



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 21 April 2010 (23.04)
(OR. en,it)**

8860/10

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

**INST 126
COPEN 107
CODEC 346
PARLNAT 7**

COVER NOTE

from: Secretary-General of the Senate of the Republic of Italy
date of reception: 15 April 2010
to: Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union

Subject: Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Spain, the Republic of Estonia, the French Republic, the Republic of Hungary, the Italian Republic, the Republic of Poland, the Republic of Portugal, Romania, the Republic of Finland and the Kingdom of Sweden for a Directive of the European Parliament and of the Council on the European Protection Order
[PE-CONS 2/10 COPEN 23 CODEC 42]
- Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached a copy of the letter indicating that the abovementioned initiative complies with the principle of subsidiarity.

Senate of the Republic
The Secretary-General

Rome, 14 April 2010

Sir,

On behalf of the President of the Senate of the Italian Republic, I enclose herewith the comments of the Committee on EU Policies on the following acts referred to it for a reasoned opinion regarding the application of the principles of subsidiarity and proportionality:

- Initiative by a group of Member States for adoption of a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings (PE-CONS 1/10);
- Initiative by a Group of Member States for adoption of a Directive of the European Parliament and of the Council on the European Protection Order (PE-CONS 2/10);
- Proposal for a Regulation of the European Parliament and of the Council concerning European Union financial contributions to the International Fund for Ireland (2007-2010) (COM(2010) 12 final)

(Complimentary close.)

Mr Pierre de Boissieu
Secretary-General
of the Council of the European Union

1048 BRUSSELS

COMMENTS AND PROPOSALS BY THE 14TH STANDING COMMITTEE

(EU Policies)

under Rule 144(1) of the Senate Rules

(Drafter: Mauro Maria MARINO)

Rome, 3 March 2010

Act assessed:

Initiative for a Directive of the European Parliament and of the Council on the European Protection Order (PE/CONS 2/10)

The 14th Standing Committee on EU Policies, having examined the above act,

whereas the proposal under examination seeks to implement the objectives set out in the Stockholm Programme to consolidate freedom, security and justice in the European Union, approved by the European Council at its meeting on 10 and 11 December 2009, and incorporates the victim protection objectives already established in the programmes adopted in Tampere and The Hague;

considering that combating every form of violence has been a constant concern of the European Parliament, as reflected in its resolution of 16 September 1997 on a campaign for zero tolerance of all forms of violence against women and its resolution of 2 February 2006 on the current situation in combating violence against women and any future action;

noting that the directive is intended to incorporate existing instruments dealing with the protection of persons in danger, such as Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, and Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;

whereas Article 82(1) of the Treaty on the Functioning of the European Union states that judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions, and whereas the Lisbon Treaty made approximation of the

Member States' criminal laws and regulations, both at procedural level and at the level of substantive criminal law, subject to the ordinary legislative procedure;

whereas in a common area of justice without internal borders it is necessary to ensure that the protection provided to a person in one Member State is maintained and continued in any other Member State to which the person moves or has moved;

within the terms of its remit, approves the proposal, and wishes to make the following points:

1. The proposal complies with the principle of subsidiarity inasmuch as Member States are unable to lay down rules of their own regarding the application and validity of their victim protection measures in another Member State and the aim of uniform recognition by each Member State of measures adopted by any other can be achieved solely by joint action.
2. The proposal complies with the principle of proportionality inasmuch as it does not provide for harmonisation of the measures envisaged by the EU Member States, but instead introduces a mechanism whereby the protection enjoyed by a person in one Member State may be extended to another Member State to which that person has gone, under the legislation of the latter State and in full compliance with its legal system.
3. The legal basis for the proposal appears to be correct inasmuch as Article 82(1)(d) of the Treaty on the Functioning of the European Union (TFEU) states that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions. Furthermore, the proposal was submitted under Article 76(b) of the TFEU, which states that acts relating to judicial cooperation in criminal matters and to police cooperation may be adopted either on a proposal from the Commission or on the initiative of a quarter of the Member States.
4. As regards the merits of the proposal, the Committee welcomes the fact that some Member States have availed themselves of the power of initiative conferred by the new Treaty to set out rules whereby the protection stemming from a protection measure adopted according to the law of one Member State ("the issuing State") can be extended to another Member State to which the protected person moves ("the executing State"), regardless of the type or duration of the obligations or prohibitions contained in the protection measure concerned.
5. The Committee endorses the creation of a legislative instrument capable of filling the existing gap and offering an efficient, Europe-wide mechanism to protect victims and guarantee the

right of those protected to freedom of movement and residence.

6. However, further consideration should be given to the question of the choice of a three-stage approach (requiring an internal protection measure, a European Protection Order, and a national protection measure adopted by the executing State), rather than the more traditional judicial cooperation route of mutual recognition, which in terms of this proposal was deemed incompatible with the need to offer victims an immediate response.

Mauro Maria Marino

=====