



EUROPEAN PARLIAMENT

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**A7-0126/2013**

26.3.2013

**\*\*\*I**  
**REPORT**

on the proposal for a regulation of the European Parliament and of the Council  
on mutual recognition of protection measures in civil matters  
(COM(2011)0276 – C7-0128/2011 – 2011/0130(COD))

Committee on Legal Affairs  
Committee on Women's Rights and Gender Equality

Rapporteur: Antonio López-Istúriz White, Antonya Parvanova

(Joint committee meetings – Rule 51 of the Rules of Procedure)

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters  
(COM(2011)0276 – C7-0128/2011 – 2011/0130(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0276),
  - having regard to Article 294(2) and points (a), (e) and (f) of Article 81(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0128/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the Committee of the Regions of 16 February 2012<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the joint deliberations of the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality under Rule 51 of the Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A7-0126/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 113, 18.4.2012, p. 56.

**Amendment 1**

AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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**REGULATION (EU) n .../2012 OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

*of ...*

**on mutual recognition of protection measures in civil matters**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2)(a), (e) and (f) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national *parliaments*,

**█**

Acting in accordance with the ordinary legislative procedure<sup>1</sup>.

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **█**.

<sup>1</sup> *Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ....*

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice *in which the free movement of persons is ensured and* access to justice *is facilitated*, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. *For the gradual establishment of* such an area, the Union *is to* adopt **■** measures relating to judicial cooperation in civil matters *having cross-border implications*, particularly when necessary for the proper functioning of the internal market.
- (2) **■** Article 81(1) of the Treaty on the *functioning* of the European Union (TFEU) *provides that judicial cooperation in civil matters in the Union shall be based on the principle of mutual recognition of judgements and of decisions in extrajudicial cases.*
- (3) *In a common area of justice without internal borders, provisions* to ensure rapid and simple recognition and, where applicable, enforcement *in another Member State* of protection measures *ordered in a Member State* are essential to ensure *that* the protection *provided to a natural person in one Member State is maintained and continued in any other Member State to which the person travels or moves.*

*It should be ensured that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union (TEU) and Article 21 TFEU, does not result in a loss of their protection.*

*(3a) Mutual trust in the administration of justice in the Union and the aim of ensuring quicker and less costly circulation of protection measures within the European Union justify the principle that such measures ordered in a Member State are recognised in all Member States without the need for any special procedures. As a result, a protection measure ordered in a Member State should be treated as if it had been taken in the Member State addressed.*



- (4) In order to attain the objective of free movement of protection measures, it is necessary and appropriate that the rules governing ■ the recognition and, where applicable, enforcement of protection measures be governed by a legal instrument of the Union which is binding and directly applicable.
- (4a) *This Regulation should apply to protection measures ordered with a view to protecting a person when there exist serious grounds for considering that that person's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk, for example so as to prevent any form of gender-based violence and violence in close relationships, such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion. It is important to underline that this Regulation applies to all victims regardless of whether they are victims of gender-based violence.*
- (4b) *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime<sup>2</sup> ensures that victims receive appropriate information and support.*

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<sup>2</sup> *OJ L 315, 14.11.2012, p. 57.*

- (4c) *The provisions of this Regulation should be a complement to Directive 2012/29/EU. The fact that a person is the object of a protection measure ordered in civil matters does not necessarily preclude that person from being defined as a 'victim' under that Directive.*
- (5) *The scope of this Regulation is within the field of judicial cooperation in civil matters within the meaning of Article 81 TFEU. This Regulation should apply to protection measures ordered in civil matters, and does not therefore cover protection measures adopted in criminal matters, which should be covered by Directive 2011/99/EU on the European Protection Order.*
- (5a) *The notion of civil matters should be interpreted autonomously, in accordance with the principles of Union law. The civil, administrative or criminal nature of the authority ordering a protection measure should not be determinative for the purpose of assessing the civil character of a protection measure.*

- (6) ***This Regulation should not interfere with the functioning of*** Regulation (EC) No 2201/2003 ■ concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (***Brussels IIa Regulation***). ***Decisions taken under the Brussels IIa Regulation should continue to be recognised and enforced under that Regulation.***
- (6a) ***This Regulation takes account of the different legal traditions of the Member States, and does not interfere with the national systems for ordering protection measures. This Regulation does not oblige the Member States to modify their national laws so as to order protection measures in civil matters, nor does it create obligations on the Member States to introduce civil protection measures for the application of this Regulation.***
- (6b) ***In order to take account of the various types of authorities which issue protection measures in civil matters in the Member States, and unlike other areas of judicial cooperation, this Regulation should apply to decisions of both courts and administrative authorities provided that the latter offer guarantees with regard, in particular, to their impartiality and to the right of the parties to judicial review. In no event should police authorities be considered as issuing authorities within the meaning of this Regulation.***

**(6c) *Based on the principle of mutual recognition, protection measures ordered in civil matters in one Member State should be recognised in another Member State as civil measures in accordance with this Regulation.***

**(6d) *In accordance with the principle of mutual recognition, the recognition should correspond to the duration of the protection measure.***

***However, in view of the diversity of protection measures available under the laws of the Member States as regards the duration of protection measures, and taking into account the fact that this Regulation should typically apply in urgent situations, the effects of recognition under this Regulation should by way of exception be limited to a period of 12 months from the issuing of the certificate, irrespective of whether the protection measure itself (whether provisional, time-limited or indefinite in nature) has a longer duration.***

- (6e) *In cases where the validity period of the protection measure goes beyond the 12 months laid down in this Regulation for the effects of the recognition, this time-limitation should be without prejudice to the right of the protected person to invoke the measure under any other available EU instrument providing for recognition or to apply for a national protection measure in the Member State addressed.*
- (6f) *This limitation of the effects of recognition is exceptional because of the special nature of the subject matter of this Regulation and it should not serve as a precedent for other instruments in civil and commercial matters.*

■

- (6g) *This Regulation deals only with the recognition of the obligation imposed by the protection measure. It does not regulate the procedures for implementation or enforcement of the measure, nor does it cover any potential sanctions that might be imposed if the obligation ordered by the protection measure is infringed in the Member State addressed. The actual enforcement and any possible sanctions are left to the law of that Member State. However, in accordance with the general principles of Union law and particularly the principle of mutual recognition, Member States have to ensure that protection measures recognised pursuant to this Regulation can take effect in the Member State addressed.*

- (6h) *Protection measures covered by this Regulation should provide protection to a person at his or her place of residence, place of work or at another place which he or she visits on a regular basis, such as the residence of close relatives or the school or educational establishment attended by his or her child.*

*Irrespective of whether this place or the extent of the area covered by the protection measure is described in the protection measure by one or more specific addresses or a certain perimeter which the person causing the risk may not enter (or a combination of these two criteria), the recognition of the obligation or regulation imposed by the protection measure relates to the purpose which this place serves for the protected person rather than to the specific address.*

- (6i) *In the light of the foregoing and provided that the nature and the essential elements of the protection measure are maintained, the competent authority in the Member State addressed should be allowed to adjust the factual elements of the protection measure where such adjustment is necessary in order for the recognition of the protection measure to be effective in practical terms in the Member State addressed. Factual elements include the address or the general location or the minimum distance the person causing the risk must keep from the protected person, the address or the general location. However, the type and the civil nature of the protection measure may not be affected by such adjustment.*

**(6j)** *In order to facilitate the adjustment of a protection measure, where necessary, it should be indicated in the certificate whether the address specified in the protection measure constitutes the place of residence, the place of work or a place that the protected person visits on a regular basis. Furthermore, if relevant, the perimeter (approximate radius from the specific address) to which the prohibition imposed by the protection measure on the person causing the risk applies, should also be indicated in the certificate.*

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**(12)** In order to facilitate free movement of protection measures within the European Union, this Regulation should introduce a uniform model of certificate and *provide a multilingual standard form for that purpose.*

*The issuing authority should issue the certificate upon request of the protected person and, upon request, it should also assist that person in obtaining information on the authorities before which the protection measure is to be invoked or enforcement is to be sought in the Member State addressed.*

**(12a)** *Free text fields in the multilingual standard form for the certificate should be as limited as possible, so that translation or transliteration could be provided in most cases without imposing any cost on the protected person by using the standard form in the relevant/required language. Any costs for necessary translation that goes beyond the text of the multilingual standard form should be allocated as provided under the law of the Member State of origin.*

*(12b) Where a certificate contains free text, the competent authority of the Member State addressed should determine whether any translation/transliteration is required. This does not preclude the protected person or the issuing authority of the Member State of origin from providing a translation/transliteration of their own initiative.*

*(12c) To ensure that the rights of defence of the person causing the risk are respected, the certificate may only be issued if that person had the opportunity to arrange for his defence against the protection measure, where the protection measure was ordered in default of appearance or under a procedure that does not provide for the prior notice of that person ("ex-parte procedure").*

*However, with a view to avoiding circumvention and taking into account the typical urgency of cases requiring protection measures it is not required that the period for raising such defence has expired before a certificate may be issued. The certificate should be issued as soon as the protection measure is enforceable in the Member State of origin.*

*(12d) Having regard to the objectives of simplicity and speed, this Regulation provides for the application of simple and quick methods to be used for bringing procedural steps to the notice of the person causing the risk. These specific methods of notification should apply only for the purposes of this Regulation due to the special nature of its subject matter, but should not serve as a precedent for other instruments in civil and commercial matters and they should not affect any obligations of a Member State concerning the service abroad of judicial and extrajudicial documents in civil matters arising from a bilateral or multilateral convention concluded between that Member State and a third state.*



- (12e)** *When notifying the certificate to the person causing the risk and also when adjusting any factual elements of a protection measure in the Member State addressed, due regard should be paid to the interest of the protected person in not having his or her whereabouts or other contact details disclosed. Such details should not be disclosed to the person causing the risk unless it is necessary for compliance with or enforcement of the measure.*
- (13)** The certificate should not be subject to appeal. ■
- (13a)** *The certificate should be rectified where, due to an obvious error or inaccuracy, such as typing errors, errors of transcription or copying, the certificate does not correctly reflect the protection measure, or be withdrawn if the certificate was clearly wrongly granted, for example when it was used for a measure that falls outside the scope of this Regulation or when it was issued in breach of the criteria set out in Article 5a.*
- (13b)** *If the protection measure is suspended or withdrawn or the certificate is withdrawn in the Member State of origin, the competent authority of the Member State addressed should, on application by either party, suspend or withdraw the effects of recognition and, where applicable, the enforcement of the protection measure.*

- (13c) *The harmonious functioning of justice requires that irreconcilable decisions should not be pronounced in two Member States. To this end, this Regulation should provide for a ground for refusal of recognition and/or enforcement of the protection measure on application by the person causing the risk in case of irreconcilability with a judgment given or recognised in the Member State addressed.*
- (13d) *Considerations of public interest may, in exceptional circumstances, justify the courts of the Member States being allowed to refuse the recognition or enforcement of a protection measure where its application would be manifestly incompatible to public policy of that forum. However, the courts should not be able to apply the public-policy exception in order to refuse the recognition or enforcement of a protection measure when doing so would be contrary to the rights set out in the Charter of Fundamental Rights of the European Union, and in particular Art. 21 thereof.*
- (13e) *A protected person should have effective access to justice in another Member State. To ensure such effective access in procedures covered by this Regulation, legal aid should be provided in accordance with Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes<sup>3</sup>.*

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<sup>3</sup> *OJ L 26, 31.1.2003, p. 41 and corrigendum OJ L 32, 7.2.2003, p. 15.*

- (14) In order to ensure *uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the forms provided for in this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers*<sup>4</sup>.
- (14a) *The examination procedure should be used for the adoption of implementing acts establishing and subsequently amending the forms provided for in this Regulation in accordance with the procedure laid down in Article 5 of Regulation (EU) No 182/2011.*
- (14b) *In order to facilitate the application of this Regulation, provision should be made for an obligation requiring the Member States to communicate certain information regarding their legislation and procedures relating to protection measures in civil matters within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC*<sup>5</sup>. *Access to the information provided by the Member States should be made available through the European e-Justice Portal.*

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<sup>4</sup> *OJ L 55, 28.2.2011, p. 13.*

<sup>5</sup> *OJ L 174, 27.6.2001, p. 25.*

- (15) This Regulation respects the fundamental rights and observes the principles recognised in **■** the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure the rights of the defence and fair trial, as established in Article 47 thereof. This Regulation must be applied according to these rights and principles.
- (16) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (*TEU*). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (17) In accordance with *Article ■ 3 ■* of Protocol *No 21* on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to *take part* in the adoption and application of this Regulation.
- (18) In accordance with Articles 1 and 2 of Protocol *No 22* on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is **■** not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION

## CHAPTER I

### *Subject matter, scope and definitions*

#### *Article -1*

#### *Subject matter*

*The purpose of this Regulation is to establish rules for a simple and rapid mechanism for the recognition of protection measures ordered in a Member State in civil matters.*

#### *Article 1*

#### *Scope*

- 1. This Regulation shall apply to protection measures in civil matters ordered by an authority as defined in point 4 of Article 2.*

2. *This Regulation shall apply to cross-border cases. For the purposes of this Regulation, a cross-border case is one in which the recognition of the protection measure in a Member State other than the Member State of origin is sought.*
3. *This Regulation shall not apply to protection measures falling within the scope of Regulation (EC) 2201/2003.*

*Article 2*  
*Definitions*

For the purposes of this Regulation, *the following definitions shall apply*:

- (1) '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*** **█** :
- █**
- (a) ***a prohibition or regulation on entering the place*** where the protected person resides, works or **█** ***visits or stays regularly***; **█**
- (b) ***a prohibition or regulation of contact***, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; **█**
- (c) ***a prohibition or regulation on approaching*** the protected person closer than a prescribed distance; **█**

**█**

- (2) *'protected person' means a natural person who is the object of the protection resulting from a protection measure;*
- (3) *'person causing the risk' means a natural person on whom one or more obligations referred to in point 1 have been imposed;*
- (4) *'issuing authority' means any judicial authority or any other authority designated by a Member State as having competence in the matters falling within the scope of this Regulation, provided that such other authority offers guarantees to the parties with regard to impartiality and provided that decisions taken by such other authority in relation to the protection measure, under the law of the Member State in which they operate,*
- (a) *may be made subject to review by a judicial authority, and*
- (b) *have similar force and effects as a decision of a judicial authority on the same matter;*
- (5) 'Member State of origin' means the Member State in which the protection measure is *ordered*;
- (6) 'Member State *addressed*' means the Member State in which the recognition and, *where applicable*, the enforcement of the protection measure is sought.

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## CHAPTER II

### Recognition and enforcement of protection measures

#### *Article 4*

#### *Recognition and enforcement*

- 1.** A protection measure *ordered* in a Member State shall be recognised in the other Member States without any special procedure being required and *be enforceable without a declaration of enforceability being required*.
- 1a.** *A protected person who wishes to invoke in a Member State a protection measure ordered in another Member State shall provide the competent authority of the Member State addressed with*
  - (a)** *a copy of the protection measure which satisfies the conditions necessary to establish its authenticity;*
  - (b)** *the certificate issued in the Member State of origin pursuant to Articles 5; and*

*(c) where necessary, a transliteration and/or a translation of the certificate into the official language of the Member State addressed or into another official language of the European Union that that Member State has indicated it can accept.*

*1b. The certificate shall take effect only within the limits of the enforceability of the protection measure.*

*1c. Irrespective of any longer validity of the protection measure, the effects of recognition pursuant to paragraph 1 shall be limited to a duration of 12 months, starting from the date of the issuing of the certificate.*

*1d. The procedure for the enforcement of protection measures shall be governed by the law of the Member State addressed.*

*Article 5  
Certificate*

■

2. *The issuing authority* of the Member State of origin shall, *upon request of the protected person*, issue the certificate using the *multilingual standard form established in accordance with Article 18 and containing the information provided in Article 5c*.

■

2a. *No appeal shall lie against the issuing of a certificate.*

4. *Upon request of the protected person, the issuing authority* of the Member State of origin shall provide the protected person with a transliteration *and/or* a translation of the certificate *by making use of the multilingual standard form*.

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*Article 5a  
Requirements for the issuing the certificate*

1. *The certificate may only be issued if the protection measure was brought to the notice of the person causing the risk in accordance with the law of the Member State of origin.*
  
2. *Where the protection measure was ordered in default of appearance, the certificate may only be issued if the person causing the risk had been served with the document which instituted the procedure or an equivalent document or, where relevant, had been otherwise informed of the initiation of the procedure in accordance with national law in sufficient time and in such a way as to enable that person to arrange for his or her defence.*

3. *Where the protection measure was ordered under a procedure that does not provide for the prior notice of the person causing the risk ("ex -parte proceeding") the certificate may only be issued if the person causing the risk had the right to challenge the protection measure under the law of the Member State of origin.*

#### *Article 5b*

##### *Notification of the certificate to the person causing the risk*

1. *The issuing authority of the Member State of origin shall bring to the notice of the person causing the risk the certificate and the fact that the issuing of the certificate results in the recognition and, where applicable, the enforceability of the protection measure in all Member States pursuant to paragraph 1c of Article 4.*
2. *Where the person causing the risk resides in the Member State of origin, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State of origin or in a third State, this notification shall be effected by registered letter with acknowledgment of receipt or equivalent.*

*Situations in which the address of the person causing the risk is not known or in which that person refuses to accept the receipt of the notification are governed by the law of the Member State of origin.*

3. *In the notification of the certificate to the person causing the risk, due regard shall be paid to the interest of the protected person in not having his or her whereabouts or other contact details disclosed to the person causing the risk. Such details shall not be disclosed to the person causing the risk unless they are necessary for compliance with or the enforcement of the protection measure.*

*Article 5c*  
*Contents of the certificate*

*The certificate shall contain the following information:*

- (a) the name and address/contact details of the issuing authority;*
- (b) the reference number of the file;*
- (c) the date of issue of the certificate;*
- (d) details of the protected person: name, date and place of birth, where available, and an address to be used for notification purposes, followed by a conspicuous warning that this address may be disclosed to the person causing the risk;*
- (e) details of the person causing the risk: name, date and place of birth, where available, address to be used for notification purposes;*
- (f) all information necessary for enforcement of the protection measure, including, where applicable, the type of the measure and the obligation imposed by it on the person causing the risk and specifying the function of the place and/or the perimeter which that person is prohibited from approaching or entering;*

- (g) *duration of the protection measure;*
- (h) *duration of the effects of recognition in accordance with paragraph 1c of Article 4;*
- (i) *a declaration that the requirements prescribed by Article 5a have been met;*
- (j) *an information on the rights granted by Articles 7 and 12 to the person causing the risk;*
- (k) *for ease of reference, a notion of the full title of this Regulation.*



*Article 7*

*Rectification or withdrawal of the certificate*

1. *Without prejudice to Article 5(2a) and upon request by either party to the issuing authority of the Member State of origin or on that authority's own initiative, the certificate shall be*
  - (a) *rectified where, due to a clerical error, there is a discrepancy between the protection measure and the certificate; or*
  - (b) *withdrawn where it was clearly wrongly granted, having regard to the requirements provided in Article 5a and the scope of this Regulation.*
2. *The procedure for the rectification or withdrawal of the certificate, including any appeal on the rectification or withdrawal, shall be governed by the law of the Member State of origin.*

*Article 7a*

*Assistance to the protected person*

*Upon request of the protected person, the issuing authority of the Member State of origin shall assist the protected person in obtaining information, as made available pursuant to Articles 21 and 22, on the authorities before which the protection measure is to be invoked or enforcement is to be sought in the Member State addressed.*

*Article 7b*

*Adjustment of the protection measure*

- 1. The competent authority of the Member State addressed shall, where and to the extent necessary, adjust the factual elements of the protection measure in order to give effect to the protection measure in the Member State addressed.*
- 2. The procedure for the adjustment of the protection measure, shall be governed by the law of the Member State addressed.*
- 3. The decision adjusting the protection measure shall be brought to the notice of the person causing the risk.*

4. *Where the person causing the risk resides in the Member State addressed, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State addressed or in a third State, this notification shall be effected by registered letter with acknowledgment of receipt or equivalent.*

*Situations in which the address of the person causing the risk is not known or in which that person refuses to accept the receipt of the notification are governed by the law of the Member State addressed.*

5. *The adjustment may be appealed by either party. The procedure for the appeal shall be governed by the law of the Member State addressed. However, any appeal shall not have suspensive effect.*

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*Article 11*  
*No review as to substance*

Under no circumstances may a protection measure **ordered** in a Member State be reviewed as to its substance in the Member State **addressed**.

*Article 12*  
*Refusal **■** of recognition or enforcement*

1. The recognition **and, where applicable, the enforcement of a protection measure shall be refused, upon** application by the person causing the risk, **to the extent such recognition:**

- (a) **is manifestly contrary to public policy in the Member State addressed; or**
- (b) **is irreconcilable with a judgment given or recognised in the Member State addressed.**

**1a. The application for refusal of recognition or enforcement shall be submitted to the court of the Member State addressed as communicated by that Member State to the Commission in accordance with point (a) (iv) of Article 22(1).**

**■**

3. The recognition of a protection measure may not be refused because the law of the Member State **addressed** does not allow for such a measure based on the same facts.

*Article 12a*

*Suspension or withdrawal of recognition or enforcement*

- 1. If the protection measure is suspended or withdrawn in the Member State of origin or its enforceability is suspended or limited or if the certificate is withdrawn in accordance with point b of Article 7(1), the issuing authority of the Member State of origin shall, upon request by either party, issue a certificate indicating this modification or withdrawal using the multilingual standard form established in accordance with Article 18.*
  
- 2. Upon submission of the certificate pursuant to paragraph 1 by either party, the competent authority of the Member State addressed shall suspend or withdraw the effects of the recognition and, where applicable, the enforcement of the protection measure.*

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## CHAPTER III

### Other provisions

#### *Article 14*

#### *Legalisation and other similar formalities*

No legalisation or other similar formality shall be required *for documents issued in a Member State* in the context of this Regulation.

#### *Article 15*

#### *Transliteration or translation*

1. *Any* transliteration or translation required under this Regulation shall be into the official language or one of the official languages of the Member State *addressed* or *into* any other language that *that* Member State has indicated it can accept.
2. *Without prejudice to Article 5(4), any* translation **|** under this Regulation shall be *made* by a person qualified to do translations in one of the Member States.

**|**

## CHAPTER IV

### General and final provisions

#### *Article 17*

#### *Transitional provisions*

This Regulation shall apply to protection measures *ordered after* the day of *its application irrespective of when proceedings have been instituted*.

*Article 18*

*Establishment and subsequent amendments to the form*

The Commission shall *adopt implementing acts establishing and subsequently amending the forms referred to in Articles 5 and 12a. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18a.*

*Article 18a*

*Committee procedure*

- 1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.*

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*Article 20*

*Review* ■

By [five years from the date of application in Article 23] ■ the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee **a report** on the application of this Regulation. If necessary, the report shall be accompanied by proposals for **amendments**.

*Article 21*

*Information made available to the public*

**The Member States shall provide**, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC<sup>6</sup> ■ **with a view to making the information available to the public**, a description of the national rules and procedures concerning protection measures **in civil matters**, including **information on the type of** authorities competent for recognition and/or enforcement.

**The Member States shall keep this information up to date.**

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<sup>6</sup> OJ L 174, 27.6.2001, p. 25.



Article 22

Communication by the Member States

1. By [*six months* before the entry into *application* of this Regulation], ■ Member States shall communicate to the Commission:
- (a) the *type of* authorities *which have* competence in the matters falling within the scope of this Regulation, *specifying, where applicable,*
    - (i) *the authorities which are competent to order protection measures and to issue the certificate in accordance with Article 5;*
    - (ii) *the authorities before which a protection measure ordered in another Member States is to be invoked and/or which are competent to enforce such a measure;*
    - (iii) *the authorities which are competent for the adjustment of the protection measure in accordance with Article 7b(1);*
    - (iv) *the courts to which the application for refusal of recognition and, where applicable, enforcement is to be submitted in accordance with Article 12;*
  - (b) the *language or* languages accepted for translations ■ as referred to in *point (c) of Article 4(1a) and Article 15(1).*

2. The Commission shall make the *above* information publicly available through any appropriate means, in particular through the *website of the* European Judicial Network in civil and commercial matters **█**.

Article 23  
Entry into force **█**

The Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [*11 January 2015*].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the *Treaties*.

Done at [...]

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

...

...

## EXPLANATORY STATEMENT

The rapporteurs welcome the Commission's proposal for a regulation on the mutual recognition of protection measures in civil matters, which is part of a legislative package which strengthens the rights of victims in the EU and which also includes a proposal for a directive on the rights, support and protection of victims of crime.

The Commission's proposal answers the need for a comprehensive European legal framework affording all victims of crime recognition and the greatest possible protection within the territory of the Union. The proposal for this regulation will complement the Directive on the European Protection Order which ensures the mutual recognition of protection measures in criminal matters. The combined application of the two instruments (criminal and civil) will enable persons who have been granted a protection order to move freely and safely within the EU, as provided for in Article 3 of the Treaty on European Union, and will ultimately lead to the strengthening and development of the area of freedom, security and justice in the Union.

Under the procedures resulting from the implementation of the Treaty of Lisbon, Rule 51 of Parliament's Rules of Procedure allows reports to be drawn up by two committees acting jointly. This report has benefited from input from discussions in the Committee on Legal Affairs and in the Committee on Women's Rights and Gender Equality, as well as from the cooperation between the two rapporteurs.

### **Simplifying the recognition of protection orders**

The rapporteurs deem it imperative to ensure that a person who has been granted protection in one Member State does not lose it when s/he moves to another Member State. Thus, the rapporteurs envisage the establishment of a mechanism which would eliminate intermediate formalities through the use of a standardised and multilingual certificate. This would ensure not only the rapid and simple recognition, but also the enforcement, of protection measures. The mechanism will also make the administrative procedure more straightforward for victims and ensure that they are protected whenever they travel or move to another Member State. Member States are also encouraged to guarantee that the protected person does not have to meet the financial costs related to the recognition of the protection measure in another Member State.

### **Addressing the situation of victims of gender-based violence**

The rapporteurs support the overall concept of the regulation on the mutual recognition of protection measures, but consider it imperative to further address the issue of victims of gender-based violence. To this end, reference is made to provisions in the proposal for a Directive on Victims' Rights. In order to better provide for the needs of victims of gender-based violence, the rapporteurs propose that officials likely to come into contact with cases where a person's physical, psychological and sexual integrity is considered to be at risk – particularly cases of violence against women – should be appropriately trained. The work of civil society, particularly NGOs, women's associations and other voluntary organisations

providing specialist support is recognised by the rapporteurs, and Member States are encouraged to support the work of, and collaborate with, such organisations in providing support to victims of violence, and particularly female victims.

### **Information and translation**

The rapporteurs also emphasise the need for the protected person to receive information and assistance in an easily comprehensible form and in an accessible language, adapted to the needs of the protected person. Where protected persons do not understand or speak the language of the proceedings relating to the recognition and enforceability of protection measures, rapporteurs would call on the competent authorities to provide translation and/or interpretation in an easily comprehensible manner, having regard to the victim's needs and situation.

### **Awareness raising**

In order to better inform protected persons of their rights, the rapporteurs believe that it is important for Member States to include information on the free movement of protection measures and the uniform certificate in their education and awareness-raising campaigns on the protection of victims. In order to further strengthen this aspect, the rapporteurs also encourage the Commission to include relevant information on protection measures available in Member States on its widely accessible e-justice portal.

### **Legislative footprint**

The rapporteurs are grateful for the explanations provided by the Commission through DG JUSTICE, as well as for the fruitful exchange of views with the shadow rapporteurs. The rapporteurs would also like to express their gratitude for the positions put forward by organisations, associations and NGOs on rights, support and protection of victims of crime.

The rapporteurs have now reached a compromise agreement following negotiations with the Council under the Cypriot and Irish Presidencies, which is reflected in the present final report.

17.1.2012

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

for the Committee on Legal Affairs

for the Committee on Women's Rights and Gender Equality

(Rule 51 - Joint Committee meetings )

on the proposal for a regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters  
(COM(2011)0276 – C7-0128/2011 – 2011/0130(COD))

Rapporteur: Carmen Romero López

### **SHORT JUSTIFICATION**

The Commission's proposal for a regulation on mutual recognition of protection measures in civil matters seeks to recognise protection measures on behalf of victims of violence in countries where the provision of such measures comes under civil or administrative jurisdiction. This proposal for a regulation has its origin in the draft Directive on the European protection order presented by 12 Member States at the instigation of the Spanish Presidency, in January 2010.

The Spanish initiative, in its original form, covered the full spectrum of protection measures existing in the various Member States, regardless of the type of authority they were issued by. All existing protection measures in the EU have the same purpose: to prevent crimes from being committed or repeated. Thus, by including a mechanism for the recognition and adaptation of the order issued in the State of origin, the Spanish initiative introduced in an original and practical way a single, effective mechanism enabling victims to move around within the EU with the same security with which they were provided in their country of origin.

The rapporteur considers that the above-mentioned directive could have been made applicable not only to those countries in which protection orders are issued by criminal courts but also to those in which they are a matter for civil or administrative courts. The mechanism originally proposed by the directive provided a simple and effective means of allowing mutual

recognition of precautionary measures, obviating the need for this regulation. The difficulty of negotiating with the Member States in which the protection of victims is a civil or administrative matter has made it necessary to restrict the scope of the directive. This regulation is therefore a response to pressure from these Member States for the creation of a valid recognition mechanism for countries in which victims' protection is dealt with under civil or administrative law.

The rapporteur therefore considers that under current circumstances this regulation, which allows a Member State to recognise and automatically carry out a protection order issued by another Member State merely on presentation of a certificate, simplifies the enforcement of the protection order even if it is only applicable in certain EU Member States.

The combined application of the two instruments (penal and civil) enables persons who have been granted a protection order to move freely and safely within the EU, as provided for in Article 3 of the Treaty on European Union.

In this opinion, the rapporteur has sought to harmonise the two instruments so that they become complementary, integral parts of a complete protection system for use in cases of violence by a known aggressor, within Europe. To achieve this, terminology has been adjusted and the guarantees relating to respect for the fundamental rights of both the protected person and the one causing the risk have been strengthened. These guarantees have been increased by completing the automatic recognition of the protection order, with the competent authorities being required to transmit information on the issue of the certificate as a matter of course, thereby establishing an automatic transmission system. It is hoped that this will provide greater protection for potential victims, make the administrative procedure more straightforward for them and ensure that they are protected wherever they go.

Finally, the rapporteur wishes to highlight in her opinion the importance of collecting statistical data, without which we will be unable to gain an understanding of the true extent of this type of violence in Europe.

## AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs and on the Committee on Women's Rights and Gender Equality, as the committees responsible, to incorporate the following amendments in their report:

### Amendment 1

#### Proposal for a regulation

##### Recital 1

*Text proposed by the Commission*

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice,

*Amendment*

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice,

facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. In order to establish progressively such an area, the Union should adopt, amongst other things, measures relating to judicial cooperation in civil matters, particularly when necessary for the proper functioning of the internal market.

facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. In order to establish progressively such an area, the Union should adopt, amongst other things, measures relating to judicial cooperation in civil matters, particularly when necessary for the proper functioning of the internal market ***and for the full exercise by citizens of the Union of their right to move and reside freely in the territory of the Member States.***

## **Amendment 2**

### **Proposal for a regulation Recital 2 a(new)**

*Text proposed by the Commission*

*Amendment*

***(2a) In accordance with the Stockholm Programme, adopted by the European Council at its meeting on 10 and 11 December 2009, and the Commission action plan implementing that Programme, mutual recognition could extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system in question, be either criminal or administrative. The Programme also calls on the Commission and the Member States to examine how to improve legislation and practical support measures for the protection of victims. It also emphasises that victims of crime can be offered special protection measures which should be effective throughout the Union.***

## **Amendment 3**

**Proposal for a regulation**  
**Recital 2 b(new)**

*Text proposed by the Commission*

*Amendment*

***(2b) In its resolution of 10 June 2011 on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, the Council stated that action should be taken at the level of the European Union in order to strengthen the rights and protection of victims, and called on the Commission to present appropriate proposals to that end. Within that framework, a mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures for victims. According to the resolution, this Regulation, which concerns the mutual recognition of protection measures in civil matters, should complete the mechanism for mutual recognition of protection measures taken in criminal matters envisaged in Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order<sup>1</sup>.***

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<sup>1</sup> OJ L 338, 21.12.2011, p. 2.

*Justification*

*It is important to clarify that this Regulation is part of a legislative package aimed at strengthening the protection of all victims and that it completes the mechanism for mutual recognition of protection measures taken in criminal matters envisaged in the Directive of the European Parliament and of the Council on the European Protection Order.*



## Amendment 4

### Proposal for a regulation Recital 3

*Text proposed by the Commission*

(3) Differences between national rules governing protection measures hamper the ***sound operation of the internal market***. Provisions to ensure rapid and simple recognition and, where applicable, enforcement of protection measures from Member States bound by this Regulation are essential to ensure the protection afforded is maintained when a person travels or moves to another Member State.

*Amendment*

(3) Differences between national rules governing protection measures hamper the ***equal treatment of persons at risk of suffering violence and harassment***. Provisions to ensure rapid and simple recognition and, where applicable, enforcement of protection measures from Member States bound by this Regulation are essential to ensure the protection afforded is maintained when a person travels or moves to another Member State. ***Those provisions should also ensure that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union and Article 21(1) of the Treaty on the Functioning of the European Union, does not result in a loss of their protection.***

## Amendment 5

### Proposal for a regulation Recital 5

*Text proposed by the Commission*

(5) This Regulation applies to protection measures taken in civil ***proceedings*** whatever the nature of the authority, be it a court, a tribunal, an administrative or any other authorities.

*Amendment*

(5) This Regulation applies to protection measures taken in civil ***matters*** whatever the nature of the authority, be it a court, a tribunal, an administrative or any other authorities.

*Justification*

*Protection measures are not necessarily adopted in the course of civil proceedings in the Member States. The different legal systems of the Member States should be taken into*

*account.*

## **Amendment 6**

### **Proposal for a regulation Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

*(7a) Mutual confidence in the administration of justice in the Union and the objective of ensuring and facilitating the free movement of persons within the Union justify procedures for the recognition and/or enforcement of protection measures without any intermediate formalities. As a result, a protection measure taken in a Member State should, for the purposes of recognition and, where applicable, enforcement, be treated as if it had been taken in the Member State in which recognition and/or enforcement is sought. To that end, this Regulation should introduce a European uniform model of certificate to be issued by the Member State of origin on request by the protected person. In order to respect the principle of subsidiarity, that certificate should not replace the internal procedure of the Member States.*

## **Amendment 7**

### **Proposal for a regulation Recital 7 b (new)**

*Text proposed by the Commission*

*Amendment*

*(7b) The abolition of intermediate formalities should be accompanied by necessary safeguards aimed in particular at ensuring full respect of the rights of the defence and the right to a fair trial, as enshrined in Article 6 of the European Convention for the Protection of Human*

***Rights and Fundamental Freedoms and in Article 47 of the Charter of Fundamental Rights of the European Union. To that end, the competent authorities in the Member State of origin should make sure that the certificate is not issued unless the right to a fair trial of the person causing the risk has been guaranteed.***

*Justification*

*This amendment stresses the importance of ensuring the respect of the rights of the defence of the person causing the risk in the context of an automatic mutual recognition of protection measures.*

**Amendment 8**

**Proposal for a regulation**

**Recital 7 c (new)**

*Text proposed by the Commission*

*Amendment*

***(7c) Notwithstanding the right of the protected person to invoke the protection measure directly in another Member State, the authority which issues the certificate should in any event transmit the certificate to the competent authority of the Member State of recognition. This procedure should ensure that the safeguard afforded to the protected person is maintained in any other Member State to which the protected person moves, even when that person has not been able to locate or contact the competent authority in the Member State of recognition.***

*Justification*

*In order to enhance the protection of potential victims it is necessary to establish the obligation for the competent authorities to transmit the certificate to the authority in the second Member State in addition to the right for the victim to directly contact the authority in the second Member State. This will ensure that in all cases the competent authority in the second Member State receives the certificate for the purpose of the recognition of the*

*protection measure.*

## **Amendment 9**

### **Proposal for a regulation**

#### **Recital 8**

*Text proposed by the Commission*

(8) The harmonious functioning of justice requires that irreconcilable decisions should not be pronounced in two Member States. To this end, this *regulation* should provide for a ground for refusal of recognition and/or enforcement ***on application by the person causing the risk*** in case of irreconcilable decisions.

*Amendment*

(8) The harmonious functioning of justice requires that irreconcilable decisions should not be pronounced in two Member States. To this end, this *Regulation* should provide for a ground for refusal of recognition and/or enforcement in case of irreconcilable decisions.

*Justification*

*This amendment reflects the amendments for Article 12.*

## **Amendment 10**

### **Proposal for a regulation**

#### **Recital 9**

*Text proposed by the Commission*

***(9) Mutual trust in the administration of justice in the Union and the aim of ensuring quicker and less costly circulation of protection measures within the European Union justify procedures for the recognition and/or enforcement of such measures without any intermediate formalities. As a result, a protection measure taken in a Member State should, for recognition and, where applicable, enforcement purposes, be treated as if it had been taken in the Member State in which recognition and/or enforcement is sought.***

*Amendment*

***deleted***

*(See amendment for recital 7a)*

## **Amendment 11**

### **Proposal for a regulation**

#### **Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) The certificate should not be susceptible of appeal. However, if the protection measure is suspended or withdrawn in the Member State of origin, the competent authority of that Member State should inform the competent authority of the Member State of recognition thereof, which should immediately suspend or withdraw the recognition and/or enforcement of the protection measure accordingly.***

## **Amendment 12**

### **Proposal for a regulation**

#### **Recital 9 b (new)**

*Text proposed by the Commission*

*Amendment*

***(9b) Given the different legal traditions of the Member States, the protection measure taken in the Member State of origin may not be known in the Member State of recognition. In such cases, the competent authority in the Member State of recognition should, as far as possible, adapt the protection measure to one known under its national law which has equivalent effects and pursues similar aims and interests. The competent authority in the Member State of recognition may apply, in accordance with its national law, civil, administrative or criminal measures.***

## *Justification*

*This amendment aims at giving the reasons for and specifying the scope and content of Article 8. It partly reproduces the wording of Recital 26 and Article 9 of the Directive on the European Protection Order.*

### **Amendment 13**

#### **Proposal for a regulation Recital 12**

*Text proposed by the Commission*

*Amendment*

***(12) In order to facilitate free movement of protection measures within the European Union, this Regulation should introduce a uniform model of certificate and appoint the authority competent to issue it. In order to respect the principle of subsidiarity, this certificate should not replace the internal procedure of the Member States.***

***deleted***

*(See amendment for Recital 7 a new)*

### **Amendment 14**

#### **Proposal for a regulation Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) The European uniform model of certificate should contain the list of Member States which recognise that certificate, in order to facilitate the free movement of persons obtaining a protection measure within the Union and to avoid imposing an additional***

*administrative burden on Member States of origin by requiring them to issue new certificates when protected persons move to another Member State. A uniform model should inter alia facilitate the translation process as well.*

## **Amendment 15**

### **Proposal for a regulation Recital 13**

*Text proposed by the Commission*

*Amendment*

*(13) The certificate should not be subject to appeal. However, if the protection measure is suspended or withdrawn in the first Member State, the competent authority of the second Member State should, on application by the person causing the risk, suspend or withdraw the recognition and/or enforcement of the protection measure.*

*deleted*

*(See amendment for Recital 9 a new)*

## **Amendment 16**

### **Proposal for a regulation Recital 13a (new)**

*Text proposed by the Commission*

*Amendment*

*(13a) Bearing in mind the principle of mutual recognition on which this Regulation is based, all official communications relating to a protection measure should be made, as far as possible, directly between the competent authorities of the Member State of origin and of the Member State of recognition.*

## *Justification*

*This amendment aims at justifying the obligation of direct transmission of information relating to a protection measure between competent authorities, which is established by the amendments to Article 12.*

### **Amendment 17**

#### **Proposal for a regulation Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

*(13b) In the context of implementation of this Regulation, the competent authorities should give appropriate consideration to the needs of victims, notably those of particularly vulnerable persons, such as minors or persons with disabilities, and should take due account of the necessary assistance as proposed by the Member States.*

### **Amendment 18**

#### **Proposal for a regulation Recital 13 c (new)**

*Text proposed by the Commission*

*Amendment*

*(13c) Where information is to be provided under this Regulation to the protected person, or to the person causing the risk, that information should also be provided to the legal representative, guardian or tutor, if any, of the person concerned. Due attention should also be paid to the need for the protected person and the person causing the risk, or their representative, to receive information, as provided for by this Regulation, in a language they understand.*



## *Justification*

*This Regulation aims at strengthening the rights of both the protected person and the person causing the risk by foreseeing the case they are minors or legally incapacitated and by ensuring that they understand all information they receive. This amendment reproduces the wording of Recital 13 of the Directive on the European Protection Order.*

### **Amendment 19**

#### **Proposal for a regulation Recital 13 d (new)**

*Text proposed by the Commission*

*Amendment*

***(13d) In the context of implementation of this Regulation, Member States should take the necessary steps to ensure that the protected person does not have to meet the financial costs connected with recognition of the protection measure in another Member State.***

### **Amendment 20**

#### **Proposal for a regulation Recital 13 e (new)**

*Text proposed by the Commission*

*Amendment*

***(13e) Member States should foster as much direct contact as possible between the competent authorities in the context of implementation of this Regulation, and should promote regular training for judicial authorities and other competent authorities likely to come into contact with victims or potential victims, so that they can offer them adequate assistance.***

## Amendment 21

### Proposal for a regulation Recital 13 f (new)

*Text proposed by the Commission*

*Amendment*

***(13f) Personal data processed under this Regulation should be protected in accordance with national laws implementing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>.***

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<sup>1</sup>OJ L 281, 23.11.1995, p. 31.

## Amendment 22

### Proposal for a regulation Chapter I – title

*Text proposed by the Commission*

*Amendment*

Scope, definitions and jurisdiction

***Objective***, scope, definitions and jurisdiction

## Amendment 23

### Proposal for a regulation Article - 1(new)

*Text proposed by the Commission*

*Amendment*

***Article -1***

***Objective***

*This Regulation lays down rules allowing an authority in a Member State in which a protection measure has been taken with a view to protecting a person when serious reasons exist to consider that person's life, physical or psychological integrity and dignity, personal liberty or sexual integrity to be at risk, to issue a certificate enabling a competent authority in another Member State to continue the protection of the person concerned in the territory of that other Member State.*

#### *Justification*

*It is essential to define the objective of this Regulation. This amendment is inspired by the wording of Article 1 of the Directive on the European Protection Order.*

#### **Amendment 24**

##### **Proposal for a regulation Article 1**

###### *Text proposed by the Commission*

This Regulation applies to protection measures taken in civil matters whatever the nature of the authority. It does not apply to protection measures covered by Regulation (EC) No 2201/2003.

###### *Amendment*

This Regulation applies to protection measures taken in civil matters whatever the nature of the authority ***issuing the protection measure***. It does not apply to protection measures covered by Regulation (EC) No 2201/2003 ***or to those covered by Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order<sup>1</sup>, in order to prevent overlapping between the civil law and criminal law systems.***

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<sup>1</sup> OJ L 338, 21.12.2011, p. 2.

## Amendment 25

### Proposal for a regulation Article 2 – point a

#### *Text proposed by the Commission*

(a) 'protection measure' means any decision, whatever it may be called, of a preventive and temporary nature taken by an authority in a Member State in accordance with its national law with a view to protecting **a** person when serious reasons exist to consider the person's physical and/or psychological integrity **or** liberty to be at risk. It shall include measures ordered without the person causing the risk being summoned to appear.

*The following are notably* protection measures:

- (i) ***an obligation not to enter*** certain localities, places or defined areas where the protected person resides, works or that he visits; or
- (ii) ***an obligation not to enter into*** contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or
- (iii) ***an obligation not to approach*** the protected person closer than a prescribed distance; or
- (iv) a decision attributing the exclusive use of the common housing of two persons to the protected person.

#### *Amendment*

(a) 'protection measure' means any decision, whatever it may be called, of a preventive and temporary nature taken by an authority in a Member State in accordance with its national law with a view to protecting ***an individual*** person when serious reasons exist to consider the person's ***life***, physical and/or psychological integrity, ***dignity, personal*** liberty ***or sexual integrity*** to be at risk. It shall include measures ordered without the person causing the risk being summoned to appear.

*(If the part of this amendment concerning the words "person's life, ...or sexual integrity" is adopted, corresponding modifications will need to be made throughout the text)*

Protection measures ***may include one or more of the following obligations or prohibitions:***

- (i) ***a prohibition from entering and/or remaining in*** certain localities, places or defined areas where the protected person resides, works or that he visits; or
- (ii) ***a prohibition or regulation of*** contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or
- (iii) ***a prohibition or regulation on approaching*** the protected person closer than a prescribed distance; or
- (iv) a decision attributing the exclusive use of the common housing of two persons to the protected person; ***or***
- (iva) ***any other prohibitions or regulations imposed in order to guarantee the protection of the protected person.***

## **Amendment 26**

### **Proposal for a regulation**

#### **Article 2 – point a – subparagraph 2 – point iv a (new)**

*Text proposed by the Commission*

*Amendment*

*(iva) a prohibition forbidding publication, under the terms of Directive 95/46/EC, of the personal data of protected individuals without their consent.*

## **Amendment 27**

### **Proposal for a regulation**

#### **Article 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

*(aa) 'protected person' means the natural person who is the object of the protection stemming from a protection measure adopted in the Member State of origin.*

### *Justification*

*This amendment repeats the wording of the definition of protected person laid down in the directive on the European Protection Order.*

## **Amendment 28**

### **Proposal for a regulation**

#### **Article 2 – point a b (new)**

*Text proposed by the Commission*

*Amendment*

*(ab) 'person causing the risk' means the natural person against whom a protection measure imposing one or more of the obligations or prohibitions referred to in*

*point (a) is or has been adopted.*

*Justification*

*This amendment partly reproduces the wording of the definition of person causing danger laid down in the directive on the European Protection Order.*

**Amendment 29**

**Proposal for a regulation  
Article 5 – paragraph 1**

*Text proposed by the Commission*

1. A party who wishes to invoke in another Member State a protection *order recognised pursuant to this Article* shall provide the competent authorities of the Member State of recognition with the certificate issued in accordance with this Article.

*Amendment*

1. A party who wishes to invoke in another Member State a protection *measure* shall provide the competent authorities of the Member State of recognition with the certificate issued in accordance with this Article.

**Amendment 30**

**Proposal for a regulation  
Article 5 – paragraph 3 – point ii**

*Text proposed by the Commission*

(ii) at the request of the protected person in any other case; *when adopting a protection measure, the competent authority of the Member State of origin shall inform the protected person of the possibility of requesting a certificate as established by this Regulation.*

*Amendment*

(ii) at the request of the protected person in any other case.

*Justification*

*See amendment for Article 5, paragraph 3 a (new).*

**Amendment 31**

**Proposal for a regulation  
Article 5 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. When a competent authority adopts a protection measure, it shall inform the protected person about the possibility of requesting a certificate in the event that he or she decides to leave for another Member State. The competent authority shall advise the protected person to submit the request before leaving the territory of the Member State of origin.***

*Justification*

*See amendment for Article 5, paragraph 3, point (ii). This amendment aims at strengthening the protection of the potential victim, who shall be informed and advised about the possibility to request a certificate when moving to another Member State. The second sentence of the paragraph reproduces the wording of Article 6, paragraph 5, second sentence of Directive on the European Protection Order.*

**Amendment 32**

**Proposal for a regulation  
Article 5 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. When a competent authority issues a certificate in accordance with paragraph***

***3, it shall inform the protected person as to which authorities are competent to recognise and/or enforce the protection measure in the Member State of recognition.***

*Justification*

*This amendment aims at strengthening the protection of the potential victim. This amendment takes into consideration the fact that the potential victim moving to another Member State might not know which authorities she or he has to contact in order to invoke the protection measure.*

**Amendment 33**

**Proposal for a regulation**

**Article 5 – paragraph 3 c (new)**

*Text proposed by the Commission*

*Amendment*

***3c. Notwithstanding paragraph 1, when a competent authority issues a certificate in accordance with paragraph 3, it shall immediately transmit that certificate to the competent authority of the Member State of recognition.***

*Justification*

*In order to avoid a situation where the potential victim encounters obstacles of whatever nature (language barriers, administrative barriers etc..) in invoking the protection measure in the Member State to which she or he moves, this amendment imposes an obligation upon the authority, issuing the certificate, to transmit it automatically and directly to the competent authority in the second Member State. This procedure will ensure that the protection of the potential victim is maintained in the second Member State in all circumstances.*



## Amendment 34

### Proposal for a regulation Article 5 – paragraph 4

*Text proposed by the Commission*

4. *The competent authorities of the Member State of recognition may, where necessary, request a transliteration or a translation of the content of the certificate, in accordance with Article 15.*

*Amendment*

4. Where necessary, the content of the certificate *shall be transliterated or translated by the competent authority of the Member State of origin into the official language or one of the official languages of the Member State of recognition or any other language that the Member State of recognition has indicated it can accept.*

### *Justification*

*This amendment aims at strengthening the protection of the potential victim. The protected person shall not bear the costs of translation of the certificate. It is therefore necessary to amend the text in order to establish that the translation of the certificate shall be provided by the authority, which adopted the protection measure and issued the certificate.*

## Amendment 35

### Proposal for a regulation Article 7 – paragraph 2

*Text proposed by the Commission*

2. No appeal shall lie against the issuing of a certificate.

*Amendment*

2. No appeal shall lie against the issuing of a certificate. *Procedural errors shall be rectified in accordance with paragraph 1 of this Article.*

## Amendment 36

### Proposal for a regulation Article 8

*Text proposed by the Commission*

If a protection measure is not known in the Member State of recognition, the competent authority in that Member State shall, to the extent possible, adapt the protection measure to one known under its own law which has equivalent effects attached to it and pursues similar aims and interests.

*Amendment*

If a protection measure is not known in the Member State of recognition, the competent authority in that Member State shall, to the extent possible, adapt the protection measure to one known under its own law which has equivalent effects attached to it and pursues similar aims and interests, ***and which also guarantees the protected person the same level of protection.***

**Amendment 37**

**Proposal for a regulation  
Article 12 – paragraph 1**

*Text proposed by the Commission*

1. The competent authority in the Member State of recognition may, on application by the person causing the risk, refuse the recognition of the protection measure taken by the court of origin if it is irreconcilable with a decision taken in the Member State of recognition.

*Amendment*

1. The competent authority in the Member State of recognition may, ***either*** on application by the person causing the risk ***or of its own motion***, refuse the recognition of the protection measure taken by the court of origin if it is irreconcilable with a decision taken in the Member State of recognition.

*Justification*

*According to Recital (8) the refusal of recognition in case of irreconcilable decisions is justified by the need for ensuring the harmonious functioning of justice. Therefore, this ground of refusal should be applied by the competent authority ex officio as well.*

## **Amendment 38**

### **Proposal for a regulation**

#### **Article 12 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The recognition and/or enforcement of a protection measure may not be refused on the ground that the law of the Member State of recognition does not allow for such a measure based on the same facts.***

*Justification*

*See amendment for Article 12, paragraph 4. It is more logical to have this paragraph immediately after the paragraph on the ground of refusal.*

## **Amendment 39**

### **Proposal for a regulation**

#### **Article 12 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Where the competent authority in the Member State of recognition refuses recognition of the protection measure in accordance with paragraph 1, it shall immediately inform the competent authority of the Member State of origin of that refusal.***

*Justification*

*It seems appropriate that the authority in the Member State of origin should be informed about the possible refusal of recognition of the protection measure in the second Member State.*

## Amendment 40

### Proposal for a regulation Article 12 – paragraph 2

*Text proposed by the Commission*

2. If the **protection measure is suspended or withdrawn in** the Member State of origin, the competent authority of the Member State of recognition **shall, on application by the person causing the risk, suspend or withdraw the recognition and, when applied, the enforcement of the protection measure. The application shall be submitted using the form set out in Annex II.**

*Amendment*

2. If the **competent authority of the Member State of origin suspends or withdraws the protection measure, it shall immediately inform** the competent authority of the Member State of recognition **of that suspension or withdrawal.**

*Justification*

*The person causing the risk should not be expected to make an application for suspension or withdrawal to the competent authority in the Member State of recognition. This is impractical and the onus should not be on the person to apply. For these reasons, this amendment establishes, in line with the previous amendments, the obligation of direct transmission of information between competent authorities.*

## Amendment 41

### Proposal for a regulation Article 12 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. If the protection measure is suspended or withdrawn in the Member State of origin, the competent authority of the Member State of recognition shall suspend or withdraw the recognition and, as the case may be, the enforcement of the protection measure as soon as it has been duly informed by the competent authority of the Member State of origin in accordance with paragraph 2.**

## Amendment 42

### Proposal for a regulation Article 12 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. The recognition of a protection measure may not be refused because the law of the Member State of recognition does not allow for such a measure based on the same facts.**

**deleted**

*(See amendment for Article 12, paragraph 1a)*

## Amendment 43

### Proposal for a regulation Article 13 – paragraph 1 – introductory wording

*Text proposed by the Commission*

*Amendment*

1. The competent authorities of the Member State of origin shall, without delay and according to the law of that Member State, bring to the notice of the person causing the risk and to the protected person:

1. The competent authorities of the Member State of origin shall, without delay and according to the law of that Member State, bring to the notice of the person causing the risk and to the protected person **and, where appropriate, his or her legal representative, guardian or tutor:**

## Amendment 44

### Proposal for a regulation Article 13 – paragraph 1 – point iv

*Text proposed by the Commission*

*Amendment*

(iv) any suspension **or** withdrawal of the protection measure.

(iv) any suspension, withdrawal **or review** of the protection measure.

## Amendment 45

### Proposal for a regulation

#### Article 13 – paragraph 2 – introductory wording

*Text proposed by the Commission*

2. Upon reception of the certificate pursuant to Article 5 ***provided by the protected person***, the competent authorities of the Member State of recognition shall, without delay and where necessary according to the rules of Regulation (EC) No 1393/2007, bring to the notice of the person causing the risk and to the protected person:

*Amendment*

2. Upon reception of the certificate pursuant to Article 5, the competent authorities of the Member State of recognition shall, without delay and where necessary according to the rules of Regulation (EC) No 1393/2007 ***of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)***<sup>1</sup>, bring to the notice of the person causing the risk and to the protected person ***and, where appropriate, his or her legal representative, guardian or tutor, in a language which they understand:***

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<sup>1</sup> OJ L 324, 10.12.2007, p. 79.

## Amendment 46

### Proposal for a regulation

#### Article 13 – paragraph 2 – point i a (new)

*Text proposed by the Commission*

*Amendment*

***(ia) if applicable, the protection measure adopted in accordance with Article 8;***

#### *Justification*

*The obligation to bring to the notice of the person causing the risk and the protected person any information related to the protection measure shall include the information about the measure adopted to adapt the unknown foreign protection measure to one known under the*

*national law of the Member State of recognition.*

#### **Amendment 47**

##### **Proposal for a regulation**

##### **Article 13 – paragraph 2 – point iv**

*Text proposed by the Commission*

(iv) any suspension or withdrawal of the protection measure.

*Amendment*

(iv) any ***refusal of recognition and/or enforcement***, suspension or withdrawal of the protection measure.

#### *Justification*

*See justification of the amendment for Article 13, paragraph 2, point (1a).*

#### **Amendment 48**

##### **Proposal for a regulation**

##### **Article 13 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. When bringing to the notice of the person causing the risk the information referred to in paragraphs 1 and 2, the competent authorities of the Member State of origin and those of the Member State of recognition shall be particularly attentive to the fact that it is not in the interests of the protected person to have his or her address or other personal details divulged unless this is necessary for the purposes of enforcement of the protection measure.***

## Amendment 49

### Proposal for a regulation Article 15

*Text proposed by the Commission*

*Amendment*

#### *Article 15*

*deleted*

#### *Transliteration or translation*

*When a transliteration or translation is required under this Regulation, such transliteration or translation shall be into the official language or one of the official languages of the Member State of recognition or any other language that the Member State of recognition has indicated it can accept. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.*

*(See amendment for Article 5, paragraph 4)*

## Amendment 50

### Proposal for a regulation Article 16

*Text proposed by the Commission*

*Amendment*

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be **entitled**, in any proceeding relating to the *enforceability* of the protection measure, to benefit from **the most favourable** legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of recognition.

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be **considered**, in any proceeding relating to the *enforceability* of the protection measure, **for entitlement** to benefit from legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of recognition, **as decided by that Member State**.

## Amendment 51



**Proposal for a regulation**  
**Article 19 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 19a**

**Data collection**

*In order to facilitate evaluation of the application of this Regulation, Member States shall communicate to the Commission relevant data relating to the application of national procedures on the issuing of certificates referred to in Article 5 and the transmission thereof between competent authorities. Those data shall include, at least, information on the number of protection measures and certificates requested, issued and/or recognised and on the number of certificates refused, suspended and/or withdrawn, as well as the reasons for such refusal and/or withdrawal, with due regard for the fundamental principles of privacy and the protection of personal data.*

**Amendment 52**

**Proposal for a regulation**  
**Article 20**

*Text proposed by the Commission*

*Amendment*

By [*five* years from the date of application in Article 23] at the latest, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the application of this Regulation. If necessary, the report shall be accompanied by proposals for adaptation.

By [*four* years from the date of application in Article 23] at the latest, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the application of this Regulation ***and on the interaction between this Regulation and Directive 2011/99/EU***. If necessary, the report shall be accompanied by proposals for adaptation.

## Amendment 53

### Proposal for a regulation Article 21 – paragraph 1

*Text proposed by the Commission*

Within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC, the Member States shall provide a description of the national rules and procedures concerning protection measures, including authorities competent for recognition and/or enforcement with a view to making it available to the public.

*Amendment*

Within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC, the Member States shall provide a description of the national rules and procedures concerning protection measures, including authorities competent for recognition and/or enforcement with a view to making it available to the public.  
***Information concerning individual cases shall remain confidential.***

## Amendment 54

### Proposal for a regulation Article 22 – paragraph 1

*Text proposed by the Commission*

By [1 year before the entry into force of this Regulation], **the** Member State shall communicate to the Commission

(a) the authorities having competence in the matters falling within the scope of this Regulation;

(b) the languages accepted for translations of the of the certificate as referred to in **Article 15**.

*Amendment*

By [1 year before the entry into force of this Regulation], **each** Member State shall communicate to the Commission

(a) the ***names and contact details of the*** authorities having competence in the matters falling within the scope of this Regulation;

(b) the languages accepted for translations of the certificate as referred to in **Article 5(4)**.

**Amendment 55**

**Proposal for a regulation**  
**Annex I – Title**

*Text proposed by the Commission*

*Amendment*

*Annex I*

*Annex*

*Justification*

*This amendment is justified by the deletion of Annex II (See amendment for Annex II)*

**Amendment 56**

**Proposal for a regulation**  
**Annex II**

*Text proposed by the Commission*

*Amendment*

*Annex II*

*Annex deleted*

(See amendments for Article 12)

## PROCEDURE

<b>Title</b>	Mutual recognition of protection measures in civil matters			
<b>References</b>	COM(2011)0276 – C7-0128/2011 – 2011/0130(COD)			
<b>Committees responsible</b> Date announced in plenary	JURI 7.6.2011	FEMM 7.6.2011		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	LIBE 7.6.2011			
<b>Rapporteur(s)</b> Date appointed	Carmen Romero López 12.7.2011			
<b>Rule 51 – joint committee meetings</b> Date announced in plenary				
<b>Discussed in committee</b>	19.9.2011	11.10.2011	23.11.2011	12.1.2012
<b>Date adopted</b>	12.1.2012			
<b>Result of final vote</b>	+: –: 0:	48 1 1		
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Sonia Alfano, Roberta Angelilli, Vilija Blinkevičiūtė, Arkadiusz Tomasz Bratkowski, Philip Claeys, Frank Engel, Kinga Gál, Kinga Gőncz, Nathalie Griesbeck, Sylvie Guillaume, Salvatore Iacolino, Sophia in 't Veld, Lívía Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Svetoslav Hristov Malinov, Véronique Mathieu, Anthea McIntyre, Nuno Melo, Louis Michel, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Birgit Sippel, Csaba Sógor, Renate Sommer, Kyriacos Triantaphyllides, Wim van de Camp, Axel Voss, Renate Weber, Josef Weidenholzer, Auke Zijlstra			
<b>Substitute(s) present for the final vote</b>	Elena Oana Antonescu, Michael Cashman, Anna Maria Corazza Bildt, Ioan Enciu, Nadja Hirsch, Stanimir Ilchev, Franziska Keller, Jean Lambert, Marian-Jean Marinescu, Mariya Nedelcheva, Hubert Pirker, Zuzana Roithová, Raül Romeva i Rueda, Kārlis Šadurskis, Bogusław Sonik, Cecilia Wikström			

## PROCEDURE

<b>Title</b>	Mutual recognition of protection measures in civil matters
<b>References</b>	COM(2011)0276 – C7-0128/2011 – 2011/0130(COD)
<b>Date submitted to Parliament</b>	18.5.2011
<b>Committees responsible</b> Date announced in plenary	JURI                      FEMM 7.6.2011                      7.6.2011
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	LIBE 7.6.2011
<b>Rapporteur(s)</b> Date appointed	Antonio López-      Antonya Istúriz White      Parvanova 25.1.2012              25.1.2012
<b>Rule 51 – joint committee meetings</b> Date announced in plenary	19.1.2012
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<b>Result of final vote</b>	+:                      32 –:                      0 0:                      2
<b>Members present for the final vote</b>	Raffaele Baldassarre, Regina Bastos, Edit Bauer, Luigi Berlinguer, Sebastian Valentin Bodu, Emine Bozkurt, Edite Estrela, Marielle Gallo, Iratxe García Pérez, Lidia Joanna Geringer de Oedenberg, Mikael Gustafsson, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Sajjad Karim, Antonio López-Istúriz White, Astrid Lulling, Alajos Mészáros, Elisabeth Morin-Chartier, Norica Nicolai, Siiri Oviir, Antonya Parvanova, Bernhard Rapkay, Evelyn Regner, Raül Romeva i Rueda, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Britta Thomsen, Cecilia Wikström, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Kartika Tamara Liotard, Axel Voss
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Carmen Romero López
<b>Date tabled</b>	26.3.2013