

Regulation on the Mutual Recognition of Protection Measures in Civil Matters

In June 2011 the European Council adopted a Resolution entitled “Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings”, immediately published (OJ C 187, June 2011, 28th). I might of course be mistaken, but it seems to me that both the Resolution and its immediate consequences in the civil realm have gone largely unnoticed . Let’s fill (if only a bit) the gap.

The document starts reminding that in the Stockholm programme “An open and secure Europe serving the citizen”, the European Council had stressed the importance to provide special support and legal protection to those who are most vulnerable, such as persons subjected to repeated violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents. In the same vein, responding to the Stockholm programme, the European Commission has proposed a package of measures on victims of crime including a Regulation on the mutual recognition of protection measures in civil matters [Com(2011) 276 *final*, May 2011, 18]. The Regulation intends to help preventing harm and violence and ensure that victims who benefit from a protection measure taken in one Member State are provided with the same level of protection in other Member States, should they move or travel there; and that protection be awarded without the victim having to go through additional procedures. In order to ensure a quick, cheap and efficient mechanism of circulation of protection measures in the European Union, the *rationale* of Council Regulation (EC) No 2201/2003 of 27 November 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 II-bis’), and in particular Articles 41 and 42 (therefore automatic recognition and the abolition on intermediate procedures such as exequatur) thereof, has been followed.

The fact that the proposal follows the *rationale* of existing EU instruments on judicial cooperation in civil and commercial matters implies that many provisions

are similar or equal to the correspondent articles in the mentioned legislation. This is not a problem in itself; it might be, nevertheless, as certain protection measures are already covered by the Brussels I and Brussels II-bis Regulations. It is therefore important to clarify the articulation of the proposal with these regulations. According to the Commission, as the new Regulation establishes special rules in relation to protection measures, following a general principal of law it shall supersede the general rules set out by Brussels I. As for the Regulation Brussels II-bis, the aim of which is to centralise all proceedings relating to a given divorce or legal separation the situation is different: the proposal must not jeopardise rules governing jurisdiction and the recognition of judgments contained in the Brussels II-bis Regulation by offering the possibility to seize the jurisdiction of another Member State as regards the protection measures taken in the context of the ongoing proceedings. For this reasons, all protection measures entering into the scope of Brussels II-bis shall continue to be governed by this instrument. Examples of measures that do not fall under the application of Brussels II-bis are protection measures which would concern a couple which has not been married, same sex partners or neighbours.

The proposal provides for a speedy and efficient mechanism to ensure that the Member State to which the person at risk moves will recognise the protection measure issued by the Member State of origin without any intermediate formalities. A standardised certificate issued by the competent authority of this Member State, either ex-officio or on request of the protected person, will contain all information relevant for the recognition. The beneficiary of the measure will contact the competent authorities in the second Member State and provide them with the certificate. The competent authorities of the second Member State will notify the person causing the risk about the geographical extension of the foreign protection measure, the sanctions applicable in case of its violation and, where applicable, ensure its enforcement.