

SUBSIDIARY LEGISLATION 9.21**EUROPEAN PROTECTION ORDER (EXECUTION)
REGULATIONS**

22nd August, 2014

LEGAL NOTICE 294 of 2014.

1. The title of these regulations is the European Protection Order (Execution) Regulations. Citation.

2. In these regulations, unless the context otherwise requires - Definitions.

"the Arrangement" means the Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order;

"certificate" means the form, as contained in the Annex to the Arrangement, purporting to reproduce details setting out the information required by the same form, set out in Schedule 1;

"court" means a court of criminal jurisdiction;

"European protection order" means a decision, taken by a judicial or equivalent authority of a Member State in relation to a protection measure, on the basis of which a judicial or equivalent authority of another Member State takes any appropriate measure or measures under its own national law with a view to continuing the protection of the protected person;

"the European Union" means the European Union as referred to in the Treaty;

"executing State" means the Member State to which a European protection order has been forwarded with a view to its recognition;

"issuing State" means the Member State in which a protection measure has been adopted that constitutes the basis for issuing a European protection order;

"person causing danger" means the natural person on whom one or more of the prohibitions or restrictions referred to in regulation 6 have been imposed;

"protected person" means a natural person who is the object of the protection resulting from a protection measure adopted by the issuing State;

"protection measure" means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the prohibitions or restrictions referred to in regulation 6 are imposed on a person causing danger in order to protect a protected person against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity;

Cap. 446.	"State of supervision" means the Member State to which a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, to which reference is made in the Probation Act, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA to which reference is made in the Decisions on Supervision Measures (Execution in the European Union) Regulations, has been transferred;
S.L. 9.19	"the Treaty" shall have the same meaning assigned to it by article 2 of the European Union Act.
Cap. 460.	
Limitation.	3. These regulations shall be limited to the transmission and execution of European Protection orders between Malta and a Member State of the European Union, which has implemented the Arrangement, and shall apply to European protection orders received in Malta after the 11th January 2015.
Competent authorities.	4. For the purposes of these regulations: (a) the Attorney General shall be competent to receive a European protection order issued in the issuing State and to transmit to the executing State European protection orders issued in Malta by a court of criminal jurisdiction; and (b) a court of criminal jurisdiction shall be competent to issue a European protection order.
Mode of transmission.	5. (1) A European protection order shall be transmitted with the certificate provided for in Schedule 2 containing the information prescribed therein, by any means capable of producing a written record under conditions allowing the executing State to establish authenticity. (2) The European protection order and the certificate shall be in either the Maltese or English language.
Protection measure under national law.	6. A European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions: (a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits; (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; or (c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.
Form and content.	7. A European protection order shall be issued in accordance with the certificate set out in Schedule 1 and shall, in particular, contain the following information: (a) the identity and nationality of the protected person, as well as the identity and nationality of the guardian or representative if the protected person is a minor or is legally incapacitated;

- (b) the date from which the protected person intends to reside or stay in the executing State, and the period or periods of stay, if known;
- (c) the name, address, telephone and fax numbers and e-mail address of the authority of the issuing State;
- (d) identification (for example, through a number and date) of the legal act containing the protection measure on the basis of which the European protection order is issued;
- (e) a summary of the facts and circumstances which have led to the adoption of the protection measure in the issuing State;
- (f) the prohibitions or restrictions imposed, in the protection measure underlying the European protection order, on the person causing danger, their duration and the indication of the penalty, if any, in the event of the breach of any of the prohibitions or restrictions;
- (g) the use of a technical device, if any, that has been provided to the protected person or to the person causing danger as a means of enforcing the protection measure;
- (h) the identity and nationality of the person causing danger, as well as that person's contact details;
- (i) where such information is known by the competent authority of the issuing State without requiring further inquiry, whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State;
- (j) a description, where appropriate, of other circumstances that could have an influence on the assessment of the danger that confronts the protected person;
- (k) an express indication, where applicable, that a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred to the State of supervision, when this is different from the State of execution of the European protection order, and the identification of the competent authority of that State for the enforcement of such a judgment or decision.

8. Where the Attorney General receives a European protection order within the meaning of these regulations, the Attorney General shall, in his own individual judgement and subject to the provisions of regulation 9, issue a certificate to the effect that the authority which issued a European protection order has the function of issuing European protection orders and such certificate shall be conclusive of its contents.

Certificate by
Attorney General.

Grounds for non-recognition.

9. (1) A European protection order shall not be recognised by a court of criminal jurisdiction if:

- (a) the European protection order is not complete or has not been completed within the time limit set by the court;
- (b) the requirements set out in regulation 6 have not been met;
- (c) the protection measure relates to an act that does not constitute an offence;
- (d) the protection derives from the execution of a penalty or measure that, according to the laws of Malta, is covered by an amnesty and relates to an act or conduct which falls within the jurisdiction of the Maltese courts;
- (e) under the laws of Malta there is immunity conferred on the person causing danger, which makes it impossible to adopt measures on the basis of a European protection order;
- (f) criminal prosecution, against the person causing danger, for the act or the conduct in relation to which the protection measure has been adopted is barred by prescription according to the law of Malta and relates to an act or conduct which falls within the jurisdiction of the Maltese courts;
- (g) recognition of the European protection order would contravene the *ne bis in idem* principle;
- (h) under the laws of Malta the person causing danger cannot, because of that person's age, be held criminally responsible for the act or the conduct in relation to which the protection measure has been adopted;
- (i) the protection measure relates to a criminal offence which, under the laws of Malta, is regarded as having been committed, wholly or for a major or essential part, within its territory.

(2) Where a court refuses to recognise a European protection order in the application of one of the grounds referred to in subregulation (1), the court shall:

- (a) without undue delay, inform the issuing State and the protected person of this refusal and of the grounds relating thereto;
- (b) where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure in accordance with its national law;
- (c) inform the protected person of any applicable legal remedies that are available under its national law against such a decision.

10. Where a certificate has been issued by the Attorney General under regulation 9, and without the need of any further authority other than the authority conferred by this regulation, the European protection order shall be transmitted to a court of criminal jurisdiction for execution. Execution after issue of certificate.
11. (1) The following provisions of this regulation shall apply where a protection order is transmitted to a court of criminal jurisdiction under regulation 10. Effect of decision and other measures.
- (2) The provisions of article 412C of the Criminal Code shall *mutatis mutandis* apply to a European protection order executed under this regulation as if it were an order made under the said article 412C. Cap. 9.
- (3) A court of criminal jurisdiction shall, without delay, recognise a European protection order and take a decision adopting any measure that would be available under the laws of Malta in a similar case in order to ensure the protection of the protected person unless it decided to invoke one of the grounds for non-recognition referred to in regulation 9.
- (4) The measure adopted by the court in accordance with subregulation (3), as well as any other measure taken on the basis of a subsequent decision as referred to in regulation 12, shall, to the highest degree possible, correspond to the protection measure adopted in the issuing State.
- (5) The court shall inform the person causing danger, the competent authority of the issuing State and the protected person of any measures adopted in accordance with subregulation (3), as well as of the possible legal consequence of a breach of such measure provided for under national law and in accordance with regulation 12(2). The address or other contact details of the protected person shall not be disclosed to the person causing danger unless such details are necessary in view of the enforcement of the measure adopted in accordance with subregulation (3).
- (6) If the court considers that the information transmitted with the European protection order in accordance with regulation 7 is incomplete, it shall without delay inform the competent authority of the issuing State by any means which leaves a written record, assigning a reasonable period for it to provide the missing information.
- (7) A European protection order shall be recognised with the same priority which would be applicable in a similar national case, taking into consideration any specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person in Malta and, where possible, the degree of risk for the protected person.
12. (1) A court of criminal jurisdiction shall be competent to adopt and to enforce measures following the recognition of a European protection order. The laws of Malta shall apply to the adoption and enforcement of the decision provided for in regulation 11(3), including rules on legal remedies against decisions adopted relating to the European protection order. Governing law and competence in the executing State.

(2) In the event of a breach of one or more of the measures taken by a court of criminal jurisdiction following the recognition of a European protection order, the court shall, in accordance with sub-regulation (1), be competent to:

- (a) impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under the laws of Malta;
- (b) take any non-criminal decisions related to the breach;
- (c) take any urgent and provisional measure in order to put an end to the breach, pending, where appropriate, a subsequent decision by the issuing State.

(3) Where there is no available measure at national level in a similar case that could be taken according to the laws of Malta, the court shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware.

(4) Where the competent authority in the issuing State has revoked or withdrawn the European protection order in accordance to the Arrangement, the court shall discontinue the measures adopted in accordance with this regulation as soon as it has been duly notified by the competent authority of the issuing State.

(5) Where the competent authority in the issuing State has modified the European protection order in accordance to the Arrangement, the court shall, as appropriate:

- (a) modify the measures adopted on the basis of the European protection order, acting in accordance with this regulation; or
- (b) refuse to enforce the modified prohibition or restriction when it does not fall within the types of prohibitions or restrictions referred to in regulation 6, or if the information transmitted with the European protection order in accordance with regulation 7 is, or has not been, completed within the time limit set by the competent authority of the executing State in accordance with regulation 11(6).

Notification in the event of breach.

13. (1) A court of criminal jurisdiction or the Attorney General, as the case may be, shall notify the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order.

(2) The notice referred to in subregulation (1) shall be given using the standard form set out in Schedule 2.

Grounds for discontinuation of measures.

14. (1) A court of criminal jurisdiction may discontinue the measures taken in execution of a European protection order:

- (a) where there is clear indication that the protected person does not reside or stay in Malta, or has definitively left Malta;
- (b) where, according to the laws of Malta, the maximum

term of duration of the measures adopted in execution of the European protection order has expired;

- (c) in the case referred to in regulation 16(7)(b); or
- (d) where a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, is transferred to Malta after the recognition of the European protection order.

(2) Where a decision to discontinue the measures has been taken, the court shall immediately inform the competent authority of the issuing State and, where possible, the protected person of such decision.

(3) Before discontinuing measures in accordance with subregulation 1(b) the court may invite the competent authority of the issuing State to provide information as to whether the protection provided for by the European protection order is still needed in the circumstances of the case in question.

15. (1) A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, a court of criminal jurisdiction shall take into account, *inter alia*, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.

Procedure for the issuing of a European protection order.

(2) A court of criminal jurisdiction may issue a European protection order only at the request of the protected person and after verifying that the protection measure meets the requirements set out in regulation 6.

(3) The protected person may, by means of an application, request a court of criminal jurisdiction to issue a European protection order:

Provided that where Malta is the executing state, a copy of the request shall, as soon as possible, be transmitted to the competent authority of the issuing state.

(4) Before issuing a European protection order, the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if that person has not been granted these rights in the procedure leading to the adoption of the protection measure.

(5) When a court of criminal jurisdiction adopts a protection measure containing one or more of the prohibitions or restrictions referred to in regulation 6, the protected person shall be informed about the possibility of requesting a European protection order in the case that the said person decides to leave for another Member State, as well as of the basic conditions for such a request. The court shall advise the protected person to submit an application before leaving Malta.

(6) If the protected person has a guardian or representative, that guardian or representative may introduce the request referred to in sub-regulations (2) and (3), on behalf of the protected person.

(7) If the request to issue a European protection order is rejected, the court shall inform the protected person of any applicable legal remedies that may be available, against such a decision.

Competence in the issuing State.

16. (1) A court of criminal jurisdiction shall have exclusive competence to take decisions relating to:

- (a) the renewal, review, modification, revocation and withdrawal of the protection measure and, consequently, of the European protection order;
- (b) the imposition of a custodial measure as a consequence of revocation of the protection measure, provided that the protection measure has been applied on the basis of a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or on the basis of a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA.

(2) The laws of Malta shall apply to decisions adopted in accordance with sub-regulation (1).

(3) Where a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred, or is transferred after the issuing of the European protection order, to another Member State, subsequent decisions, as provided for by those Framework Decisions, shall be taken in accordance with the relevant provisions of those Framework Decisions.

(4) When the protection measure is contained in a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA which has been transferred or is transferred after the issuing of the European protection order to another Member State, and the competent authority of the State of supervision has made subsequent decisions affecting the obligations or instructions contained in the protection measure in accordance with Article 14 of that Framework Decision, the court shall renew, review, modify, revoke or withdraw without delay the European protection order accordingly.

(5) The court shall inform the competent authority of the executing State without delay of any decision taken in accordance with subregulation (1) or (4).

(6) Where the court has revoked or withdrawn the European protection order in accordance with sub-regulation (1)(a) or with subregulation (4), it shall duly notify the executing State and upon such notification, the executing state shall discontinue the measures adopted in accordance with Article 9(1) of the Arrangement.

(7) Where the court modifies the European protection order in accordance with sub-regulation (1)(a) or with sub-regulation (4),

the competent authority in the executing State shall, as appropriate:

- (a) modify the measures adopted on the basis of the European protection order, acting in accordance with Article 9 of the Arrangement; or
- (b) refuse to enforce the modified prohibition or restriction when it does not fall within the types of prohibitions or restrictions referred to in regulation 6, or if the information transmitted with the European Protection order in accordance with regulation 7 is incomplete or has not been completed within the time limit set by the competent authority of the executing State in accordance with regulation 11(6).

18. (1) Upon the issue of a European protection order under regulation 15, the Attorney General shall append the certificate provided in Schedule 1 purporting to reproduce details setting out the information required by the same certificate.

Appendices to the protection order.

(2) The Attorney General shall sign and certify as authentic the contents of the certificate.

SCHEDULE 1
(Regulation 2)

Issuing State: Executing State:
(a) Information regarding the protected person: Surname: Forename(s): Maiden or previous name, where applicable: Sex: Nationality: Identity number or social security number (if any): Date of birth: Place of birth: Addresses/residences: — in the issuing State: — in the executing State: — elsewhere: Language(s) understood (if known):
Has the protected person been granted free legal aid in the issuing State (if information is available without further enquiry)? ☐ Yes. ☐ No. ☐ Unknown. Where the protected person is a minor or is legally incapacitated, information regarding the person's guardian or representative: Surname: Forename(s): Maiden name or previous name, where applicable: Sex: Nationality: Office/Address:

(b) The protected person has decided to reside or already resides in the executing State, or has decided to stay or already stays in the executing State. Date from which the protected person intends to reside or stay in the executing State (if known): Period(s) of stay (if known):
(c) Have any technical devices been provided to the protected person or to the person causing danger to enforce the protection measure: ☐ Yes; please give a short summary of the devices used: ☐ No.
(d) Competent authority which issued the European protection order: Official name: Full address: Tel. No (country code) (area/city code) (number): Fax No (country code) (area/city code) (number): Details of the person(s) to be contacted Surname: Forename(s): Position (title/grade): Tel. No (country code) (area/city code) (number): Fax No (country code) (area/city code) (number): E-mail (if any): Languages that may be used for communication:
(e) Identification of the protection measure on the basis of which the European protection order has been issued: The protection measure was adopted on (date: DD-MM-YYYY): The protection measure became enforceable on (date: DD-MM-YYYY): File reference of the protection measure (if available): Authority that adopted the protection measure:
(f) Summary of the facts and description of the circumstances — including, where applicable, the classification of the offence — which have led to the imposition of the protection measure mentioned under (e) above:

(g) Indications regarding the prohibition(s) or restriction(s) that have been imposed by the protection measure on the person causing danger:

— Nature of the prohibition(s) or restriction(s): (more than one box may be ticked):

☐ a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

— if you ticked this box, please indicate precisely which localities, places or defined areas the person causing danger is prohibited from entering:

☐ 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;

— if you ticked this box, please provide any relevant details:

☐ a prohibition or regulation on approaching the protected person closer than a prescribed distance;

— if you ticked this box, please indicate precisely the distance which the person causing danger has to observe in respect of the protected person:

— Please indicate the length of time during which the abovementioned prohibition(s) or restriction(s) are imposed on the person causing danger:

— Indication of the penalty (if any) in the event of the breach of the prohibition or restriction:

(h) Information regarding the person causing danger on whom the prohibition(s) or restriction(s) mentioned under (g) have been imposed:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the person (ID card, passport):

Has the person causing danger been granted free legal aid in the issuing State (if information is available without further enquiry)?

☐ Yes.

☐ No.

☐ Unknown.

(i) Other circumstances that could have an influence on the assessment of the danger that could affect the protected person (optional information):
(j) Other useful information (such as, where available and necessary, information on other States where protection measures have been previously adopted with respect to the same protected person):
(k) Please complete: ☐ a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, has already been transmitted to another Member State — If you ticked this box, please provide the contact details of the competent authority to whom the judgment has been forwarded: ☐ a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA has already been transmitted to another Member State — If you ticked this box, please provide the contact details of the competent authority to whom the decision on supervision measures has been forwarded: Signature of the authority issuing the European protection order and/or of its representative to confirm the accuracy of the content of the order: Name: Position (title/grade): Date: File reference (if any): (Where appropriate) Official stamp:

Schedule 2
(Regulation 13)

(a) Details of the identity of the person causing danger:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the identity of the protected person:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(c) Details of the European protection order:

Order issued on:

File reference (if any):

Authority which issued the order:

Official name:

Address:

(d) Details of the authority responsible for the execution of the protection measure, if any, which was taken in the executing State in line with the European protection order:

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. No (country code) (area code) (number):

Fax No (country code) (area code) (number):

E-mail:

Languages that may be used for communication:

(e) Breach of the prohibition(s) or restriction(s) imposed by the competent authorities of the executing State following recognition of the European protection order and/or other findings which could result in taking any subsequent decision:

The breach concerns the following prohibition(s) or restriction(s) (more than one box may be ticked):

☐ a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

☐ 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;

☐ a prohibition or regulation on approaching the protected person closer than a prescribed distance;

☐ any other measure, corresponding to the protection measure at the basis of the European protection order, taken by the competent authorities of the executing State following recognition of the European protection order

Description of the breach(es) (place, date and specific circumstances):

In accordance with Article 11(2):

— measures taken in the executing State as a consequence of the breach:

— possible legal consequence of the breach in the executing State:

Other findings which could result in taking any subsequent decision

Description of the findings:

(f) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):