that the principles of due process are still warranted: the defendant can always contest the claimant in court if he disagrees with the victim’s point of view. Furthermore, civil sanctions upon violation of protection orders are relatively lenient and mostly consist of civil fines. This is different when the violation of civil protection orders is criminalized. In that case there is more at stake and it is up to the public prosecution service to prove there was an infringement on the protection order.

In the case of criminal protection orders and emergency barring orders, a violation usually has to be proven ‘beyond reasonable doubt’. This means that the victim’s statement usually needs to be substantiated with sufficient corroborating evidence. Some criminal protection and emergency barring orders, however, seem to have a more relaxed evidentiary standard.¹⁷⁹ Although these latter protection orders are beneficial from the perspective of the victim, they are possibly not in accordance with the rules of due process. Because of this possible tension between victims’ rights and those of the defendant, the custom to apply less stringent evidentiary criteria for the violation of (some) criminal protection or emergency barring orders is not recommended here.

¹⁷⁸ Proving a violation ‘beyond reasonable doubt’ is the standard when a country has criminalized the violation of civil protection orders (see Chapter 2 section 4.4.9). In other countries, it suffices if the violation of a civil protection order is plausible.

¹⁷⁹ See Chapter 2 section 4.4.9.

4.21. Discretionary power to report violations

Ideally, violations of protection orders should *always* be passed on to a superior authority. Even though some violations may seem trivial to the individual police officer taking down the report, the context of domestic violence, intimate partner violence or stalking may render them harmful nevertheless.¹⁸⁰ Therefore, countries that do not give the police discretionary power in reporting violations to the public prosecutor or the courts score a plus (+), those that do, a minus (-).

This situation may be different in jurisdictions where the violation of civil protection orders does not constitute a crime.¹⁸¹ In that case, criminal justice involvement is not self-evident and the police retain the discretionary power to decide whether the behavior that caused the breach of the order fulfills the constituent elements of a crime. If not, they can decide not to report the case to the public prosecutor, but drop the case or take down notes instead. However, since notification of the superior authority would still be preferable from the victim's perspective, the countries with compulsory reporting score a plus (+), those with discretionary power a plus-minus (+/-).

¹⁸⁰ If, for instance, a woman is sent a bouquet of flowers for her birthday by the man who is bound by a 'no contact'-order, this incident may, in itself, seem innocent enough. However, once the flowers are not seen in isolation, but placed within the context of a prolonged stalking campaign aimed at destructing the woman's (private) life, they become much more malignant.

¹⁸¹ This is the case in Belgium, the Netherlands, Finland and Lithuania.

Table 3.16. Discretionary power to report violations

	Civil protection orders	Criminal protection orders	Emergency barring orders
AT	+	+	+
BE	+/-	M	+
BG	+	+	n/a
CZ	+	+	+
CY	M	M	n/a
DE	+	+	-
DK	M	+	M
EE	+	+	n/a
EL	+	+	n/a
ES	+	+	n/a
FI	M	-	+
FR	+	M	n/a
HU	M	M	M
IE	+	+	n/a
IT	+	+	+
LT	+/-	+	n/a
LV	M	-	n/a
LU	M	M	M
MT	M	M	n/a
NL	+/-	+	+
PL	M	+	n/a
PT	M	+	n/a
RO	+	+	n/a
SE	+	+	n/a
SI	M	+	+
SK	M	M	M
UK	+	+	n/a

Key to symbols:

For civil protection orders: monitoring authorities have discretionary power (+/-), monitoring authorities have no discretionary power (+)

For criminal protection and emergency barring orders: monitoring authorities have discretionary power (-), monitoring authorities have no discretionary power (+)

4.22. Criminalization of civil and emergency barring order violation

The enforcement of civil protection orders can either start by informing the police – in countries where their violation is criminalized – or by turning to a bailiff or a civil court. Both options have their pros and cons. Victims who prefer to steer clear from a criminal procedure – e.g., because they do not want their offender to have a criminal record – may shy away from reporting violations to the police. They may prefer the alternative of having civil means

of execution at their disposal. If a country only allows for enforcement through the criminal justice system, these victims may decide not to report violations at all, and the behavior remains unpunished.

Other victims, however, may feel uncomfortable with the idea of having to go to a bailiff or to civil court themselves. They would much rather the police helped them and proceeded with their case instead. Also, it can send a strong signal to the offender that society does not tolerate infringements of protection orders, either because they could be interpreted as a sign of contempt of court or because they endanger the rights of other citizens. Criminalization could further inspire policemen to intervene in what otherwise might be seen as a 'private matter'.¹⁸² In addition, the criminalization of protection order violation could have a more powerful deterrent effect than a civil sanction. This may also depend on the maximum penalty that is attached to protection order violation.¹⁸³

Ideally, Member States would therefore offer victims both alternatives – civil *and* criminal enforcement – to choose from. Victims could weigh all the pros and cons of filing a report versus civil execution and decide which solution suits their particular case best. Germany is an example of a Member State that has implemented both options. When forced to choose, we feel that most victims would prefer the option of criminal enforcement. Provided that the criminal justice system takes protection order violations seriously and provided that national laws allow for effective and dissuasive sanctions, most victims would much rather have the police or the public prosecution service be in charge. For this reason, we recommend the criminalization of breaches of civil protection orders and emergency barring orders.¹⁸⁴ Table 3.17 gives an overview of the countries that have (not) criminalized the violation of civil and administrative protection orders.

¹⁸² In the Netherlands, for instance, where the violation of civil protection orders is not criminalized and the civil verdict does not always contain an explicit authorization for the police to intervene in case of violation, some policemen are confused on what to do when a victim reports an infringement (see Van der Aa e.a. (2013), *op. cit.*).

¹⁸³ In this respect, the maximum fines attached to the breach of an emergency barring order in Member States such as Belgium and Slovenia – €100 and €800 respectively – may not be high enough to deter an obstinate offender. Especially, since in Slovenia the alternative to a pecuniary fine is police custody for a maximum of only 12 hours. A fine may furthermore have little deterrent effect on an offender who has no money, income or assets. Of course, whether the maximum sentences actually need to be changed is a complex discussion. It also depends on the average income in a certain country, of the maximum penalties attached to other crimes, etcetera. The maxima on protection order violation need to be in proportion to the sanctions within the national system as a whole. We therefore cannot recommend that maximum penalties need to be raised across the board.

¹⁸⁴ An administrative sanction – e.g. Austria – might also suffice, provided that the sanction imposed is effective and dissuasive. The downside is that imprisonment for violations of a protection order becomes more difficult.

Table 3.17. Criminalization of civil and emergency barring order violation

	Civil protection orders	Emergency barring orders
AT ¹	+	-
BE	-	+
BG	+/-	n/a
CZ	+	+
CY	M	n/a
DE	+	-
DK	M	+
EE	+	n/a
EL	+	n/a
ES	+	n/a
FI	-	+
FR	+	n/a
HU	+	+
IE	+	n/a
IT	+	+
LT	-	n/a
LV	M	n/a
LU	+	+
MT	+	n/a
NL	-	+
PL	M	n/a
PT	M	n/a
RO	+	n/a
SE	+	n/a
SI	M	+
SK	+	+
UK ¹	+	n/a

¹ In Austria, the violation of an emergency barring order is administratively sanctioned.

² With the possible exception of Scotland.

Key to symbols: violation of civil protection orders and emergency barring orders is not criminalized (-), violation of some protection orders criminalized, not all (+/-), violation of civil protection orders and emergency barring orders is criminalized (+)

4.23. Possible reactions and sanctions upon violation

It is important that breaches of protection orders in principle lead to effective and dissuasive sanctions. Informal or lenient reactions, such as warnings or a reprimands, should be kept to the utmost minimum, and should, for instance, only be considered in situations in which a genuine mistake (lack of *mens rea*) or serious provocative behavior on the part of the victim (see next Section) caused the violation. It could also be an outcome in cases where there

is insufficient evidence to establish the violation. However, restrainees who violate orders because they consider the conditions too strict, or restrainees who only commit minor violations should not be given a second or a third chance. If the restrainee considers the conditions disproportionate, he should have officially applied for their change, and the (lack of) seriousness of the violation can be expressed in the mildness of the sanction, but should not lead to impunity either.

The reason is that the lack of a (serious enough) reaction sends the message that infringements of protection orders are tolerated. Once the offender realizes he can get away with his misbehavior, the deterrent potential of protection orders could diminish significantly. This could not only provoke future violations, but it could also seriously discourage the victim, who may feel let down by the police.

4.24. Contact initiated by the victim

Contact initiated by the victim in spite of a protection order puts many monitoring and enforcement agents in an awkward position. According to some professionals, the fact that the victim initiated the contact diminishes the culpability on the part of the offender. We can broadly distinguish two approaches in the Member States:

- 1) Either the enforcement authorities will not consider this a violation of the protection order or seriously discount the complicity on the part of the victim in the culpability of the offender, or
- 2) The offender remains in principle liable for violations regardless of whether the contact was initiated by the victim.

In ordinary cases, if the offender enters into a conversation started by the victim, despite a protection order prohibiting such contact, the behavior of the victim could be interpreted as a form of provocation or even incitement. In that case it would only be fair to take the 'complicity' on the part of the victim into account and decide not to execute the underlying sanction at the expense of the offender. However, the situation is different when domestic or intimate partner violence is concerned.

Research has shown that the dynamics of a violent relationship can be such that the victim is unable to stop communicating with the offender. Due to the learned helplessness and the social isolation that resulted from the violence, these victims have become so fully dependent on their abuser that they can no longer function without his presence. Without a sophisticated support network to fill the gap, these victims feel at a loss once he is no longer present to guide her every move. In these situations, the victim cannot be blamed for interacting with the offender. The same is true when contact was initiated

with an eye on visiting rights, moving the perpetrator's property, or arranging a divorce.

In principle, holding the offender fully accountable for protection order violations is therefore a good point of departure (+). The fact that the contact was initiated by the victim may mitigate the official reaction to the breach of the protection order to some extent, but it is still the responsibility of the restrainee to ignore the victim and comply with the order. Only when the victim's behavior is clearly provocative or amounts to incitement, can rigorous enforcement or even the protection order itself be reconsidered.

Table 3.18. Influence of contact initiated by the victim

AT	+	IT	-
BE	no info	LT	-
BG	M	LV	no info
CZ ¹	-	LU	-
CY	+	MT	M
DE	-	NL	-
DK	-	PL	M
EE	-	PT	-
EL	no info	RO	M
ES	+	SE	-
FI	+	SI	M
FR	no info	SK	-
HU	-	UK	-
IE	+		

¹ Only in the case of the emergency barring order is the reaction always considered a violation of the order.

Key to symbols: the reaction to contact initiated by the victim is generally not considered a violation of the protection order (-), the reaction to contact initiated by the victim is generally considered a violation of the protection order (+)

4.25. Training of the monitoring authorities

Issuing protection orders, monitoring their compliance, and enforcing them upon violation can be complex matters. These are areas in which misunderstandings or misinterpretations of the applicable rules can easily arise. What are the police, for instance, allowed (or obliged) to do when a victim calls to the station and complains about the violation of a civil protection order? Does it make a difference if the breach of civil protection orders is criminalized? Are they allowed to arrest the offender or not? Should they always inform a superior authority, even if the violation was only minor?

What difference does the fact that the victim has initiated the contact make?

Without specialized training in how to monitor and enforce protection orders, the police or the probation officers might not know how to answer the above questions and how to act accordingly. As a result, they may decide to merely issue a warning or not act at all, causing violations to remain under the radar and victims not receiving the protection they are entitled to. A consistent, predictable reaction to protection order violation, on the other hand, can work as a deterrent for offenders.

Specialized training is vital to guarantee a consistent, nation-wide approach to monitoring protection order compliance and enforcement. Preferably, training is offered not only during a one-off course, but forms part of the continued education of the police, the probation officers, public prosecutors, and judges. If it is part of the existing curricula on domestic or intimate partner violence, it needs to be stressed that protection orders can apply to other victims as well.

Also, it is better to have all policemen attend (basic) courses on protection order monitoring and enforcement, rather than to reserve these for policemen specialized in domestic violence only. Unless all reports of domestic violence are automatically forwarded to specialized police officers, there is the risk that certain incidents go unnoticed if they are dealt with by an inexperienced and unspecialized official.¹⁸⁵

Member States that offer specialized training score a plus (+), with Austria, Finland and Spain scoring a double-plus (++), because they have made interventions in the area of violence against women and domestic violence part of their continued education available for all policemen.

¹⁸⁵ Furthermore, cases that do not fit in the domestic violence category might not end up being dealt with by these specialized professionals.

Table 3.19. Specialized training of the monitoring authorities

AT	++	IT	-
BE	-	LT	-
BG	M	LV	-
CZ	-	LU	-
CY	-	MT	-
DE	+	NL	-
DK		PL	+
EE	no info	PT	+
EL	-	RO	+
ES	++	SE	+
FI	++	SI	-
FR	-	SK	no info
HU	-	UK	-
IE	+		

Key to symbols: no specialized training available (-), specialized training available (+), specialized training available as part of continued education for all monitoring agents (++)

4.26. Types of protection orders

Protection order provisions should at the very least authorize civil and criminal justice authorities to designate an area in which the offender is no longer allowed to go, prohibit him from approaching the victim within a certain distance, and impose a ‘no contact’ order covering all forms of contact (direct and indirect, by proxy, through means of telecommunication, et cetera). Although an exhaustive list of possible protection orders is preferable from the viewpoint of legality – the principle of legal certainty prescribes that legal interventions need to be described as clearly and unambiguously as possible – the many ways in which offenders can harass their victims calls for some flexibility. Courts and prosecutors should have sufficient leeway to adopt the conditions best suited to stop the violence in a particular situation. The Swedish civil protection order, which only allows for a (mutual) prohibition to ‘visit one another’, is therefore too rigid.

By their very nature, emergency barring orders should have as a (possible) condition that the offender leaves the family home, usually accompanied by the condition that the offender is no longer allowed to contact the persons staying behind. In other words, the barring from the family home and the ‘no contact’ order come as a package deal. Only in Austria and Slovakia are the two conditions not automatically linked, with (some) barred persons still

being allowed to contact the protected person.¹⁸⁶ Given the objective of the emergency barring order – to create a period of rest during which the victim can recuperate and decide on long-term protection measures – the Austrian and Slovakian legislators are advised to reconsider this decision. After all, how can you guarantee that the victim is able to make up her mind on prolonged protection, free from the (negative) influence of the offender, if the offender is still allowed to contact the victim?

4.27. Legal limitations to the scope of protection orders

National laws include very few legal limitations to the exact scope of civil and criminal protection orders. As long as certain general restrictions are taken into account – proportionality, necessity, no infringement on religion or political rights – the courts and prosecutors are free to make the order as extensive as needed. From a victim's perspective, this is a positive strategy, for it allows for wide-ranging protection orders. If needed, the orders can cover entire villages or cities. The defense lawyers need not worry either, for in practice it turns out that extensive orders are seldom imposed.

This is different for emergency barring orders. Here, the national laws have restricted the prohibited area to the family home and its direct vicinity. Although understandable with a view to rights of the barred person and a consistent application of the barring order throughout the country, from the victims' point of view, it is a shame that the national legislators have not allowed the law enforcement authorities a little more flexibility. For a victim, it could be reassuring to know that the offender is not only barred from the home, but also prohibited to find himself in the street where she works or where the children attend school. In other words, if the authorities are allowed to cast the net a little wider,¹⁸⁷ some victims may feel themselves better protected. Given the short duration of emergency barring orders, the infringements on the offender's rights are still rather limited.

4.28. Delineation of a prohibition to enter an area

There are national differences when it comes to the delineation of the 'no contact' orders and the prohibitions to enter an area.

For 'no contact' orders, the practice of some Dutch civil courts and of Swedish public prosecutors to work with standardized formulae can be seen as a promising practice. Dutch research has shown that without standard formulations, courts easily overlook certain types of contact, thereby

¹⁸⁶ In Belgium, the two conditions are usually imposed collectively, but the public prosecutor can decide to leave out the contact order as well.

¹⁸⁷ Compare the Belgian system where the public prosecutor can autonomously decide on the scope of the barring order. In Austria, the barring order can also prohibit the violent person from approaching other locations.

providing offenders with an opportunity to resume contact with the victim, e.g. through third parties.¹⁸⁸ It also diminishes the risk of misinterpretations. The enforcement of ‘no contact’ orders could be improved by the use of such standard formulations as well, because they offer complete protection, prohibiting both direct and indirect contact, as well as contact initiated by the victim. Also, if the court deviates from the standardized text, you know it was a conscious decision, based on the characteristics of the case and that it was not an accidental omission.¹⁸⁹

Prohibitions to enter a specific area are harder to ‘capture’ in a standard formulation, but it already makes a difference if the use of radiuses is constrained and prohibited areas are indicated with the help of the surrounding streets and – even better – a map. Vague formulations, such as ‘the direct vicinity’ or ‘in the surroundings of’ need to be used with the greatest restraint possible. Radiuses and vague formulations hinder the monitoring and enforcement authorities. One can easily imagine disputes over whether the offender was within 200 or 201 meters of the victim’s house. Who is able to measure this?

Interestingly, the Directive on the European Protection Order and the Regulation on the mutual recognition of protection measures in civil measures changed the rules of the game in this respect. It is easier to transpose a protection order that makes use of a radius instead of a map in a foreign jurisdiction. After all, a radius has universal applicability, whereas a map is situational. Let us illustrate this with the help of an example:

Imagine a victim who contacts the appropriate authority with the request to issue the standard certificate form needed for mutual recognition of the protection order (art. 5(1) Regulation). If the original protection order referred to a map to clarify the scope of the prohibition to enter an area, the issuing authority cannot provide the victim with a one-on-one translation of the protection order. The victim is going to live or reside abroad, where the map no longer applies. For the protection order to be enforceable in this new situation as well, the authority needs to interpret the old situation – how much space did the original judge mean to cover – and apply it to the new situation instead. This can either be done by ‘translating’ the area on the map into a radius – the indicated streets more or less correspond to a radius of 200

¹⁸⁸ See Van der Aa e.a. (2013), *op. cit.*, p. 268-269.

¹⁸⁹ In the Netherlands, for instance, many courts prohibit the offender to ‘engage in contact with’ the victim. It is unclear whether they really only wanted to prevent contact *initiated* by the offender, which is what the phrase literally means, or whether they accidentally forgot to include the offender’s reaction to contact initiated by the victim. If they meant to include both types of contact (i.e., contact initiated by the offender and contact initiated by the victim), they should use the phrase ‘engage or be in contact with’. The advantage of a standard formula is that you know the judge has *consciously chosen* for a certain alternative.

meters surrounding the victim's home – or by shading more or less similar streets on a map with the victim's new address.

In other words, in order for protection orders to be transposable in cross-border situations, where the EPO and the Regulation apply, it is better to formulate protection orders in terms of radiuses. On a purely national level, however, maps and surrounding streets provide more clarity and less room for misinterpretations and abuse by the offender. National judges and prosecutors are therefore advised to include both options in their decisions.

4.29. Legal limitations to the duration of protection orders

In most Member States the maximum duration of protection orders is set by law. It is only in the UK, Belgium, Slovakia, Germany and the Netherlands that there is no legal limitation to the duration of civil protection orders. In theory – but sometimes also in practice – civil protection orders could last indefinitely. As for criminal protection orders, when a maximization is lacking, this is often only the case for protection orders that serve to waive or suspend criminal proceedings (NL, PT), but some (post-trial) protection orders have no legal maximum either (CZ, CY, LU).

On the one hand, the absence of a statutory maximum allows the courts much liberty in deciding the appropriate duration of the order. In serious cases, they can impose protracted protection orders without having to worry about legal limitations. From a victim's point of view, it is better to have one order, lasting long enough to diffuse the threat, than to have to apply for prolonged protection each time the maximized (short-lived) order expires. Each new application can bring along stress and cause friction between the victim and the offender.

On the other hand, the principle of legal certainty and the defendant's right to free movement may require that he is not indefinitely bound by these restrictions. Especially, when the content of the protection order seriously infringes on the offender's rights (e.g., prohibiting him to enter entire cities) a long or undetermined protection order could be disproportional. The offender should always have the prospect of being able to act and move around freely again.¹⁹⁰

The Member States that do have a statutory maximum, show great variance in terms of how long the protection order can ultimately last. For civil protection orders they range from 1 month to 3 years; for criminal protection orders from 3 months to 10 years. Also, some Member States do not allow for the prolongation of protection orders, or if they do, the orders can only be extended with a short period of time.

¹⁹⁰ Of course, in most jurisdictions, the offender always has the option to ask the court to annul the order, but this cannot compensate for the existence of infinite protection orders.

The problem here is how to balance the interests of the victims for prolonged and effective protection against the right of the offenders not to be subjected to disproportionately long restrictions. Ideally, the offender should only be restrained as long as it takes for the danger to subside. This is a weighing act the court or public prosecutor has to perform in each case, based on the specific circumstances. Both a statutory maximum that is too short and the absence of a statutory maximum can disturb this process.

What the ideal maximum duration is depends on many factors and cannot easily be generalized. First of all, it depends on the intrusiveness of the prohibition itself. Maximizing a barring order to three months can be justified, given the impact on the offender of being barred from the family home. A 'regular' order, however, entailing nothing more than a prohibition to enter a street or contact the victim, does not require such a strict time limit. In these cases, the legislator could allow the courts the freedom to impose longer-lasting orders to reflect the seriousness of the violence.

A second relevant factor is the nationally determined maximum duration of other civil and criminal sanctions. Protection orders should fit in with the national (penal) system as a whole. Member States that have comparatively short-lived maximum sanctions could consider extensive maxima for protection orders to be dissonant with the penal system in its entirety.

We do feel, however, that the statutory maximum duration of 'regular' civil and criminal (post-trial) protection orders should be set at *at least* 1 year. This would allow the victim sufficient time to get her life back in order and both parties to get used to not contacting each other. On top of that, there should always be the option to prolong civil protection orders if there is still a risk of violence after the protection order has expired.

In the case of emergency barring orders, we believe a maximum duration of at least one to (preferably) two weeks should be guaranteed. The 72 hours in the Hungarian system – without the option of extension – seems too short to secure real (prolonged) protection, especially given the emotional turmoil this measure can bring with it. We reckon a victim needs at least one to two weeks to figure out an appropriate strategy, to contact support organizations and to seek legal advice.

4.30. Empirical information on the number of protection orders issued

Reliable information is an essential factor for evidence-based legislation and policymaking in the various fields of violence. Systematic data collection on the extent and seriousness of the phenomenon, victim and offender characteristics, conviction rates and protection orders help policymakers understand the problem and assess the effectiveness of the measures taken to counter the violence. Preferably, the data are collected at regular intervals,

in order to see the longitudinal effects of intervention. Without robust data, policymaking remains a shot in the dark.

For this reason, the systematic collection of reliable data on certain forms of violence has long been promoted at the level of the European Union and the United Nations¹⁹¹ and its importance was recently reiterated in the Istanbul Convention. Article 11(1)(a) of this Convention prescribes the systematic collection of data at regular intervals on all the forms of violence covered by its scope. Judging from the explanatory report, the Council of Europe not only meant to include data on the prevalence and incidence of these forms of violence, but also information on the number of protection orders issued.¹⁹²

Despite this recognition, the availability of this type of information is lacking in the large majority of the Member States. Many experts report that there are no statistics on civil and criminal protection orders available at all, whereas others only mention the incidental collection of (non-nationwide) information. Another problem is that some data only reflect the number of protection orders that were *requested* (e.g., CZ, SI, Scotland) or the number of *violations that lead to criminal prosecution* (England and Wales). The positive exception is Spain. With its systematic recording of both civil and criminal protection orders issued nationwide on a yearly basis, the Spanish approach is considered a best practice (++).

Data collection on emergency barring orders, on the other hand, seems more sophisticated than that of other types of protection orders.

5. Standardized criteria

5.1. Standardized criteria

This section aims to provide a synthesis of the thematic discussions above. Summarizing, we come to the following thirty (standardized) criteria that help define the level of protection and identify the gaps in protection per country:

- 1) Protection orders should be available in all areas of law, including emergency barring orders.
- 2) Protection orders should (as much as possible) be available independent of other legal proceedings.
- 3) Protection orders should be available in all stages of the criminal procedure.

¹⁹¹ See, for instance, the UN Secretary's General database on Violence against Women or the EU Observatory on VAW.

¹⁹² See consideration 76 of the Explanatory Report.

- 4) (Basic) protection orders should be available to all victims (and victims with specialized needs may receive additional protection).
- 5) National legislators should avoid exhaustive lists of conditions as much as possible to provide courts and public prosecutors enough leeway to create the most appropriate conditions in a particular case.
- 6) Civil and criminal protection orders should at least be able to prohibit or regulate contact between the victim and the violent person; the violent person from entering a certain area; and approaching the protected person more closely than a prescribed distance.
- 7) An emergency barring order should at least be able to have the effect that the aggressor leaves the family home and that he is no longer allowed to contact the person staying behind.
- 8) The scope and duration of protection orders should be delineated as clearly as possible.
- 9) Victims should (as much as possible) be involved in delineating the scope and duration of protection orders, and should at least be allowed to express their wishes in this regard.
- 10) The maximum duration of protection orders should be established by law. Statutory maxima should at least amount to one year in the case of civil and post-trial criminal protection orders (not barring the offender from the family home) and one to (preferably) two weeks in the case of emergency barring orders. Prolongation of the protection order in the case of continued danger should be possible.
- 11) (Some) protection orders should be available *ex parte*.
- 12) Magistrates should have the option to declare that protection orders come into effect, regardless of whether the decision is still open for appeal (immediate effectiveness).
- 13) The coming into effect of protection orders should not be deferred by the service of the verdict. Enforcement in practice, however, can only take place if the offender had prior knowledge of the existence of the order and its conditions.
- 14) The authorities adopting protection orders should, as much as possible and explicitly, take parental and visitation rights into account and vice versa. It should be possible to include (mutual) children in one and the same protection order on the condition that the restrained person forms a threat to them as well. In principle, protection orders should allow for continued contact between the violent parent and his children for the duration of the protection order *if it does not impede the protection of the victim and if the violent person does not pose a threat to the children* as well. If this creates tension, the safety of the victim should be prioritized, after which alternative ways to allow for (safe) contact between the violent parent and children should be explored.
- 15) Emergency barring orders, however, should in principle automatically extend to the children.

- 16) Mutual protection orders should not be allowed.
- 17) Protection orders should be available within the shortest time possible.
- 18) Protection orders should be made available free of charge.
- 19) Legal representation for victims should be highly recommended, but not made compulsory and Member States should foster a well-functioning and inclusive system of legal aid.
- 20) Protection orders, including their violations, should be registered carefully in a nationwide, central registry.
- 21) Victims should always be kept informed – of the fact that a protection order was issued, of the precise conditions of the order, and of how to react to a violation – unless the victim exercised her right ‘not to be informed’.
- 22) Protection orders should formally and, when necessary, in practice be (actively) monitored by the police and/or another state authority.
- 23) Protection order monitoring with the help of technical (GPS) devices should be made possible.
- 24) Emergency calls of protection order violation should be prioritized.
- 25) The monitoring authorities have no discretionary power in reporting protection order violation to a superior authority.
- 26) The violation of civil protection orders and emergency barring orders should be criminalized.
- 27) The violation of protection orders should in principle lead to (effective and dissuasive) sanctions. Informal and lenient reactions, such as warnings or reprimands, are only indicated in exceptional circumstances.
- 28) The offender should in principle be held accountable for the violation of a protection order, even if the contact was initiated by the victim.
- 29) Specialized training on protection order monitoring and enforcement should be available nationwide, preferably as part of continued education for all monitoring agents.
- 30) Nationwide data collection on protection orders should be conducted in a systematic fashion at regular intervals.

5.2. Standardized criteria per Member State

In Annex 2 is a table that combines a number of standardized criteria and results country by country. Unquantified standardized criteria for which a break-down per Member State was not possible (e.g., because there were too many missings) are not represented.¹⁹³ Although the individual scorings on a theme each have a separate meaning, they can roughly be equated with:

¹⁹³ For those criteria, the Member States are advised to check Chapter 2, Chapter 3, and their national reports to see whether their countries complies with the standards set out in this study or whether there is room for improvement.

- Insufficient (-)
- Sufficient (+/-)
- Good (+)
- Very good / promising (++)

5.3. Promising practices

Some countries also had practices that were considered ‘very good’ or ‘promising’. Often these practices went above and beyond what can be considered appropriate action. Other times, we classified these practices as ‘promising’ because they were innovative and unquestionably positive for the victims concerned. Some of these promising practices are represented in the table in Annex 2, but most of them could either not be quantified (we had not enough information on these practices in all Member States) or they were so unique to only one or two countries, that we did not devote an entire theme to them. Still they deserve separate discussion here, because as far as we are concerned, these practices serve as an example to other countries. We wholeheartedly recommend other countries to implement these practices in their own jurisdictions.

Many of these promising practices are related to emergency barring orders. While emergency barring orders are to a large extent organized along the same lines in Europe, there are some Member States that have introduced special features that have the potential of improving the use and effectiveness of emergency barring orders significantly. These promising practices are:

- 1) Combining emergency barring orders with a support plan for both victim and offender.*
- 2) Allowing the authorities to expand the scope of the emergency barring order, e.g., to also include the place where the victim works or the surroundings of the school the children attend.*
- 3) Allowing emergency barring orders to be imposed on a person who does not cohabite with the victim.*
- 4) Using an objective (standardized) risk assessment (instrument) when assessing the appropriateness of emergency barring orders.*

Other promising practices extended to protection orders in all areas of law (civil, criminal, emergency barring order):

- 5) Making legal representation for (certain) victims free of charge.*
- 6) Working with standardized forms or formulations when defining a ‘no contact’-order.*
- 7) Indicating the prohibited area with the help of maps.*
- 8) Having specialized training available as part of continued education for all monitoring agents.*

- 9) *Recording all civil, criminal and emergency barring orders issued nationwide on a yearly basis in a central registry.*
- 10) *Facilitating the continued contact between the parent and his children, while guaranteeing the safety of the victim (e.g., with the help of meeting centers)*

A final promising practice arose in the context of civil proceedings, but it could be relevant for other types of protection orders too:

- 11) *Hearing claimants and defendants in separate sessions in order to avoid a confrontation between the two parties.*

5.4. Interesting practices

A final category of practices were the so-called ‘interesting’ practices. Although these practices have an intuitive appeal, and although, on the face of it, they seem to benefit the victims or other valued interests, such as the continued contact between a parent and his children, there may be important drawbacks that limit their usefulness in cases of (repetitive) violence. Another reason why a practice was categorized as ‘interesting’ instead of ‘promising’ was that we feared its impact on the rights of the abuser might be disproportionate. Until further study has taken away our concerns, we are hesitant to recommend these practices across the board. We would, however, highly welcome more research on these topics. We recommend that Member States further investigate the functioning and (side)effects of:

- 1) *Quasi-criminal protection orders that can be imposed without suspicion of a crime through a separate and short trajectory.*
- 2) *Criminal protection orders that can be imposed upon the acquittal of the suspect.*
- 3) *The expansion of the range of persons who can apply for civil (and criminal) protection orders*
- 4) *Civil protection orders that can be imposed solely on the basis of a written (statutory) declaration of the victim*
- 5) *Civil protection orders that can be obtained by victims who joined the criminal proceedings as injured parties*
- 6) *The reversal of the burden of proof of the violation of a civil protection order (when violation is only subject to civil means of enforcement)*
- 7) *The continued contact between the barred parent and his children for the duration of the emergency barring order.*

6. Conclusion

A plain description of the protection laws in the various countries does not tell us which country provides the best protection: comparing legal regulations is too blunt an instrument to base specific conclusions relating to the level of protection on. With the help of 'standardized criteria', this chapter tried to provide a more solid basis for comparison and informed discussion.

We are fully aware that some of the choices we made – some of our standardized criteria – may give rise to debate. Given the absence of authoritative sources many of our choices were based on (intuitive) reasoning rather than objective, empirical evidence or international legal standards. Future developments and research may cause us to reconsider our current choices and opt for a different approach. In that respect, the study can be seen as work in progress and it is our sincere hope that future discussions and research will help crystallize out even better approaches to protection order legislation. These future discussions would also have to take into account the impact of our suggestions on the rights of the defense, a factor that was largely overlooked in the current study.

Furthermore, it is important to note that this chapter and especially the country-by-country tables were not meant to point the finger at the Member States that take less action. We did not intend to name and shame. Again, we would like to emphasize that the thematic approach may have resulted in a somewhat distorted view of a country's protective system as a whole and that we lack structural information on the workings of the law in practice. It is possible that the countries that score well on paper underperform in practice. The following chapter will give an explorative view of the practical implementation of protection order legislation.

Keeping these limitations in mind, we nevertheless conclude that the Member States show a wide variation in their approach to protection orders on factors that could seriously impact their effectiveness. We have done our utmost to establish per Member State where we think there is still room for improvement, for instance in providing protection orders in all areas of law, in abolishing mutual protection orders, and in allowing for *ex parte* orders. Hopefully, the developed standardized criteria can function as a guideline for future action. However, whether all suggestions are equally accurate, whether some of the shortcomings are sufficiently 'compensated' by other aspects of the national protection order regime, and whether the proposed suggestions would fit in with the legal system of a country as a whole is up to the national legal experts to decide.

Chapter 4

The functioning of protection orders in practice: The victims' perspective

1. Introduction

The previous chapters focused on the manner in which the 27 Member States had regulated protection orders in their national laws and delegated legislation. They did not, however, assess how legal protection measures worked in practice. How effective are protection orders in stopping or reducing the violence? What practical issues do victims encounter in obtaining protection orders? Which needs and expectations do victims harbor in respect to the orders and are these needs and expectations met in practice?

The objective of the current chapter is to assess the functioning (impact, effectiveness and context) of legal protection orders in the Member States in practice by means of an explorative victim study in four Member States: Italy, Finland, the Netherlands, and Portugal. With the help of 58 in-depth victim interviews – approximately 15 in each Member State – the study tries to provide a deeper qualitative understanding of the mechanisms that can explain the effectiveness or limitations of protection orders from the perspective of the victims.

We will first briefly discuss the ideas that the legal experts brought forward when asked about the functioning of protection orders in practice (section 2). This will give an impression of some of the 'common themes' that the experts have identified in daily life in relation to protection order procedures and effectiveness. If the same problems are mentioned by our victim sample as well, this enhances the validity and generalizability of the results. In addition, we will describe the methodology (section 3), the limitations (section 4), and the results of the victim interviews (section 5).

2. Protection order functioning and effectiveness: the experts' perspective

In addition to describing their national legal systems, the 27 national experts were also asked to comment on the manner in which the law operates in practice. What bottlenecks do they discern in their day-to-day experience with protection orders? This resulted in a wealth of information, much of which related to the particular national situation. There were, however, also many

issues that transcended national borders, mentioned by four of more experts. The following is a summary of the most frequently mentioned problems per 'theme'.

2.1. Problems with protection order legislation

A problem that many experts complained about was the fact that their national legislation either *lacked a certain type of protection order* or that their legislation required such strict qualification criteria that many victims were excluded from protection. The lack of a civil protection order, of an emergency barring order, or the strict eligibility criteria for certain protection orders are examples of this.¹⁹⁴

In a similar vein, many experts also regretted that protection orders did not cover victims across the board, but were available to a *certain type of victim only*.¹⁹⁵ According to the experts, this limited many victims' access to protective measures considerably. Other experts thought the scope of the protection orders too narrow as well, but then in relation to their maximum duration or geographical scope.¹⁹⁶

On the other hand, protection order laws that do *not provide clear qualification criteria* or that lack guidance on how to delineate protection orders were sometimes criticized as well.¹⁹⁷ According to the experts, they allow courts and public prosecutors a margin of appreciation that is too generous.

Some experts were also critical about the lack of legislative guidance in how to combine protection orders with *parental (visitation or custody) rights*.¹⁹⁸

2.2. Problems with the protection order procedure

With regard to the procedures through which protection orders can be procured, five main problems arose. The first problem that some experts observed is that certain protection orders are *rarely imposed* in practice. Despite the possibilities provided by law, the legal authorities are, for some reason, reluctant to use the options available to them¹⁹⁹ or victims are unaware of their rights and do not institute proceedings.²⁰⁰

¹⁹⁴ See, for instance, the Latvian, Maltese, Swedish, German and Italian reports.

¹⁹⁵ This was, for example, mentioned by the Luxembourg, Romanian, French and Portuguese experts.

¹⁹⁶ See the French, Slovakian, Hungarian and Austrian reports.

¹⁹⁷ See, the Estonian, Luxembourg and Cypriot reports.

¹⁹⁸ See, the Luxembourg, Estonia, Bulgaria, and Hungarian reports.

¹⁹⁹ See, Latvia, Austria, Hungary, Bulgaria, Portugal, Czech Republic and Italy.

²⁰⁰ See, Germany, Slovenia, and Malta, for instance.

A second problem – one that typically relates to civil protection orders – is that victims run a risk of having to pay for the *procedural costs*. This, along with the reduction in legal aid funding, may hinder victims' adequate access to justice.²⁰¹ The UK expert even feared that 'the orders are not accessible to many victims because of the assumption that some women should pay for some or all the costs.'

Criminal protection order procedures, on the other hand, were criticized, because they allow *victims little or no involvement* in constructing the protection order that is best suited to end the violence.²⁰² Victims have no say in the matter or they have an advisory role at best. This is the third problem.

The fourth problem has to do with the fact that there can be considerable *delays* in handling protection order procedures.²⁰³ Even though urgent cases can be heard immediately, full hearings on the merits of the case usually take much longer. In Latvia there are no deadlines whatsoever to assess the victim's request for a protection order.

A final issue is the obligation to *notify* the aggressor of the existence of the protection order.²⁰⁴ The fact that the verdict needs to be serviced on the defendant or suspect poses problems in real life, especially when he does not have a known address.

2.3. Problems with protection order monitoring

According to 17 experts, the *lack of (efficient) monitoring mechanisms* is the most important bottleneck when it comes to monitoring outstanding protection orders.²⁰⁵ With the exception of GPS monitoring, there are practically no pro-active and cost-effective forms of monitoring available. As a result, the monitoring authorities mostly depend on the victims to report violations, but this 'reactive' monitoring is not 100% reliable either, with some victims being unable or unwilling to report violations – for instance because they have reconciled with the offender – or even initiating contact themselves.

Monitoring efforts are furthermore hindered by the '*vague*' or *generic manner* in which the conditions are formulated by the courts or the public prosecutors.²⁰⁶ If the protection order is not clearly delineated this causes

²⁰¹ This was mentioned by the Dutch, Estonian, Slovenian, UK and Slovakian experts.

²⁰² See, for instance, the Dutch, Lithuanian, German and Austrian reports.

²⁰³ See, for instance, Romania, Ireland, Latvia, Austria, and Cyprus.

²⁰⁴ This was, for example, mentioned by the Austrian, Belgian, French, Finnish, and German expert.

²⁰⁵ These seventeen experts were from: the Netherlands, Lithuania, Finland, Sweden, Portugal, Estonia, Germany, Austria, Italy, Malta, Luxembourg, Slovakia, Hungary, Poland, the Czech Republic, Latvia, and Belgium.

²⁰⁶ See, for instance, Malta, Belgium, the Netherlands, Lithuania, and Finland.

disputes over whether or not the protection order was violated.

A final problem in relation to monitoring is the *poor registration and communication* of certain protection orders.²⁰⁷ Especially when a central database is lacking, the monitoring authorities have difficulties knowing which persons are restrained and which exact conditions they have to comply with.

2.4. Problems with protection order enforcement

The main problem in the enforcement phase is that the responsible authorities are *reluctant to interfere* in case a protection order is breached.²⁰⁸ They often issue warnings first, before resorting to serious sanctions. Some experts attributed this reluctance to the stereotype of domestic violence as a private, less serious problem, while others highlighted the ambivalent behavior of some victims, which may have contributed to the violation of the protection orders. When the formal reaction to a violation is standard or compulsory, the experts were more confident that the protection order will work as a deterrent.²⁰⁹

In line with the previous reluctance, some experts also mentioned the *lack of an effective sanction* to protection order violations,²¹⁰ with some experts even calling the protection orders ‘toothless’.²¹¹ The punishment either takes too long, the law only allows for lenient sanctions, or the violations are not criminalized.

On top of that, the experts reported *difficulties in proving* protection order violations.²¹² Often the violation is contested by the restrainee, which, in the absence of corroborating evidence, turns the story into a ‘he says, she says’ impasse.

A final impediment to effective enforcement of protection orders is the situation in which the protected person and the aggressor have *children in common*.²¹³ Due to the (necessary) contact between parent and the children, protection orders are sometimes violated, with enforcement authorities turning a blind eye. Especially when the options of mediated contact through

²⁰⁷ See, for instance, the Netherlands, Lithuania, Germany, Greece, UK, Italy, Hungary and Cyprus.

²⁰⁸ This was mentioned by the Dutch, Lithuanian, German, Italian, Bulgarian, Latvian, French and Irish expert.

²⁰⁹ The Luxembourg expert stated, for instance, that ‘the factor that contributes most to the success of protection orders is the practically automatic prosecution by the Luxembourg authorities in case of violation’.

²¹⁰ See, the Netherlands, Latvia, Bulgaria, Belgium, Estonia, Hungary, and Finland.

²¹¹ This was a remark by the Austrian expert in reaction to the fact that until recently, the violation of civil protection orders was not (administratively) sanctioned.

²¹² See the Netherlands, Latvia, Lithuania, and Germany.

²¹³ See, for instance, the French, Finnish, Swedish and German reports.

a third party are limited, this can have a negative impact on either parental or protection rights.

2.5. Problems with protection order effectiveness

The experts identified four main problems in the field of protection order effectiveness: 1) victims who maintain contact with the aggressor themselves, 2) lack of effective monitoring, 3) reluctance on the side of official authorities to intervene, and 4) lack of research into protection order effectiveness. The lack of empirical studies was flagged as a problem by no less than eleven experts²¹⁴ Because of this dearth in empirical evidence, the identification of the three problems above heavily relied on the personal experiences of the experts. Furthermore, many experts recommend increased training of justice personnel dealing with protection orders on a more than incidental basis.

3. Methodology

In addition to having experts have their say on protection order functioning in practice, we also thought it important to investigate the experiences of victims with the help of victim interviews in Finland, Portugal, Italy, and the Netherlands. Below the selection of participants, sample characteristics, interview protocol, and method of analysis are explained.

3.1. Selection of the participants

Given the limited number of victims included in our sample, in order to increase the comparability of their experiences, our sample had to consist of a more or less homogenous group, representing the most commonplace scenario in which protection orders are imposed. This meant, for instance, that male victims, victims of female offenders, or victims of non-intimate partner violence were excluded. As a result, each partner was supposed to select 15 victims who met the following certain criteria:

- 1) Female victims of
- 2) domestic violence and/or ex-partner stalking,
- 3) who had obtained a criminal protection order against their male (ex)partner;
- 4) in the pre- and/or post-trial phase (in the Netherlands, Italy, and Portugal)²¹⁵ or as the result of a specific, quasi-criminal protection order procedure (Finland);
- 5) in reaction to an incident that happened less than 4 years ago.

²¹⁴ These eleven experts were from: the Netherlands, France, Portugal, Estonia, Greece, Italy, Bulgaria, Lithuania, UK, Poland, and Ireland.

²¹⁵ For instance, as a coercive measure, a conditional suspension of pre-trial detention or a condition to a conditional suspension of the sentence.

After securing the permission of the national public prosecution service or the national Ministry of Justice, the partners started inviting the participants. Initially, the idea was to select the participants at random. However, due to practical constraints, the sampling methodology slightly differed per Member State, resulting in a so-called 'convenience sample' for some of the partner states. For a more elaborate description of the manner in which the victims were selected in each of the four countries, see Annex 3. Here, it suffices to say that the differences in sampling may have had an impact on the generalizability of the outcomes of the interviews. Victims who were, for instance, selected amongst the clients of a women's shelter may have had a biased view on protection orders and their effectiveness. After all, had the protection orders been effective, they probably would not have ended up in a shelter in the first place.²¹⁶

The selection procedure resulted in a total of 58 interviews. The break-down per Member State was as follows:

- 15 female victims of IPV / stalking by their (former) partners in the Netherlands
- 16 female victims of IPV / stalking by their former partners in Finland
- 13 female victims of IPV / stalking by their former partners in Portugal
- 14 female victims of IPV / stalking by their former partners in Italy

3.2. Sample characteristics

Respondents were widely dispersed, with an age range from 24 to 63 years old and a mean of 42 years. Almost 2 out of 3 women had paid employment at the time of the interview, whereas the other women were unemployed.

Furthermore, 2 (3%) of the women indicated they were still in a relationship with the man against whom the protection order was issued, while 56 (97%) reported having separated. The average duration of the relationship between the women and their abusive ex-partners was 9.8 years, ranging from ½ year to 30 years.

Thirty-seven (64%) women indicated that they had underage children, in 30 cases these were children they had in common with their ex-partners. The other women either had no children at all, or they had children older than 18 years.

²¹⁶ The views of these victims with regards to protection orders may have been the result of the fact that their selection was not random. Had a random sample been selected, the results might have been different.

		NL	IT	PT	FI	Total (%)
Age	Mean (years)	44	41	39	42	42
Occupation	Employed	9	6	9	10	34 (59%)
	Unemployed	6	8	4	6	24 (41%)
Relationship status	Still in relationship	2	-	-	-	2 (3%)
	Separated	13	14	13	16	56 (97%)
Duration relationship	Mean (years)	9.2	8.4	10.8	10.6	9.8
Children < 18 years	Yes, but not with ex-partner	5	-	-	2	7 (12%)
	Yes, with ex-partner	7	7	7	9	30 (52%)
	No or > 18 years	3	7	6	5	21 (36%)

The men against whom a protection order had been imposed are slightly older than their female victims. According to our sample, the offenders' age ranged from 29 to 70 years with a mean of 44 years. Twenty-two (39%) of them were employed at the time of the interview and 24 (41%) had a prior criminal record. Substance abuse was rather prevalent as well, with no less than 38 (59%) men having a problem with alcohol and/or drugs, according to their ex-partners.

		NL	IT	PT	FI	Total (%)
Age (n=57) ¹	Mean (years)	45	44	41	46	44
Occupation (n=57) ¹	Employed	8	3	3	8	22 (39%)
	Unemployed	4	7	4	7	22 (39%)
	Unknown	2	2	6	-	10 (18%)
	Missing	1	2	-	-	3 (5%)
Criminal record	Yes	5	4	4	11	24 (41%)
	No	9	6	4	4	23 (40%)
	Unknown	1	3	5	1	10 (17%)
	Missing	-	1	-	-	1 (2%)
Substance abuse	Yes, alcohol and/or drugs	11	4	7	12	34 (59%)
	No	4	9	6	4	23 (40%)
	Unknown	-	1	-	-	1 (2%)

¹ One Finnish man had passed away by the time of the interview and was excluded here

3.3. Interview protocol and procedure

The interviews were conducted with the help of a semi-structured interview protocol with mostly open-ended questions, covering all the aspects of the protection order procedure in which problems could arise for victims. The semi-structured design was deliberately chosen to allow victims to elaborate on certain issues or to bring up new issues if needed. If something interesting came up, the interviewers were allowed to follow-up on this lead and to investigate the matter further. In this respect, the emphasis of the interviews differed somewhat, depending on the reaction of the victim, and the follow-

up response of the interviewer. All respondents were asked the same basic questions, while leaving room for elaboration.

The protocol contained questions on: the history of the violence they had experienced, the incident that eventually lead to the protection order, the procedure through which the protection order was imposed, the manner in which the police and the public prosecution service had treated the victim, the effect of the protection order on the violence, and the victim's satisfaction with the protection order (procedure). For the complete protocol, see Annex 4.

This protocol had to be translated into the four native languages – something for which each partner was responsible – and sometimes slightly adapted to fit the national situation. In Finland, for instance, the questions on protection orders as conditions to suspension of pre- or post-trial detention were replaced by questions matching the Finnish quasi-criminal procedure. For this reason, the final protocols differed in the four Member States, but these differences were only marginal and did not affect the overall comparability of the results.²¹⁷

The interviews were held face-to-face or by telephone, depending on the preference of the participants. In both cases informed consent was given, either orally or in writing. In the case of a face-to-face interview, the place where the interview was held was also chosen by the victim. This could, for instance, be the victim's home, but a more 'neutral' place, such as the university or APAV premises was also possible. In order to limit possible risks for the victim or the interviewer, the protocol also contained several safety instructions (see Annex 4). Participants were guaranteed that their answers would be processed anonymously and that nothing in the final report could be traced back to them personally. In return for their cooperation the participants were given a gift voucher worth €25.

The interviews were conducted in the period 21 November 2013 until 11 June 2014. The interviews lasted between half to one and a half hours. With the permission of the victims, all interviews were tape recorded and later on transcribed *ad verbatim* into the own native language.²¹⁸ The partners were responsible for transcribing their own interviews. They were allowed to transcribe the interviews completely, or to summarize some parts (e.g., answers to closed questions) and transcribe other parts.²¹⁹

²¹⁷ All translated interview protocols can be found on the website of the POEMS project (<http://poems-project.com>).

²¹⁸ One Dutch victim preferred not to be tape recorded. This interview was transcribed on the spot.

²¹⁹ In order to guarantee a uniform approach for the transcriptions, the partners were provided with a template that indicated which questions had to be transcribed literally and for which

Once the interviews were transcribed, the transcriptions then had to be translated into English again.

3.4. Analysis

After conducting the interviews, the translated transcripts were read carefully by one researcher who tried to identify certain themes or clusters of answers. These themes formed the basis of the description below. The most important themes – themes that were mentioned by four or more victims – were included in the analysis. Themes that only a few victims brought up are also discussed, but less elaborately ('miscellaneous'). After that, the researcher selected appropriate quotes in accordance with the established themes.

To guarantee that the interpretation and selection of themes by the single researcher corresponded to the overall impression that the other researchers had of the interviews, the draft chapter was discussed amongst the research partners and, where necessary, adjusted or complemented with other themes.

4. Limitations

Some of the limitations have already been discussed above. The fact that the sample only consisted of 58 participants and that their selection was not always at random may have had a bearing on the results. But even amongst the randomly sampled victims systematic errors may have arisen. Some victims may have been more eager to participate or, on the contrary, been more reluctant to disclose their experiences because of the personal nature of their victimization.

One aspect that may limit the reliability of the results was the fact that this was a retrospective study, asking victims about experiences that happened in the past. The results may have been biased by loss of recall. Although we tried to limit recall problems by including only women who had obtained a protection order as a result of an incident that happened less than four years ago, people are less likely to remember events further back in time.

A final limitation had to do with the difficulties in understanding the legal terminology, procedures, or system. Although the interview protocol tried to steer clear of legal jargon as much as possible, and although the interviewers were instructed to provide participants with further clarification if needed, some participants may have misinterpreted some questions.

questions a summary response sufficed. The Finnish, Portuguese, and Dutch interviews were transcribed literally, but the Italian transcriptions contained some summarized information.

These – and other – limitations could not be checked for. For this reason, it is necessary to emphasize the *exploratory* nature of the study and to warn the reader to interpret the results, and especially the percentages presented in the tables, with care.²²⁰

5. Results

5.1. History of violence

The nature, frequency and seriousness of the violence suffered by the women during or after their relationship varied considerably. With cases ranging from incidental psychological violence to cases involving numerous incidents of severe physical, psychological, and sexual violence on a daily basis, the respondents' experiences are widely dispersed. Also, while some women were exposed to violent behavior during the relationship, others experienced incidents of stalking and violence only after the relationship had ended.

Typically, the women had used different strategies to end the violence first, before going to the police. Examples from the sample include: filing for a civil protection order, trying to reason with the aggressor, having others talk to the aggressor, attending couples' therapy, applying for a divorce, changing phone numbers, taking security precautions, moving to another town or a women's refuge. Threatening to call the police, without following-up on that threat, was also mentioned as a strategic means to dissuade the offender from using violence. Only 10 women had not tried any alternative solutions.²²¹

It is only after all other remedies have failed to stop the violence that the police were actually called for help. This often coincided with the final break-up of the relationship. In some cases, the reluctance of the respondents to contact the judicial authorities could be explained by the victims' fear for revenge on the part of the offender. They were afraid that police interference would only lead to an escalation of the violence. Other victims saw judicial interference as a last resort. For a long time, they had been confident they were able to work things out with their partner and they did not consider their experiences serious enough to file an official report with the police. They were hoping against all odds. For 43% of the sample this was the first time they had contacted the police in relation to the violence (see table 4.1 below)

²²⁰ More reliable inferences can only be based on studies with a large-scale (quantitative), prospective research design.

²²¹ Some victims reported that, aside from the incident that resulted in the protection order, there had not been (m)any violent incident(s) before, which is why they hadn't sought for alternative solutions.

I did not call the police after this incident. I was terribly naive for a long time. I hoped that our common life, my personality, and that different environment (...), that different type of relationship, and our love could change everything. [Finland 5]

According to the interviewed women, the violence was mostly one-sided. It was usually only the partner who showed violent behavior and if the women resorted to violence themselves, this was often in response to an aggressive act on the part of the offender. In other words, women who used physical force mostly acted in self-defense.²²² Again fear of escalation played a role in the women's reluctance to use violence, but also their lack of physical strength.

In all those years, I've tried all sorts of things, but he has a robust figure and measures 1.80 meters. If I hit him, I hurt myself. I just couldn't do anything. He would take me in a hold, and everything was jammed. I couldn't move my hands or crawl forward (...) because I'm only 1.50 meters and weigh 50 kilos. [The Netherlands 14]

Once I bit him and hit him in order to get away. I bit quite hard. I cannot remember other times. I have always tried to escape or, if the kids were present, just submit to him so that they did not have to witness it. [Finland 8]

Table 4.1 History of violence (n=58)

		NL	IT	PT	FI	Total (%)
Type of violence	Physical	10	11	11	16	48 (83%)
	Psychological	14	14	13	16	57 (98%)
	Sexual	3	4	4	9	20 (34%)
Frequency of violence	1-2 incidents	2	-	-	-	2 (3%)
	Monthly	3	-	-	-	3 (5%)
	Weekly	3	3	1	4	11 (19%)
	Daily	6	11	9	10	36 (62%)
	Missing	1	-	3	2	6 (10%)
Alternative solutions	No	3	4	3	0	10 (17%)
	Yes	12	9	9	16	46 (79%)
	Missing	-	1	1	-	2 (3%)
Previous contacts police	No	8	5	5	7	25 (43%)
	Yes	7	9	8	9	33 (57%)
Self-defense by victims	No	9	4	4	6	23 (40%)
	Yes	6	9	9	10	34 (59%)
	Missing	-	1	-	-	1 (2%)

²²² Sometimes the use of physical force was violent (e.g., biting), whereas other times, the women reacted physically but not in a violent manner (e.g., trying to ward off blows), but both types of force were used in reaction to violence that was initiated by the offender.

5.2. Incident that resulted in a protection order

In general, the incident that eventually resulted in the protection order was more serious than previous incidents (see table 4.2 below). The women first of all considered the violence more serious because the nature of the violence had changed: the offender used physical violence for the first time, the violence was no longer exclusively directed towards the victim but involved others as well, or the threats were for some reason more credible than before. Another factor that affected the seriousness of the violence was the context in which the violence took place. Some women, for instance, had separated from their ex-partners and found it really disturbing that he showed up unexpectedly at the front door of their new homes. For some women, it was the first time they genuinely feared for their lives or the lives of their loved-ones.

It was the first time he used any physical violence against me. I realized that everything had changed, the person had changed and now anything could happen. [I realized] that he was now in such a mental state that I really cannot predict what his next move is going to be. [Finland 11]

Well yes, it was precisely the fact that previously we had always been able to quarrel between us, but now my son was there to witness it and he had to fear also. It was like (...) somehow the child's suffering was the last straw. [Finland 3]

Yes, because on that day he was really able to do it [kill the respondent]. He was able to get home, drink, and grab the gun or anything else that he could find and do something foolish. [Portugal 11]

Other women did not consider the incident that led to the protection order necessarily different from the previous incidents. It was just another incident in a series of more or less equally serious events. Still, many of these victims also reported that the violence in general had worsened lately. For them, the most recent incident was the proverbial 'straw that breaks the camel's back'. They were at their wits' end and realized that nothing would change if they did not contact the police or apply for a protection order.

The last straw was when he came up with the idea to spray glue into my front door lock six times in a row. The property company and a locksmith came to repair it every time. Then after the last time (...) I thought that this must come to an end, that I cannot take it anymore. [Finland 2]

Another common feature in the respondents' narratives was that they were usually the ones who contacted the police or other judicial authorities. Sometimes this happened while the violence was taking place, other times the women reported the violence the following day at the police station. A few respondents indicated that it was actually a third party – neighbors, parents, or

women's shelters – who contacted the police (see table 4.2 below). Practically all women called the police in search of immediate protection: they primarily wanted the offender to be arrested in order to stop the violence; the thought of punishment or retribution was of secondary importance. In 53% of the cases, the police actually arrested the suspect.

That they arrest him, that I am being protected and if he doesn't comply, that he will have to face the consequences. [The Netherlands 8]

I expected them to remove my ex-partner and prevent him from threatening me or threatening anyone. That they would take him somewhere and hold him in custody and talk reason into him. [Finland 5]

When it comes to the person or organization initiating the protection order, national differences appeared. In Finland, where a protection order can be procured via separate protection order proceedings, it was mostly the victims who applied for the order. Often they did this on the advice of the police and with the help of a lawyer or someone working for a victim support organization. In some cases, the victim-initiated protection order had been preceded by a police-imposed temporary barring order. The advantage of having a separate trajectory is that some victims managed to procure a protection order from the district courts, even if they did not find a response with the police.²²³

In the Dutch sample, on the other hand, it was mostly the public prosecutor or the criminal court who initiated the order, with victims having at most an advisory role. This lack of autonomy sometimes caused dissatisfaction on the part of the victims, especially to those who wanted to continue the relationship with their assailant.

They asked me whether I wanted an emergency barring order, which I didn't. Then they said: 'For protection's sake, shall we impose a no-contact order instead?' I thought that this would last for only 10 days, just like the emergency barring order, which is why I agreed to it. However, it turned out that it would last until the trial (...) which can take approximately one-and-a-half years! [The Netherlands 9]

In Portugal and Italy, besides the victims and the police, there are also NGO's that can apply for a protection order on behalf of the victim. In the current Portuguese sample there were, for instance, four women who reported that APAV had acted on their behalf.

²²³ See, for instance, Finnish respondents 6 and 7. A disadvantage is that victims can also withdraw their claim (e.g., Finnish respondent 14).

Finally, although for the majority of offenders it was their first protection order, there were also men who had already been restrained before. In the Dutch sample, this was even the case in 1 out of 3 interviews.²²⁴ Apparently, for some men – serial stalkers or abusers – the previous protection orders had not changed their deviant ways.

Table 4.2 Incident resulting in a protection order (n=58)

		NL	IT	PT	FI	Total (%)
Violence more serious than other times	No	2	2	3	2	9 (16%)
	Yes	9	5	6	12	32 (55%)
	Missing	4	7	4	2	17 (29%)
Victim called the police or contacted judicial authorities	Yes	10	7	12	13	42 (72%)
	No	4	2	1	3	10 (17%)
	Missing	1	5	-	-	6 (10%)
Victim initiated protection order	Yes	2	5	2	13	22 (38%)
	No, NGO/lawyer	-	1	4	-	5 (9%)
	No, police/PPS/judge	9	7	3	3	22 (38%)
	Missing	4	1	4	-	9 (16%)
First protection order	Yes	8	8	10	10	36 (62%)
	No	5	4	2	4	15 (26%)
	Unknown	1	1	1	2	5 (9%)
Arrest offender (n=57)	Yes	15	3	6	6	30 (53%)
	No	-	8	7	9	24 (42%)
	Missing	-	3	-	-	3 (5%)

5.3. Police response

Most of the women in the sample had experienced violence for a protracted period of time, often involving multiple violent incidents over a timespan of several months or years. Because the respondents had mostly suffered from *course-of-conduct* crimes, it was not uncommon for these women to have been in contact with the police before (see table 4.1 above). When asked about the manner in which the police reacted on those previous occasions, the answers varied a lot. Many women considered those previous experiences with the police to be mostly negative experiences. A very common complaint was that they were not taken seriously or believed, especially during the first couple of times they contacted the police for help.

They would say: ‘Oh, this is a lovers’ quarrel’. (...) And they said it in a way that implied that ‘tomorrow they will be together again’. (...) The third or fourth time I went there they no longer commented. (...) I think then they

²²⁴ Sometimes the prior protection orders had been imposed to protect one and the same victim, but other times they concerned other victims, mostly ex-girlfriends of the abusive partner.

started taking it more seriously. But if I had given up after the first or the second complaint, I probably would have nothing solved yet. [Portugal 1]

Well, obviously, the first few times, they will just tell me: 'Miss, it is not that we don't believe this, but obviously there are other women who claim that their man did something, saying: 'He did this to me, he did that to me' and obviously, we need to have proof.' In the beginning, yes, but after 4 years? [Italy 4]

A reversed scenario, in which the police lost interest over time, was also observed in some cases, but this was more exceptional.

At some point the police got tired of coming every time. They told me in quite a straightforward way. In the beginning their approach was not like that, but then in between there was this [attitude] that I was calling them for nothing. [Finland 6]

Victim blaming – for the violence, but also for not leaving the violent relationship – was another issue that some victims struggled with during those first encounters with the police.

It was this young lad who interviewed me. (...) that somehow I had this feeling like that boy (...) that he was kind of: 'How can you be so stupid that you ended up in this situation?' (...) as if he was looking at me in a disparaging way (...) (Q: was it blaming?) No, I would not say it was blaming, more like: 'You are stupid to have let things get in that condition. (...) Why did you not walk away earlier?' [Finland 4]

Much, however, depended on the individual police officer. Some officers were really understanding and helpful, while others reacted in an insensitive manner, downplaying the violence, disbelieving the victims or criticizing the victim's role in the violence or the continuation of the relationship. This resulted in mixed experiences on the part of the interviewed women. Of a total of 33 women who had been in contact with the police before, at least 22 women had mixed or downright negative prior experiences with the police.

Conversely, when the police took the time to listen to the victim, to react with appropriate velocity to emergency phone calls,²²⁵ to provide them with general and case specific information, and to take victims seriously, the victims considered their contacts with the police a positive experience. Their

²²⁵ In relation to the speed with which the police reacted to emergency calls, a distinct difference appeared in some of the Finnish interviews. Due to the vast distances between populated areas, and the fact that police stations are mostly located in urban areas, there was sometimes a lack of nearby patrol cars, when the incident took place away from a city center. Three respondents indicated that it took a long time for the police to arrive at the scene of the crime

narratives formed a mirror image of the ones described above.

The next day, when I went to file a complaint for domestic violence, the officer who welcomed me was great. It was a woman apparently trained to handle these situations. It was only then when I told everything that had happened. The officer was asking precise questions and was really paying attention to me. [Portugal 2]

It made me feel like she cared. I was happy with the female officer. She also took the trouble to explain to me what I have to do in order to get my protection order application to move forward so that I get the situation to a point where I can move on with my life. It was really wonderful. [Finland 2]

The police really were my best friend. They have really protected me and the children wonderfully. They have also kept watch so many times. That was really fantastic. [The Netherlands 5]

Nevertheless, regardless of the procedural fairness with which the victims were treated, whether their experiences with the police were predominantly positive or negative, many victims criticized the inability of the police to actively and timely intervene in the situation of domestic violence or stalking.

I have noted that their competence to act on things is rather poor. The police officers told me several times that they would love to do something about my ex-partner, but that in the scope of their official powers, these are the (few) things they can do. [Finland 11]

Although most victims understood the necessity to build a case file and to collect sufficient evidence, they were disappointed in the fact that this took such a long time; a long time during which they were vulnerable to revictimization. It became even worse when the longevity of the procedure was caused by the fact that the police officers had misinformed the victim or seemed unwilling to initiate protection order procedures.²²⁶

The police told me it was complicated. That he had to be caught in the act and well... When I came to APAV, I found out it was not quite like that and that there were ways to get the protection a little faster and that is how it went. [Portugal 4]

A final issue that arose during the section devoted to the police, was the inadequate supply of information. No less than 38% of our sample indicated that during the procedure, not enough information was provided to them by the police.²²⁷

²²⁶ Many Italian victims, for instance, owe their protection order to the Anti-Violence Center and/or their lawyer rather than the police.

²²⁷ A further 41% said the police had provided them with sufficient information and 21% was missing.

All in all, the above factors resulted in 66% of our sample being overall satisfied, 29% being dissatisfied, and 4% having mixed feelings with regard to the police response during the procedure that led to the protection order.²²⁸ Thirty-two respondents gave suggestions for improvements, including: taking the victims and domestic violence more seriously; promoting protection orders and intervening more actively; changing the prejudiced attitude towards domestic violence (victims); creating specialized teams; involving the victim in the decision making process; and arranging for one contact person per case.

5.4. Response of the public prosecution service

As appears from the interviews, not every victim had been in touch with the public prosecutor who represented her case.²²⁹ Sometimes this had to do with the fact that the case was still under investigation, other times the victims were not invited to speak to the public prosecutor or they themselves declined the offer to have a conversation with the prosecutor before the trial. Yet other times they spoke to another representative from the public prosecution service, but not the person representing their case. Other respondents could not remember whether they had spoken to someone from the public prosecution office or not or whether the information regarding their case was passed onto them with the help of a lawyer. The Finnish respondents had the least experience with the public prosecution service, because in Finland, the public prosecution service typically is not involved in the protection order procedure whatsoever.

A first point of criticism is the speed with which the protection order is imposed. Although some victims criticized the slowness of the entire procedure – from report to a final verdict in court – others specifically referred to the time it took for protective measures to be in place. This did not correspond to the respondents' feelings of being unsafe and urgency of the situation.

All the procedures at the prosecutor's office were slow. (...) the prosecutor told me they still had to investigate, hear witnesses, before a decision could be made (...) but the measures of coercion, with the need to hear the accused and the time it takes to happen and all the time of investigation, these things take too much time to be decided. (...) Two months have passed and no measures have been taken yet. [Portugal 2]

The trouble in receiving case-specific information or of getting in touch with a person who can provide the desired information was also complained about by some victims. Thirty-three percent of the sample indicated that they were not provided sufficient information by the public prosecutor.²³⁰

²²⁸ The answers were missing in 5% of the interviews.

²²⁹ In our sample, only 21 (36%) victims had been in contact with the public prosecutor.

²³⁰ This corresponds to 7 out of 21 victims who had been in contact with the public prosecution

I can't get hold of him. (...) I have called many times, but then his secretary answers that they have received my papers. (...) What is the status of my case? 'I can't tell you that' Well, what do I do now? Should I take a lawyer? Should I talk to you? What should I do? I just don't know. (...) Just keep me informed. [The Netherlands 7]

Sometimes, public prosecutors were criticized for their impersonal approach. Their focus on finding the truth – interrogating the victim as a witness – while paying less attention to any empathetic or informative needs of the victims turned the contact with the public prosecution service into an unpleasant experience.

Q: 'All-in all, are you satisfied with the manner in which the public prosecutor dealt with your case?' A: 'Not really. There was practically no contact and during the few moments that we were in touch, it was detached and formal.' [The Netherlands 8]

They should listen more; they hear only a few things. They only look at the facts from the point of view of the law. If a person wants to say something more to explain, they don't even talk. (...) many times I found them also very tactless. [Italy 5]

When the respondents encountered a more compassionate prosecutor, their assessment of the overall experience was usually much more positive. Even small gestures of empathy and compassion could make a difference.

Now I can see it was a very humane and adequate response. The public prosecutor was very humane. He paid attention to the little details even, like a glass of water and tissues, those little things we don't pay attention to but make sense and make us feel more comfortable. [Portugal 10]

Yes, I've had several meetings with her and these were really nice. I think she was really genuine, saying things like: 'we have to start protecting you and there will be a protection order'. Her wish was even more extensive than the final order. She wanted a more extensive order, probably covering the entire [village where victim lives] so that the kids could still attend hockey practice. (...) and then I thought: yes, you take me so seriously. Really nice. I thought she was really humane. I'd always thought public prosecutors to be very solemn people, but they are just ordinary people who almost experience pain in their hearts. [The Netherlands 5]

Some victims attributed the (lack of) compassion to the gender of the prosecutor handling their case, with female prosecutors being considered

service. However, in 38% of the interviews, information was missing.

more compassionate and male prosecutors being perceived as formal and detached.

She was very decorous. I feel that my treatment by the judiciary has overall been very decorous. I don't know why but I feel like it has somehow been affected by the fact that I have had mainly female judges and a female prosecutor. The prosecutor took me seriously, listened to me and understood me. She also told me everything she could. So every time I asked for information I have also received it. [Finland 11]

All these factors – together with being listened to, being taken seriously, being supplied sufficient information – had an impact on the overall satisfaction that the victims felt in relation to their contact with the public prosecutor. However, there was not a one-to-one correspondence between feelings of satisfaction and the manner in which victims were treated by the public prosecutor. These feelings were influenced by other factors as well, such as disappointment with the long processing time of the case in general or with the leniency of the charges. Keeping these limitations in mind, 48% of our sample was overall satisfied with their prosecutor.²³¹

Unsurprisingly, the suggestions for improvement mostly reflected the complaints described above. Some victims would appreciate an immediate reaction in response to the dangerous situation they are in. Rather than having to wait before all sorts of legal formalities and practical technicalities are settled, they propose a quicker response from the public prosecution service, at least where the protection order is concerned. The victims who encountered unsympathetic prosecutors suggest a more compassionate approach, and those who criticized the difficulties of getting in touch with their prosecutor appreciate a more proactive and spontaneous supply of information.

5.5. Pre-trial protection orders

After this, the victims were asked about pre-trial protection orders. A total of 42 respondents indicated such orders had been or were still in place. However, it appeared from the interviews that some of them had difficulties distinguishing between pre-trial and post-trial protection orders. This has to be taken into account when interpreting the results.

When it comes to the duration and content of the pre-trial protection orders, national differences surfaced. The first difference was the fact that in the Finnish sample there were no pre-trial protection orders *stricto sensu*. Because all the victims made use of the separate quasi-criminal trajectory, there was no simultaneous or subsequent criminal trial. Some victims were, however,

²³¹ Seven victims (19%) were not satisfied, one victim (5%) had mixed feelings, and six victims (29%) had not answered this question ('missing').

awarded a temporary protection order by the police in order to bridge the time between the date of their report and the date when the protection order trial was scheduled, usually between 2-4 weeks.²³² In the other three countries, pre-trial protection orders usually had a much longer duration: until the criminal trial is due.

As far as the content of the orders was concerned, most of them (at least) contained a prohibition to contact the victim, but prohibitions to enter a certain area or to be within the victim's vicinity were also popular. Furthermore, the content of the Finnish protection orders was to a large extent standardized, with victims mostly referring to 'the regular temporary protection order', while Portuguese, Italian and Dutch victims mentioned more variation. In practice, this sometimes resulted in an order that did not cover all stalking scenarios, and that needed to be adapted after the ex-partner persisted in his harassment in manners that were not included in the original order.

Anytime he would have any form of contact with me, my children, my father or my mother, through phone calls, SMS messages, or stopping by – because that needed to be added as well (...) When he started playing up again, because in the beginning he was kept a low profile, but after a while he started again... at that moment he tried to contact me indirectly. So directly and indirectly. What he did was, for instance, send my neighbor an SMS message saying: 'Could you say to (name victim) this and that?' (...) Well, that was added (to the protection order) as well. [The Netherlands 3]

The range of protected persons varied as well. In Finland, the temporary protection orders only covered the person who applied for one: the direct victim and perhaps her children. Other adults with a need for a protection order against the offender had to apply for one themselves in a separate procedure. In the other three countries, one pre-trial protection order could be issued for the benefit of multiple adult persons. Think of siblings or parents of the (direct) victim.

Another national difference appeared in the use of electronic monitoring mechanisms in the phase before the trial. In the Netherlands, Italy and Finland, this type of GPS tracking device was never imposed, whereas some Portuguese victims did make use of one.²³³ Both the victim and the accused

²³² Some Finnish victims without a temporary protection order indicate there was no need for one, because the time between their application and the trial was really short. Others, however, would have preferred a temporary protection order, because they felt powerless and felt they had to endure the continuous harassment. For them, going another 2-4 weeks without a protection order was too long.

²³³ Among the 13 Portuguese victims interviewed, 3 had an alarm system implemented, 4 victims

had to wear a GPS device, which sent out an alarm to the police station as soon as the two were within certain proximity of one another. One victim expressed her appreciation for this system in the following manner:

In a certain way, I did feel more protected. Because at least I knew he was close, just because of that. Before these measures (electronic monitoring), I never knew where he was. I knew he was always close, but I never knew where exactly. He would always show up by surprise. So at least with the bracelet I knew he was close and I could at least turn back or hide somewhere where he wouldn't go. [Portugal 13]

What did occur in the Netherlands was a solution by which only the victim carried an (AWARE) alarm system with her. A similar system (called tele-assistance) was in place for three of the Portuguese victims as well. As soon as her assailant was in sight, she could push an alarm button and the police were alerted of the emergency situation. Although technically speaking, these alarm systems are not part of the criminal protection order – victims carry one voluntarily and the device is not connected to a corresponding ankle bracelet worn by the suspect – they did provide some victims with an increased sense of security:

Although he didn't contact me, I was given an alarm system and that's what made me feel safe. [The Netherlands 10]

Since the tele-assistance was applied, I feel safer. (...) I feel safer with the tele-assistance. Because I have the GPS device on, I can call to alert the police at any time without having to explain where I am. [Portugal 2]

When asked whether the protection order had increased their feelings of safety and of being protected, the answers of the respondents varied greatly. Many victims said that it did not make them feel safer, because their ex-partner kept violating the conditions. For some, this came as a disappointment.

I think I had big expectations about being safe when we got the order, but it did not really provide any safety. The only thing was that they were able to arrest him if he came to our apartment, but he was so clever that he came there but always left before the police arrived. It was a huge disappointment that I had to keep protecting myself just the same way I had done before. [Finland 10]

But even when the restrainee did not act in direct violation of the conditions, there was no guarantee that victims felt safer as a result of the protection order. Some victims alluded to the fact that their ex-partners were still free

actually had electronic monitoring on and 6 victims never had such tracking devices imposed.

to walk the streets and could therefore harm them if they wanted to. If they felt safer, they often attributed this to other factors, such as the fact that they stayed at a women's shelter, that they had moved to another city, or that they had been given an alarm device. They referred to the fact that – in the end – the protection order was nothing more than 'a piece of paper'.

No. No. That does not give you a feeling of safety. I think the fact that I moved to another town helped. (...) I don't know if that gives you an increased feeling of safety. I think that when you walk outside on the street and somebody wants to harm you that will happen anyway, so no. [The Netherlands 15]

I did not feel protected during the whole protection order issue. I have not felt protected, ever since I met that person. So that feeling of insecurity and fear remains (...) I know that had he been in a worse mental state, that piece of paper would not have helped. I do know that if he had wanted to, he could have overcome anything to kill me. [Finland 4]

Many of these victims would have preferred a more proactive form of protection, but, with the exception of electronic monitoring in Portugal, this was not offered to any of the victims in our sample.²³⁴ The victims were expected to report violations of the protection order themselves and there were no extra surveillances or police cars patrolling their neighborhood.²³⁵

Fortunately, there were also victims who did feel safer as a result of the protection order. They had the feeling that an immediate police reaction would ensue as soon as an emergency situation arose.

Yes, finally something happened. I had the feeling that if I called, someone would show up. [The Netherlands 8]

The participants were also asked about their experiences with the protection order in relation to parental rights, such as visitation and custody. From literature, we know that this combination can be problematic, with mothers being encouraged to cooperate with the (abusive) ex-partner for the welfare of the children, despite the presence of a civil protection order.²³⁶ In our study,

²³⁴ As examples of additional conditions they desired, the respondents mentioned: having an undercover police officer shadowing the suspect, evicting the suspect from the family home, having 'more security', checking the suspects mobile phone or use of social media, and police patrols.

²³⁵ Only one Portuguese victim reports that she saw more policemen in the street during the time the coercive measure was in force (Portugal 1). She was not sure, whether this had to do with her protection order or not.

²³⁶ See, for instance, E. LaFlamme, 'Missouri's Parenting Plan Requirement: Is it in the best interest of domestic violence victims?', *Journal of the Missouri Bar*, 2000, p. 30-35.

only two respondents reported difficulties as a result of the combination protection order and parental or visitation rights. One respondent, for instance, felt uncomfortable with the extent to which contact was still allowed in relation to the children. She would have preferred much more limited and clear prescriptions.

I wished that they had defined a bit more precisely how the references in matters related to children should be done and how much of them there should be. I am not sure whether the police can do something like this. I have suggested to the police and to the child welfare officer that there should be a weekly email that should include all the relevant information. [Finland 9]

Often parental rights were explicitly taken into account in the protection order, specifying what contact was allowed, when, and for what purpose. Especially in Finland, visitation and parental rights as a standard formed part of the temporary protection order.²³⁷

An interesting finding from our sample was that instead of protection orders being violated because of parental rights, it was sometimes parental rights that were sacrificed for the benefit of the protected parent. From the narratives of the victims, it can be deduced that sometimes parental rights were thwarted because of the protection order, although this was done for a very limited time only. Two respondents would have preferred mediation in that respect, so that the fathers could have continued seeing their children for the duration of the protection order.

I much would have preferred a conversation after his release (from arrest) in the presence of the authorities. (...) in that case he would not have been forced to wait two whole weeks for his son, but he could have spent the first weekend on Father's day, something he is angry about still, he could have had his son still. (...) A father has the right to see his child, too. [The Netherlands 9]

In the beginning it was difficult (to arrange the meetings) because we had no agreement on that. I asked for family mediation, but we did not get it. In the divorce trial the judge gave a ruling on how the meetings would be carried out and ordered the dates on which the children are to visit their father. Before that there was nothing. [Finland 8]

²³⁷ In the Italian sample, there were no specifications with regard to the children in the protection order, but that was because they were not needed. Most respondents indicated that the parental rights of the abusive parent were (temporarily) lifted, whilst some respondents replied that the fathers involved did not show an interest in contact with their child(ren).

5.6. The trial stage

Of the 58 cases, 39 cases ended up before a court of law.²³⁸ In 31 of these cases, the victims were present at the trial, either voluntarily or because they had to make a witness statement.

On the whole, the current sample seemed fairly satisfied with the manner in which the courts treated both them and their case.²³⁹ Most of the victims had the feeling that they were being listened to, that the court took them seriously, and that there were no incidents of victim-blaming. Some respondents even mentioned individual judges taking extra care of them – going the extra mile – to make sure they were properly informed and trying to take away some of the anxiety that came along with being involved in a court procedure.

Then there was a judge who took my matter into consideration and called me. She told me she had a habit of calling with regard to these protection order cases... to contact the people and call, which I found to be a terribly good thing. (...) It made me feel that the matter ... is being taken care of (...) but then in the hearing the judge told me how the process will go and how I must act. So I was not left with a feeling that I knew nothing. If she had not called, I would not have known anything. It left me with an image that she wanted to ensure that I understood how the procedure works. [Finland 2]

Q: Did the judge listen to you? A: She did. So much so that I got confused with some questions and she told me that it was normal that I was not clear on dates and so on. She understood I was anxious. [Portugal 11]

Judges, however, who gave the impression of being precipitated or overburdened, who minimized the experiences of the women, or who were mainly interested in the legal side of the matter were evaluated less positively.

The judge was in a hurry to attend some other trial. He/she was in a terrible rush and did not concentrate on the trial at hand. I did not get the protection order mainly because I was living in the women's refuge. The judge considered I was already safe there and did not need an order. The judge also said that because the protection order has an effect on my ex-partner's reputation one cannot impose a protection order without a good reason. (...) The judge came to pat my shoulder after the hearing and said that I can apply again if he keeps contacting me. [Finland 13]

²³⁸ In one case, the victim could not remember whether her case had proceeded to court, in another case, this information was missing. All other cases had not reached the trial stage yet (still pending).

²³⁹ Eighty-one percent (n=25) said that, overall, they were satisfied.

In the (two) trials regarding protection orders, the courts had an attitude of: 'There is this couple quarrelling'. More so than of: 'There is this one person stalking the other'. The expertise to recognize and make a difference between quarrelling and stalking was totally lacking. I felt like I was not understood or listened to. [Finland 14]

With the exception of Finland, where the entire procedure revolves around the protection order,²⁴⁰ courts did not typically inquire after the victims' wishes in relation to the protection order. In general, courts also did not provide victims with further information on the proceedings. Most victims, nevertheless, reported that they received sufficient information from other sources – public prosecution service, victim support or their own lawyer – already, so the lack of information from the courts' side was not considered a deficiency.

A final issue that arose with regard to the trial stage was the fear of being confronted with their violent ex-partners. Many victims dreaded this confrontation, and were relieved when they discovered that precautionary measures had been taken. Vice versa, victims who were forced to share a waiting room with the accused did not appreciate this.²⁴¹

I was especially happy about the fact that both times the trials could be organized so that I did not have to face my ex-husband. I had requested this. He was present, but sat in a separate room behind the courtroom. [Finland 16]

The only thing I found disturbing (...) was being confronted with him (...) because of course you meet in a waiting room, but my lawyer saw that happening and he immediately intervened and asked someone from the court saying: 'I'm not going to let that happen to my client'. He (the ex-partner) was removed. [The Netherlands 5]

As suggestions for improvement the respondents mentioned: separate waiting rooms; more time to prepare and hold the trial; mandatory (legal) representation for the victims; and specialized training for judges in matters relating to domestic violence and stalking.

²⁴⁰ In the interviews, however, this information was often lacking.

²⁴¹ This finding is all the more remarkable, because it was not explicitly referred to in the interview protocol.

5.7. (Post-trial) protection orders

In 26 cases a post-trial protection order was imposed.²⁴² A first national difference was the period of time during which the post-trial protection orders were in force. While the Finnish protection orders typically lasted for six months to one year – with many victims reporting extensions of another year – the Dutch orders were usually in force for a standard probationary period of two years. One Finnish respondent explained that in her case the order had to be renewed several times – the last time with two years – because the violence would start again each time the order expired.

The first order was for one year and then the last one was for two years. My attorney came up with the idea of requesting an order for two years, because I had had two already and every time they expired the violence started again. That is how my attorney justified it; that it was somehow evident that the violence would start again after one year, if the order was given only for that period of time. [Finland 10]

As with pre-trial protection orders the feelings of safety seemed to be correlated to the actual effectiveness of the orders. If the orders were violated, victims typically felt less safe than respondents whose orders had actually stopped the abuse. In the Finnish sample, for example, more than one-third of the victims reported not feeling protected by the protection order (35%) or they had mixed feelings (15%), usually because in their case the violence had actually continued or because they could not imagine that the protection order would make a difference in their case and they expected the violence to begin any time soon.

No, it was like it (the order) did not even exist. He kept violating the first order all the time. [Finland 10]

The participants who did feel safer as a result of the protection order (27%) usually did so because the order had been effective and stopped the violence completely. Others, however, felt safer because the order had positively influenced the police reaction to their subsequent reports of violence. It was seen as an acknowledgement of their victimization. They had the feeling or the experience that the police would take them more seriously next time they had to come to the police station.

Yes, somehow I do, because what happened before did not happen while the protection order was in force nor does it happen now after trial. So I think I have solved my problem. [Portugal 1]

²⁴² Since it is hard to distinguish Finnish protection orders into pre-trial and post-trial orders, the (regular) quasi-criminal protection orders are discussed here. Temporary protection orders have been discussed in previous paragraphs.

I do not recall feeling more protected, but I was relieved and maybe in that sense felt safer because if I have to call the police they will take me seriously. I mean if he violates the order, then the police will definitely not say to me that: 'Maybe you should leave and not keep calling us constantly.' [Finland 6]

Many of the problems reported with regard to pre-trial protection orders, reappeared in the context of post-trial protection orders as well. As with the pre-trial protection orders, the monitoring of post-trial protection order compliance, for instance, was exclusively the responsibility of the victims themselves. The sample did not report any forms of proactive (electronic) monitoring activities,²⁴³ much to the regret of some respondents.

Everything had to be reported by me. I have been told very clearly during these past years that the police have no resources to follow guys like my ex-partner. They told me quite bluntly that the reporting is my own responsibility. Everything depends on you. What if I would not have the strength to do it? [Finland 11]

Other respondents regretted the fact that contact was still to a large extent allowed – and sometimes abused – in relation to mutual children.

A more precise definition of how he is allowed to contact me. The current wording stating that he can be in contact in matters related to the children makes the protection order useless. It does not help the way it should. [Finland 9]

For a more detailed discussion on recurring themes in both pre- and post-trial protection orders, see section 5.5 above. The only new element that surfaced with regard to post-trial protection orders was that some (particularly Finnish) participants did not understand why mutual children were not automatically included in the order.

The only thing I found peculiar was the fact that the children were not protected in anyway although they themselves had told neutrally and all three of them separately also about violence directed at them. I have been told that including the children in my protection order would hamper the impartiality of the legal system. I have no idea how. In my opinion, the right thing would be to include the children in the other parent's protection order, or at least the situation of the children should be investigated as soon as it is established that domestic violence takes place in the family. [Finland 8]

²⁴³ One respondent reported that the police held a close watch on her ex-partner, but she suspected this had to do with other crimes he was involved in, rather than the incidents of intimate partner violence.

In relation to post-trial protection orders some participants recommended more pro-active forms of monitoring (especially electronic monitoring), a clearer delineation of the protection orders (what is allowed and what not), and a broader scope of the protection orders (covering a more extensive area).²⁴⁴

5.8. Effectiveness protection orders

Sixty-nine percent of the sample reported that the protection orders were – at some point – violated by the restrainee. On three occasions, the victims consented to the violations,²⁴⁵ but most of the times, the conditions were disobeyed against the will of the protected person. The participants reported violations ranging from contacting the victim or the victim's family and friends, in person or via means of telecommunication and social media, to following the victim around, breaking into the victim's house, threatening the victim, vandalizing the victim's home, lingering in the victim's street, physically abusing the victim, and even trying to set fire to the victim's home.

Typically, the protection orders were violated almost immediately after they were issued. Many victims reported that within one week after the protection order was in place, the first violation(s) had already happened. The frequency of the violations varied from one or two violations in total, to up to 60 messages a day, with many victims reporting incidents on a daily or weekly basis.

In some cases, the offender only violated the conditions once or twice, after which he completely stopped. However, most victims indicated that their ex-partner was more persevering and kept contacting them on more than one occasion. Twenty-one (36%) of the victims mentioned that the violence had eventually stopped completely and 18 (31%) reported a decrease in the frequency of the violence. In eight cases (14%) the frequency of the violence had remained the same, while 4 (7%) victims reported an escalation.²⁴⁶

But even if the contact had not entirely stopped as a result of the protection order, in many cases it did have a positive effect on the *nature* of the contact. Of the cases in which the violence continued, many victims for instance reported that it had changed from physical to psychological violence. Only 3 victims (5%) reported that the nature of the stalking had worsened after the protection order was imposed.

²⁴⁴ Some respondents indicated they had no recommendations, because they feared that nothing would help.

²⁴⁵ These were all Dutch participants. Two of them continued having a relationship with the offender. The third victim allowed contact for matters relating to the children, but eventually the offender started harassing her anew, after which she ceased the contact again.

²⁴⁶ In two of these cases, however, the frequency had increased, but the nature of the violence had changed from physical to psychological violence.

He used physical violence and beat me with a hammer and a strap. (...) This kind of more intense violence has occurred now that he is in a weaker position and realizes that all the strings are not in his hands anymore. There was nothing like this when we were still together. [Finland 2]

One other effect of the protection order was that the ex-partners tried to find ways to circumvent the conditions of the protection orders. They, for instance, contacted the victim's relatives and friends instead of the victim directly or they used third parties to contact the victim on their behalf (by proxy). They sent anonymous messages or tried to cover up their true meaning in order to avoid legal action. Although legally, they were not in violation of the order, their victims still considered this behavior disturbing.

Well, the order was already in force on the day he sent that text message to all my relatives. (...) So, I did find that sending that kind of message to my under-aged son violated the order although legally it did not. But he knew I would find out about it and that it would hit me. He should have had the sense to leave the child out of this. [Finland 13]

Then he sent his friends to our place to threaten me. When I got scared of this too, I called the police station's social worker and he/she told me that these (acts) are also regarded as indirect violations of the protection order. So he kept violating the later protection orders as well, but he did not show himself anymore. (...) During the second and third order, the violations were individual and I was not able to prove them; there was a knife under my bedroom window, our car had been smashed and cut. All these acts, of which could not be proven that he had done them, but of which I knew that it had been him. This happened quite often; maybe on a monthly basis. [Finland 10]

The messages included hidden messages. They are not directly threatening, but they are still messages that have nothing to do with the children. The true matters are masked so that they seem to be about the children. (...) he does not plan to get caught. He has been in this business for so long, he knows that he cannot be convicted for messages like that (...) He is just trying to fool the court. [Finland 12]

Also, as a side effect, some ex-partners started to divert their attention to other persons. Instead of the victim, her new partner, children, family or friends were being harassed.

Yes. He has been obeying (...) he has not tried to contact me. But he threatens my kids saying we will pay for all this. [Portugal 11]

Victims attributed the non-compliance of their ex-partners with the conditions to three main causes: 1) They had no respect for the law or legal authorities.

They were not law-abiding citizens and had little regard for the (mild) legal consequences that may ensue as a result of a violation; 2) They were motivated by feelings of love, of revenge and of wanting to control the victim. Some of them could not accept the break-up and were trying to persuade their partners to get together again; and 3) Some of them suffered from personality disorders (narcissistic personality, borderline) and could not appreciate the unlawfulness of their behavior. Instead, they themselves felt victimized by their ex-partners and by the legal authorities.

He does whatever he wants, whatever he feels like doing. No matter who he hurts, he doesn't care. He doesn't respect anything or anybody. He doesn't respect the law. [Portugal 13]

From this letter one can clearly read this attitude of: 'No one can touch me'. Then he also felt that the police have become my friends and we together are maltreating him. [Finland 11]

A little bit because he is crazy and a little bit because he has nothing to lose and a little because the punishments should be more severe. [Italy 4]

An event that could typically trigger the offender to intensify his communication or stalking actions was a trial. Any trial, for instance in relation to the crime or in relation to family matters, could reignite his fury and cause the ex-partner to send more messages or utter more threats, after which the intensity and frequency of the violence subsided a little. For this reason, some victims reported being more vigilant in the days leading up to the trial or afterwards.

At times, the contact was not initiated by the offender, but by the victim herself. Seventeen victims reported that at one point, it was them who had started communicating with their ex-partners. Yet, there was only one victim who called her ex-partner because she still liked him. All the other victims who initiated contact replied that the contact had a purely instrumental aim: they had to communicate on matters relating to the children or because some practical matters had to be arranged.²⁴⁷ Typically, these women tried to keep the contact to an absolute minimum.

We spoke over the phone once but it was I who made the call. I know I should not have called but the court forbade him to see his son and I think that is wrong. He has family members who can facilitate this. They can pick up the child and leave the child with me afterwards, we don't need to be in touch, see each other, and he can still see his son. I contacted him so that he and his son could spend a day together. Other than that, I never contacted him. [Portugal 12]

²⁴⁷ For instance, with regard to their mutual belongings, or with regard to pets.

Several times and specifically regarding the children. But I have found that even that is not good because then he thinks that there is still hope of us getting back together. [Finland 12]

Thirty-two out of the forty victims who had experienced (non-consensual) violations contacted the police to report violations of the protection order. Of the non-reporting victims, four decided not to report their partners because they feared that the violence would escalate again or because they were tired of it all.

No, because I didn't feel in danger and... I was tired of fighting, police, court, and proceedings.... I was going crazy with all of that. [Portugal 6]

I told this to my lawyer and he said: 'you are always saying you want this to be over, so let it be. Just don't pick up the phone, don't send messages, don't provoke him, and don't do anything.' That's what I did. The lawyer says that I would not have proof because he signed as someone else and there were no records. [Portugal 8]

When asked about the police reaction to their reports, the responses varied. In some cases, the police and the public prosecution service took immediate action, issuing an arrest warrant, placing the offender in pre-trial detention, or prosecuting him. Other women, however, reported that the police remained inactive, despite them submitting 'batches' of incidents and evidence. For these victims, their contacts with the police mostly had a sobering effect. After having reported on several occasions, without getting an – in their opinion – appropriate reaction, some of the women simply gave up contacting the police.

I do not feel up to going to report violations of the protection order for the third time. I wish some concrete action would be taken to reprimand him for these things. I am not sure if he has received any fines or anything. I do not even know if they will report to me if he is reprimanded. [Finland 9]

I was like: 'If he comes I'm in control, because I will call (the police) and because he will violate the protection order he will be put back in prison again.' This is what I thought. But that is not how it works. [The Netherlands 7]

At first, I reported all the violations right away. But it did not really have an effect (...) at some point I stopped reporting. [Finland 14]

At times, the willingness of the authorities to take action seemed related to the seriousness of the violation. If the violation of the protection order consisted of a (serious) crime in and of itself – for instance arson – the authorities seemed more willing to intervene than when the non-compliance existed of text messages or mild offences only. There were, however, examples of rather

extreme violations that still were not adequately responded to.

He tried to break down the bathroom door so I jumped outside from the small bathroom window which was located on the second floor. The police arrived and they found him outside wandering around half-naked and looking for me. He had smashed down the bathroom door. I know he would have killed me if I had not escaped. He was so furious. Then the order was extended so that he was barred from the whole province. But he was not taken into custody and the next day he himself came to pick up his motorcycle from our yard. [Finland 8]

Next, the protocol inquired after the respondents' subjective feelings of safety and of being in control. Did they actually feel safer as a result of the protection order or not? It turns out that the feelings of safety had improved in 66% of the cases, but 24% felt less safe than before the protection order was imposed. Furthermore, of the 38 respondents who felt safer, (at least) five attributed this to circumstances other than the protection order.²⁴⁸ A similar trend appeared in relation to feelings of being in control, with 59% of the respondents feeling more and 22% feeling less in control than before.

Unsurprisingly, the feelings of (un)safety and of (not) being in control were often related to the (in)effectiveness of the protection order, but the feeling of being legitimized to call the police had a positive influence on the victims' perceived safety as well.

No, of course it did not. Apart from the perspective that I was still certain that the police would arrive quickly. But because also my previous experiences had been the same and I had always received good service from the police. But for me... that was the most important effect (of the order). (...) So I felt safe because my case was familiar to the police and they took me seriously. But it did not make me feel safer with respect to my ex-partner. [Finland 5]

Paradoxically, sometimes the protection order did not have an effect on the victims' subjective feelings of safety, despite the fact that the actual violence had stopped. Victims were still fearful of what their assailant might do and the fact that they had not heard from him in a while was no guarantee that they were now finally safe.

So even though I did not see him and he was not there behind the door or behind the window and the messages stopped... On the other hand, the total silence scared me too. I thought he was planning or considering

²⁴⁸ They, for instance, felt safer because they were residing in a shelter, or because they could make use of an alarm system and so on.

something and then would attack at once if he did. A paper like this or a decision of the authorities cannot remove the fear. [Finland 3]

Once the protection order expired some victims felt a bit anxious again. They dreaded a renewal of the violence and feared that their ex-partners would start harassing them again. In fact, some (calculating) ex-partners actually did contact their victims immediately after the protection order was no longer in force.

The stalking began again right away. It seemed that he followed very carefully when the order was expiring. On the very same day he would send a message. He would come up with a lie claiming that he had cancer or something and that he had to meet me. Then when I never answered any of these messages, he got angry. [Finland 10]

More messages started to arrive right away. I could tell he enjoyed the situation where there were no more boundaries. [Finland 14]

5.9. Looking back

At the end of the interview, the participants were asked to give their opinion on the protection order and its procedure as a whole. What was their overall experience with regards to protection orders? And, taking everything into consideration, were the participants satisfied?

Some remarkable findings appear, for instance, with regard to the length of the procedure. Because of its separate, accelerated procedure, Finnish victims were almost unanimously satisfied with the speed with which their protection order had been imposed. Although for some victims a couple of weeks still felt like a long time, almost all agreed that the length of the Finnish procedure was very reasonable, especially when temporary protection orders were issued to cover the period between contacting the police and the date of the trial.²⁴⁹

It went surprisingly quickly. I somehow thought it would have taken longer. So that was good. I do not know if in these situations where somebody applies for a protection order they always give the temporary order. Without it, the situation would have been horrible, but because the temporary order was issued so quickly it gave comfort while waiting for the main hearing. [Finland 9]

The processing time of cases proved a significant strength of the Finnish system, in particular in the light of the complaints of victims from the other

²⁴⁹ The one Finnish victim who complained that the procedure had taken too long referred to the fact that the police were unable to service the summons and later on, the verdict to the defendant.

three countries, some of whom had to wait months or even years before the authorities cooperated. In those countries, approximately half of the interviewed victims thought it took the authorities too long to issue a protection order.

It took too long. I mentioned before that when it comes to psychological violence, in Portugal it is very slow. And even the prosecutor said that there are cases that take a lot of analysis and thinking. In fact, there are very serious cases of physical violence that sometimes have priority over the ones where only psychological violence exists, but I think this should not be so. It shouldn't take longer. Violence is violence. [Portugal 5]

Along similar lines, many Finnish respondents indicated that the procedure itself was relatively simple: you fill out an application form and you attend a trial. Finnish respondents who thought the procedure to be 'hard' or 'difficult' mostly referred to the emotional burden the procedure had placed on them; they did not mean the procedural rules governing the trajectory.

What was considered burdensome, however, was the fact that the Finnish procedure required the victims to initiate proceedings themselves, to collect the evidence, to submit a well-wrought application form, and to attend the trial in person. Given the stressful situation they were in and the emotional turmoil that came with trying to end an abusive situation, many victims found these responsibilities rather trying.

In my opinion, the heaviest part was when you have to do things yourself. When you have to collect the evidence and suffer there in the beginning. When you get past that phase and the application is done and there are the right things in it and you have managed to collect it all, it goes quite well from then onwards (...) But from those incidents to that point, there is this dark period which, in my opinion, was the most difficult part. (...) I think that at that point, if you have suffered a lot and you are very tired and really cannot do it anymore, the fact that you have to collect that information and try to document it all and get it... How do you do it? [Finland 2]

Everything had to be proven very precisely and you had to have all the evidence and you had to have witnesses. (...) you had to prove everything very precisely and remember the dates and times and everything. [Finland 10]

Emotionally, it was one of the most difficult things I have done in my life (...) I was in such a shocked state of mind when I got the paper and I felt like I did not even see properly what they asked in it... and I only recall they told me to be careful about not including anything at all on the form that I did not wish my ex-partner to see. And this made me feel like:

'Help'... and then we filled in the form together in the Victims' Support office or my support person filled it in according to my answers. I could not write myself. [Finland 5]

Another factor of the procedure that caused the Finnish victims stress is the fact that they had to present their case in court where they could be confronted with their abuser. Despite the possibility to arrange separate hearings, some victims were either unaware of this option or they felt it would take an additional effort from their side to prove that they would qualify for such measures.

The fact that one must personally attend the trial for a protection order. I was afraid and nervous about that. In my opinion the victim should be somehow protected by using a video conference etcetera. When we went there for the trial, it was not a proper court room, but a standard room with a round table and I had to sit opposite my ex-partner. (...) In my opinion, the trial should be conducted in some way so that the victim does not have to face the perpetrator when she/he is trying to rebuild his/her life and stay away from the perpetrator. [Finland 13]

I have had to meet my ex-partner in several stages of the process. I am aware of an arrangement where he could have participated in the trials so that I would not have had to see him, but it sounded like this arrangement required several preconditions to be met and that it would have been difficult to arrange, so I have not asked for it although I would have preferred it. [Finland 15]

As a result, it was mostly in the transcriptions of the Finnish interviews that people referred to the need for protection against a confrontation with the defendant in court and a support person helping them with filling out the form, but also with other psycho-legal needs that victims may harbor.

Many victims from the other three countries also evaluated the procedure as being relatively easy, because the police and the public prosecutor were in charge of all the paperwork. However, these victims often had to present and collect evidence themselves too. When they assessed the procedure as being difficult, they mainly referred to the difficulties they had experienced in convincing the authorities of the seriousness of the violence and of procuring their cooperation.

A problem that seemed to transcend national borders was the unsatisfactory reaction of the criminal justice system to violations of the protection order. Victims from all four countries reported that violations were ignored or that the offender merely received a warning. If the public prosecution service finally sanctioned non-compliance, the penalty was usually a mild one. The victims felt disappointed and frustrated with this reaction and they attributed

much of the ineffectiveness of protection orders to the fact that violations were not properly sanctioned. By many, it was considered one of the weak aspects of protection orders, causing great dissatisfaction.

They should ensure that the laws are applied... because if a person violates the measure he would normally be put in jail, instead he is always turned loose... despite the measures... he was dismissed without being arrested. [Italy 12]

Maybe more serious sanctions for violations (...) in our case there were no sanctions imposed although he violated the order several times. The violations were not noted. He was not fined or anything. [Finland 10]

It did not work in any way. And I cannot see how it could work, when the sanctions for the violation of the order are so mild. Or maybe it works for someone, but definitely not in case where the perpetrator does not care if he gets fined. My ex-husband was not in a situation to pay any of those fines. He just could not have cared less. [Finland 16]

Looking at the overall satisfaction with the protection order and the procedure that led to the order, again national differences appeared. Where Dutch, Portuguese, and Italian participants were generally satisfied and indicate that the protection order has been beneficial for them, the majority of Finnish victims (56%) were not satisfied, saying the protection order has done them little or no good. The main point of dissatisfaction for the Finnish participants seemed to lie in the ineffectiveness of the protection orders and the mild reaction of the authorities to violations.²⁵⁰

When the orders were effective and stopped or seriously reduced the violence, victims were much happier. Some victims even reported that it helped them end the abusive relationship; that they, for instance, finally had the courage to file for a divorce after the protection order had been issued. And even when the protection orders failed to fully protect them from their ex-partners, many victims enjoyed much more piece of mind and regarded the protection order as an acknowledgement that what happened to them was unlawful.

Q: Has the protection order been good for you? A: Yes, really good. Because this is when I started to get back to a normal life like going to work, despite the fact that there are a lot of things I still can't do. [Portugal 2]

I've always felt powerless against what he did to me. I couldn't do anything to stop it. Now it appears that something can be done. (...) now there is

²⁵⁰ The fact that there were distinct differences in the level of satisfaction between Finnish and other respondents might also have to do with cultural differences.

someone else, the public prosecutor, who tells him: 'What you're doing is not allowed'. I'm very happy with that. For me as well, because one quickly thinks that one is overreacting or that it's not as bad as it seems. But it is, and what he does is not allowed! (...) It empowered me and gave me courage and strength. It gave me the strength I needed to stand up for myself. Such rules, black on white, mean a lot to a victim. It revives a victim, makes them realize that life is still worth living. [The Netherlands 14]

6. Conclusion

This chapter tried to identify the (dis)advantages and effectiveness of protection orders, their procedures and their monitoring in practice with the help of victim interviews. Although the sample size only allowed us to *explore* the issue at hand, there is a chance that the problems mentioned by the current sample are indicative of more widespread problems, affecting many victims of interpersonal violence. This is in particular plausible with problems mentioned by victims and legal experts alike.

Judging by the interviews, three of the most pressing problems that victims are faced with in relation to protection orders are:

- 1) The lack of proactive monitoring on the part of the authorities. With the exception of some Portuguese victims, the victims in our sample were exclusively responsible for the monitoring of protection order compliance. They were expected to report violations themselves and monitoring in the form of extra surveillance or with the help of GPS-tracking devices was absent.
- 2) The long processing time of cases. This problem was mostly flagged by the Dutch, Portuguese and Italian victims. Some of them had to wait months or even years before a protection order was finally imposed. This was particularly cumbersome, since most victims had already postponed going to the police until they really could not take it any longer; going to the police was seen as a measure of last resort. The narratives bear witness to the fact that many women had already endured protracted periods of (serious) violence before resorting to the police. When they did, their primary aim was to end the violence; retribution was only of secondary importance.
- 3) The reluctance to interfere once a protection order is breached and to impose an appropriate sanction. In our sample, many victims were disappointed with the lenient reactions to violations. Violations were ignored or received a mild sanction (warning or a fine).

These three problems appeared both in the interviews with the victims and in the national reports, adding credibility to their generalizability. In addition to these overlapping themes – themes that were reported by victims *and* legal experts – the victims' interviews also laid bare additional problems. With regard to the police, for instance, victims complained about not being taken seriously on previous and/or more recent occasions. They also lamented the inability of the police to intervene (the lack of official powers) and the long period of time it took before a protection order was finally issued. Concerning the public prosecution service, they criticized the sometimes impersonal and businesslike approach of some prosecutors and when the case got to trial, many of them dreaded the confrontation with the offender.

In addition to the above problems, the interviews also revealed an unexpected advantage of protection orders. This was the fact that many victims valued the orders also as an acknowledgement of their victimhood; of the fact that what had happened to them was wrong. To some of them the protection order at least warranted a serious reaction from the side of the police, even if it did not have an effect on the behavior of their ex-partners.

The effectiveness of protection orders is contested. A remarkable finding is that the large majority of the victims in our sample reported a breach of the protection order (69%). Of course this particular sample may have been biased because of the particular manner in which the participants were selected but still, the large number of violations is noteworthy.²⁵¹ Most violations occurred almost instantaneously after the PO was imposed.

Still, in many cases, the frequency and the nature of the violence seemed to have been improved with 67 percent of the respondents reporting fewer or no incidents and many ex-partners switching from serious (physical) violence to forms of violence that were generally seen as less intrusive. The downside was that some of the ex-partners redirected their attention to other persons in the victims' immediate surroundings or that they found more covert ways of harassing their ex-partners.

Finally, it is interesting to see how the different national practices affect the experiences of the women interviewed. The Finnish procedure is, for instance, unanimously praised for its short processing times and simplicity, but the sole responsibility for the collection of evidence and for initiating the proceedings is considered a heavy burden by some. At least the Finnish victims can take matters into their own hands and they are not dependent on the cooperation of the police or the public prosecution service.²⁵² A remarkable finding is then

²⁵¹ This is also true for the Dutch sample, the participants of which were selected via a more random method.

²⁵² A common complaint from the other three countries was that it was sometimes difficult to

that Finnish victims in our sample seemed least satisfied with their protection orders compared to the participants from other countries. Their dismay mainly stemmed from the fact that the protection order had not been effective and that the official reaction to a violation was considered too lenient. This is certainly an aspect that warrants further quantitative and comparative study.

convince the authorities of the seriousness of their situation; that it is more than just a 'lovers' quarrel'.

Chapter 5

The European Protection Order in the light of the national findings

1. Introduction

Protection orders, available at domestic level, are only effective on the territory of the state where they were adopted. Victims that benefit from the protection granted by any of these measures but who move to another Member State are in principle not automatically entitled to the same protection. This means that if offenders follow them and pursue the harassment in the second Member State, victims cannot invoke the protection order that was adopted in the first Member State. In order to enjoy the safeguard of a protection order in the new place of residence, a new proceeding needs to be initiated. In this situation, victims are faced with renewed uncertainties, especially since the positive outcome of the second trial is not guaranteed.

As a possible consequence of such ‘double’ procedure, victims who wish to move to or reside in another Member State may reconsider their plans once they realize that their protection against the offender could be in jeopardy. Thus this affects her freedom of movement. Realizing the adverse effects that the territorial limitations of protection orders could have on the free movement of persons, the EU adopted two instruments to counter this threat: Directive 2011/99/EU on the European protection order (EPO) and Regulation 606/2013 on mutual recognition of protection measures in civil matters (EPM). Both of these will have to be implemented on 11 January 2015.

The two instruments are based on the principle of mutual recognition, which means that protection orders issued in one Member State have to be recognized and enforced in another Member State. These instruments do not suggest any intention to harmonize protective measures in the Member States: Europe does not oblige Member States to introduce certain kinds of protective measures, nor does it take a stand on the efficiency of their protection. Instead, it only obliges states to recognize protection orders that were handed down in other Member States.

The traditional approach regarding mutual recognition of judicial measures entails what could be called ‘automatic’ recognition. The EPO Directive, however, introduced a special mutual recognition procedure that differs from this general rule. Besides the recognition of the order, the ‘recognizing’ or ‘executing’ Member State has to replace the original protection order with a similar measure available under its own law. Given the different national

traditions and the gaps in protection, this may raise some problems in practice, unforeseen at the time the Directive was drafted. After analyzing the differences and similarities in legislation on protection orders in the 27 Member States, we are now in a better position to anticipate particular difficulties that could arise in practice. In section 5 we will take stock of these and other problems related to the implementation and interpretation of the two mutual recognition instruments.

In the sections below, we first discuss both instruments: their background, scope, and procedure. Then, we analyze the main differences between the two instruments, highlighting some potential shortcomings related to their 'design', and finally, we discuss the potential challenges in the light of the findings of the previous chapters.

2. The Directive on the European protection order

2.1. Background of the European protection order Directive

The EPO Directive was initiated by a group of twelve states under the presidency of Spain in 2010. The initiative was mainly motivated by the increased attention to the problems caused by domestic violence and other forms of violence against women.²⁵³ There was, furthermore, a heightened awareness that cross-border victims face additional difficulties.

The EPO Directive is based on Article 82(1) TFEU on judicial cooperation in criminal matters. On 11 January 2011, the Directive came into force, and on 11 January 2015, the Member States are expected to have implemented its provisions (art. 21 EPO).²⁵⁴

2.2. Scope of the European protection order Directive

The aim of the EPO is to extend the protection of victims who have obtained a criminal protection order in one EU Member State ('the issuing state') and want to move or travel to another Member State ('the executing state'). An EPO can be requested when a protection measure has been granted in the context of a *criminal matter* (article 2(2) EPO). This starting point has four dimensions: First, the basis of the protection lies in the protection against a *criminal act* (Article 2(2) EPO). The EPO can be granted when the original

²⁵³ Explanatory Memorandum EPO, p. 4.

²⁵⁴ In the case of a Directive, the Member States are obliged to achieve the outcomes and result required by the Directive, but they can choose the means, that is, the concrete legal instruments they use in the implementation. Criminal law still belongs, for the most part, to the jurisdiction of the Member States. The instrument of a Directive allows Member States some degree of discretion as to the manner in which the obligations will be implemented.

protection order was adopted with the aim of preventing new criminal acts or reducing the consequences of previous criminal acts (recital 9). The crimes in question are those that endanger the life, physical or psychological integrity, dignity, personal liberty or sexual integrity of the protected person (art. 1 and 2(2) EPO).

Secondly, the issuing authorities do not necessarily have to be part of the criminal justice system. In principle, they can be administrative or civil in nature, too (recital 10 EPO).

Thirdly, the order does not necessarily have to be adopted by a final decision in criminal proceedings; the orders issued in the investigation or pre-trial stage can qualify as well (recital 10 EPO).

Fourth, the EPO encompasses all victims; it is not limited to women or children, nor to the victims of gender based violence (recital 9 EPO).

Article 5 of the EPO Directive defines the protective measures that are covered. The protection order may include one or more of the following restrictions:

- a) a prohibition to enter certain places or defined areas
- b) a prohibition to contact the protected person; or
- c) a prohibition to approach the protected person within a prescribed distance

2.3. Recognition procedure under the EPO Directive

The main steps of the procedure involving the adoption of an EPO can be summarized as follows:

- 1) On the request of the protected person, the issuing state issues an EPO
- 2) The executing state recognizes the EPO
- 3) The executing state adopts any necessary measure available under its national law in order to enforce the order and continue the protection.

The entire mutual recognition procedure should be processed ‘without undue delay’ (Article 9(1) EPO).

The protected person can apply for an EPO before or after she moves or travels to the second Member State (art. 6(1) EPO) and she can address her request to the competent authority of either of the two states (art. 6(3) EPO).²⁵⁵ Upon receiving the request for an EPO, the competent authority of the issuing state shall hear the person causing danger, unless he was already heard in the

²⁵⁵ If the request is addressed to the executing state, this state has to forward the request to the competent authority of the issuing state.

procedure that resulted in the national protection measure (art. 6(4) EPO).

As mentioned before, the EPO Directive is not an example of classical mutual recognition, because it involves one extra step: the executing state has to adopt a measure that is available under its national law in a similar case and that corresponds, to the highest degree possible, to the protection measure ordered in the issuing state (article 9(1) and (2) EPO). These measures may be criminal, administrative or civil in nature (article 9(1) EPO). As the Explanatory Memorandum clarifies:

The thinking behind the instrument is not that the executing State has to provide a level of protection which it is unable to provide for its own residents under its national legislation, but rather to ensure that the protected person obtains in a European State the same level of protection as that State stipulates under its own regulations. As a result, the executing State is not required to apply measures which go beyond its own legal system but to choose, from among those established under its legal order, those best adapted to the measures adopted by the issuing state in each individual case, specifically the measures which it would have adopted under its legislation in a similar case.²⁵⁶

In other words, the executing state does not have to adopt the exact same protection measure that the issuing state provided – this would be very difficult given the national differences in type and scope of protection measures and the fact that it could discriminate against its own citizens – but it has to provide the victim with a protection measure that is available under its own law. If there is no such measure available in a similar case, the executing state cannot be forced to impose and enforce a replacement order. In that case, it merely has to report violations of the prohibitions included in the EPO to the issuing state (art. 11(3) EPO).

In principle, the executing state should recognize the EPO. The executing state may, however, refuse recognition of the EPO on an enumerated list of grounds (art. 10 EPO). In addition to the formal grounds for refusal, such as an incomplete EPO form, the executing state can also refuse to recognize the EPO on the basis of, for instance, the double criminality principle or the principle of *ne bis in idem*. More on those grounds for refusal and the difficulties they may cause in practice in section 5.

Once the EPO has been recognized, the laws of the executing state apply, including those that govern the penalties for a breach of the protection order (art. 11 EPO). However, the issuing state retains the right to renew, review, modify, revoke and withdraw the EPO. It also retains exclusive competence to

²⁵⁶ Explanatory Memorandum, p. 17.

impose custodial measures if the original protection measure was issued as part of a probation judgment or supervision decision (art. 13(1) EPO).

3. Regulation on protection measures in civil matters

3.1. Background of the Regulation on protection measures in civil matters

Originally, civil protection orders were meant to be covered by the EPO Directive as well, provided that they had been imposed to protect a person against a criminal act. The idea was to make the benefits of the EPO available to the largest possible number of victims.²⁵⁷ It was only after the representatives of some countries had questioned the legal basis of the EPO Directive (art. 82 TFEU) and its appropriateness for prescribing the mutual recognition of civil measures that the EU decided to limit the scope of the EPO to criminal protection orders only. However, since the EPO now no longer covered all cross-border situations and all protection orders, the need for an equivalent measure regarding civil protection measures became obvious.²⁵⁸ In the end, a second instrument was created focusing exclusively on protection orders relating to civil matters, Regulation No 606/2013, which has its legal basis in Article 81 TFEU.²⁵⁹ The Regulation is rooted into the sequence of judicial cooperation in civil matters with cross-border dimensions. A central goal in the judicial cooperation in civil matters is to promote swift and efficient procedures for the mutual recognition of judgments in other Member States.

The terminology used in the Regulation differs slightly from that of the EPO Directive. Under the Regulation, the Member State that issues the protection order is called the 'Member State of origin', and the executing state the 'Member State addressed'.

3.2 Scope of the Regulation on protection measures in civil matters

The Regulation is meant to be complementary to the EPO Directive (recital 9 EPM). Where the EPO focuses on criminal protection orders, the EPM covers protection measures adopted in *civil matters*, the civil nature of which has to be interpreted autonomously (recital 10 EPM). Again, the nature of the authority imposing the measure is not decisive in this respect, but a protection order issued by the police will not qualify (recital 13 EPM). As with the EPO Directive, the Regulation applies to all victims, not just victims suffering from gender violence.

²⁵⁷ Explanatory Memorandum EPO, p. 14.

²⁵⁸ Explanatory Memorandum EPM, p. 3.

²⁵⁹ This article provides a legal basis for the mutual recognition of civil judgments and of decisions in extrajudicial cases.

The protective measures that fall under the scope of the Regulation are formulated in approximately the same way as in the EPO Directive. They should be imposed to protect another person's physical or psychological integrity and, again, the protection measure should relate to a prohibition to contact the protected person, to enter a defined area or to approach a person (art. 3(1) EPM). There are, however, subtle differences that may narrow the scope of the Regulation somewhat in comparison to the EPO Directive (more on that in section 4).

3.3. Recognition procedure under the Regulation on protection measures in civil measures

The recognition procedure under the EPM Regulation is more in line with traditional recognition than the one under the EPO Directive. If a victim wishes to have the civil protection measure extended to another Member State, all she needs to do is request the state of origin for a certificate containing the details of the protection measure (art. 5 EPM). Upon the request of the protected person, the competent authority in the state of origin issues a certificate using the standard format and provides, when needed, a translation (art. 5 EPM). The competent authority of the state of origin shall notify the defendant of the certificate (art. 8 EPM), but unlike the EPO, he does not need to be heard first.

The certificate is recognizable and enforceable in all Member States *without any additional procedure* being required (art. 4(1) EPM). So, in contrast with the EPO, the state addressed does not have to provide for a national measure of its own: The obligations and prohibitions covered by the EPM are *automatically* recognized. Whether the state addressed has a civil protection order available under its own law for similar cases or not is irrelevant. It should still recognize and enforce the prohibitions included in the EPM (art. 13(3) EPM). The only thing the state addressed is allowed to do is to adjust some *factual* elements of the protection measure in order to be able to effectuate the measure in its own territory (e.g., replace the old address of the victim with the new one) (art. 11 EPM).²⁶⁰

Also, the grounds for refusal are much more limited than the ones stipulated in the EPO Directive. There are only two grounds on which the state addressed can refuse to recognize the EPM. The order can be denied recognition if the measure would clearly be contrary to the public policy of the state addressed or if it is irreconcilable with a judgment given or recognized in the state addressed (art. 13(1) EPM). The threshold to invoke the public policy exception in order to refuse recognition in European private and procedural law is generally high.

²⁶⁰ Of course, if according to the law of the state addressed the EPM requires a national procedure/measure in order for it to be fully implemented and enforceable, this is left to the law of the state addressed (recital 18 EPM)

It requires that an essential and important policy rule of the state addressed would be violated by imposing the order.

The Regulation includes, however, one important limitation in relation to the recognition and enforcement of civil protection measures: the time limit of 12 months. Regardless of the duration of the original order, the EPM is only valid for one year, starting from the date of its issuing (art. 4(4) EPM).

The sanctions and procedures relating to the breach of the order are left entirely to the domain of the state addressed (art. 4(5) EPM); the Regulation does not suggest what these sanctions should or could be.²⁶¹ The Member State of origin retains the right to suspend or withdraw the original protection measure (art. 14 EPM).

4. Differences between the Directive and the Regulation

The EPM Regulation and the EPO Directive differ, not only when it comes to the terminology used ('state of origin' versus 'issuing state'). There are other, more substantial differences as well. As can be witnessed from its Explanatory Report, the rationale and wording of the civil EPO has mainly been inspired by other EU instruments on judicial cooperation in civil and commercial matters.²⁶² As a result, the two instruments differ in many – serious and less serious – aspects, some of the most important of which are explained below.

4.1. Procedures for recognition

One of the most influential distinctions is the fact that the recognition procedures differ, which seems intrinsically linked to the duties of states following such recognition. In the case of the EPO, where the recognizing state must 'execute' or 'enforce' the measure, the European legislator took the possibility into account that the Member States might not have similar protection order mechanisms in place. Given the different legal traditions, there is a chance that the Member State in which the execution of the order is required cannot provide for a protection order identical to the one adopted in the issuing Member State. In those circumstances, the Member States are given a degree of discretion (recital 20). They are allowed to provide for an alternative measure which *is available under its national law in a similar case* and which corresponds, to the *highest degree possible*, to the protection measures ordered in the issuing state (Article 9(1)(2) EPO). The executing State is, furthermore, not obliged to adopt a criminal measure per se, but can

²⁶¹ The Explanatory Memorandum, however, hints at the fact that these sanctions are often criminal ones and should follow directly after the breach (p. 4-5).

²⁶² Explanatory Memorandum EPM, p. 6.

adopt administrative or civil measures as well (Article 9(1) EPO). In the case that there is *no national alternative* available in a similar case, the executing Member State is *not obliged* to provide for one.²⁶³ The only remaining obligation in such protective lacuna is of a formal nature: the executing state still has to inform the issuing state of any breaches of the protection measure described in the EPO that come to its attention (Article 11(3) EPO).

The EPM Regulation, on the other hand, has taken on a completely different approach. In contrast to the EPO, the Member State addressed does not need to adopt a national measure replacing the original one: it merely has to recognize the foreign measure without any intermediate procedures. In other words, no further action is expected on the part of the Member State addressed (automatic recognition). In the situation in which the Member State addressed does not offer a protection measure to its own citizens based on the same facts, *it still needs to recognize* the prohibitions included in the protection order originating from the other Member State (Article 13(3) Regulation) and make sure that the protection measures can take effect (recital 18).²⁶⁴

4.2. Grounds for refusal

A second disparity between the two instruments is that the EPO has a more extensive list of grounds for refusal. Especially the principle of ‘double criminality’ can be an important limitative factor in this respect, for instance in the case of stalking. The principle entails that mutual recognition should only occur if both the issuing and the executing country recognize the behavior underlying the protection measure as a crime. Some of the threatening acts, such as stalking, may be criminal offences in the issuing state, but in the absence of such an offence in the Criminal Code of the executing state, the authority in the executing state must interpret whether the acts would be criminal offences under its national law. Even now stalking is increasingly defined as a criminal act in most European countries, this is not always the

²⁶³ The Directive does not explicitly exempt the executing Member State in this respect, but this can be deduced from Article 11(3) EPO.

²⁶⁴ This means that the foreign protection order of a victim who would normally not qualify for civil protection measures under the national rules of the Member State addressed would still have to be recognized. For example, even if the Member State addressed only has civil protection measures available in divorce proceedings, and a woman asks for recognition of the protection order against her ex-partner with whom she has never entered into marriage, the Member State addressed still needs to recognize this woman’s no-contact order. In the Explanatory Report, the initiators originally proposed to have the second Member State adapt the protection measure ‘to one known under its own law which has equivalent effects attached to it and pursues similar aims and interests’ (Article 8 draft Regulation). Apparently, the EU legislator has abandoned the idea of adapting protection measures with the aim of aligning them with internal legislation, because under the final Regulation, the only things that the Member State addressed may adjust are some *factual elements* of the protection measure (e.g., replace the victim’s old address with the new one) (Article 11 Regulation).

case. Victims who move to those countries where stalking has not been criminalized may encounter difficulties in having their protection order recognized. In fact, the principle of double criminality has been identified as one of the factors that can (potentially) seriously diminish the impact of the EPO.²⁶⁵ The EPM Regulation only includes two grounds for refusal and these have to be interpreted restrictively (see Section 3.3 above).

4.3. Aim of the original order

Another difference is that the EPO Directive allows the issuing Member State discretion to determine the aim of the criminal protection order and to refuse the adoption of the EPO if the order does not specifically aim to protect the victim (recital 9 EPO). With criminal protection orders, it is possible that the prohibition to contact the victim was imposed with other goals in mind, such as the social rehabilitation of the offender or law enforcement purposes.²⁶⁶ While these orders may have a protective effect, their main aim is completely different. In these circumstances, it is possible that the authority of the issuing state could decline the victim's request for an EPO. This is not possible in the case of civil protection orders, because these always (assumably) promote the victim's interests first and foremost. Again, the threshold for obtaining an EPO could be higher than that of an EPM.²⁶⁷

4.4. Physical presence protected person

A fourth distinction could be the relevance of the place where the victim is located. Whether the EPM – like the EPO Directive – requires the physical presence of the protected person in the state addressed is not clear. Unlike the EPO Directive, the Regulation is less adamant in this respect. Although the introductory text seems to suggest that the instrument does indeed have the traditional cross-border situation in mind – with the victim going to another Member State²⁶⁸ – there is no direct referral to the travel or relocation plans

²⁶⁵ See Van der Aa & Ouwerkerk (2012) *op. cit.* Another one of the grounds on which the recognition of the EPO can be refused is the principle of *ne bis in idem* (art. 5(1)(g) EPO). The *ne bis in idem* principle means that someone cannot be punished twice for the same crime. Protection orders, however, are oriented towards the future and the protection of the victim. They are based on an anticipated risk, and the goal is prevention, not retribution notions. It is difficult to see what the purpose and interpretation of *ne bis* should and could be in the context of protection orders, something which the EU legislator also seemed to realize (see recital 26 EPO). If, however, the principle would lead states to deny the issuing of the EPO, this could diminish the protection of victims.

²⁶⁶ For instance, with an eye on preserving the victim as a reliable witness.

²⁶⁷ However, the fact that the execution of the EPM upon violation is underdeveloped in comparison to the EPO Directive undermines the practical relevance of the first instrument again.

²⁶⁸ In recital 3 the EPM refers to the free movement of persons and states that 'protection afforded to a natural person in one Member State is maintained and continued in any other Member State to which that person travels or moves'.

of the victim in its actual provisions as there is in the Directive.²⁶⁹ Also, the EPM certificate does not contain any information on the period for which the protected person intends to stay.²⁷⁰ Apparently, the question of whether the victim actually goes to another Member State is not relevant for the issuing of the EPM.²⁷¹

4.5. Assessment of the duration of the victim's stay

Another factor that is of relevance under the EPO Directive, and not the EPM Regulation, is the duration of the victim's stay in the executing Member State. Article 6(1) EPO prescribes that the issuing state is allowed to take the length of the period that the protected person intends to stay in the executing state into account. The minimum duration of the victim's stay is not defined in the Directive, but left up to the discretion of the national Member States: They are allowed to anchor the EPO to a fixed minimum term, which may lead to the refusal of the EPO in the case of short-term visits.

4.6. Assessment of the need for protection

Another potential burden arising from the EPO procedure of recognition relates to the assessment of the seriousness of the need for protection (art. 6(1) EPO). This requirement thus brings with it a 'double' risk assessment for the victim who already had the seriousness of the need for protection recognized in the issuing state. The assessment is left to the discretion of the competent authority since the Directive does not recommend the adoption of any risk assessment mechanism, nor is there any reference to a standardized assessment tool to be used by all Member States. Arguably, this could be an important threshold for issuing the EPO, e.g., with competent authorities of the issuing state easily assuming that the threat will have diminished with the victim crossing borders. Under the EPM Regulation no such double-check is allowed.

²⁶⁹ Compare Article 6(1) EPO.

²⁷⁰ Compare Article 7(b) EPO.

²⁷¹ The fact that it may be unnecessary for the victim to go to the state addressed could possibly enhance the protection offered by the EPM, because the threat and risk are not necessarily tied to the place where the protected person stays. Especially threatening behavior as recognized in article 5(b) EPO and 3(1)(b) EPM may take the form of phone calls, mail, electronic mail or other means of telecommunication. Therefore, the situation in which *the offender moves to the other Member State* could also trigger the need for enhanced cross-border protection. This situation, although not explicitly covered by the EPM, may be contemplated for cases where a victim with the EPM certificate remains in the country of issuing, notifies the authorities of a breach by a person residing in the other State. In the light of the EPM the executing State may then be obliged to put the person causing the danger to the disposition of the authorities in the issuing State. Of course, in some cases, if the violation amounts to a criminal offence, the state of origin could pursue action on the basis of extraterritorial jurisdiction based on the nationality of the victim and ask the second state to surrender the offender, but these are complex procedures, not likely to be invoked for the 'mere' enforcement of a protection order.

4.7. Possibility to limit duration

As discussed above, the EPM is only valid for 12 months maximum. Victims with a national civil protection measure that exceeds this one-year threshold are disadvantaged in this respect. On the other hand, the EPM does not allow the state addressed to discontinue the protection if, under its national laws, the maximum term of similar national measures has expired (Article 14(1)(b) EPO). As appeared from the national reports, some EU Member States have limited the maximum duration of civil protection orders to 6 months or less.²⁷² At least victims who travel to those countries with an EPM certificate do not have to fear that their protection is limited to the maxima set out in national laws. Victims whose national order was recognized in the second Member State on the basis of the EPO Directive, however, can be deprived of protection sooner than they would have expected on the basis of the original order.²⁷³

4.8. Prohibitions under the Regulation and the Directive

In certain aspects, the scope of the civil Regulation is somewhat more limited than that of its criminal counterpart. The first difference lies in the manner in which a protection order or protection measure is defined. According to 3(1) of the Regulation, a protection measure means:

‘any decision, whatever it may be called, ordered by the issuing authority of the Member State of origin in accordance with its national law and imposing one or more of the following obligations on the person causing the risk with a view to protecting another person, when the latter person’s physical or psychological integrity may be at risk.’ [emphasis added]

The definition provided for in the EPO Directive, however, also covers protection measures that were issued in order to protect a person from threats to this person’s ‘dignity, personal liberty or sexual integrity’ (Article 2(1) EPO). The question is what would happen if the original civil protection order was imposed with these latter three goals in mind. There is a possibility that the Member State of origin will refuse to issue the certificate. So where the threshold for application of the civil EPO is on the one hand lower – the danger does not have to be based on a ‘criminal act’ – on the other hand its scope seems more limited in that it may not cover national protection orders that were issued with a view to the dignity, personal liberty or sexual integrity of the endangered person.

Another subtle difference can be found in the definition of the prohibitions and restrictions that fall under the scope of the two instruments. While the

²⁷² A Hungarian civil order is only valid for 30 days.

²⁷³ Think, for instance, of a 5-years protection order adopted in the Netherlands, which is replaced by the Finnish ‘basic restraining order’ that has a maximum duration of one year attached to it.

prohibition of contact and approaching the protected person are similarly worded, the prohibition to enter certain areas varies. According to Article 3(1) (a) of the Regulation the scope is limited to:

‘a prohibition or regulation on entering the place where the protected person resides, works or regularly visits or stays.’ [emphasis added]

Article 5(a) of the EPO defines it as:

‘a prohibition from entering certain localities, places or defined areas where the protected person resides or visits.’

The civil Regulation is more extensive in that it includes places where the endangered person works – the EPO only covers areas where the victim resides or visits²⁷⁴ – but it is more limited in that the victim has to visit these places *regularly*.²⁷⁵ This is not a requirement under the EPO. What happens if the civil protection order prohibits entering a place that the victim only occasionally visits? And how often does a victim have to visit a certain area before it amounts to ‘regular’ visits?

All these differences can have implications in practice, causing confusion on the part of the Member States and affecting the protection of the endangered person. In Table 5.1 below, we have summed up the differences discussed above.

²⁷⁴ Although one could argue that a place where one works is also a place that one visits.

²⁷⁵ Another difference is that the Regulation seems to have formulated the area from which the restrainee can be banned more narrowly. Whereas the Regulation only covers prohibitions on ‘entering the place’, the EPO uses a more detailed formulation (‘entering certain localities, places or defined areas’). It seems, however, unlikely that the European legislator actually intended to express a real difference in the area covered by the two instruments, for Article 7(f) of the Regulation mentions the specification and the function of the ‘place and/or the circumscribed area which that person is prohibited from approaching’. Still, these small differences may cause confusion on the part of the Member States (in particular, since the draft version of the Regulation did use the same expression, see Explanatory Report, p. 13).

Table 5.1 Differences between the EPO Directive and the EPM Regulation

	EPO Directive	Article	EPM Regulation	Article
State where protection measure originated	'issuing state'	2(5)	'state of origin'	3(5)
State where protection measure was recognized	'executing state'	2(6)	'state addressed'	3(6)
Member States excluded	Ireland and Denmark	Recitals 41 and 42	Denmark	Recital 41
Protection against	Criminal act	2(2)	Other acts as well	-
Procedure	Recognition + adoption of national protection measure	9(1)	Automatic recognition	4(1)
Grounds for refusal	- EPO incomplete - Requirements art. 5 - Double criminality - Amnesty laws - Immunity laws - Prosecution state-barred - <i>Ne bis in idem</i> - Age offender - Crime on territory executing MS	10(1)	- Public policy - Irreconcilable judgment	13(1)
Aim of original order	Protection victim > possibility to refuse if other (more important) aims	Recital 9	Protection victim assumed	-
Location protected person	Reside or move to executing Member State	6(1)	Also when victim stays in or returns to state of origin	-
Duration measure based on EPM or EPO	National maximum duration executing state	14(1)(b)	12 months	4(4)
Length of stay + need protection victim	Can be taken into account in issuing EPO	6(1)	Irrelevant	-
Protection includes protection against	- Physical integrity - Psychological integrity - Dignity - Personal liberty - Sexual integrity	2(2)	- Physical integrity - Psychological integrity	3(1)
Prohibition of	'areas where the protected person resides or visits'	5(a)	'place where the protected person resides, works or <i>regularly</i> visits or stays'	3(1)(a)
Sanctions in case of breach protection measure	Law executing state, unless custodial measure within probation or supervision decision or transfer to state supervision	13(1)3)	Law state addressed, but not well developed	Recital 18

5. Possible problems in the implementation of the Directive and the Regulation

In this section we will discuss some more (potential) problems or challenges that may surface once the two instruments are implemented. We distinguish two types of challenges:

- 1) Challenges caused by the *ambiguities on the level of the EU instruments themselves*, allowing for different interpretations; and
- 2) Challenges caused by the *national differences in the EU Member States*, affecting the implementation of the instruments in practice.

With regard to the latter type of challenge, we will try to combine the information from the national reports and the preparatory and legislative texts from the two mutual recognition instruments. In the light of the national findings and the two pieces of EU legislation, which problems do we foresee in the implementation of the Directive and the Regulation in practice?

5.1. Challenges related to interpretation difficulties

5.1.1. Uncertainty with regard to commuters

In the past, critics have hypothesized that the criminal EPO will only be useful to a limited number of victims in a limited number of situations.²⁷⁶ Cases in which a person continues to pose a threat to the life, physical, psychological and sexual integrity, dignity, and personal liberty of another person after that person has moved to another Member State are bound to be exceptional. In addition, in some of these cases, existing protection measures can already be recognized on the basis of other EU regulations, thereby reducing the usefulness of the EPO even further. A final factor that could decrease the frequency with which the EPO will be issued is the relevance of the duration of the victim's stay in the other Member State.

As discussed above, Article 6(1) EPO allows the authority of the issuing Member State to take 'the length of the period or periods that the protected person intends to stay in the executing State' into account in its decision on issuing an EPO. Europe does not define the minimum duration that a victim needs to be in the Member State of destination, but one can imagine that issuing an EPO to cover a two-week holiday could be considered disproportionate in the light of the work that the recognition of the EPO might bring along. Probably, issuing Member States will require their citizens to at least stay for a protracted amount of time in the Member State of destination.

²⁷⁶ See, for instance, S. van der Aa & J. Ouwerkerk, 'The European Protection Order: No time to waste or a waste of time?', *European Journal of Crime, Criminal Law and Criminal Justice* (19), 267-287.

A factor that could *increase* the practical use of the EPO, on the other hand, is when commuters would be allowed to benefit from the EPO. There are numerous persons who cross borders on a daily basis in order to travel between their place of residence and their place of work or full-time study. Authorizing these persons to apply for an EPO would expand its range, especially in the border regions.²⁷⁷ The problem is that, based on the text of the EPO, one cannot deduce whether the EPO applies to these situations and to these endangered persons as well. It is plausible that the EPO was drafted with a more 'static' situation in mind, that is to say, the victim remaining relatively stationary in the other Member State, thus not covering victims who travel back and forth on a regular basis.²⁷⁸ Since the Directive remains silent on this particular issue, it is left up to the Member States to decide.²⁷⁹

5.1.2. Splitting the protection order

Another, comparable, situation is one in which the victim needs protection simultaneously in both jurisdictions, because only some of the conditions 'travel' along with the victim to another Member State. Think, for instance, of the situation in which the original protection order not only prohibited the offender to enter the street where the victim lives, but also the street of her parents' place of residence. The victim who moves to another Member State may prefer an EPO covering her new address in the executing State, while, at the same time, retaining the prohibition in relation to her parent's place in the issuing State. In others words, can only part of the original protection measure be recognized and transposed to the new state, while the other part remains effective in the Member State of origin? It is not clear whether the EPO procedure allows for such 'splitting' of the protection order, or whether it is a 'package deal'.

²⁷⁷ Still the added value is only realized in the case that the commuter first had a national protection order covering her place of work (or place of residence) in the issuing Member State, after which she changed jobs and started working (or living) abroad. If the commuter was already working abroad at the time of the original protection order, it probably could not have covered the foreign place or work (or residence), because of lack of extraterritorial jurisdiction. In this situation, the endangered person should have sought a separate national protection order in the second Member State to begin with.

²⁷⁸ It would have the effect of one protection order (decision) being effective in two countries at the same time: the country of origin (where the victim still resides) and the country where the victim started to work. In principle, there are no objections to this construction, if the sum of the two areas that are prohibited for the restrainee (one area in the issuing country of origin and one area in recognizing country) does not substantially exceed the area that was envisioned in the original decision. In other words, the mutual recognition of a part of the original order should not result in the offender being banned from a larger area: the net result (in square meters) should be approximately the same.

²⁷⁹ The civil Regulation, on the other hand, clarifies in Article 2(2) that 'a case shall be deemed to be a cross-border case where the recognition of a protection measure ordered in one Member State is sought in another Member State'. This leaves more leeway for allowing commuters access to civil EPOs.

5.1.3. *Contact that is still allowed*

While the EPO was drafted with a complete prohibition of any form of contact in mind, in practice, there are numerous situations in which protection orders still allow for (mediated) contact between the restrained and the protected person. Contact in matters related to the children or divorce proceedings (via a lawyer) are often included in national protection orders as exceptions to the rule that the violent person should no longer communicate with the victim. Given that the EPO Directive remains silent on whether or not these (mediated) forms of contact are transferred to the new Member State as well, this may give rise to problems in practice.²⁸⁰

5.1.4. *Lack of alternative measures*

As explained above, the executing state only has to provide for an alternative measure that is available 'at national level in a similar case' (art. 11(3) EPO). An important question is what the EU legislator meant exactly by this sentence. Does it refer to the three prohibitions enumerated in article 5 EPO (substantive interpretation) or does it refer to the procedural criteria that Member States apply in national cases (procedural interpretation)?

A substantive interpretation allows Member States to refuse recognition if, under their national laws, it is not possible to impose (one of) the three prohibitions under Article 5 EPO (to contact or approach a victim or to be within a certain area). In other words, if (one of) these three prohibitions are not available *at all* in a certain Member State, can the recognition of the EPO justifiably be denied.

A procedural interpretation, however, limits the applicability of the EPO much more. In this interpretation, the executing state can deny recognition if its own citizens, in domestic cases, could not apply for protection in similar circumstances either. This means, for instance, that states that have restricted the range of protected persons to a narrowly defined category of victims, are not obliged to provide an alternative measure if the foreign victim does not qualify for protection under national laws either. In these circumstances, the executing state is only required to inform the issuing state of any breaches of which it is aware (Article 11(3) EPO). Again, which interpretation is correct?

²⁸⁰ A related question is whether more 'positive' actions in this respect should also be assumed by the executing Member State. Should, for instance, the executing Member State also actively provide for meeting facilities for the restrained parent and his children to meet (provided that these facilities are also in place for 'domestic' victims) or would that be too much of a stretch?

5.2. Challenges related to national differences

5.2.1. Quasi-criminal protection orders

A first problem that is rooted in the different legal traditions has to do with the existence of quasi-criminal protection orders as can be found in Denmark, Finland, and Sweden. The two recognition instruments are based on the assumption that there is a clear division between civil, criminal and administrative protection orders. Based on their nature, protection orders are either classified as falling under the regime of the EPO Directive or the EPM Regulation. In reality, however, it appears that this distinction is not as straightforward as the European legislator suggests.

We have seen from the national reports that some of the protection measures in the Member States do not fall nicely into the proposed dichotomy: it is not obvious whether they are civil or criminal. Still, their classification is an important matter, because it can have a significant impact on the level of protection offered by the measure that will be adopted to replace the original order and the speed and efficiency with which the recognition procedure is performed. Because of the differences between the two instruments (see section 4 above), victims can have a preference for having the original order recognized as being either civil or criminal.

So how do the two instruments themselves distinguish between civil and criminal protection orders? It turns out they do not provide clear-cut answers either. The EPM Regulation applies the following criteria:

- 1) The notion of ‘civil matters’ should be interpreted *autonomously* (recital 10).
- 2) The *nature of the authority* issuing the original protection order is *not determinative* (recital 10).
- 3) Protection orders issued by *police authorities* are excluded (recital 13).

The autonomous interpretation of civil matters, referred to under the first point, should, furthermore, be performed ‘in accordance with the principles of Union law’ (recital 10) ‘within the meaning of Article 81 TFEU’ (recital 9).

From the EPO Directive, we can also deduce three criteria:

- 1) The order has to protect a person against *a criminal act* as defined by the law of the issuing state (art. 2(2))
- 2) This criminal act does *not* have to been established by a *final decision* (recital 10)
- 3) The *nature of the authority* issuing the original protection measure is *irrelevant* (recital 10)

Although the Directive is not as explicit as the civil Regulation, these criteria suggest that the criminal nature of the protection orders has to be established autonomously as well.

Unfortunately, this does not help us much. To date, there has been no case law providing guidance into the question of how to interpret the concepts of criminal and civil matters autonomously. A solution could be to base an EU-wide understanding of the matter on the ECtHR rulings on the concept of 'criminal charge' in Article 6 ECHR.²⁸¹ However, until this matter has finally been settled on, we predict that the ambivalent nature of, for instance, the 'quasi-criminal' protection orders in Sweden, Denmark, and Finland could be problematic since the trajectories in these countries have both civil and public features.²⁸² If the uncertainty would result in cross-border disputes regarding the correct legal basis of the quasi-criminal protection orders, this could hamper the effective protection of victims.

5.2.2. From designated streets to radiuses (and back)

Another difficulty that arises from the different practices in the 27 Member States is a result of the manner in which the judicial authorities designate the area the restrainee is no longer allowed to enter. While in some Member States the authorities have a preference for the designation of the prohibited area by naming streets, others prefer the use of radiuses instead (see Chapter 2).

As a result of the introduction of the EPO Directive and the EPM Regulation, an interesting paradox has arisen. In Chapter 3 we argued that in a domestic situation, the designation of particular streets is to be favored over the use of a radius. We expect that it is easier to monitor and enforce protection orders that spell out exactly the forbidden streets, instead of relying heavily on the geometric perceptions of the persons involved. But because a radius has universal applicability, it makes it easier for the authorities to transpose a radius-defined order to a new (cross-border) situation.

²⁸¹ This solution was, for instance, proposed by S. Peers, *EU Justice and Home Affairs Law (third edition)*, Oxford: Oxford EU Law Library, Oxford University Press, 2011, p. 843. In the case of *Engel and others v Netherlands* (Apps. 5100/71, 5101/71, 5354/72, and 5370/72, 8 June 1976, Series A No 22 (1979-80) 1 EHRR 647), for instance, the Court formulated three criteria that should be taken into account in establishing whether the matter involved a 'criminal charge' for the purposes of Article 6: 1) the classification of the proceedings under national law; 2) the essential nature of the offence; and 3) the nature and degree of severity of the penalty that could be imposed having regard in particular to any loss of liberty, a characteristic of criminal liability.

²⁸² A similar problem could arise with Hungarian and Romanian 'civil' protection orders initiated by the police. Although recital 10 of the EPM Regulation excludes protection orders that were *issued* by police authorities, it remains silent on the situation in which the police merely instigate civil proceedings, but where the actual decision is still left up to the civil court. Again, the mixture of civil and public features could make an unequivocal classification problematic.

In the case of the EPM, the European legislator has explicitly acknowledged that the protection order may need to be adapted to fit the changed circumstances. The exact rules are laid down in Recitals 19-21, Article 11(1) of the Regulation and in the EPM Certificate.²⁸³ In order for the protection order to be effective in practice, the Member State of origin needs to indicate what function the particular address mentioned in the original order has (place of residence, place of work, other), after which the Member State addressed can adjust the factual elements of the order to fit the new circumstances (e.g., replace old address with new address victim). The problem is that the EPM only seems to take into account prohibitions that are radius-based.²⁸⁴ Comparable arrangements were not made in the context of the EPO.²⁸⁵

The result of the different practices on a national level is that the orders based on specific addresses or streets need to be ‘translated’ into radius-based orders, which can be quite a challenge if the authority responsible for designating the new prohibited area was not involved in the original decision-making process. What exact area did the original authority mean to include? This could result in the request going back and forth to establish the exact parameters within which the restrainee is prohibited to come, thereby stalling the recognition procedure.

Another risk involved with the ‘transposition’ of the original street-based order into a radius is that there is a chance that the radius covers a more extensive area than the original order.²⁸⁶ Inadvertently, this could mean an increase in the burden imposed by the prohibition: the rights of the restrainee to move freely could be more restricted than the original order had envisioned.

5.2.3. Lack of legal basis to provide for an autonomous criminal order

Another problem could be that almost all criminal protection orders available within the domestic laws of the Member States are inextricably tied to the criminal procedure. The order could, for instance, be a condition to a suspension from pre-trial detention. If there are no autonomous protection orders available, at least not within the national criminal (procedural) law,

²⁸³ See Commission implementing Regulation (EU) No 939/2014 of 2 September 2014, establishing the certificates referred to in Articles 5 and 14 of Regulation (EU) No 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters (OJ L263, 3.9.2014, p. 10).

²⁸⁴ Point 10.1.1.3 of the Certificate mentioned above only allows the Member State of origin to describe the circumscribed area in terms of an approximate radius in meters.

²⁸⁵ In contrast to the EPM, the EPO Directive has not arranged for the fact that the prohibited area in the new situation is different from the one described in the original measure. In the case of the EPO, the manner in which the competent authorities should deal with the different factual elements is not regulated.

²⁸⁶ Especially since radiuses form part of a circular area, while streets form a straight line.

then there may not be a legal basis for the ‘replacement’ order. These Member States have two options: either they can implement the original order with the help of a national order from other areas of law (civil or administrative), provided that these areas do provide the legal basis for such an autonomous order. The alternative is to create a special legal basis to impose an EPO-based criminal protection order independent from criminal proceedings, which requires legislative changes.²⁸⁷ If Member States introduce autonomous protection orders to live up to the obligations deriving from the EPO Directive, there is a risk that they will opt for weaker sanctioning mechanisms.

5.2.4. Criminal or civil sanctions in response to non-compliance

One of the most intricate issues involves the enforcement of protection orders in case of a breach. The two recognition instruments leave the implementation and enforcement of the EPO and the EPM to the laws of the executing (or addressed) state. In the implementation practice, this may lead to some difficulties, because Member States have different reactions to violations of the protection order.

In the case of civil protection orders, for instance, some of the Member States have criminalized non-compliance, whereas other Member States have opted for civil sanctions (see Chapter 2). The EPM Regulation clearly wants to steer clear of any harmonizing incentives in that respect.²⁸⁸ In other words, the Member States addressed are allowed to retain their own national practices in this respect. Still, this may lead to difficulties in practice. We distinguish two different scenarios:

- 1) A civil protection order issued in a Member State that has *criminalized violations* is recognized by a Member State that opted for civil sanctions.
- 2) A civil protection order issued in a Member State that has opted *for civil sanctions* is recognized by a Member State that has civil sanctions as well.

The situation in which a ‘criminalized’ protection order is transposed into a protection order with civil means of execution (scenario 1) is problematic because of the manner in which civil sanctions are executed. The enforcement of a ‘non-criminalized’ order is left to the protected person instead of the police or the public prosecutor. Upon violation, the claimant (then executor) can (with the help of a bailiff) collect the civil fine or ask the court for the (civil) committal of the restrainee to detention for failure to comply with a judicial order. However, the claimant needs to base his actions on the underlying

²⁸⁷ This is, for instance, the case in the Netherlands, where a new autonomous protection order will be created in order to be able to comply with the EPO.

²⁸⁸ Recital 18 stipulates that it does not cover ‘any potential sanctions that might be imposed if the obligation ordered by the protection measure is infringed in the Member State addressed. Those matters are left to the law of that Member State’.

verdict: Only in the underlying verdict can she read what amount of money the restrainee owes for each violation. The problem with protection orders originating from ‘criminalizing-countries’ is that the underlying verdict will not contain any information regarding this and they cannot easily be adapted to the new situation in accordance with Article 11 Regulation either. This is because the amount of money linked to protection order violation (or time in civil detention) is often established taking into account various factors, such as the anticipated deterrent effect, the restrainee’s financial resources, and his track-record in previous protection order (non-)compliance. In order for the civil protection order to be enforceable in these Member States, it would require an additional procedure in the state addressed to establish the appropriate civil sanction.

The second scenario (from civil to civil sanctioning) is not without problems either. Although the prohibitions contained in the original order need to be recognized automatically, this is not per definition true for the sanctions that the first court has formulated to strengthen the civil protection order. The state addressed may require the victim to initiate an additional procedure to strengthen the prohibitions with enforcement measures in case of a breach.²⁸⁹ Having to go through these ‘additional’ proceedings can be a burden for the victims involved, especially when they require the servicing and presence of the defendant.

5.2.5. Lack of civil protection orders

As explained above the protection measures that are recognized under the EPM Regulation are *automatically* recognized. Moreover, even in the situation in which the state addressed would not normally offer protection to its own citizens, it still needs to implement and enforce the prohibitions contained in the EPM (Article 13(3) Regulation).

The *enforcement* of the civil protection measure, however, is governed by the law of the Member State addressed (Article 4(5) Regulation). But what if the Member State addressed does not have any civil protection measures whatsoever? How can it determine what enforcement actions are called for? Of course, this problem has become less relevant now all 27 Member States included in the study seem to have some form of civil protection measures in place at the time of writing. We do not know, however, if that is also the case for Croatia.

²⁸⁹ In fact, this is what the draft Dutch implementation law proposes. The prohibitions contained in the original protection order will be recognized automatically, but if the protected person wishes to strengthen the order with sanctions upon violation, she needs to initiate a separate procedure before the interlocutory judge in The Hague to that end. This procedure cannot be an *ex parte* procedure – the defendant needs to be serviced – and the victim is obliged to be represented by a lawyer (*Kamerstukken II* 2013/2014, 34 021, nr. 3, p. 14-15).

5.2.6. *Lack of sanctions to violations of criminal orders*

As a general rule, the execution and enforcement of protection orders is governed by the law of the executing state. If violations of the protection order are established, the competent authorities of the executing Member State can (Article 11(2) EPO):

- Impose criminal sanctions or other measures in reaction to the breach if the ‘breach amounts to a criminal offence under the law of the executing state’ (art. 11(2)(a) EPO).²⁹⁰
- Impose a non-criminal sanction
- Take an urgent and provisional measure to stop the breach

Already, under the general rule, some problems may arise in the Member States. Judging by the text of Article 11(2) EPO, the EU legislator assumed that all Member States would have some type of sanction or (provisional) measure available in the event of a breach of a protection order. A construction like the Bulgarian one, where (post-trial) protection orders are not strengthened by any sanction or measure, was obviously not taken into account. This means that protection orders violated on Bulgarian territory with Bulgaria as an executing Member State cannot be enforced *de facto*.

5.2.7. *Sanctioning when there is no alternative order in the executing state*

An interesting question is what the *issuing* state is allowed to do in case the executing state has no national measure available and is only obliged to alert the issuing state of any violations that occurred on its watch. The general rule that the executing state needs to sanction violations does not apply, since there is no legal basis for such sanctioning: the EPO was not implemented with the help of a national measure in the executing Member State. Can, in these circumstances, the *issuing* state revoke the original order and the EPO and impose a sanction instead, given that the breach occurred on the territory of the executing state? What possibilities are there for the issuing state to act?

One aspect that mitigates this problem in practice is the fact that not all sanctioning powers are transferred under the EPO Directive to the executing Member State. There are two exceptions to the rule in which the executing state needs to sanction violations: 1) when the EPO overlaps with other EU mutual recognition instruments, and 2) when the original protection measure was adopted in the context of a probation judgment or a supervision decision. Because of this, we expect, that *de facto* it will mainly be the issuing state that retains the power to impose sanctions in the case of criminal protection orders (see box below).

²⁹⁰ A relevant question here is whether the crime has been committed on the territory of the executing Member State (principle of territoriality).

Sanctioning by executing state, issuing state or state of supervision

The general rule is that the executing Member State is exclusively allowed to sanction the breach of (autonomous) protection measures and not the issuing Member State or a third country. Allowing other states to impose penalties as well, would violate the *ne bis in idem* principle. There are, however, exceptions to this rule.

The first exception is when the EPO overlaps with other EU mutual recognition instruments, more in particular with the Framework Decisions 2008/947/JHA and 2009/829/JHA on custodial sentences and probation decisions. If the protection measure is included in a probation judgment or a supervision sentence, and this sentence is transferred to another (third) Member State after the EPO has been issued, the *Member State of supervision* decides on the imposition of a custodial sentence in case of non-compliance. In other words, if the EPO and the 2008 or 2009 Framework Decisions coincide, the latter two have precedence over the first (see Article 20 (2) EPO).

A second exception is when the original protection measure was adopted in the issuing Member State as part of a probation judgment or a supervision decision – without that decision being transferred to another Member State. In that case it is *the issuing Member State* that can decide on *custodial measures* in reaction to the breach of the protection measure that took place on the territory of the executing Member State (Art. 13(1)(b) EPO). In this situation, the issuing Member State is the state of supervision, and it can revoke the original protection measure and replace it by a custodial sentence instead. In other words, only the issuing state is allowed to impose a custodial measure as a result of a probation judgment or a supervision decision.

The importance of this exception should not be underestimated. Our estimation is that most protection orders within criminal matters will fall under this category, making the exception *de facto* the rule.

6. Conclusion

The two mutual recognition instruments have definitely not solved all problems for victims who cross borders. Due to the fact that the EU had no ambitions to harmonize regulations, the national protection laws will continue to disparage. As a result, travelling to Member States with less inclusive protection schemes can seriously hamper the victim's safety and may negatively affect a person's freedom of movement still. This, however, is a situation that the EU legislator has accepted. But even the mere recognition of protection orders that originated from another Member State is difficult enough.

Mutual recognition in a field that is characterized by so many differences can be quite a challenge. All the more, since the two mutual recognition instruments that were adopted differ on several aspects, making them more or less attractive from a victim protection perspective. The principle of mutual recognition usually entails ‘the acceptance (...) of judicial decisions delivered in another Member State as if these judicial decisions were delivered in the domestic order, even though they could never have been so delivered’.²⁹¹ This is the approach adopted by the EPM Regulation. The EPO, as explained above, prescribes a different trajectory. These and other differences can have far-reaching consequences for the execution and enforcement of protection orders in the individual case.

The challenges that we foresee in implementing the EPO Directive and the EPM Regulation in the national Member States can be subdivided into two types:

- 1) Challenges caused by *ambiguities on the level of the EU instruments* themselves, allowing for different interpretations. Examples are the question of whether the EPO and the EPM apply to commuters; if protection orders can be ‘split’; and how the question of whether a country has an alternative measure available needs to be interpreted (procedural or substantive).
- 2) Challenges caused by the *national differences in the EU Member States* affecting their implementation in practice. Lack of alternative protection orders, lack of sanctions upon the breach of the order, or protection order schemes that have civil and criminal features are examples of difficulties that may also require further contemplation.

In this chapter we have mainly tried to diagnose what possible challenges lie ahead in relation to the implementation of the EPO Directive and the EPM Regulation. In the concluding chapter we will present some recommendations that may help pave the way for an efficient and effective implementation.

²⁹¹ J. Ouwerkerk, *Quid pro quo? A comparative law perspective on the mutual recognition of judicial decisions in criminal matters* (diss.), Cambridge/Antwerp/Portland: Intersentia 2011, p. 77.

Chapter 6

Conclusions and recommendations

1. Introduction

Protection orders have seldom been the subject of dedicated research, especially in the European Member States. Over the past few years, however, there have been radical changes in the national laws. A reliable overview of current legislation on protection orders and their enforcement in practice in the 27 EU Member States was needed, especially in the light of the recent introduction of the criminal European protection order (EPO) and the civil European protection measure (EPM). Once these two EU instruments are implemented on 11 January 2015, protection orders issued in one Member State have to be recognized by the other Member States. Without an accurate overview of the national laws and practices, it will be more difficult for the competent authorities to perform their issuing and executing tasks under the EPO Directive and the EPM Regulation.

The aims of this study were fivefold. The first goal was to provide an accurate and up-to-date reflection of state legislation and practices in the field of protection orders. With the help of 27 national reports, we tried to find out how criminal and civil protection orders and emergency barring orders were formally regulated in Europe. The second goal was to normatively appreciate the outcome of this comparative exercise. Based on victimological literature and emerging norms in international legislation, we assessed the level of protection provided in the different EU Member States and formulated standardized criteria: indicators of what constitutes appropriate or good legal protection. The third goal was to establish the functioning and enforcement of protection orders in practice. This was attained with the help of 58 victim interviews with female victims who suffered from intimate partner violence and/or stalking by their (now) ex-partners. A fourth goal was to hypothesize how the EPO and the EPM would function in the light of the varying state practices. Finally, the fifth goal was to formulate recommendations on an EU and national level that would help elevate the level of protection provided to victims of violence. These five goals were expressed in the following research questions:

- 1) How are protection orders regulated in the 27 EU Member States?
 - a. *In which areas of law can protection orders be adopted?*
 - b. *How are the procedures through which protection orders can be adopted organized?*
 - c. *How are protection orders monitored and enforced?*

- d. *How are protection orders regulated with regard to their substance (e.g., duration)?*
 - e. *What empirical information relating to protection orders is available?*
- 2) What is the level of protection provided by the 27 different protection order schemes?
- a. *What key indicators can be used to assess the level of protection?*
 - b. *How can we develop these key indicators into standardized criteria?*
 - c. *Based on the standardized criteria, what level of protection do the 27 MS provide?*
 - d. *What are promising practices in this regard? And where are gaps in protection?*
- 3) How do protection orders function in practice?
- a. *How do legal experts evaluate their functioning?*
 - b. *How do victims evaluate their functioning?*
- 4) How can the EPO and the EPM function in the light of the national findings?
- a. *What interpretative problems can we anticipate given the text of the two instruments?*
 - b. *What problems can we anticipate based on the different legal traditions in the 27 MS?*
- 5) What are possible future directions in order to increase the level of protection for victims?
- a. *What recommendations can be made on the level of the EU Member States?*
 - b. *What recommendations can be made on the EU level?*

Below, in the sections 2 to 5, we have summarized the most important findings from the previous chapters. They are structured in accordance with the research questions formulated above. In section 6 we have formulated some recommendations, both on an EU and on a national level, in order to increase the level of protection provided by protection orders.

2. Mapping protection orders in 27 EU Member States

- 1) How are protection orders regulated in the 27 EU Member States?
 - a. *In which areas of law can protection orders be adopted?*
 - b. *How are the procedures through which protection orders can be adopted organized?*
 - c. *How are protection orders monitored and enforced?*
 - d. *How are protection orders regulated with regard to their substance (e.g., duration)?*
 - e. *What empirical information relating to protection orders is available?*

With the help of 27 national reports written by legal experts from the EU Member States, we have compiled a comparative description of the national laws on protection orders. It turns out that all Member States have some form of protection order scheme in place, mostly to counter *repeat victimization* through physical, mental, or sexual violence and stalking.

2.1. Areas of law

The main areas of law through which protection orders can be procured are: civil, criminal and ‘emergency barring order’ law.²⁹²

Criminal protection orders: From the national reports, it appears that all Member States provide for ‘criminal’ protection orders, albeit that three countries have chosen to create a trajectory separate from the criminal proceedings. In Finland, Denmark and Sweden these ‘quasi-criminal’ protection orders can even be issued without suspension or prosecution for a crime. In other countries, criminal protection orders are inextricably linked to the criminal proceedings against the suspect.

Criminal protection orders are generally available in both the pre- and the post-trial stage, but some Member States allow them in one of these stages only. It is also common practice to allow all victims of violence access to criminal protection orders. Some Member States, however, have limited their availability to certain types of victims only, such as victims of domestic violence or intimate partner violence.

Civil protection orders: All Member States provide for civil protection orders. Although Latvia did not have civil protection order legislation in place on 30 August 2013 (i.e., the reference period of the current study), their legal expert has informed us that on 31 March 2014, Latvia also introduced civil protection orders. Civil protection orders can generally be obtained in accelerated proceedings, independent from proceedings on the merits of the case, but some

²⁹² Because this latter type of protection order is classified in the Member States under different, more generic, areas of law – administrative, police, criminal, civil or a *sui generis* law – we have opted to present emergency barring order laws as a distinct category.

Member States have linked them to divorce or other substantive proceedings. Civil protection orders are, furthermore, often limited to a certain type of victim (e.g., victims of domestic violence or intimate partner violence).

Emergency barring orders: Emergency barring orders – as defined in the current study – are only available in 12 Member States: the Netherlands, the Czech Republic, Austria, Luxembourg, Belgium, Italy, Hungary, Germany, Finland, Denmark, Slovenia, and Slovakia.²⁹³ They can immediately be imposed in emergency situations, independent of the wishes of the victim, and independent from criminal proceedings, and they have *inter alia* the effect of removing the violent person from the family home for a limited amount of time, during which the victim can apply for prolonged protection. Emergency barring orders are usually only available to victims who share a common household with the violent person or who cohabit with this person. Only in Austria can emergency barring orders be imposed on non-cohabiting stalkers as well.²⁹⁴ Other Member States have implemented measures that closely resemble emergency barring orders, but that do not exactly qualify as such, for instance because the orders cannot be imposed *immediately*, as they require a court decision first.

The fact that Member States allow for civil, criminal, and (sometimes) emergency barring orders on paper does not mean that these options are actually used in practice. Some Member States have a strong preference for the use of civil protection orders, with criminal protection orders being a mere theoretical option, and vice versa.

2.2. Protection order procedures

Protection order procedures are largely organized along the same lines across the EU. Civil protection orders can generally be requested by a civil claimant through civil summary proceedings, while criminal protection orders are usually imposed by criminal (investigative) courts as a coercive measure, or a condition to a suspended detention or prison sentence. Emergency barring orders, finally, are adopted in very short and simple procedures, usually by the police or the public prosecution service. They can be imposed in threatening situations, without an actual crime having taken place. While civil protection orders and emergency barring orders can often be imposed *ex parte*, criminal protection orders generally require the hearing of the offender first.

²⁹³ Possibly, emergency barring orders are at present also available in Latvia. This is what the Latvian expert reported. Because the legislative changes occurred after 30 August 2013, we were unable to check whether the Latvian ‘emergency barring orders’ are in line with the definition used in the underlying study.

²⁹⁴ In this case, the violent person is not evicted from the family home, but is prohibited to contact the victim.

Still, there are important exceptions to these ‘standard’ procedures, as evidenced by the ‘Scandinavian’ quasi-criminal trajectory, and the fact that some Member States do not allow for civil summary proceedings that revolve exclusively around protection orders.

On a more detailed level, even more procedural differences arise. There are, for instance, different national approaches when it comes to:

- The range of persons who can apply for civil / criminal protection orders
- The application requirements for criminal protection orders
- The admissibility of ex parte protection orders
- The immediate effect of protection orders
- The possibility to appeal an emergency barring order
- The support to both victim and barred person during an emergency barring order
- The inclusion of mutual children in protection orders
- The admissibility of mutual protection orders
- The length of protection order proceedings
- The administrative and court fees involved in protection order proceedings
- The legal representation for the victim
- The availability of free legal representation for the victim

2.3. Monitoring and enforcement of protection orders

There are some EU-wide trends in the monitoring and enforcement of protection orders as well. Judging from the national reports, the monitoring and enforcement is not well-developed in most Member States. In general, the victims have to monitor protection order compliance themselves, and specialized training for monitoring authorities is lacking. Furthermore, the experts complained about the leniency with which breaches of protection orders are sanctioned in practice.

The monitoring and enforcement of protection orders show equal variance in the different legal systems as the procedures by which the orders were imposed. Again we see significant differences on the state level, this time with regard to:

- The registration of protection orders
- The supply of information to the victim
- The authority responsible for monitoring compliance
- The prioritization of calls of protection order violation
- The evidentiary requirements for establishing a violation
- The enforcement procedure
- The discretionary power of the monitoring authorities to report violations
- The criminalization of civil protection orders and emergency barring orders violations

- The reaction to victim-initiated contact
- The availability of specialized training for the monitoring authorities

2.4. Substantive differences

When it comes to the substance of protection orders, the 27 Member States have a varied approach as well. While some Member States allow the competent authorities great discretion in their choice and delineation of the most appropriate protection orders by using ‘open norms’, others have limited the selection of protection orders available by using exhaustive lists of conditions. In these legal systems, the authorities are only allowed to choose from a limited number of prohibitions. Typically, criminal protection orders and emergency barring orders are more narrowly defined than civil protection orders.

The general picture is that most jurisdictions have the possibility to impose the three prohibitions mentioned in the EPO and the EPM: the prohibition to contact the protected person; the prohibition to enter certain areas, and the prohibition to approach the protected person. Still, there are Member States that do not have all these options present, at least not in all areas of law. Furthermore, in Member States where all three prohibitions are available, they do not always exactly match the formulation and extent proposed by the EPO Directive.²⁹⁵

Additional variation can be found in relation to:

- The (most popular) way of delineating protection orders (e.g., streets, radius, maps)
- The maximum and average duration of protection orders
- The presence of a statutory minimum regarding the duration of protection orders

2.5. Empirical information on protection orders

Reliable and publicly available statistical data on protection orders is generally lacking, with many Member States reporting that there are no statistics available at all, or that the statistics only cover certain protection orders or certain parts of the country. Only Spain provides for nationwide estimations of all types of protection orders available, collected on a yearly basis.

The countries that have gathered statistical information on the number of protection orders imposed cannot easily be compared, due to methodological

²⁹⁵ This appears from the EpoGender-project (T. Freixes & L. Román (eds.), *Protection of the Gender-Based Violence Victims in the European Union*, Barcelona: Universitat Rovira i Virgili 2014, p. 16). Our own legal experts did not comment in detail on the exact extent of the protection orders available in their own legal systems.

and definitional differences. In some countries, for example, the number of protection orders issued is registered, while others only register the number of orders requested. Taking these methodological constraints into account, there still seem to be large discrepancies in the number of protection orders requested / imposed across the EU. In some Member States, protection orders are so rarely imposed that they are more theoretical than of actual use to victims.

The data did converge on the matter of victim and offender characteristics: in all areas of law and in all Member States that had statistical data available, protection orders were generally imposed against male offenders on behalf of female victims.

Empirical research into the effectiveness of protection orders was even more exceptional, with only five countries reporting such studies. Again, their cross-country comparability is limited. Bearing these limitations in mind, the studies all mentioned high percentages of protection order violations, but also attributed positive effects to them (e.g., the violence diminished and/or the victims felt less scared).

3. Assessing the level of protection provided by the national protection order laws

- 2) What is the level of protection provided by the 27 different protection order schemes?
 - a. *What key indicators can be used to assess the level of protection?*
 - b. *How can we develop these key indicators into standardized criteria?*
 - c. *Based on the standardized criteria, what level of protection do the 27 MS provide?*
 - d. *What are promising practices in this respect? And where are gaps in protection?*

The second objective of the POEMS study was to assess the level of protection provided to victims in the different Member States based on their protection order regimes. In order to make an adequate comparison of all the different protection order regimes, we first had to develop indicators of what constitutes appropriate legal protection. With the help of international (human rights) legislation, the national reports, and victimological research, key indicators were selected that could serve as a guideline. The Member States could obtain a score of 'insufficient', 'sufficient', 'good' or 'very good / promising' on these indicators (turning them into standardized criteria). In addition to these four scores, we also felt the need to introduce one more option, namely, 'interesting' practices. These practices have a certain intuitive appeal, but warrant further study, before we can recommend them across the board.

A full overview of all the key indicators and standard criteria can be found on pages 158-160. The scores of the European Member States on some of the individual key indicators can be found in Annex 2. Besides the quantifiable indicators, there were also indicators that could not be represented in a table, at least not based on the national reports. Still, these indicators could have an impact on the level of protection provided to victims of violence to a significant extent.

Based on the standardized criteria – both the quantified and unquantified ones – we can conclude that there is not a single Member State that provides victims with optimal protection. In each legal system under study, there were points for improvement, and Member States should strive to at least score a ‘sufficient’ on each key indicator. Every score below this level is considered a gap in the protection of victims.

As ‘promising’ practices – practices that go beyond the minimum protection that all Member States should provide victims at the very least – we identified the following practices:

- *Combining emergency barring orders with a support plan for both victim and offender.*
- *Allowing the authorities to expand the scope of the emergency barring order beyond the family home, e.g., to also include the place where the victim works or the surroundings of the school the children attend.*
- *Allowing the authorities to expand the range of persons against whom an emergency barring order can be issued, including persons who does not cohabite with the victim.*
- *Using an objective (standardized) risk assessment (instrument) when assessing the appropriateness of emergency barring orders.*
- *Providing victims with an increased risk of repeat victimization with free legal representation and support.*
- *Delineating the prohibition to contact the protected person with the help of standardized formulations as a point of departure, after which case-specific conditions can be formulated.*
- *Indicating the prohibited area (also) with the help of maps.*
- *Having specialized training available as part of continued education for all monitoring agents.*
- *Recording all civil, criminal and emergency barring orders issued nationwide on a yearly basis in a central registry.*
- *Facilitating the continued contact between the restrained parent and his children for the duration of the civil and criminal protection order, while guaranteeing the safety of the victim (e.g., with the help of meeting centers)*
- *Hearing claimants and defendants in civil proceedings in separate sessions in order to avoid a confrontation between the two parties.*

‘Interesting’ practices were:

- *Introducing quasi-criminal protection orders that can be imposed without suspicion of a crime through a separate and short trajectory.*
- *Introducing criminal protection orders that can be imposed upon the acquittal of the suspect.*
- *Expanding the range of persons who can apply for civil (and criminal) protection orders on behalf of the victim, while the victim retains the right to discontinue these proceedings.*
- *Introducing civil protection orders that can be imposed solely on the basis of a written (statutory) declaration of the victim*
- *Introducing civil protection orders that can be obtained by victims who joined the criminal proceedings as injured parties*
- *Allowing the reversal of the burden of proof of the violation of a civil protection order (when violation is only subject to civil means of enforcement)*
- *Allowing for continued contact between the barred parent and his children for the duration of the emergency barring order.*

4. The functioning of protection orders in practice

- 3) How do protection orders function in practice?
 - a. *How do legal experts evaluate their functioning?*
 - b. *How do victims evaluate their functioning?*

The functioning of protection orders in practice was commented on by the legal experts and 58 female victims of IPV and stalking by their ex-partners. In the four partner states (Finland, Italy, Portugal and the Netherlands), victims were asked about their experiences in relation to *criminal (and quasi-criminal)* protection orders.

The most urgent problems that victims were faced with in the four partner states were:

- 1) The long processing times of cases. It took many victims a long time to convince the authorities of the seriousness of the problem and it took even longer before a first protection order was adopted.
- 2) The lack of proactive monitoring on the part of the authorities. Victims were expected to detect and report breaches of protection orders themselves.
- 3) The reluctance to interfere once a protection order is breached. Many victims reported that violations were either ignored or that the offender received a mild sanction.
- 4) The evidence collection. Especially the Finnish victims found the responsibility for collecting the evidence and presenting their case in court burdensome.

- 5) The formal and businesslike approach of some public prosecutors. Some prosecutors were predominantly focused on prosecutorial (law enforcement) purposes, rather than being sympathetic of the victims' experiences and acknowledging their needs.
- 6) The confrontation with the offender. Many victims dreaded the fact that they had to be confronted with the offender once the case went to trial. They appreciated efforts by prosecutors or judges to avoid this confrontation.
- 7) The effectiveness of protection orders. Sixty-nine percent of our sample reported a breach of the protection order, with most protection orders being breached immediately after they had been adopted (within one week). Still, in many of the cases in which the protection order was breached, the frequency of the violence had reduced and the nature of the violence had changed for the better: the violence became less intrusive.

It is important to note that the first three points were mentioned by victims and legal experts alike, increasing their generalizability to other victims and to other countries. Victims with positive experiences on the eight points mentioned above – e.g., the order was effective or the authorities reacted appropriately to a violation of the order – generally seemed to report higher rates of satisfaction with the handling of their case by the criminal justice authorities, although a negative experience on one point could affect the overall satisfaction of the respondents significantly. However, given the small sample size, these and other correlations could not be checked for.

An unexpected advantage of protection orders was their *designative* function: for the victims they meant an official acknowledgement of their victimization, which, to some of them, was valuable in itself, regardless of the effect of the protection order on the behavior of their ex-partner.

5. The functioning of the EPO and the EPM in the light of the national findings

- 4) How can the EPO and the EPM function in the light of the national findings?
 - a. *What interpretative problems can we anticipate given the text of the instruments?*
 - b. *What problems can we anticipate based on the different legal traditions in the 27 MS?*

In 2011 and 2013, the EU legislator introduced two instruments that allow for the mutual recognition of protection orders throughout Europe. The EPO Directive deals with mutual recognition of protection orders in criminal matters, whereas the EPM Regulation covers protection orders in civil matters. A fourth aim of this study was to identify possible problems with the implementation of the two mutual recognition instruments in the Member

States after 11 January 2015.

Based on a close reading of the two instruments and of the information contained in the national reports, we distinguished two types of *potential* problems or challenges:

- 1) Challenges related to the interpretation of the two instruments
- 2) Challenges related to the national differences in protection order legislation and practice

5.1. Challenges related to the interpretation of the two instruments

The first challenge is the question of whether cross-border commuters fall under the scope of the EPO Directive. From the wording of the instrument it is not clear whether a victim who commutes back and forth between two Member States on a regular basis is allowed to profit from the recognition procedure in the Directive or whether the Directive requires a more 'static situation'. Related to this is the question of whether the instrument allows for protection orders to be 'split': Can one part of the protection order remain effective in the Member State in which the order was issued, while another part of the protection order is recognized by the second Member State?

The second question is related to the interpretation of article 11(3) EPO Directive, which regulates the situation in which 'there is no available measure at national level in a similar case' in the executing State. Should this provision be interpreted in a substantive manner – i.e. it only applies when the executing State lacks one of the prohibitions formulated in Article 5 EPO – or should it be interpreted in a procedural manner, meaning that the executing State can invoke article 11(3) EPO when a similar victim in a similar situation would not classify for protection under his/her own national laws (e.g., allowing access to victims of domestic violence only)?

A third issue is that it is unclear what competence the issuing State has in case the order is breached, but the executing State has failed to adopt a measure available under its national law, because there was no such measure available in a similar case (art. 11(3) EPO). The issuing State will be informed of the breach, but what is the issuing State allowed to do? Has recognition taken place or does mutual recognition under the EPO Directive require the executing State to not only recognize the original order but also adopt a national measure under its own law? In other words, is it a package deal?

A fourth future challenge could be the question of what to do with original protection orders that have restricted most forms of contact, yet allowed some forms of contact in certain well-defined situations (e.g., contact in matters relating to the children). Article 5 of the EPO Directive and article 2(2) of the

EPO Regulation only refer to the *prohibitions* included in the original order, yet they fail to mention the forms of contact that are still permitted and that are sometimes even compulsory, e.g., to enable a parent to establish a meaningful relationship with his or her child. What should happen to those forms of contact?

It is possible that these problems will be solved in practice by appropriate interpretation. It seems that both the Directive and the Regulation give room for flexible and functional interpretation.

5.2. Challenges related to national differences

The main challenge related to the fact that the 27 Member States have different legal traditions is that there can be a loss in the level of protection enjoyed by the victim. If, for instance, a victim travels to a Member State where the GPS-assisted monitoring granted in the home state can no longer be supported, this may result in a lower level of protection. The situation is even worse, when executing Member States have no national measures available whatsoever or when breaches of protection orders do not carry a sanction.

Similar problems arise with the interpretation of recital 9 of the EPO Directive. According to recital 9 of the EPO Directive, Member States are not obliged to issue an EPO based on orders that primarily serve other aims. Although this was not structurally assessed, some legal experts explained that in their Member States, ‘protection’ orders are mostly imposed with alternative motives in mind. The primary aim of prohibiting contact between the victim and the offender could, for instance, be to preserve the victim as a reliable witness. This means that the protective needs of the victim alone could not have triggered the adoption of these measures and any protective consequences, which although fortunate, are mere side-effects.

The challenges mentioned above were anticipated and accepted by the EU legislator: the two mutual recognition instruments have no harmonizing ambitions and they do not guarantee the same level of protection throughout Europe. However, what may not have been foreseen is the challenge posed by the fact that some Scandinavian Member States have systems that do not fit nicely into the dichotomy of civil and criminal protection measures, while their categorization as a civil or a criminal protection order can have important implications for the victims involved, because of the (subtle) differences between the two EU instruments.

Another challenge is the ‘translation’ of prohibitions to enter an area that are based on naming the exact streets where the person committing the violence is no longer allowed to come into ‘radius-based’ prohibitions. This requires an estimation of the ambit of the original order, which can be difficult for an authority that was not involved in its original adoption. This translation

exercise may, furthermore, unintentionally extend the prohibited area, exacerbating the burden imposed by the original prohibition upon the violent person.

Furthermore, it will be difficult to substitute a civil protection order stemming from a country that has *criminalized* breaches by a similar measure in countries that *only have civil sanctions* available. In our estimation, this would at least require one extra procedure in which the courts can determine the appropriate civil sanction for each violation.

A final impediment to the implementation of the EPO Directive is that criminal protection orders are usually inseparably connected to criminal proceedings. In the majority of Member States they are not ‘autonomous’ measures, meaning that they cannot be imposed outside the context of criminal proceedings. When these orders are violated, and the offender is remanded to detention or prison again, this is not a sanction *stricto sensu*, but a quashing of the benefit of retaining one’s freedom. In countries where the protection orders are intertwined with criminal proceedings, there is possibly no legal basis for the ‘replacement order’ under the mutual recognition procedure of the EPO. In those countries, the national legislator will either have to introduce an autonomous protection order or he will have to adjust existing criminal protection order legislation to include EPO-based orders.

6. Future directions to improve the level of protection for victims (recommendations)

- 5) What are possible future directions in order to increase the level of protection for victims?
 - a. What recommendations can be made on the level of the EU Member States?
 - b. What recommendations can be made on the EU level?

Many Member States have, over the past two decades, developed their protection order laws to serve the needs of victims of violence. All these efforts have been linked to the increased awareness of (domestic) violence and the need for immediate protection in the face of an imminent risk of violence. In doing so, some Member States have followed the Austrian model and combined emergency protection orders and adjusted civil protection orders to tackle, *inter alia*, domestic violence and IPV situations. Another group of Member States have emphasized protection in the context of criminal proceedings, while yet others have tried to strengthen protection orders across the board (both civil and criminal). In addition to these different approaches at the

general level, the protection order laws differ significantly in detail as well. We have already identified the variation in approaches and laws in the Member States as an obstacle to consistent protection in the European Union: There is reason to believe that these discrepancies could impact on the efficiency and effectiveness of the protection provided. In the detailed recommendations below, we shall discuss the issues that may hamper the effective adoption and enforcement of protection orders.

The observation that Member States have put an emphasis on the development of either the civil or the criminal protection orders is a concern in itself. We found that civil and criminal protection orders each function best in different situations and that they can serve (slightly) different purposes. The same is true for emergency barring orders.

The purpose of emergency barring orders is articulated most clearly: it should protect against an imminent risk and provide victims sufficient time to find an appropriate measure of protection in the long run. Because of its limited duration, it needs complementary protection measures. The interviews with the victims confirmed that the risk of repeated violence is high immediately after a protection order has been imposed. This means that the end of an emergency barring order can be very dangerous. It is important that the victim has at that point either sufficient support services according to the Austrian model and/or automatic protection along the lines of the criminal protection order model.

Civil protection orders are also preventive in nature. They are usually handed down in simple procedures. The victim needs to show that she is in need of protection, but the evidentiary threshold is not very high. However, because they are usually not strengthened with rigorous enforcement mechanisms, they may not give sufficient protection against serious violence. In the worst case, they may provide victims with a false sense of security, which may entice them to take unwarranted risks. Notwithstanding these shortcomings, civil protection orders can be useful in (mild) cases of repeated violence.

Most criminal protection orders were designed as an alternative to detention or prison. As such, they should be available when the violence could warrant an arrest or when an arrest has already taken place. In standard cases of battery and assault, the arrest usually lasts a few days at most, leaving the victim vulnerable to a repeat of the violence. In these situations, a consideration of a criminal protection order should be a standard procedure. The strength of criminal protection orders is their (potentially) effective sanctions: the suspect can be detained for breaching the order. However, in practice this does not always happen. An important shortcoming of criminal protection orders is their connection to criminal proceedings. If the crime is not reported to the police, if a threat or stalking is not considered a crime, or if a crime cannot be proven, there will be no protection.

Our conclusion is therefore that both civil and criminal protection orders are needed, as well as emergency barring orders.

We consider the EPO Directive and the EPM Regulation positive steps in the protection of persons against violence and stalking. However, we are concerned about the practical implementation of these measures in the Member States, especially because of the differences in the national protection instruments and approaches. Even if the purpose of the instruments is not the harmonization of national laws, it is important that the co-existence of the two instruments underlines the need for both civil and criminal protection orders.

Protection orders usually entail a relatively limited violation of the defendant's freedom of movement and their issuing and – non-GPS assisted – monitoring does not involve significant financial investments, while they can have positive effects on the reduction and prevention of violence. For these reasons we also propose to extend access to general protection measures *to the widest range of victims possible*. If budgetary constraints force Member States to limit access to highly-specialized forms of protection measures (e.g., electronic monitoring) to certain types of victims only, Member States can opt for more selective inclusion criteria (e.g., only victims of domestic violence), but general protection measures that do not entail significant investments on the part of the state, should be widely available.

To conclude, we can ask whether it is the task of the Member States to try to approximate national laws or whether the European Union should revise its legal instruments to achieve more congruence. If we leave this up to the Member States, they need to invest a lot of energy in the skillful transposal of the Directive and the Regulation and they should consider modification of their national protection order laws to provide higher levels of protection for domestic victims as well. We also realize that the European legislative process is arduous and that the two recognition instruments were the result of complicated negotiations.²⁹⁶ Yet, we believe that further development is needed on both sides as is reflected in our detailed recommendations.

6.1. Recommendations on the level of the EU Member States

General recommendations to the Member States

- To ensure that adequate protection is available in all situations, the states should have civil and criminal protection orders, as well as emergency barring orders.

²⁹⁶ Furthermore, despite the changes brought about by the Lisbon Treaty, EU competence in these matters is still limited, especially in the absence of apparent cross-border elements. Whether the problems at hand (domestic violence, stalking, IPV) provide a strong enough cross-border dimension to warrant harmonizing binding legislation on the level of the EU is debatable.

- These orders should not only exist on paper, but, depending on the characteristics of each individual case, should actually be considered and applied in practice.
- Protection orders should be available to all victims, and should not be reserved for victims of domestic or intimate partner violence only.
- Victims should be informed of the existence of protection orders and of their function.
- National legislators should avoid exhaustive lists of conditions as much as possible to provide courts and public prosecutors enough leeway to create the most appropriate conditions in a particular case.
- Civil and criminal protection orders should at least be able to prohibit or regulate contact between the victim and the violent person; the violent person from entering a certain area; and approaching the protected person more closely than a prescribed distance.
- Victims should (as much as possible) be involved in delineating the scope and duration of protection orders, and should at least be allowed to express their wishes in this respect.
- The maximum duration of protection orders should be established by law. Statutory maxima should at least amount to one year in the case of civil and (post-trial) criminal protection orders (not barring the offender from the family home). Prolongation of protection orders in the case of continued danger should be possible.
- Protection orders should be available and come into effect within the shortest time possible.
- Protection orders should be available *ex parte* – outside the presence of the violent party – on the condition that the defendant has been summoned and is allowed to appeal the decision.
- Protection orders should be made available free of charge.
- Authorities should have the possibility to declare that protection orders come into effect immediately, regardless of whether the decision is still open for appeal (immediate effectiveness).
- The coming into effect of protection orders should not be deferred by the service of the verdict. Enforcement in practice, however, can only take place if the offender had prior knowledge of the existence of the order and its conditions.
- Victims should always be informed – of the fact that a protection order was issued, of the precise conditions of the order, of its duration, and of how to react to a violation – unless the victim exercised her right ‘not to be informed’.
- The scope and duration of protection orders should be formulated with care, befitting the case-specific situation, and be as clear and unambiguous as possible.
- It should be possible to include (mutual) children in one and the same protection order on the condition that the violent person forms a threat to them as well.

- The authorities adopting protection orders should, as much as possible and explicitly, take parental and visitation rights into account and vice versa. In principle, protection orders should allow for continued contact between the violent parent and his children for the duration of the protection orders *if it does not impede the protection of the victim and if the violent person does not pose a threat to the children as well*. If this creates tension, the protection of the victim should be prioritized, after which alternative ways to allow for (safer) contact between the violent parent and children should be explored.
- Legal representation for victims should be highly recommended, but not made compulsory and Member States should foster a well-functioning and inclusive system of legal aid.
- Contact with the perpetrator, even if initiated by the victim, may not lead to negative consequences for the victim, especially not to the loss of protection.
- To avoid misunderstandings, mutual protection orders should not be allowed.
- Emergency calls of protection order violations should be prioritized.
- It is important to define who is responsible for monitoring protection order compliance. (Quasi-)criminal and emergency barring orders (at least) should formally, and, when necessary, in practice be (actively) monitored by the police and/or another state authority.
- It is helpful to provide the monitoring authorities with national guidelines that include information on *inter alia*: necessity and frequency with which to visit the victim, informing the victim, making a safety plan, conducting a risk assessment, etcetera.
- The monitoring authorities should have no discretionary power in reporting breaches of protection orders to superior authorities responsible for the enforcement of protection orders upon violation. It should be left up to the latter to decide whether the breach was serious enough to warrant further action.
- The violation of protection orders should in principle lead to (effective and dissuasive) sanctions. Informal and lenient reactions, such as warnings or reprimands, are only indicated in exceptional circumstances.
- Actors in the criminal and civil justice system – the police, prosecutors, judges, probation officers – as well as social workers and support personnel must receive adequate and specialized training on protection orders (e.g., as part of their continued education).
- Protection orders, including their violations, should be registered carefully in a nationwide, central registry.
- Nationwide statistical information on protection orders, including EPOs and EPMs, should be collected at regular intervals.

Recommendations for emergency barring orders

- An emergency barring order must at least make it possible to remove the violent person from the family home or other shared dwellings immediately, and prohibit any contact with the persons staying behind.
- The emergency barring order should in principle automatically extend to the children.
- It should be able to impose an emergency barring order *ex parte*, also without prior notification of the violent person, e.g., if he has absconded, as long as the barred person is allowed to appeal the decision.
- The emergency barring order should have immediate effect, even if the order must be confirmed by a court or other legal authority afterwards.
- The emergency barring order is valid for a short period of time, the minimum of which should be established by law. A minimum duration of approximately two weeks is commendable. There should be the possibility of renewal in the case of continued danger.
- The emergency barring order should at least be accompanied by the availability of support to the victim, such as victim services, legal advice and help, shelters, medical help and psychological support counselling.
- The sanctions for the breach of emergency barring orders must be effective and dissuasive. Preferably, the breach of an emergency barring order should be a criminal offence.

Recommendations for civil protection orders

- Civil protection orders should be available at the petition of the victim.
- Civil protection orders should not be dependent on the instigation of a proceeding on some other issue, such as divorce.
- The procedure should be simple. It should suffice that the victim shows that the threat of (repetitive) violence is real.
- The sanctions for the breach of civil protection orders must be effective and dissuasive. Preferably, the breach of an order should be a criminal offence.

Recommendations for criminal protection orders

- Protection orders should be available in all stages of the criminal procedure (pre-trial, post-trial, conditional release).
- In cases with a continued risk of violence, protection orders should, as a rule, be considered (e.g., in the context of a conditional release from pre-trial detention, a conditional sentence, and a conditional release from prison).
- Electronic monitoring of protection orders should be possible and duly considered in cases of serious violence.
- The sanctions for the breach of criminal protection orders must be effective and dissuasive.

6.2. Recommendations on the level of the EU

- The monitoring of the implementation of the EPO Directive and the EPM Regulation is paramount. Each Member State should be invited to provide information about the use of an experience with the two instruments, and to identify problems with regard to their implementation in practice.
- An assessment of their effectiveness should be made after a couple of years, and, *inter alia* based on that assessment, the need for more far-reaching EU measures should be determined.
- Soft-law measures for the approximation of national laws should be considered in any case. For example, a model law on the initiative of the Commission through the ‘open method of coordination’ that would cover emergency barring orders, civil and criminal protection orders could be a useful tool.²⁹⁷

6.3. Recommendations for future research

- Although the current study could not structurally investigate the implementation of protection order laws in practice, evidence from the national reports suggests that in some Member States protection measures are not or are only rarely used in practice. There could be different reasons for this underuse. We recommend more in-depth research into the factors that hinder the effective use of protection order legislation in practice. Member States should diagnose which factors are at play and should try to address these factors.
- Apart from a few effectiveness-studies, protection order effectiveness is largely under-researched in the European Member States. Large-scale, quantitative and – preferably – cross-country studies are recommended.
- These studies should preferably also research the practices that were identified in this study as ‘interesting’.

²⁹⁷ Compare *Feasibility study to assess the possibilities, opportunities and needs to standardize national legislation on violence against women, violence against children and sexual orientation violence*, Luxembourg: Publications Office of the European Union 2010, p. 149.

Annex 1.

Template national reports

2.1. Introduction²⁹⁸

In the national reports we would like you to give a brief overview of which legislation/laws are relevant for victim protection purposes. Questions such as: 'Can you provide the key provisions which enable the imposition of protective orders?', 'What are the procedures by which these protection orders are imposed?', 'How can protection orders be enforced?' and 'Are there any recent reforms in protection order legislation?'

Next to the above questions – which all refer to the law in the books – we are also interested in how the law is implemented in practice. It is of vital importance to see how the laws work out in practice and if there are any impediments to their effective implementation. You are also asked to comment on the workings of protection orders in practice.

In many Member States protection orders can be obtained through multiple areas of law, so not only through criminal law, but also via a civil (summary) procedure, through administrative law or other areas of law. If this is the case in your Member State, please distinguish these areas of law when you answer the questions below.

What follows is the structure which the national legal reports should take with further guidance for each section. In case you are not able to answer a certain question, please state this specifically and include the reason why the question cannot be answered (e.g., 'no information available' or 'not applicable to domestic situation').

2.2. Overview of the structure of the national reports

2.2.1. Imposition of protection orders

- 1) We would like to know about the different forms of protection orders in your country
 - a. Identify the laws in which protection orders are regulated. Through which areas of law (criminal, civil, administrative, other) can protection orders be imposed?

²⁹⁸ The entire guidance document (including glossary and introduction) can be found on the project's website ([www. http://poems-project.com/](http://poems-project.com/)).

- b. Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?
 - c. Are these laws (or the text on the protection orders) available on the internet in English or in your local language? If so, could you provide us with a link?
- 2)
 - a. Within the different areas of law (criminal, civil, administrative, other), you can also have different legal provisions through which protection orders can be imposed (e.g., a condition to a suspended trial, a condition to a suspended sentence, a condition to a conditional release from prison or as a condition to a suspension from pre-trial detention). Which different ways of imposing protection orders can be distinguished in the different areas of law? (please, be as exhaustive as possible).
 - b. When it comes to criminal law: can protection orders be imposed in all stages of the criminal procedure?

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. In other words, make sure that the following questions are filled in separately for each category of protection order. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law which persons can apply for a protection order (question 3).

- 3)
 - a. Who can apply for such an order (victims/complainants or only the police/the public prosecution service)?
 - b. Which organizations or authorities are involved in applying for and issuing protection orders? (Do, for instance, probation services play a role in the issuing of criminal protection orders?)
 - c. Can protection orders be issued on an *ex parte* basis (without hearing the offender)?
- 4)
 - a. Are protection orders available for all types of victims or crimes, or only for a certain subset of victims or crimes (e.g., only victims of domestic violence, stalking, female victims)? In other words, can all victims receive protection?
 - b. Can protection orders be issued independent from other legal proceedings (e.g., independent from criminal proceedings if the victim does not wish to press charges or independent from divorce proceedings)?
- 5)
 - a. What procedures have to be followed in order to obtain a protection order? (please explain the different steps that need to be taken)
 - b. Could you give an indication of the length of the proceedings?
 - c. Does the protection order come into effect as soon as the decision on a protection order is made or are there any additional requirements

- before the orders really come into effect (e.g., in civil proceedings the notification/service of the verdict to the defendant)? In other words, is the victim immediately protected or can there be a lapse of time before the actual protection begins?
- d. Is there a regulation for interim protection that can be given immediately upon request or very quickly? For how long? What steps have to be taken in order to finalize the protection after the interim order?
- 6) a. What are the application requirements in order to (successfully) apply for a protection order? In other words, under what conditions will a protection order be imposed?
 b. Is legal representation/advice of victims required by law or in practice?
 c. Is free legal representation/advice available?
- 7) a. What types of protection can be provided for in the orders (e.g., 'no contact' orders, orders prohibiting someone to enter a certain area, orders prohibiting someone to follow another person around, etcetera)?
 b. Is there an order that has the effect of moving/barring a violent (or threatening) person from the common or family home (eviction or barring order)? For how long can the violent/threatening person be barred? During the barring period, is help provided to the victims? And to the offender?
 c. Which of these types of protection (e.g., no contact order) are imposed most often in practice?
 d. Can the different types of protection orders also be imposed in combination with each other (e.g., a no contact order and a prohibition to enter a street)?
 e. If so, which combinations are most often imposed in general?
- 8) a. Are there any formal legal requirements for the formulation of protection orders? In other words, are there certain elements that always need to be included in the decision or does it, for instance, suffice if the restrained person is told 'not to contact' another person?
 b. How does this work in practice? How elaborate are these protection order decisions in general?
- 9) a. Are there any legal limitations to the scope of these protection orders – e.g., only a couple of streets – or are the legal authorities free to decide the scope of protection orders any way they see fit?
 b. If there are limitations, which factors do the legal authorities have to take into account when deciding on the scope of protection orders?
 c. Which factors do they take into account in practice?

- 10) a. How are prohibitions to enter a certain area mostly delineated? For instance, are these areas indicated on a map or are they indicated by naming the surrounding streets? Or do legal authorities use radiuses (“person A is no longer allowed to be within 200 meters of the victim’s house”)?
b. What is the average scope of an order that prohibits someone to enter a certain area (one street, multiple streets, a village)?
- 11) a. Are there any legal limitations to the duration of protection orders? Do the orders always have to be issued for a specified or a determined period? And is there a maximum or minimum duration attached to the orders?
b. Which factors do legal authorities generally take into account when deciding on the duration of a protection order?
c. What is the average duration of the different protection orders (half a year, one year, two years)?
- 12) a. To what extent (if any) do the wishes of the victims influence the imposition of protection orders? Can victims, for instance, request the cessation of protection orders?
b. In cases where a protection order is not directly requested by the victims, is there always an assessment of the victims’ need for a protection order or do victims have to bring this up themselves?
c. Can victims influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?
- 13) a. Can offenders formally challenge/appeal the imposition of protection orders?
b. To what extent (if any) do the wishes of the offender influence the imposition of protection orders? Are, for instance, (disproportionate) disadvantageous consequences for the offender taken into account?
c. Can offenders influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?
- 14) To what extent (if any), do practical impediments (such as shortage of police personnel, lack of available resources in certain (rural) areas) to the enforcement of protection orders play a role in the decision to impose a protection order? Do legal authorities, for instance, refuse to impose certain protection orders, because they know their enforcement in practice is problematic or do they impose these protection orders anyway (e.g., for reasons of ‘sending a message’ to the offender)?

- 15) Can previous protection orders be taken into account in other ensuing legal proceedings against the same perpetrator (e.g., as evidence of a pattern of violence)?
- 16) a. When a protection order is issued in a case of domestic violence, are the children automatically included in the protection?
 b. How is the order granted/implemented if the violent partner has visitation rights?
 c. Are there any problems with protection orders and custody/visitation decisions by the courts?
- 17) a. Are so-called 'mutual protection orders' (i.e., protection orders that restrain both the victim and the offender) allowed in your country?
 b. If not or if mutual protection orders are only accepted in particular cases, in which cases are mutual protection orders prohibited and what is the rationale behind this prohibition?
- 18) a. Are protection orders provided free of charge?
 b. If not, who has to pay for the legal costs/court fees?
 c. Can these costs/fees constitute an undue financial burden for the victim (and bar him/her from applying for a protection order)?

2.2.2. Enforcement of protection orders

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law where and how protection orders are registered (question 1).

- 19) Where and how are protection orders registered?
- 20) a. Is the victim always informed of the imposition of a protection order and of the conditions that the offender has to comply with?
 b. In what way is the victim informed? Does this happen automatically? By mail or letter?
- 21) Who is or which authorities are responsible for monitoring the compliance with protection orders? In other words, who checks whether these orders are violated or not?
- 22) a. Which activities can the monitoring authorities undertake to check the compliance with protection orders? (e.g., GPS, extra surveillance, house visits, etcetera)

- b. Which of these activities do they generally undertake in practice?
 - c. If protection orders can be monitored with the help of technical devices (e.g., GPS), how often is this used in practice?
 - d. Are protection orders actively monitored or is it generally left up to the victim to report violations?
 - e. How do the monitoring authorities generally become aware of a violation of a protection order: through the victim or through proactive monitoring activities?
- 23) a. Is contact with the offender initiated by the victim considered a breach to the protection order?
- b. What (if any) role does contact initiated by the victim him/herself play in establishing or proving a protection order violation?
 - c. What (if any) role does contact initiated by the victim him/herself play in the official reaction to protection order violation? Are the authorities, for instance, less inclined to impose a sanction on the offender if the victim initiated contact him/herself?
- 24) a. Which evidentiary requirements have to be met before a violation of a protection order can be established?
- b. Which procedure(s) has to be followed in order for the protection order to be enforced after a violation?
- 25) a. What are possible reactions/sanctions if a protection order is violated?
- b. Are there only formal reactions/sanctions available, or are there also informal reactions possible to the breach of a protection order (e.g., a change of the conditions, a warning)?
 - c. Which (official or unofficial) reaction usually follows on a protection order violation?
 - d. In your opinion, are the sanctions/reactions to protection order violations 'effective, proportionate and dissuasive'?
 - e. Are reports of PO violations, such as emergency calls by the victims, automatically given priority (e.g., with the police)?
- 26) a. Is the violation of civil, administrative or other protection orders criminalized?
- In other words, is the violation of any protection order an offense in itself?
- b. If so, what is the range of sanctions (minimum and maximum penalty) attached to a violation?
 - c. If so, how do the police generally react to a violation of a civil, administrative or other protection order?
 - d. If not, can the victim still call in the help of the police and how do the police react?

- 27) a. Is the monitoring authority capable of issuing a sanction following the breach of the order or does the authority have to report the violation to another authority in order for the sanction to be issued?
 b. If so, are they obliged to report all violations or do they have a discretionary power not to report violations?
 c. If so, how is this discretionary power used in practice?
- 28) Do monitoring authorities receive training in how to monitor and enforce protection orders?

2.2.3. Types and incidence of protection orders

*This section inquires after the presence of (empirical) studies into the **nature and incidence** of protection orders in your country. If such studies have been conducted, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

- 29) Is there any (empirical) information available on the number of protection orders imposed on a yearly basis in your country? How often are protection orders imposed on a yearly basis? Please distinguish per area of law
- 30) a. Which types of protection orders (no contact, prohibitions to enter an area, eviction from the family home, other) are imposed most often?
 b. Which combinations of protection orders are most often imposed?
- 31) For which types of crimes are protection orders generally imposed (IPV, stalking, rape, other)?
- 32) Is there any (empirical) information available on specific victim and offender characteristics?
 a. Are protection orders generally imposed against male offenders on behalf of female victims?
 b. Which percentage of the restraints already had a prior police record?
 c. Which percentage of the restraints already had a previous protection order imposed against him/her?

2.2.4. Protection order effectiveness

*This section inquires after the presence of (empirical) studies into protection order **effectiveness** and the reaction to the violation of protection orders. If any such studies have been conducted in your country, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

- 33) a. Is there any empirical information available on the effectiveness of protection orders in your country? Do protection orders stop or reduce the unwanted contact? Or do they have another effect (e.g. improve the well-being of the victims, change in the nature of the violence)?
 - b. Which percentage of the imposed protection orders are violated?
 - c. If protection orders are still violated, are there any changes in the nature of the violence (e.g., violent incidents are less serious)?
 - d. Is there any empirical information on the role that victims play in protection order violations (e.g., percentage of cases in which the victims themselves initiated contact)?
- 34) Is there any empirical information available on factors which significantly influence the effectiveness of protection orders, either in a positive or a negative way?
- 35) Is there any empirical information available on the formal and informal reaction of the enforcing authorities to violations?
 - a. How often (what percentage) do violations lead to a formal reaction?
 - b. How often (what percentage) do violations lead to an informal reaction?
 - c. How often (what percentage) do violations lead to no reaction?

2.2.5. Impediments to protection order legislation, enforcement and effectiveness

- 36) Which impediments are present in your country when it comes to:
 - a. Problems with protection order legislation
 - b. Problems with protection order imposition/issuing/procedure
 - c. Problems with protection order monitoring
 - d. Problems with protection order enforcement
 - e. Problems with protection order effectiveness?
- 37) In your opinion, what is/are the biggest problem(s) when it comes to protection orders?

2.2.6. Promising/ good practices

- 38) Which factors facilitate the:
 - a. Imposition
 - b. monitoring, and
 - c. enforcement of protection orders?
- 39) Which factors increase the effectiveness of protection orders? In your opinion, which factor(s) contribute most to the success of protection orders?
- 40) What would you consider promising practices in your country when it comes to protection orders? Why?

- 41) Do you have any recommendations to improve protection order legislation, imposition, supervision, enforcement and effectiveness?

2.2.7. Future developments

- 42) Do protection orders feature at the moment in current discussions (in politics) on the protection of victims?
- 43) a. Will the legislation/practice on protection orders change in the nearby future? Are there, for instance, any bills proposing changes to the current practice?
b. If so, what will change?
c. Are there at the moment any pilots in your country with a new approach to victim protection orders.
- 44) Which (if any) developments in protection order legislation or enforcement do you foresee in the nearby future?
- 45) You have probably heard about the introduction of the European Protection Order (EPO). From now on, criminal protection orders issued in one Member State have to be recognized in another Member State. What is your opinion on the EPO? Which problems/possibilities (if any) do you foresee in the implementation of the EPO in your Member State?

Annex 2.

Standardized criteria per Member State

Below is a table that combines all the standardized criteria and results country by country. Unquantified standardized criteria for which a break-down per Member State was not possible (e.g., because there were too many missings) are not represented.²⁹⁹ Although the individual scorings on a theme each have a separate meaning, they can roughly be equated with:

- Insufficient (-)
- Sufficient (+/-)
- Good (+)
- Very good / promising (++)

The table also indicates when information was missing in the national reports ('M'), when there was no information available on a particular topic in the Member State ('inf'), and when an approach is considered 'interesting' ('i').

²⁹⁹ For those criteria, the Member States are advised to check Chapter 2, Chapter 3, and their national reports to see whether their countries complies with the standards set out in this study or whether there is room for improvement.

	AT	BE	BG	CZ	CY	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK
1. Protection orders are available in all areas of law, including emergency barring orders																											
Civil	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Criminal	+	+	+	+	+	+	i	+	+	+	i	+	+	+	+	+	+	+	+	+	+	+	+	i	+	+	+
EBO	+	+	-	+	-	+	+	-	-	+	+	-	+	-	+	-	-	+	+	-	-	-	-	-	-	+	-
2. Civil protection orders are available independent of other legal proceedings																											
Civil	+	+	+/ -	+	+	+	M	+/ -	+	M	-	+	+	+	+	+/ -	M	+	-	+	+	M	+	-	+	+	+
3. Protection orders are available in all stages of the criminal procedure																											
Criminal	+	+	+	-	+	+	M	+	+	+	M	+	+	+	+	+	+	-	+	+	+	+	-	-	M	+	+
4. (Basic) protection orders are available to all victims (and victims with specialized needs may receive additional protection)																											
Civil	+	+/ -	+/ -	+	+/ -	+/ -	M	+	+/ -	+/ -	M	+/ -	+/ -	+/ -	+/ -	+/ -	M	+/ -	+/ -	+	+/ -	M	+/ -	+/ -	+/ -	+	+
Criminal	+	+	+	+	+/ -	+/ -	+	+/ -	+/ -	+/ -	+	+/ -	+	+	+/ -	+	+	+/ -	+/ -	+	+	+	+/ -	+/ -	+	+	+
EBO	++	+/ -	-	+/ -	-	+/ -	+/ -	-	-	+	+/ -	-	+/ -	-	+/ -	-	+	+/ -	+/ -	-	-	-	-	-	+/ -	+/ -	-
14. Protection orders allow in principle for continued contact between violent person and child (but emergency barring orders automatically include children)																											
Civil	+	M	+	+	M	+	M	+	+	+	M	-	-	-	+	+	M	M	+	+	+	M	+	-	+	+	+
Criminal	+	M	+	+	+	+	+	+	+	+	+	M	+	-	+	+	+	+	+	+	+	+	+	+	+	+	+
EBO	i	i	n/a	+	n/a	+	M	n/a	n/a	n/a	i	n/a	+	n/a	+	n/a	n/a	+	n/a	n/a	n/a	n/a	n/a	n/a	n/a	+	n/a
16. Mutual protection orders are not allowed																											
Civil	+	-	-	+	+	-	M	inf	-	-	M	+	+	+	+	-	M	+	-	-	M	M	inf	-	+	+	-

	AT	BE	BG	CZ	CY	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK
17. Protection orders are available within the shortest time possible																											
Civil	+/-	+	inf	+	-	+	M	+	+	+	M	++	+	+	+/-	M	M	+/-	M	+	+/-	M	M	M	M	+	+
18. Protection orders are available free of charge (no court fees)																											
Civil	+	-	-	+	-	-	M	-	M	+	-	-	+	M	-	-	M	+	+	+	-	M	+	+	-	-	-
Criminal	+	+	+	+	M	+	-	+	M	+	+	M	-	M	+	+	+	+	+	+	+	-	+	+	+	M	+
EBO	+	+	n/a	+	n/a	+	+	n/a	n/a	n/a	+	n/a	+	n/a	+	n/a	n/a	+	+	n/a	n/a	n/a	n/a	n/a	+	+	n/a
19. Legal representation is not compulsory and there is a legal aid system																											
Civil	+	M	+	+	M	+	M	+	+	+	+	+	+	+	+	-	M	+	+	-	M	M	+	+	+	+	+
Criminal	+	M	+	+	M	+	M	+	+	+	+	M	+	M	+	+	+	+	+	-	+	+	-	+	M	+	+
20. Protection orders (and their violations) are registered in a nationwide central registry																											
Civil	+/-	M	-	M	-	+/-	M	+	M	+	+	-	-	+/-	+	+	M	-	-	-	M	M	+	-	+	-	+/-
Criminal	+/-	+	-	+	-	+	+	+	+	+	+	M	+	-	+/-	+	+	+	M	-	+	-	+	+	+	M	M
EBO	+/-	+	n/a	+	n/a	M	+	n/a	n/a	n/a	+	n/a	M	n/a	+	n/a	n/a	+	+	n/a	n/a	n/a	n/a	n/a	+	+	n/a
21. Victims are automatically be kept informed																											
Civil	+	M	+	+	M	+	M	+	+	+	+	+	+	+	+	+	M	+	+	+	M	M	+	+	+	+	+
Criminal	-	+	+	+	-	+	+	+	+	+	+	M	+	-	+	+	+	+	+	-	+	-	+	+	+	+	+
EBO	+	+	n/a	+	n/a	+	+	n/a	n/a	n/a	+	n/a	+	n/a	+	n/a	n/a	+	+	n/a	n/a	n/a	n/a	n/a	+	+	n/a
22. The responsibility for monitoring protection order compliance is with the police and/or other state authority																											
Civil	+/-	M	+	+/-	+/-	+	M	+	+	M	+	+/-	+	+	+/-		M	+/-	+	+	+/-	M	+	+	+/-	+/-	+/-
Criminal	M	+	+	-	-	+	-	+	-	+	-	M	+	+	+	M	-	+	+	-	+	+	+	+	+	+	-
EBO	+	+	n/a	+	n/a	+	-	n/a	n/a	n/a	+	n/a	+	n/a	+	n/a	n/a	+	+	n/as	n/a	n/a	n/a	n/a	+	+	n/a

	AT	BE	BG	CZ	CY	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK
23. Protection order monitoring with the help of technical (GPS) devices is possible																											
Criminal	-	M	M	-	-	+	-	-	-	+	-	+	-	-	+	+	-	-	-	+	+	+	-	+	-	-	+
24. Emergency calls of protection order violation are prioritized																											
All	+	M	inf	+	+	+	M	-	M	M	+	+	+	M	-	+	-	inf	-	+	+	M	-	+	+	+	+
EBO	+	+	n/a	+	n/a	-	M	n/a	n/a	n/a	+	n/a	M	n/a	+	n/a	n/a	M	n/a	+	n/a	n/a	n/a	n/a	+	M	n/a
26. The violation of civil protection orders and emergency barring orders is criminalized																											
Civil	+	-	+/-	+	M	+	M	+	+	+	-	+	+	+	+	-	M	+	+	+	M	M	+	+	M	+	+
EBO	-	+	n/a	+	n/a	-	+	n/a	n/a	n/a	+	n/a	+	n/a	+	n/a	n/a	+	+	n/a	n/a	n/a	n/a	n/a	n/a	+	n/a
28. The restrainee is in principle held accountable for the violation of a protection order, even if contact was initiated by the victim																											
All	+	inf	M	-	+	-	-	-	inf	+	+	inf	-	+	-	-	inf	-	M	-	M	-	M	-	M	-	-
29. Specialized training on protection order monitoring and enforcement is available nationwide																											
All	++	-	M	-	-	+	-	inf	-	++	++	-	-	+	-	-	-	-	-	-	+	+	+	+	+	inf	-

Annex 3.

Selection procedure per Member State for the victim interviews

The Netherlands

In the Netherlands, the victims were selected with the help of the Board of Procurators-General (*College van procureurs-generaal*), the executive board of the Dutch public prosecution service. They granted permission to search the database of the public prosecution's district office of *Zeeland-West Brabant*, a region located in the south-west of the Netherlands.³⁰⁰ This district office was selected for two reasons: 1) the involvement of one district office only would place a much lighter burden on the public prosecution service as a whole 2) it was conveniently located for the researchers. The downside of the limitation to the region *Zeeland-West Brabant* is that the findings possibly only represent local practices and problems, making it difficult to generalize the results to the Netherlands as a whole.

Searching the database directly for protection orders proved to be impossible. The system did not allow for such a selection. It could, however, select on the following factors:

- the sex of the suspect (male)
- whether the case involved domestic violence
- which exact crimes the suspect was charged with³⁰¹
- whether the pre-trial detention and/or prison sentence was suspended on special conditions
- in what year the public prosecution service opened the case file³⁰²

³⁰⁰ The public prosecution service in the Netherlands is subdivided into a total of 10 district offices. The region *Zeeland-West Brabant* has 1.4 million inhabitants.

³⁰¹ Included in the search were the following crimes: simple and aggravated assault (articles 300 to 304 Criminal Code), threat (article 285 Criminal Code), stalking (article 285b Criminal Code), deprivation of liberty (article 282 Criminal Code), manslaughter (287 Criminal Code).

³⁰² This was the so-called inflow period. Included were the years January 2010 – April 2014. Due to differences in registration requirements, the years 2010 and 2011 did not generate many useful contact details. A compulsory registration of the exact special conditions to a suspension of pre-trial detention and a prison sentence was only introduced as of 2012. Before then, it was up to the individual public prosecutor to decide whether or not and how (s)he registered this type of information in the system.

This resulted in a list of 587 case files matching the above criteria. These case files had to be studied one-by-one in order to check whether the condition that was imposed to suspend the pre-trial detention actually involved a protection order and not an alternative condition (e.g., contact with the probation service or prohibition to consume alcohol or drugs). The sample also contained cases in which the victim was male, in which the suspect was a minor, in which a child had abused his parent(s) or vice versa, or in which other blood relatives were involved. Also, if the case file contained other clues that would make the file inappropriate for the current study it was excluded from the analysis.³⁰³ After subtracting these cases a total of 205 cases remained

One hundred and four of these files mentioned the telephone number of the victim and a total of 78 victims were contacted using this number. Of those victims, 43 could not be reached (voicemail, no reply, number out of use), 16 did not want to participate in the interviews, and 3 victims dropped out before an interview was conducted.³⁰⁴ One victim who was willing to participate in an interview turned out to be the mother of the offender. Although the interview was completed, it was removed from the sample and thus not analyzed. After the total of 15 victims was reached, the researchers stopped calling more victims. All of the 15 victims were sampled from the years 2012 and 2013.³⁰⁵ All interviews were conducted between 14 May and 11 June 2014.

One victim preferred not to be tape-recorded out of privacy concerns. This interview was transcribed and summarized on the spot.

³⁰³ E.g., if in the file it said that the victim did not want to be kept informed of the progress of the case (the victim had exercised her right to 'opt out'), we decided to respect the victim's wishes and to exclude her from the sample.

³⁰⁴ They did not pick up the phone at the time when the interview was due and we didn't manage to contact them afterwards either.

³⁰⁵ The researchers had decided to contact the victims who had obtained their protection orders in 2014 only if the previous years did not generate a sufficient number of victims. Because the interviews would have taken place very shortly after the protection order was imposed (May 2014) this could compromise the results. The years 2010 and 2011 were also kept as a backup, since these protection orders may have been outdated due to changes in practices and the victims' recollection of the events may have diminished in the meantime. In the end, we managed to gain sufficient victims from the years 2012 and 2013.

	Frequency (N)	Percentages (%)
Gross sample	205	100%
Non-response (total)	170	83%
of which:		
<i>Not contacted (n=15 reached)</i>	26	13%
<i>No phone number</i>	101	49%
<i>No reply / voicemail /out-of-use</i>	43	21%
Net sample	35	100%
Non-response (total)	20	57%
of which:		
<i>Unwilling to participate</i>	16	46%
<i>Early drop-out</i>	3	9%
<i>Mother – son situation</i>	1	3%
Participation (total)	15	43%

Portugal

In Portugal, the victims were randomly selected within the Portuguese Association for Victim Support clients.

A request was sent out to all victim support scheme managers within the APAV network. The request was that managers would identify victims that would fully fit the criteria established by the research team and send the APAV POEMS team a list of potential respondents, with relevant data for the team to assess if these were suitable candidates. After selection by the APAV POEMS team, managers were asked to first contact these women to explain the project and ask if they were interested in and available to participate in the study. After that first contact, the interviewer contacted the victim directly to arrange a suitable day to schedule the interview.

The team encountered difficulties identifying victims who would fit all the required criteria, mostly because there were not many victims that kept regular contact with APAV with protection orders issued on their cases that we had knowledge of.

Of a total of 30 victims contacted, only 14 were either available or willing to participate in the study. Also, although among the sample there are two victims interviewed who had been hosted in one of the shelters managed by APAV during the validity of the protection order, after these interviews the team decided to exclude victims in such circumstances as they revealed to have little perception of the impact of protection orders, as their feeling of safety rose from the fact that they were in an unknown location within the premises of the shelter.

The APAV team also made an effort to include a wide range of participants and give it a national dimension, not sticking to the reality of a given location

(e.g.: capital city). Therefore, the Portuguese sample counted with women from various parts of the country: Lisbon metropolitan area (namely, Lisbon and Odivelas), Algarve (south Portugal), Azores (islands), Vila Real (close to Oporto).

One of the interviews was not recorded due to a problem with the audio recording device that was impossible to identify at the time of the interview. This interview that took place unfortunately had to be disregarded.

All interviews were held in APAV's respective nearest local scheme premises except one, which took place in the victims' house. The interviews were held between 2 February and 30 July of 2014.

Finland

In Finland, finding respondents turned out to be cumbersome and it took half a year (November 2013 to May 2014) before all interviews were conducted. The researcher contacted shelters, the Federation of Mother and Child Homes (shelters) and Women's Line, which published an announcement of the study on their bullet boards, webpages and email lists. In addition, a letter was sent to 52 persons who had gained a protection order by the district court of Helsinki or Espoo (the capital area) during 2011-2013. The researcher had also contact with a few prosecutors and police women and the National Institute of Welfare and Health, but these sources did not yield any informants.

The announcement and the letter explained briefly the study and its purposes and asked the recipient to contact the researcher. The help line, an NGO giving advice to victims of partnership violence, was most fruitful in initiating contacts. We did not ask how the informant found out about the study, but most of the 11 informants that contacted the researcher after the announcement was published had noticed it on the help line's home page or facebook site. The shelters were intermediaries to two interviews. The letter to the district court applicants yielded three interviews.

The informants were from different parts of Finland, the majority from Southern Finland. Most interviews were done at the University of Helsinki. Two interviews were conducted through internet connection. All but one had been granted a protection order in Finland and one Finnish woman had been granted a protection order in another EU member state.

Italy

Victims were recruited in different ways. Nine victims were contacted through the shelters where they had been or currently where staying in three different cities in Italy, the remaining five where recruited via their lawyers and the public prosecutor who had issued the request for a protection order. First, the

victims were asked by them if they were interested and then, once consent was given, their name was provided to the senior researcher of the Italian partner for explaining in more details the aims of the project and schedule a face-to-face interview.

All interviews were done face-to-face in a calm and secure place chosen by the victim. The interviews lasted between 60 to 90 minutes and were audio recorded. Before the interview started, victims were assured about the anonymity of the study and the confidentiality of the answers provided, and they were told that they could stop at any time if they wished.

After the interview, the victims were acknowledged for their time and debriefed. They were also handed over the free-tool number of services for victims, if the woman had not had contact with them already in the past.

Annex 4.

Interview protocol victim interviews

2. Interview protocol

2.1. Introduction

Domestic violence and stalking are serious problems which might be stopped with the help of a criminal protection order. Criminal protection orders are measures aiming at the protection of the victim by restraining the abuser, by prohibiting the abuser from contacting or approaching the victim. Once a criminal protection order is imposed, the offender is, for instance, no longer allowed to contact the victim or to be in the street where the victim lives. They are imposed by the public prosecution service and/or the judge. The aim of this interview is to find out if and how criminal protection orders work in practice.

We are particularly interested in your experience with criminal protection orders and the procedure that lead up to them. How did you, for instance, perceive the performance of the police or the public prosecutor? Was it easy to get a criminal protection order or did it take very long? And once you had one, did it stop the violence? With the help of this interview we want to improve the effectiveness of criminal protection orders and to increase the safety of (other) victims of domestic violence and/or stalking.

Before we start the interview there are a few issues that we need to talk about in advance:

- *There are no correct or wrong answers. What matters is your experience and your opinion.*
- *Are you currently still in a relationship with the person against whom you have had a protection order? If that is the case, we will stop the interview if your partner shows up unexpectedly. We will say that this interview is about.....*
- *The interview will take about 1-1½ hour, but you are allowed to stop the interview at any time you like (e.g., if you feel uncomfortable or if the questions make you really emotional) or skip any question.*
- *The interview will be processed anonymously. Your name will not be mentioned in the report, nor will it include any information leading back to you.*
- *Do you mind if we use a voice-recorder during the interview to tape the interview?*
- *Thank you in advance for your participation.*

2.2. Background information (anonymous in report!)

- 1) With whom are currently living with?
- 2) Do you have children?
 - a. If so, how many and how old are they?
 - b. Are these children with your (ex) partner?
 - c. Are your children currently living with you?
 - d. If not, are they living with the man who you have the protection order against?
- 3) How old are you?
- 4) How old is/was your (ex) partner?
- 5) What is your native language?
- 6) What is your employment status? (full-time, part-time employed, unemployed, student)
- 7) What is your education? (basic/ vocational / high school / university)
- 8) What is your (ex) partner employment status?
- 9) What is his education? (basic/ vocational / high school / university)
- 10) Were you legally married or did you have a common law union?
- 11) Were you cohabiting?
- 12) Did your partner have problems with the police before? Does he have a criminal record?
- 13) Does your (ex) partner have problems of alcohol or drugs abuse?

2.3. History

First we would like to have an idea of the relationship you had/have with your (ex) partner and of the violence that occurred during or after the relationship

- 14) When did the relationship with your partner start? How long did the relationship last?
- 15) When did the violence/stalking begin (how long after you got together)?
- 16) Can you describe the first episode of violence you recall?
- 17) What type of violence/stalking did you experience?
 - a. Did your (ex) partner hit you or use other kinds of physical violence?
 - b. Did you ever felt controlled by your partner? Can you describe in what way? (Jealousy, money, family and friends, etc.)
 - c. Did he follow you, spy you, constantly phoned you or try to get hold of you?
 - d. Did he send you unwanted presents, mail, messages that scared you and made you change your habits?
 - e. Did he call you names or belittle you?
 - f. Did he make you engage in unwanted sexual act? Did this behavior include unwanted sexual intercourse?
 - g. Did he do other things you didn't like?

- 18) Could you give an indication of the frequency of the violence/stalking?
Were there incidents on a daily, weekly, monthly basis?
- 19) Was there any situation in which you physically needed to defend yourself?
- 20) Disclosure
 - a. Did others know about the violence/stalking?
 - b. Did you tell others about the violence/stalking?
 - i. If so, to whom?
 - ii. If not, why not?
- 21) Before the incident that resulted in the criminal protection order, did you ever call the police or ask them for help, because of the violence/stalking?
 - a. If so, how many times?
 - b. If so, how did the police react?
 - c. If not, why not?
- 22) Has your partner been arrested for violence before?
- 23) Besides calling the police, did you also resort to any other type of help on stopping the violence/stalking?
 - a. If so, what did you try and did it help?
 - b. If not, why not?

2.4. Incident that lead to a criminal protection order

- 24) Was this the first time you requested a protection order?
- 25) Was this the first time your (ex) partner had a criminal protection order imposed against him or did he receive criminal protection orders before (for example, for previous partners)?
 - a. If so, how many?
 - b. If not, did he have any other type of protection orders imposed against him before (e.g., civil protection orders or barring order)?
 - i. If so, these apparently haven't stopped the violence/stalking. Do you have any idea why not?
- 26) In case of Finland: 'Who filed for a protection order?'
 - a. You / social worker / police / prosecutor?
 - b. Did you first go to the police or did you file directly in the court?
- 27) If your (ex) partner has had multiple criminal protection orders imposed against him, we want you to focus on the last time he received such an order for the remainder of this interview.
 - a. Could you describe the incident that lead to the criminal protection order? What happened exactly?
 - b. Was the violence/stalking different from other times?
 - c. Who called the police or filed for the protection order?

- d. If this was the first time you asked for the police or judge to intervene, why did you decide to do it?
- e. What did you expect from the police/judge?

2.5. Procedure that lead to a criminal protection order

Police response:

- 28) Did the police ask you whether you wanted a protection order? For instance, did they ask you whether you would like your (ex) partner not to contact you anymore or not entering your street? Or did you indicate you wanted such an order yourself?
- 29) Did the police listen to you?
- 30) Did the police take you seriously?
- 31) Did you feel blamed for what happened?
- 32) Did they give you sufficient information on what would happen next (the procedure)?
- 33) Overall, are you satisfied with the manner in which the police responded? Elaborate.
- 34) How could the response of the police be improved?
- 35) Was your (ex) partner arrested? For how long?

Prosecution:

- 36) Apparently your case was prosecuted. Did you come into contact with the public prosecutor who represented your case?
 - a. If not, go the next section.
 - b. If so, we would like to know about the response of the public prosecution service to you:
 - i. Did the public prosecutor ask you whether you wanted a protection order? For instance, did (s)he ask you whether you would like your (ex)partner not to contact you anymore or not entering your street? Or did you indicate you wanted such an order yourself?
 - ii. Did the prosecutor listen to you?
 - iii. Did the prosecutor take you seriously?
 - iv. Did you feel blamed for what happened?
 - v. Did the prosecutor give you sufficient information on what would happen next (the procedure)?
- 37) Overall, are you satisfied with the manner in which the public prosecutor treated you? (Elaborate)
- 38) In which way could the response of the public prosecutor be improved?

Questions in relation to conditional suspension of pre-trial detention

- 39) Before the beginning of the trial, was your partner under arrest?
- 40) If he wasn't under arrest,

- a. Do you know of any conditions being imposed to him in order to remain free?
 - b. If so, which were these conditions? (Try to find out the exact conditions)
 - i. Was he, for instance, no longer allowed to contact you?
 - ii. Was he, for instance, no longer allowed to be in your street or neighborhood?
 - iii. Was he, for instance, no longer allowed to follow you around?
 - iv. Any other conditions (e.g., electronic monitoring)?
 - c. If so, how long did your (ex) partner have to comply with these conditions?
- 41) Did the conditions only apply to you or were other people also protected by the conditions, such as your children or family?
- a. If the protection order also extended to your children, were there any difficulties with visiting rights?
- 42) Overall, these measure(s) had the effect of stopping the violent behavior?
- a. Did you feel protected by these measures?
 - i. Why, why not?
- 43) What other conditions would you have liked? Why?
- 44) How were the conditions monitored?
- 45) Did you have to report all violations to the police yourself?
- 46) Did the police keep an eye on your (ex) partner?
- a. If so, in what way?

Questions relating to the trial stage

- 46) Finland: Was there also a criminal prosecution and trial for the same incident that led to the protection order or a related violent crime against you?
- 47) Finland: If yes, answer questions in relation to this trial:
- 48) Finland: Was the offender arrested or held in police custody? If yes, for how long?
- 49) Were you present during the trial?
- a. If so, we would like to know about the treatment by the judge:
 - i. Did the judge ask you whether you wanted a protection order? For instance, did (s)he ask you whether you would like your (ex)partner not to contact you anymore or not entering your street? Or did you spontaneously indicate you wanted such an order yourself ?
 - ii. Did the judge listen to you?
 - iii. Did the judge take you seriously?

- iv. Did you feel blamed for what happened?
 - v. Did the judge give you sufficient information on what would happen next (the procedure)?
- 50) Overall, are you satisfied with the manner in which the judge/court treated you?
- b. Why, why not?
- 51) In which way could the response of the judge/court be improved?
- 52) At the trial, was your (ex)partner found guilty and sentenced?
- a. If so, what sentence did he receive?
 - b. Was the sentence made effective (was your partner sent to prison)?
 - c. Was he given a conditional sentence (released under certain conditions)? (If the latter, go to next section.)
 - d. If he was not sentenced, why not? Go to section 2.5.

Questions in relation to a condition to a conditional sentence

- 53) Finland: What was the content of the PO?
- 54) Apparently, your (ex) partner was found guilty and sentenced, yet instead of having to serve his entire sentence in prison, he was allowed to spend part of his sentence outside prison under certain conditions. Which were these conditions?
- a. Was he, for instance, no longer allowed to contact you?
 - b. Was he, for instance, no longer allowed to be in your street or neighborhood?
 - c. Was he, for instance, no longer allowed to follow you around?
 - d. Any other conditions (e.g., electronic monitoring)?
- 55) How long did your (ex) partner have to comply with these conditions?
- 56) Did the conditions only apply to you or were other people also protected by the conditions, such as your children or family?
- 57) If the protection order also extended to your children, were there any difficulties with visiting rights?
- 58) Did you feel protected by these measures?
- a. Why, why not?
- 59) What other conditions would you have liked?
- 60) How were the conditions monitored?
- a. Did you have to report all violations yourself?
 - b. Did the police keep an eye on your (ex) partner?
 - i. If so, in what way?

2.6. Effectiveness criminal protection order

We would now like to talk about the time when the criminal protection order was in place.

- 61) Did your (ex) partner obey the conditions imposed?
- 62) Did your partner violate the conditions and still contact you?

- a. If so, how did he violate the conditions?
- b. If so, how often did he violate the conditions?
- c. If so, was there a change in the violence/stalking as a result of the protection order?
 - i. Was the frequency of the violence/stalking reduced/increased?³⁰⁶
 - ii. Did the nature of the violence/stalking change?³⁰⁷
 - iii. Did the violence/stalking become worse or less bad? In what sense?
- d. If so, how long after the criminal protection order was impose did he violate the order?
- e. If so, why do you think your (ex) partner violated the conditions?
- f. If so, did you report this violation to the police?
 - i. If not, why not?
 - ii. If so, how did the police respond? Did their response satisfy you?

63) During the validity of the protection order,

- a. Did you ever initiate contact with your (ex)partner yourself?
 - i. If so, why?
 - ii. If so, how often?
- b. Was there any other form of contact between you and your (ex) partner (e.g., through third parties)?
- c. Did you feel safe(r) and more protected (than before)?
 - i. If not, why not?
 - ii. If so, why?
 - iii. And after the protection order had expired?
- d. Did you feel more in control of your safety?
 - i. If not, why not?
 - ii. If so, why?
 - iii. And after the protection order had expired?

64) After the protection order had expired, did you experience new incidents of violence/stalking?

2.7. Looking back

- 65) Would you say the duration of the procedure leading up to a criminal protection order is okay, or did it take too long?
- 66) Would you say the procedure leading up to a criminal protection order was easy or was it hard?

³⁰⁶ Did the abuser/stalker, for instance, call once a week instead of 100x a day?

³⁰⁷ By a change in the nature of the violence/stalking we mean, for instance, that instead of physically abusing the victim, the violent (ex)partner now only resorts to threats.

- 67) Would you say the criminal protection order(s) has been good for you?
- a. Why (not)?
- 68) Which aspects of the (procedure leading up to the) criminal protection order would you consider successful?
- 69) Which aspects of the (procedure leading up to the) criminal protection order could be improved?
- 70) Overall, are you satisfied with the protection order(s)?
- a. Why, why not?
- 71) Did anything change in your relationship with your (ex) partner as a result from the criminal protection order?
- a. For instance, was it easier to break up the relationship?
 - b. Did your (ex) partner, for instance, become less violent or controlling?

2.8. End of the interview

- *Thank again for participating in this interview!*
- *Would you be interested in the results of the final report?*
 - *(If so, write down e-mail address + warn that the final report may take a while).*
- *Do you have any questions?*

(Hand over gift voucher worth €25)

Many victims of repetitive violence, such as domestic violence or stalking, have an increased need for protection against their offender. One way of safeguarding them is to issue a protection order. Previous research has shown that protection order legislation shows large discrepancies across the EU, but we lack a clear overview of how victim protection is constructed in the different Member States. The POEMS study has tried to address this problem by making an inventory of protection order legislation in 27 Member States.

Another feature of protection orders that has largely remained in the dark is how they function in practice. This study has therefore assessed the functioning of these protection orders in practice by means of an explorative victim study in four Member States (Finland, the Netherlands, Italy, and Portugal). The aim was to find best practices and gaps in protection order legislation on a national level.

A final goal was to assess how the different approaches on a national level could impact the implementation of the European Protection Order Directive and the Regulation on mutual recognition of protection measures in civil matters. In the light of the findings from the 27 Member States, which difficulties do we anticipate after the 11th of January 2015 when the Directive and the Regulation need to be implemented?



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