



INSIGHT

PROTECTING VICTIMS' RIGHTS THROUGH THE EUROPEAN SUPERVISION ORDER?

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ABSTRACT: This *Insight* analyses the aim of victim protection in the Framework Decision 2009/829/JHA and its limited usefulness, despite being regarded as one of the main objectives of the recognition and enforcement of judicial decisions on supervision measures. After explaining the apparent aims of the Framework Decision, the *Insight* addresses the victims' rights in the pre-trial stage according to Directive 2012/29/EU on victims' rights and Directive 2011/99/EU on the European Protection Order, whose aim is to ensure that victims of crime receive appropriate information, support, and protection. Particular attention is dedicated to the victims' right to information, which is also instrumental for their right to protection. The analysis shows that victims' rights do not play a role in the assessment of whether or not to forward the certificate or maintain the supervision measures adopted.

KEYWORDS: European Supervision Order – pre-trial detention – non-custodial precautionary measures – mutual recognition – victim's rights – victims' directive.

I. INTRODUCTION

Art. 5, para. 1, let. c), of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR) guarantees the right to liberty and security of person, save in some cases, including “the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so”. Accordingly, pre-trial detention is regarded as an exceptional measure to be adopted only when necessary to ensure that the person concerned will be available to stand trial or to prevent him or her from committing a new offence against the same or other victim.

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From the perspective that non-custodial precautionary measures constitute important ways of avoiding the negative effects of pre-trial detention, literature consistently refers to the exceptionality of custody and the importance of having the widest possible range of alternatives.¹ The number of pre-trial detainees in the EU – over 100,000 people² – shows that this opinion does not permeate judicial practice.

The situation is even worse when one considers the nationality and residence of the person concerned. In spite of all recommendations and rules, existing discrimination against foreign and non-resident suspects when contemplating pre-trial precautionary measures is generally recognized in literature.³ Although all member states have alternatives to pre-trial detention, foreign and non-resident suspects are usually not considered for the same range of alternative measures as national offenders. Risk of flight is routinely invoked disproportionately against them. Because they are regarded as being at risk of absconding, while suspects who are residents in the country would in a similar situation often benefit from a non-custodial supervision measure or even unsupervised liberty, many foreign and non-resident suspects who would normally have qualified for provisional release or a non-custodial supervision measure are given pre-trial detention, kept in prison until their trial is held, or released only to be expelled from the country. Some member states allow pre-trial detention irrespective of the penalty for the offence when the suspect has no fixed abode in the territory and poses a flight risk, even though the general threshold for pre-trial detention might be much higher.⁴ In sum, foreign and non-resident suspects are at higher risk of being held in pre-trial detention in comparison to nationals. In addition to this risk of discriminatory treatment, the problems that incarcerated suspects usually confront are exacerbated when the variables of nationality and res-

¹ See A. ASHWORTH, *Sentencing and criminal justice*, Cambridge: Cambridge University Press, 2015, p. 304.

² According to R. WALMSLEY, *World Pre-trial/Remand Imprisonment List*, 2019, available at www.prisonstudies.org, pp. 8-10.

³ See T. LJUNGUQUIST, *Mutual Recognition of Non-Custodial Pre-Trial Supervision Measures in the European Union*, in *Revue internationale de droit pénal*, 2006, p. 172-173; J.B. BANACH-GUTIERREZ, *Globalised Criminal Justice in the European Union Context – How Theory Meets Practice*, in *New Journal of European Criminal Law*, 2013, p. 165; T. RAFARACI, *The application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention*, in S. RUGGERI (ed.), *Liberty and Security in Europe*, Osnabruck: Universitätsverlag, 2013, p. 68; R. JURKA, I. ŽENTELYTĒ, *European Supervision Order – Is it the Ballast for Law Enforcement or the Way Out of the Deadlock*, in *Journal of Eastern-European Criminal Law*, 2017, p. 33-34; L. MANCANO, *Mutual recognition in criminal matters, deprivation of liberty and the principle of proportionality*, in *Maastricht Journal of European and Comparative Law*, 2018, p. 729.

⁴ This is the case of Spain. See E. MONTERO PÉREZ DE TUDELA, L. RAVAGNANI, *La población penitenciaria en España y Italia. Estudio comparativo de la situación de la población carcelaria extranjera en ambos países*, in *Revista Electrónica de Ciencia Penal y Criminología*, 2016, p. 23-24, criminnet.ugr.es. In Spain, the more frequent application of pre-trial detention to foreigners is commonly recognized in literature. See E. GARCÍA ESPAÑA, *Extranjeros sospechosos, condenados y ex condenados: Un mosaico de exclusión*, in *Revista Electrónica de Ciencia Penal y Criminología*, 2017, p. 19 et seq., criminnet.ugr.es.

idence are added to the equation, since a foreign or non-resident prisoner is typically in a more vulnerable position than a person who resides in the country.⁵

Against this background, in 2001 the European Parliament urged the European Commission to take action, particularly by enabling control, supervision or preventive measures ordered by a judicial authority pending the trial court's decision to be recognised and immediately enforced in another member state.⁶ Moreover, it called on the Council of the European Union to adopt a framework decision on common standards for procedural law, for instance on rules covering pre-trial orders, so as to guarantee a common level of fundamental rights protection throughout the EU. A proposal on mutual recognition of non-custodial pre-trial supervision measures was set as a priority in the Hague Programme on strengthening freedom, security and justice in the European Union, approved by the European Council on 5 November 2004,⁷ and included in the work programme of the Commission for 2005. In 2006, the European Commission issued a proposal for a framework decision on the European supervision order in pre-trial procedures between Member States of the European Union.⁸ The general aim of this proposal was to reinforce the right to liberty and the presumption of innocence in the European Union and promote equal treatment of all citizens in the area of freedom, security and justice. By substituting pre-trial detention, whenever possible, with a non-custodial supervision measure to be served where the person concerned normally lives, it was expected to avoid any discriminatory treatment based on the nationality or country of residence.⁹

Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on su-

⁵ See H.S. BHUI, *Going the distance: Developing effective policy and practice with foreign national prisoners*, London: Prison Reform Trust, 2004; H.S. BHUI, *Foreign National Prisoners: Issues and Debates*, in H.S. BHUI (ed.), *Race and Criminal Justice*, London: Sage, 2009, p. 154 *et seq.*; T. UGELVIK, *The Incarceration of Foreigners in European Prisons*, in S. PICKERING, J. HAM (eds), *The Routledge Handbook on Crime and International Migration*, London and New York: Routledge, 2014, p. 107 *et seq.*; D. VAN ZYL SMIT, S. SNACKEN, *Principles of European Prison Law and Policy: Penology and Human Rights*, Oxford: Oxford University Press, 2009; J. WARR, *The deprivation of certitude, legitimacy and hope: Foreign national prisoners and the pains of imprisonment*, in *Criminology & Criminal Justice*, 2016, p. 307 *et seq.*

⁶ Programme of measures to implement the principle of mutual recognition of decisions in criminal matters, measure 10.

⁷ Communication COM(2005) 184 final of 10 May 2005 from the Commission, *The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice*.

⁸ Communication COM(2006) 468 final of 29 August 2006 from the Commission, on a Proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union.

⁹ See T. LJUNGQUIST, *Mutual Recognition of Non-Custodial Pre-Trial Supervision Measures*, *cit.*, pp. 169-170; M. VENTRELLA, *The control of people smuggling and trafficking in the EU*, Farnham: Ashgate, 2010, p. 124.

pervision measures as an alternative to provisional detention (hereinafter the FD ESO),¹⁰ explicitly combines the traditional purpose of pre-trial precautionary measures with other purposes. The traditional purpose ensures that the person subject to criminal proceedings will be available to stand trial, while other purposes address the protection of victims and of the general public, as well as promote the use of non-custodial measures for persons who are not resident in the Member State where the proceedings take place. Therefore, the aims of the FD ESO are threefold: it ensures the due course of justice; it enhances the right to liberty and the presumption of innocence by avoiding an excessive use of provisional detention against non-residents; and it protects victims and the general public. It is not clear in the text how this protection will be achieved, particularly if one takes into account that the words “victim” and “general public” are mentioned only when the aims of the FD ESO are stated. How are victims protected through the transfer of supervision measures? Are their rights and interests really balanced when deciding on the mutual recognition of decisions on alternatives to provisional detention?

A review of the literature suggests that this *Insight* is one of the first attempts to provide an analysis of the aim of “victim protection” in the FD ESO and of its limited usefulness, despite being regarded as one of the main objectives of the transfer of decisions on supervision measures. The present study aims to bridge this research gap. The topic is definitely a timely one, particularly in light of the less-than-satisfactory application level of the FD ESO more than ten years after its entry into force,¹¹ and the thousands of EU citizens who are being investigated for a criminal offence in another member state of the European Union and could benefit from these kinds of repatriation measures.

The *Insight* is structured as follows. The second section explains the apparent aims of the FD ESO. The third section addresses victims’ rights in the pre-trial stage according to the Directive 2012/29/EU (hereinafter the Victims’ Directive),¹² to show to what point the ESO complies with them. The fourth section briefly discusses the limited usefulness of the reference to the victim protection in the FD ESO. The main findings are summarised in section five.

II. AIMS OF THE EUROPEAN SUPERVISION ORDER

In the Programme of measures to implement the principle of mutual recognition, the initial preoccupation regarding the enforcement of pre-trial decisions and non-custodial

¹⁰ 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.

¹¹ See I. DURNESCU, *Framework decisions 2008/947 and 2009/829: state of play and challenges*, in *ERA Forum*, 2017, pp. 361-362.

¹² Directive 2012/29/EU of 25 October 2012 of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

supervision measures at European level was “[t]o ensure cooperation when a person is subject to obligations or supervision as part of judicial supervision pending a court decision”. To achieve this, the following measures were proposed: “to catalogue the measures potentially concerned, the methods of supervision ensuring compliance by the individuals to whom they apply, and the penalties applicable in the event of non-compliance”, and, “[o]n the basis of the above catalogue, [to] consider the adoption of an instrument enabling control, supervision or preventive measures ordered by a judicial authority pending the trial court’s decision to be recognised and immediately enforced. This instrument should apply to any person against whom criminal proceedings have been brought in one Member State and who may have gone to another Member State and should specify how such measures would be supervised and the penalties applicable in the event of non-compliance with them”. Accordingly, the first objective of the FD ESO is “to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial” (Art. 2, para. 1, let. a)).

The second objective is “to promote, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures for persons who are not resident in the Member State where the proceedings are taking place” (Art. 2, para. 1, let. b)). The enhancement of the right to liberty and the presumption of innocence in the European Union is conceived as a consequence of the promotion, where appropriate, of the use of non-custodial measures as an alternative to provisional detention, even where, according to the law of the Member State concerned, a provisional detention could not be imposed *ab initio* (Recital 4). Statistical data demonstrates that foreign nationals are kept on remand custody disproportionately.¹³ But there are not only costs to the suspects involved. Keeping persons in pre-trial detention also has an important cost implication for the member states. Moreover, the excessive or unnecessary use and length of pre-trial detention contribute to the phenomenon of prison overcrowding,¹⁴ which continues to blight penitentiary systems across Europe and seriously undermines improvements in conditions of detention.

The third objective of the FD ESO is “to improve the protection of victims and of the general public” (Art. 2, para. 1, let. c)). It corresponds to one of the seven parameters

¹³ Overrepresentation of foreign and non-resident suspects and offenders in the crime statistics is too complicated to be properly tackled here. See, for instance, L.M. SOLVETTI, *Looking for a fair country: features and determinants of immigrants' involvement in crime in Europe*, in *The Howard Journal of Criminal Justice*, 2012, p. 133 *et seq.* However, some data are interesting. For example, in Italy foreigners make up 8.9% of the total population but comprise 32.8 percent of total prison population (according to the World Prison Brief, 2018) and 38% of remand prisoners – almost 8 points more than Italians, who have a significantly lower remand percentage, 30.2 percent – and only 13.5 percent of the persons in semi-liberty.

¹⁴ See T. LJUNGQUIST, *Mutual Recognition of Non-Custodial Pre-Trial Supervision Measure*, cit., p. 173; Y. CARTUYVELS, A. MARTUFI, *Concluding remarks on prison overcrowding and the status of offender supervision: a socio-legal approach*, in A. BERNARDI (ed.), *Prison overcrowding and alternatives to detention. European sources and national legal systems*, Napoli: Jovene, 2016, p. 505 *et seq.*

identified to determine the effectiveness of mutual recognition in the Programme of measures to implement the principle of mutual recognition, which describes it as “mechanisms for safeguarding the rights of third parties, victims and suspects”.¹⁵ The reason beyond this mention is easy to understand: “if in case of custodial sanctions and measures the offender is confined and cannot represent any threat to the public in general or the victim, in particular, when alternative non-custodial sanctions are applied, there is a theoretical risk to the general public and the victim.”¹⁶ The protection of the general public is served through enabling a person resident in a member state, but subject to criminal proceedings in another member state, to be supervised by the authorities of the state in which he or she is resident while awaiting trial. By doing so, the risk the suspect poses to the public will decrease, giving further effect to the right of law-abiding citizens to live in safety and security (Recital 3). The idea is that through the improvement of the monitoring of compliance with alternatives to pre-trial detention, recidivism is prevented, thereby paying due regard to the protection of the general public.¹⁷ There is no mention on how the FD ESO protects victims’ rights, since the text provides no further reference to the protection of victims or how the mutual recognition of decisions on supervision measures will contribute to this.

III. VICTIMS’ RIGHTS IN THE PRE-TRIAL STAGE

Safeguards to protect victims’ rights appear across various domains and levels, ranging from EU primary law to the national level. The already respectable body of European measures mainly aims at providing victims with their fundamental right of access to justice, in line with Art. 47 of the Charter of Fundamental Rights of the EU. This is the case of the Victims’ Directive, which represents the most important legislative development for victims’ rights at the EU level to date.¹⁸ It responds to the European Council’s call for an

¹⁵ See the introduction to the Programme of measures to implement the principle of mutual recognition.

¹⁶ See D. NIȚU, *Non-custodial sanctions and measures. Principles and rules in the framework of EU legislation*, in A. BERNARDI (ed.), *Prison overcrowding and alternatives to detention*, cit., 2016, p. 63.

¹⁷ See I. DURNESCU, *Framework decisions 2008/947 and 2009/829*, cit., p. 357.

¹⁸ Other European instruments address particular categories of victims, such as victims of terrorism (Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, whose Chapter V explicitly lays down provisions on protection of, support to, and rights of victims of terrorism), human trafficking (Directive 2011/36/EU of 5 April 2011 of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, which contains provisions on victims’ protection, assistance and support), gender violence (Directive 2011/99/EU of 13 December 2011 of the European Parliament and of the Council on the European protection order, hereinafter the EPO Directive) and child sexual abuse and sexual exploitation (Directive 2011/93/EU of 13 December 2011 of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, which introduces provisions to strengthen the prevention of those crimes and the protection of the victims thereof).

integrated and coordinated approach to victims, contained in the Stockholm Programme¹⁹ and in the Council's Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, which concentrate specifically on strengthening the rights and protection of victims. Art. 1 of the Victims' Directive declares that its purpose "is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings." As we will see, this instrument emphasises the rights that are instrumental to law enforcement since they allow victims to fulfil their function as witnesses.²⁰ Consequently, most of the rights recognized operate in the context of a criminal investigation or proceeding. This means that not all stages of the criminal proceedings receive equal attention when it comes to victims' rights, with an imbalance between the ones covering the trial stage and those that are relevant to the pre- and post-trial stage.²¹

Victims have the right to receive information about their case. This right is a precondition to most of the other rights victims have. It is crucial to ensure that victims can participate in the criminal justice process relating to their case. The right to information is also instrumental for the right to protection. According to Art. 6, para. 5, of the Victims' Directive, "Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender". The relevant information for the victim concerns, first of all, any conditions and requirements attached to the precautionary measures imposed, particularly the protection measures envisioned for the victim's own safety. Secondly, the victim also needs information related to the supervision conditions in the executing state. Differences between Member States in the way they supervise or monitor compliance with alternatives to pre-trial detention may be a cause of concern for the victim, particularly if the suspected individual is transferred to an executing state where monitoring mechanisms are lagging behind those of the issuing state. Thirdly, important information for victims about the criminal justice system in the executing state includes the enforcement of measures after non-compliance with the alternatives to pre-trial detention. Some Member States take a strict approach to such violations, while others show a more lenient attitude.²²

¹⁹ Stockholm Programme – An open and secure Europe serving and protecting citizens.

²⁰ See S. VAN DER AA, *Post-trial Victims' Rights in the EU: Do Law Enforcement Motives Still Reign Supreme?*, in *European Law Journal*, 2015, pp. 239-240.

²¹ *Ibid.*, p. 240.

²² See A.M. VAN KALMTHOUT, M.M. KNAPSEN, C. MORGENSTERN (eds), *Pre-trial detention in the European Union*, Nijmegen: Wolf Legal Publishers, 2009; P.H.P.H.M.C. VAN KEMPEN (ed.), *Pre-trial detention: human rights, criminal procedural law and penitentiary law, comparative law*, Antwerp: Intersentia, 2012.

However, victims' right to information about the suspected individual's release is not mentioned in the FD ESO. This is a significant shortcoming. Due to victims' unfamiliarity with foreign procedures and language issues, their access to information on their case may be unduly complicated. Even more so because some Member States are more diligent in keeping the victim informed of the situation of the accused person in the pre-trial stage than others.²³ Moreover, since the decision to grant pre-trial release can impact victims' right to safety, it would be reasonable to afford victims the right to participate in the decision-making process – e.g., to inform issuing or executing authorities of possible risks related to the transfer –, or to request a review of the pre-trial release decision. The Victims' Directive obliges member states to "ensure that victims may be heard during criminal proceedings" (Art. 10), but the FD ESO neither requires them to have victims express their opinion on the mutual recognition of supervision measures nor encourages courts to take this opinion into consideration. Some national legal systems, such as England and Wales and Spain,²⁴ require courts to take into account victims' interests in relation to bail decisions, while others, such as Ireland,²⁵ provide that courts may hear evidence from the victim as to the nature and seriousness of any danger to any person that may be presented by the release of the accused person on bail. However, other member states do not regard rights for victim participation in the decision-making process, as is the case in Denmark, France, or Germany. Moreover, certain victims in some member states may have the possibility to make a Victim Personal Statement allowing them to express their concerns in relation to bail,²⁶ yet even in these member states victims are not afforded the right to make direct submissions in relation to pre-trial detention and release.²⁷ This is consistent with the silence of the FD ESO on this regard.

²³ According to the European Agency for Fundamental Rights-FRA, *Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers*, available at fra.europa.eu, p. 102, the Member States that have, either as issuing state or executing state, established in law the right of victims to be informed of suspects', accused or sentenced persons' release include Belgium, Croatia, the Czech Republic, France, Lithuania, Malta, Poland, and Portugal.

²⁴ According to K. BRAUN, *Victim Participation Rights. Variation Across Criminal Justice Systems*, Cham: Palgrave Macmillan, 2019, p. 113-114; C. ARANGÜENA FANEGO, *Reconocimiento mutuo de resoluciones sobre medidas alternativas a la prisión provisional: análisis normativo*, in C. ARANGÜENA FANEGO, M. DE HOYOS SANCHO, C. RODRÍGUEZ-MEDEL NIETO (eds), *Reconocimiento mutuo de resoluciones penales en la Unión Europea: análisis teórico-práctico de la Ley 23-2014, de noviembre*, Cizur Menor: Aranzadi-Thomson Reuters, 2015, p. 224, respectively.

²⁵ According to T. KIRCHENGAST, *Victims and the Criminal Trial*, London: Palgrave Macmillan, 2016, pp. 62-63.

²⁶ For example, in the United Kingdom, according to the Code of Practice for Victims of Crime (UK) 2013.

²⁷ K. BRAUN, *Victim Participation Rights*, cit., pp. 113-114.

IV. PROTECTING VICTIMS THROUGH THE EUROPEAN SUPERVISION ORDER?

The effective implementation of the FD ESO is intended to promote free movement of persons in the EU while at the same time preserving the due course of justice and safeguarding the right to liberty and the presumption of innocence. The FD ESO also fulfils a humanitarian objective, since the execution of a non-custodial measure in the member state where the suspect is resident allows family and social ties to be preserved and avoids discriminatory treatment of non-residents and foreigners. In this respect, as indicated by Rafaraci,²⁸ this act is coherent with other instruments adopted at the EU level, where the explicit objectives are also offenders and suspects' rehabilitation and reintegration.²⁹ Some of these instruments do not mention the purpose of protecting the victims and the general public, but others contain explicit reference to it. However, as it happens here, they provide no further reference to the protection of victims and the general public or how the transfer will contribute to these. An analysis of the measures oriented to the victim protection in these mutual recognition instruments reveals its limited usefulness,³⁰ despite being regarded as one of the main objectives of the mutual recognition of judicial decisions in criminal matters.

FD ESO is not an exception in this regard. Victims' rights do not play a role in the assessment of whether or not to forward the certificate. Taking into account that common grounds that warrant pre-trial detention in European countries are the risk of flight, risks associated with evidence tampering and the risk of committing further offences while awaiting trial, it is clear that the decision to grant the accused pre-trial release from incarceration can significantly impact victims' interests, especially their safety. However, the Framework Decision gives little room for a true balancing of interests of the accused person (right to liberty, rehabilitation) against those of the victim (at the pre-trial stage, mainly information and safety). The Victims' Directive makes it clear that when the interests of victims and suspected persons/ offenders are conflicting, the latter are prioritised. Illustrative of this point is Art. 6, para. 6, of the Victims' Directive,

²⁸ T. RAFARACI, *The application of the principle of mutual recognition*, cit., p. 69.

²⁹ Mainly, the Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, and the 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, but also the Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

³⁰ For instance, S. VAN DER AA, *Post-trial Victims' Rights in the EU*, cit., with regard to the transfer of probation measures. Contrarily, C. ARANGÜENA FANEGO, *Violencia de género y medidas cautelares personales: en especial, la orden de protección*, in C. ALONSO SALGADO, R. CASTILLEJO MANZANARES (eds), *Violencia de género y justicia*, Santiago de Compostela: Servicio de Publicaciones de la Universidad de Santiago de Compostela, 2013, p. 329, maintains that the Framework Decision manages to strengthen the status of the accused while at the same time providing adequate protection for society, with special consideration for the victim.

which says that victims have a right to know about the escape or release of their offender in cases “where there is a danger or an identified risk of harm to them, *unless there is an identified risk of harm to the offender which could result from the notification*” (emphasis added). Also illustrative of the secondary status of victims is the relationship of the transfer of supervision measures with the European protection order, explicitly addressed in the EPO Directive. If the victim is protected by a EPO resulting from a protection measure adopted by the issuing state, one of the grounds for discontinuation of measures taken by the state of supervision is that “a decision on supervision measures within the meaning of Art. 4 of FD ESO is transferred to the executing State after the recognition of the European protection order” (Art. 14, para. 1, of the EPO Directive). Even though this decision may have a considerable impact on her or his safety, the protected person only has a right to be informed of such a decision “where possible” (Art. 14, para. 2, of the EPO Directive). Moreover, before discontinuing protection measures in accordance with this norm, the competent authority of the state of supervision may invite the competent authority of the issuing state to provide information as to whether the protection provided for by the EPO is still needed in the circumstances of the case in question (Art. 14, para. 3, of the EPO Directive). Such an invitation is not made to the protected person. Clearly, this regulation shows that victims’ rights are subordinated to other interests.³¹

V. CONCLUSION

Protection of the rights of crime victims has always constituted one of the main priorities of the European Union in the area of freedom, security and justice. The European Union, first, through the Framework Decision 2001/220/JHA of 15 March 2001, on the standing of victims in criminal proceedings, and now through the Victims’ Directive, has opted for a balanced approach, emphasizing the rights of victims to be treated with dignity, to have access to information, to receive medical, psychological and social assistance and support, to understand and be understood, to be protected at the various stages of the procedure and to be compensated by the offender or by the State. But in each member state’s legal system, different protection standards and entitlements have been provided for victims in the course of proceedings. The result is a protection which varies according to the geographical location, bound to the basic rules governing each national system.

The diversity of legal cultural traditions relating to victims’ rights in the various member states, combined with a lack of proper attention in the FD ESO, raises the question whether the principle of mutual recognition is really beneficial for victims and whether it provides them with adequate tools to apply the rights granted to them at the

³¹ See J.C. VEGAS AGUILAR, *Algunos aspectos conflictivos sobre la ejecución de la orden europea de protección con otros instrumentos de reconocimiento mutuo*, in *Teoría y Derecho*, 2017, p. 146.

EU level. It is generally recognised that mutual recognition in criminal matters should be accompanied with a form of minimum harmonisation,³² particularly in areas in which legislative differences between the member states are considerable but could be overcome, such as non-custodial precautionary measures.³³ An increased effort of harmonisation is also required if we want victims' rights to be effectively and equally protected in all EU member states.³⁴ Such an effort will also have a positive effect for suspects whenever national regulations balance the right to liberty and the presumption of innocence of the person concerned with the victim's rights to information and protection. In the meantime, the traditional perspective of precautionary measures aimed at balancing individual freedoms with the repressive needs of the state must be complemented with the increasing demand for information and protection of crime victims.

³² So it is explicitly recognized in the Communication COM(2006)73 final of 21 February 2006 from the Commission, *Disqualifications arising from criminal convictions in the European Union*. See also S. PEERS, *Mutual Recognition and Criminal Law in the European Union. Has the Council Got it Wrong?*, in *Common Market Law Review*, 2004, p. 5 *et seq.*; P. ASP, *Mutual Recognition and the Development of Criminal Law Cooperation within the EU*, in E. HUSABO, A. STRANDBAKKEN (eds), *Harmonization of Criminal Law in Europe*, Antwerp: Intersentia, 2005, p. 31-33; P. ANDREOU, *Gegenseitige Anerkennung von Entscheidungen in Strafsachen in der Europäischen Union*, Baden-Baden: Nomos, 2009, p. 344; G. DI CHIARA, *The Protection of the Right of Freedom on the European Union Level: The European Arrest Warrant and Non-custodial Pre Trial Measures. The Guideline of the Principle of Proportionality: An Interpretive Perspective*, in S. RUGGIERO (ed.), *Transnational Inquiries and the Protection of Fundamental Rights in Criminal Proceedings*, Berlin-Heidelberg: Springer, 2013, p. 251; S. ALLEGREZZA, *Victim's statute within Directive 2012/29/EU*, in L. LUPÁRIA (ed.), *Victims and criminal justice. European standards and national good practices*, Aalphen aan den Rijn: Wolters Kluwer, 2015, p. 6.

³³ S. VAN DER AA, *Post-trial Victims' Rights in the EU*, cit., p. 250.

³⁴ T. RAFARACI, *The application of the principle of mutual recognition*, cit., pp. 79-80.

