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COVER NOTE

from:	The President of the Bundesrat of the Federal Republic of Germany
to:	Miguel Ángel Moratinos, President of the Council of the European Union
date of receipt:	6 April 2010
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 [ref. PE-CONS 2/10 COPEN 23 CODEC 42] – Reasoned opinion in accordance with Article 6 of the Protocol (No 2) on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached a translation of the second part of the above letter.

The President of the Bundesrat

To the President of the Council of the European Union,
Mr Miguel Ángel Moratinos
Rue de la Loi 175
1048 Brussels
Belgium

Berlin, 26 March 2010

Procedure pursuant to Protocol (No 2) to the Treaty on European Union and the Treaty on the Functioning of the European Union on the application of the principles of subsidiarity and proportionality

**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**

Sir,

Please find attached a reasoned opinion concerning the application of the principle of subsidiarity adopted by the Bundesrat at its 868th meeting on 26 March 2010.

Yours faithfully,

{sig.}

26 March 2010

**Decision
by the Bundesrat**

**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**

At its 868th meeting on 26 March 2010, pursuant to §§3 and 5 EUZBLG (law on cooperation between the Federation and the Länder in EU matters), the Bundesrat decided to adopt the following opinion:

1. The Bundesrat welcomes the approach in the proposed Directive of offering the victims of violence and threats the opportunity to make a protection order already obtained applicable in another Member State without the need for completely new proceedings in that State.
2. The Bundesrat considers it doubtful whether the proposed Directive in question observes the principle of proportionality (Article 5(4) TEU). The appropriateness of the proposed measure is already questionable as the comparatively complicated procedure might not guarantee that the aim of granting endangered persons protection more quickly and easily in the Member State to which they wish to go will be achieved. Proportionality concerns may

*) First Decision by the Bundesrat of 26 March 2010 (opinion on application of the principle of subsidiarity), BR document 43/10 (Decision)

also arise from the fact that the number of cases to which a European protection order might be relevant in practice cannot be predicted. If it were to apply only to a numerically small number of cases, the considerable implementation effort, which could in some cases lead to substantive amendments to Member States' legal systems, might no longer seem commensurate.

3. A description of the scope of the Directive, which is linked to the commission of a criminal offence or at any rate criminal proceedings, does not make it certain beyond doubt that an order issued by a civil court under the German Protection Against Violence Act (GewSchG) can form the basis of a European protection order. If this is possible from the standpoints of competence and proportionality, the Bundesrat takes the view that in the interests of clarity and in order to ensure effective protection for German victims, the scope should make it clear that a deliberate unlawful act against life, physical or mental integrity, personal freedom or sexual self-determination has been committed or was intended to be committed. The Bundesrat further points out that a need for protection may exist not only in relation to orders under the Protection Against Violence Act but also in the case of comparable orders on the basis of §1361b(2) or §1666(4) BGB (German civil code). Moreover, the criminal provision in §4 of the former Act does not apply to such orders.

4. The proposed Directive does not make it sufficiently clear which State is responsible for criminal prosecution of violations of a European protection order in the executing State. The Bundesrat is therefore in favour of transferring full responsibility for law enforcement to the State in which a protection measure is violated. This avoids both the territorial scope of the criminal law of the issuing State being extended to the territory of the executing State and, because another constituent element of an offence was carried out at the same time (e.g. physical injury or threat), a penalty failing to be imposed owing to withdrawal of prosecution. Prosecution in two separate sets of proceedings would in addition lead to a

doubling of the costs (falling to the States) of the investigation and criminal proceedings and to a double burden on the victim, who would in each case have to appear as a witness.

5. To improve practitioners' understanding the Bundesrat recommends that the translation procedure make it clear that translation into the language of the executing State is to be carried out and paid for by the issuing State.
6. The Bundesrat points out that the question of the relationship to other potentially relevant EU legislative acts is not covered with the clarity required for practical application of the law. The current wording to the effect that other legal acts are to remain unaffected ("shall not affect") does not make it sufficiently clear whether other acts are to be excluded or whether a number of legislative acts are to apply in conjunction.
7. In considering the implementation deadline it should be borne in mind whether further EU legal acts anticipated in the area of victim protection will also give rise to implementation requirements. Where necessary it should be ensured that implementation measures can be adopted together and coordinated.

