

The SNaP logo, consisting of the letters 'SNaP' in a bold, white, sans-serif font, enclosed within a white speech bubble shape with a tail pointing towards the bottom left.

SNaP

**Specific Needs and
Protection Orders**

A thick, white horizontal bar with a curved right end, positioned above the 'International Report' text.A thick, white diagonal bar with a pointed right end, positioned to the left of the 'International Report' text.

International Report

**Protection orders and domestic violence
against women with specific needs**

Findings from five European countries



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Federal Ministry for
Family Affairs, Senior Citizens,
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Protection orders and domestic violence against women with specific needs

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0. Introduction

Protection orders are widely used legal interventions in tackling domestic violence (DV) and often constitute a core element of national strategies. Following the concept as used in Art. 52 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), emergency barring orders (EBO) and protection orders (PO) can be distinguished as the most relevant measures to use.

Their basic idea is to create a safe area for victims of DV by imposing rules of conduct on the perpetrator, e.g. by banning the perpetrator from a victim's living space and by prohibiting him from contacting or approaching the victim. However, the specificity of measures varies greatly between legal systems and countries (van der Aa et al. 2015). Such measures may aim to secure protection from immediate danger, reduce the risk of future harm, prevent the offender from committing further offences and give victims time and space in which to recover and make decisions about their future, the latter depending on the supports available and proactively offered.

Whilst some measures are issued immediately after a violent incident by the police (EBO), others are granted in criminal proceedings by the court on the initiative of the police or public prosecutors (PO) and still others only after a victim applies for them in civil court proceedings (PO).¹

Existing research on the topic has focussed on legal comparison (Kelly, Hagemann-White, Meysen & Römkens 2011, Cerrato 2014) and on the potential of EBO – PO to increase victims' safety (Benitez, McNiel & Binder, 2010) or both (van der Aa et al. 2015). An analysis of their implementation in general is missing for most countries. However, it is often stated that the availability of legal measures does not automatically imply that they are also used to a relevant extent. Additionally, variations in access to these measures and differential effects

¹ Looking at all EU member states there are even more options and differences. For a more detailed analysis of protection orders in the member states see van der Aa et al. (2015)



of EBO – PO on various groups of victims have not been researched. Given the high relevance that most countries ascribe to these instruments, this absence in research and in public and political discourse on EBO – PO is striking.

The concept of using protection orders is based on the idea, that separating victim and offender and prohibiting contact increases safety levels. It implies that the protected person can live and make decisions on her own and has sufficient help and support to live without the offender. This can be limited because of individual, social, financial or legal restrictions and dependencies. When protection orders need to be applied for, as is the case in civil law based protection orders, knowledge of and access to legal measures, initiative and the capacity to make the application are also required. However, where this access and these capacities are limited, the limitations of these protection measures are evident. Criminal law based protection orders rely on access to the criminal justice system and in most cases on the victim's support of the criminal prosecution of the perpetrator. Again, where this is not given, protection orders will not be applied.

Scientific studies from different countries (Hague et al. 2007, Ackerman et al. 2014, Schröttle et al. 2013) have shown that current practice with regard to protective measures is supportive for many women, but at the same time for many of them it is problematic because the support needs of victims with so-called specific needs are not considered or not adequately taken into account. Two previous Daphne III projects² concluded that in particular the protection of older, dependent women or those in need of nursing care poses challenges to the police and/or the legal system.

Limitations and difficulties in accessing protection orders affect all victims with limitations in activities of daily living, like some women in very old age or with chronic illnesses, women with physical disabilities, cognitive impairment, mental health problems and women who are for other reasons dependent upon the perpetrator. This is especially problematic as studies have established that physical, psychological and sexual violence occur significantly more often for such women than their peers (Schröttle & Hornberg 2013, 2014; Schachner et al. 2014; FRA 2014; WHO 2002; Hughes et al. 2012). Further barriers for use of these measures are additional access problems which can be related to restricted mobility, cultural norms, language barriers or the incapacity to identify experiences as violent (inter alia).

² "Intimate Partner Violence against Older Women" (www.ipvow.org) and "Mind the Gap" (<http://www.ipvow.org/en/research-reports/mind-the-gap>)

Very little is known about the implementation of the different forms of EBO and PO in the participating countries generally and even less about how these measures serve the needs of victims whose daily living activities are restricted and who have other difficulties accessing orders.

Research questions addressed in the SNaP project were: What are the possibilities, what are the limitations of the measures for victims with specific needs? What decisions are taken by authorities when it comes to issuing EBOs and POs for these victims? How do authorities deal with especially vulnerable victims? What constitutes vulnerability, what constitutes specific needs in the view of practitioners and experts? To what extent are instruments used by and for victims with specific needs? What problems do victims face when they want to apply for such orders, what difficulties do authorities face, when they want to issue protection orders for these victims? How can options to improve safety for women be increased?

The SNaP project was developed to find answers to these questions. Partner organisations in five European countries researched the situation in their countries with the aim of mapping the field and identifying options for improving existing measures and their implementation and of finding other possible solutions for vulnerable victim groups where existing measures prove to be insufficient or inadequate. The research teams in the partner countries³ examined national protective measures for their suitability and efficiency for different victim groups with specific needs and access barriers.

This report brings together findings from all five country reports. Differences between the countries are considerable, with regard to legal frameworks, the scope of the research, the case sample and the findings. The idea of the international report is to focus on commonalities and differences between the countries and to highlight relevant overarching concepts and findings. It should help to make it understood that basic problems are similar in the partner countries, but that different solutions lead to different results for the problems discussed.

Chapter 1 will describe the methodological approach and data basis of the project and of the partner countries. In Chapter 2 we will outline some conceptual and terminological issues of the project. In order to facilitate the understanding of the results, in chapter 3 we will outline the respective legal provisions for protection against violence in the intimate social environment for each country, pre-

³ Besides the project leader, the Institute of Conflict Research (IKF, Austria), the participants include ZOOM - Gesellschaft für prospektive Entwicklungen e.V. and the German Police University (DHPol) (both Germany), Safe Ireland (Ireland), University of Bialystok (Poland) and CESIS – Centre for Studies for Social Intervention (Portugal). Bridget Penhale (UK) supported the project as an expert consultant.



sent some statistics on protective measures and some findings on the general implementation of the measures. In Chapter 4 we will describe the understanding of our interview partners of specific needs and will look at the identified groups and features of specific needs. In this chapter the extent to which protection orders work for victims with specific needs is discussed, together with the difficulties and obstacles in accessing EBOs and POs and protection and safety in general for women with specific needs as well as existing other measures described. Chapter 5 provides an overall summary of the findings.

1. Project description, methodological approach and data basis

As described above, the SNaP study aimed to identify victim groups with specific needs, to examine the implementation and effectiveness of protective measures for these groups, and to develop recommendations to improve their protection. To reach these goals, a qualitative research approach⁴ combining a number of methods and perspectives was chosen:

1. Collection of data on legal provisions and regulations and secondary analytic evaluation of existing data on victim protection measures. This step provided an overview of the respective national regulations and their implementation as far as national statistics or evaluation studies were available. This information is included in all national reports.

2. Collection of data on legal provisions for protection against domestic violence in five more countries. In this literature analysis, we collected data on relevant legal provisions, taking into account evaluations and experiences in Great Britain, Spain, New Zealand and the Netherlands as well as the U.S.A. The analysis concentrated on potentially valuable approaches to victim protection for vulnerable groups that might be adopted, on implementing and monitoring measures and on protection against violence. The report can be downloaded from our website (Grundel, Kotlenga & Nägele 2015; www.snap-eu.org).

3. Interviews with experts and practitioners from the fields of police work, the legal system and NGOs. In the first part of the field work qualitative semi-structured interviews with experts and practitioners were carried out. The interviews focussed on three areas, namely (i) identifying groups with specific needs; (ii) the most important current barriers to protection against violence in legal provisions and their implementation as well as areas for potential improvement; and (iii) the collection of agency-specific data and case histories. The national project teams were free to choose between individual interviews or focus group discussions. In addition, two expert interviews were conducted in each country to help sketch and draft a national policy paper. The number of interviewed individuals ranged from 29 experts and practitioners to 88 in Ger-

⁴ A quantitative empirical survey leading to robust data was not feasible within the financial framework of the Daphne III programme. On the one hand, such a survey would have required a very large sample in order to determine which victims are particularly vulnerable with regard to barriers in accessing victim protection measures. On the other hand, such a project would only have provided limited information, because it is difficult for research to reach the most vulnerable groups, such as victims with serious cognitive disabilities.

many, the high number being due to the size of the country and the two project partners with respectively more resources. In Ireland, in addition to 24 experts, 10 victims of domestic violence were interviewed about their perception and experience of domestic violence orders. All other partners countries only interviewed experts and practitioners from organisations and professions which differed according to the different national protective measures and the different national focuses of the research. (see Table 1) The analysis of findings is contained in the national reports.

Table 1: Interviews for qualitative analysis

Interviewed persons	Austria (AT)	Portugal (PT)	Ireland (IE)	Poland (PL)	Germany (DE)
Judiciary / legal practitioners, Public prosecutor/ State solicitor, judges, lawyer, court service	3	11	10	6	18
Police	2	3		5	20
Victims ^a / dv support organisations / support services for specific groups (e.g. migrant women , women with disabilities, etc. counselling/protection), lobbying organisations, NGOs	24	13	14	6	45
Others (social aid, health care, academics)		1		13	5
Female victims of domestic violence			10		
Total number of participants	29	28	34	30	88

4. Analysis of files and qualitative case histories. Within the project , each country aimed to analyse detailed cases. The approach regarding the case providers (e.g. police, public prosecution, courts, NGOs) was left open on the national level, and therefore varied considerably. This was necessary due to the differences and variation in systems between countries. Privacy rules sometimes complicated access to and tracking of cases. As “specific needs” of victims, e.g. disabilities or residence status, are not used as classification markers in the organisations that provided the cases, no computer-aided search for relevant files was possible. In some of the countries, therefore, practitioners from different fields and organisations were asked to select files or to prepare case histories according to specific, detailed criteria provided by the project team(s). Due to our purposive sampling methods this cannot be called a representative selection

of cases. Nevertheless, we can infer case types were included which provide information on the implementation of victim protection measures, their effectiveness, and awareness of and attention to specific needs within the police and the judiciary.

For the file analysis, a project-wide template was developed which was adapted with regard to national specifics. Information on the socio-demographic data of victims and perpetrators was collected as well as information on the living conditions at the time of the violent incident(s), on the history of violence and the forms of violence experienced. In addition, the victim's help seeking behaviour and related experiences were analysed, together with their (presumed) attitude against criminal prosecution. Another main focus was the approach of police and judiciary - protective measures taken and their impact, and any problems that arose in the course of police/ judicial procedures. The minimum number of analysed cases was 50, the maximum number was 55. (see Table 2 below)

Table 2: Number of cases

	Austria (AT)	Portugal (PT)	Ireland (IE)	Poland (PL)	Germany (GE)
Number of cases	55	50	50	52	50

The sampling of cases for the case analysis differed between the countries. This was mainly due to different access options. In **Poland**, where domestic violence protection measures are mainly criminal law based, the case sample consisted of court files on cases of domestic violence (Art. 207 penal code: physical and emotional abuse of family members) involving victims who were mothers with children, older women and women with disabilities. A specific approach was followed in **Austria** as follows. Pre-identified institutions with case knowledge received a printed or online questionnaire and provided the information on cases with victims who they regarded as particularly vulnerable. Some cases were further explored during expert interviews. These case descriptions were delivered mostly by victim support services, some by services for persons with disabilities, by support organisations for refugees, by the police and by legal guardians.

In **Portugal**, where protective measures are also criminal law based, 39 cases of case description were delivered by services working for Public Prosecutor's Offices and diverse Courts. Data on three more cases came from interviews with women who lived or had lived in domestic violence refuges, data on three cases came from interviews with women and additional information from practitioners, and data on 5 cases came from interviews with practitioners working in these services. The specific groups, which were identified during expert interviews, were the basis for case sampling. In **Germany** the sample consisting principally



of police officers were asked about detailed descriptions of cases that were identified as problematic with regard to the application of emergency barring orders. In **Ireland** case files on victims with specific needs from ten domestic violence support services across Ireland were purposefully sampled, either by DV support service personnel or a study researcher on site in the domestic violence services. Written consent provided by the women was the precondition for using data in the analysis. The analysis of cases also forms part of each national report.

5. Expert meetings on the national as well as EU level. In each country national expert meetings were held. The aim of these meetings was to reflect upon and further develop national policy papers on the basis of the findings from each country. Additionally, a final conference was held in Berlin on 14th September 2016, to integrate the experiences and perspectives of other European experts and to benefit from their knowledge for the development of recommendations for future activities on both national and EU levels. Documentation from the international conference as well as the national and international policy papers can be found on the project website. (www.snap-eu.org)

2. Specific needs and protection orders - terminological issues

The focus of this study is female victims of violence in close social relationships who are aged 18 years and older at the time of the abuse. We did not focus exclusively on intimate partner violence, but also took into account violence from – male and female – relatives and in other close personal relationships.

As “groups with specific needs”, was initially understood, the term referred to the “traditional” fields of disability – physical, cognitive and mental handicaps. Discussion within the project teams, and not least the inspiration from interviewed experts in all five countries, finally resulted in an expanded definition of “specific needs,” which not only allowed for person-centred characteristics, but was based on a more inclusive understanding of vulnerability and included structural, cultural and perpetrator-specific factors (see further discussion in Chapter 3). A research project on “special needs⁵ and protection orders” requires some explanation regarding the meaning of these headline concepts.

The term “protection order” was a particular term of reference for this research, being widely used in international comparative literature on legally based protective measures (Kelly, Hagemann-White, Meysen & Römken, 2011, Cerrato et al. 2014, van der Aa et al. 2015). It is a technical term with its exact meaning depending on the legal and socio-political framework. The following definition of the term is provided by van der Aa et al. (2015, p. 22). :

“A protection order is a decision, provisional or final, adopted as part of a civil, criminal, administrative or other procedure, imposing rules of conduct (prohibitions, obligations or limitations) on an adult person with the aim of protecting another person against an act that may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity.” (van der Aa et al. 2015, p. 22)

The differences between the orders and measures summarized under the term protection orders have been extensively highlighted in former research (van der Aa et al. 2015, Cerrato et al. 2014). This research report uses the term and the named definition, but it is necessary to explain some difficulties linked to that and why this term is used nonetheless. A main problem related to the term protection order is, that in criminal law the protection of the victim is not the main

⁵ The project proposal was referring to “special needs”; in the course of the project, we decided to replace “special” by “specific”, as disabilities result in specific needs, but not necessarily exceptional ones.



goal of the protective measure, but it is – as found in the whole of criminal law and criminal procedural law - perpetrator centered. These measures may have protective effects for a victim, but still the system as a whole follows a different – perpetrator oriented – logic, aiming at prosecuting the offender and preventing him or her from perpetrating further crimes. This may interfere with the protection needs of DV victims. Thus, for the countries in the SNaP project with criminal law based protection orders (Portugal and Poland) the term was not seen as fully adequate. The national terms in these countries are “preventive order” (PL) and “coercive measure” (PT). Additional terminological difficulties derive from the fact that in Ireland a Protection Order is a specific form of temporary order issued under the Domestic Violence Act, prohibiting a perpetrator from causing further harm or threatening the victim and/or approaching the victim’s home (in cases where the victim and perpetrator do not live together). Despite these difficulties the term protection order will be used in this report, because it is widely established in international research. The term is therefore used together with more general descriptions like protection measures or protective measures.

The meaning of “specific needs” is even less straightforward. In literature, “specific needs” are frequently mentioned with regard to victims of specific types of crime such as intimate partner violence, sexual assault, child abuse, or human trafficking. On the other hand, victim groups such as children, older adults, persons with disabilities, or ethnic minorities are also characterized as having “specific needs” (see for example Berson, 2010; Franklin et al., 2015; Jackson et al., 2015; Twyman et al., 2010). While the term „specific“ is very much open to interpretation, it can be considered as an antonym to „standard“. Thus, it indicates that these types of crime are linked to specific (non-standard) victim needs or that these groups of victims have specific needs that distinguish them from other groups. In both cases, the term „needs“ primarily refers to post-victimization processes such as formal and informal victim support and case handling by the police and the judiciary (and not, for example, to pre-victimization needs linked to specific risks of becoming a victim).

In the context of this project, “specific needs” should not be considered as a stable feature of victims or victim groups. Rather, it refers to the interaction of person and their situation. This is in line with an interactionist understanding of human behaviour (see e.g. Cantor & Kihlstrom, 1987) or with a concept of "persons in context" (Shoda et al., 2007), the importance of which has been linked to societal tendencies of ever growing interdependencies (Hermans & Dimaggio, 2007).

Specific needs arise and exist in given situations, they are not “permanently attached” to a woman through her ethnicity, disability status or other characteristics. In the field of violence in close interpersonal relationships, this project focused upon tensions and mismatches between victimization experiences in specific (although possibly repeating) situations, individuals involved in and affected by these experiences, and measures taken to handle incidents and to prevent their reoccurrence.

The situations the project looked at are those where the use of protection orders is an option. The main research perspective was characterized by the following questions: Where do tensions, frictions, or problems arise between the application of a standard protective measure and the situation of a victim of domestic violence (DV)? How do organizations or State agencies handle these difficulties? How can problems be solved or at least diminished?

Problems and tensions can arise with regard to the (anticipated) consequences of the application for a barring order. This refers to such aspects as not being able to live independently once the perpetrator has been banned, losing one’s permanent residence permit, being ostracized by one’s significant others, or endangering custody. Since a victim’s willingness or readiness to initiate or accept measures taken in the case of violence will at least partly be determined by her anticipation of effects and side-effects, those consequences need not to be “real” or “certain” in order to have an impact on the way in which cases of interpersonal violence are handled.

Problems can also arise with regard to the availability of measures. This may be of limited importance with regard to emergency barring orders issued by the police and is perhaps more relevant for measures where a woman affected by DV has to take an active part in getting a measure applied. Availability issues may for example be related to lacking information, being illiterate, or not speaking the respective country’s official language.

Such critical person – situation interactions may be more prevalent or may have a higher probability among persons with certain characteristics. But this link is not a categorical one. A female DV victim may have a severe disability and still be unaffected by worries about being able to manage her household when the perpetrator is away (because there are good technical solutions or she has an established and well-functioning social network). A woman from an ethnic community where very hierarchical conceptions of gender roles are widespread may still have confidence in the loyalty of her significant others if she actively supports banning the perpetrator from her home.



What has been said about “specific needs” also applies to a (related) notion of “victim vulnerability”. The term vulnerability has its origin in the Latin word for wound, *vulnus*. In a very broad sense, vulnerability can be understood as the capacity to be hurt or damaged, or as a person’s risk of encountering a bad outcome (see also Aday, 2001; Spiers, 2000). A model presented by Turner et al. (2003) differentiates between a system’s exposure to hazards or risks, its sensitivity, and its resilience, hinging on its capacities to adjust and cope. In the context of the present project, victim vulnerability – again focussing upon post-victimization issues – refers to a person’s chances of encountering negative case outcomes. Again, it is not some stable and generalized personal feature of “vulnerability” that is important for the project. The project looks at a kind of “situational victim vulnerability” in the sense of a lack or at least some form of diminished capacity to use protection orders to enhance one’s safety. This situational (or circumstantial) vulnerability might be assumed to be more prevalent amongst certain groups of people than amongst others, but it is still an interactionist concept linking the person in the post-victimization period, their situation and the context they live in, and the measures at hand and the organizations being able to apply them.

3. Judicial framework and implementation of protection orders

In all five countries police, civil law or criminal law based protection measures are available for victims of domestic violence (and other victims), but the focus of the national domestic violence protection policy differs widely. In Ireland and Germany both criminal law based and civil law based protection measures are possible, but the most important and most often used long term protection orders have to be applied for by the victim at a civil court. In Austria these no protection measures can be initiated by criminal courts, civil law based protection orders are the only long term protection measure. In Poland and Portugal the main protective / preventive measures for victims of domestic violence are based in criminal procedures, both pre- and post-trial. In Germany and Austria, emergency barring orders are issued by the police as short-term protection measures, in other countries these measures do not exist. Thus a lack of protection measures which can be imposed by the police during a first intervention and immediately afterwards characterises the Irish, Portuguese and Polish situation.

It is important in terms of the topic of this project to note the fact that civil law based protection orders rely solely on the application being made, and thus on the will and initiative of the victim. It is obvious that this very much limits the use of the measure; knowledge and access are crucial, but also the determination to get protection and an understanding that one is a victim of violence are needed. Although on the one hand this limits access for some victims of violence, on the other hand it guarantees that no measures will be taken against the will of the victim. Basic characteristics of civil protection orders in Germany and Ireland are that breaches of orders are subject to criminal prosecution. In Ireland, Germany and Austria they open options for barring the offender from shared homes (under certain conditions), and for restraining him or her from getting in contact with and/or approaching the victim.

Criminal law based protection measures which in Poland and Portugal are core elements of national domestic violence protection policy can be implemented at any stage in the proceedings (from pre-trial until the verdict). The prosecutor and police may ask the court for these measures, they may be connected to the suspension of the proceedings or of the penalty, but they also may be issued as preventive measures. Imposed conditions may include eviction from the home, prohibition of contact or the obligation to participate in perpetrator programmes

(among others). An application of the victim is not possible and they may have little influence; it is the prosecution and the court which decide on the measures. So these orders are (more or less) independent from the will of the victims, which is important when it comes to victims who are not willing or able to make an application. But the link to criminal proceedings is also seen as problematic. A connection with the criminal prosecution limits access, because many women want the violence to stop, but they do not want the perpetrator to be punished and do not want to take part in a criminal proceeding. Especially for Portugal the connection to the criminal prosecution is also criticized, because, as a high court judge explained, „the guiding principles of the Portuguese criminal and criminal procedural system aim at ceasing the criminal activity and not the protection of the victim as a first line principle.“ Measures in place are described as being „measures of procedural safeguards“ and only coincidentally also serve the protection of the victim. (PT. p. 10)

What is also in place in all countries is the option for the police to arrest a perpetrator under certain conditions without a warrant as a preventive measure; but these arrests are possible only for very short time periods, only rarely used and not seen as very effective. Another measure not connected to a separation of victim and offender is to caution the offender and to thereby set out ground rules for future behaviour. This measure is described as effective in some cases.

In the following section the legal framework in the countries is described in more detail, together with information about general implementation as described in the national reports.

In **Ireland** there are several domestic violence orders that aim to protect victims of domestic violence and which have to be applied for at civil court. Barring Orders may bar the perpetrator from an indicated place, e.g. the property, but only if the applicant has sole or greater legal or beneficial interest in the property. Interim Barring Orders can be issued in cases of immediate risk of significant harm to the applicant for a maximum of eight days. Both may include other rules of conduct for the offender (non-molestation, non-contact). Safety orders and Temporary Safety Orders (called Protection Orders) forbid the use of violence or threats of violence against the applicant, but do not imply the removal of the perpetrator from the shared property; they may ban an offender from approaching the vicinity of the home of the victim if they do not live together. While applications for temporary orders are less formal and can be granted without hearing the offender, the Safety and Barring Orders are heard always with both parties present. Long-term Barring and Safety orders can be issued for 3 or 5 years respectively with the option of extension. A breach of a domestic violence order

is considered a criminal offence. When the police becomes aware of a breach the offender should be arrested if there is evidence of breach. As regards implementation the low number of long term or final barring orders granted is startling. Interim orders are granted in 77-83% of the cases (Interim Barring Orders and Protection Orders respectively, final orders in 33-34% of the cases (Barring Orders and Safety Orders respectively) (total: 14,374 application of dv orders in 2015 in the District Court). General implementation problems are lack of uniformity across the court system in relation to domestic violence orders and a considerable variation between the evidence considered satisfactory and inconsistencies as regards the treatment of breaches. The Irish report concludes that „the effectiveness of DVA orders relies on the willingness of the appropriate agencies to enforce them“ – which is often not given (IRE p. 27) Many women are highly dissatisfied with the outcomes of civil protection orders, some are able to report that the situation has improved for them and only a tiny minority find them entirely effective and appropriate. Additionally the criticism is made that the process of a civil protection order is long, formidable and costly, and the rate of attrition high.

In **Austria and in Germany** the situation regarding the use of emergency (police) barring orders and civil protection orders is quite similar, because the German system was drafted mainly following the Austrian model. In both countries two kinds of protection orders are predominant. In situations of acute danger, the police are authorised to bar an endangering person from the residence of the individual at risk and its immediate surroundings for 10 to 14 days, even when he or she lives there and is the owner or legal tenant. In order to achieve longer-term protection from the endangering person, there is the possibility to file for a civil protection order at the Civil / Family Court. This can be a non-contact order but also the allocation of a shared home can be ordered. Restrictive regulations exist if the home is owned by the perpetrator. If such a request is filed while an EBO is in force, the latter is automatically extended. In principle, an application for a civil protection order does not presuppose the prior existence of an EBO. As part of the intervention system in both countries a pro-active system of support was built up. It is mandatory that immediately after an EBO is issued, support organisations (NGOs which are state-funded) are informed by the police and receive contact details in order to get in contact with the victim and offer support. In Germany only in some *Länder* may contact details be handed over from the police to support organisations without the consent of the victim, whereas in Austria this is a standard procedure in all parts of the country. In Austria barring orders have to be monitored at least once within three days; however, in Germany no such regulations exist on the national level. The distinguishing characteristic of both the Austrian and German concept of protection against violence is



the creation of an emergency measure issued by the police, without the individual affected by violence being able to influence this measure, and the possibility of offering longer-term protection, which only the person affected by violence can apply for. These protective measures are accompanied by the offer of psycho-social support.

In 2014 across **Austria** police issued 7,585 EBOs of which ten per cent were disregarded.⁶ In the years 2007 and 2008, according to the Federal Ministry of Justice, a civil protection order was applied for after roughly every third emergency barring order. In the Austrian report no general implementation problems were reported.

In **Germany** no reliable figures are available with regard to emergency barring orders. In 2014 47,521 applications for civil protection orders (overall numbers on men and women) were processed, but the actual number of victims is lower because often two kinds of applications are filed (allocation of a shared home as well as a restraining and non-contact order) and both are counted separately. For the same year the police recorded 9,070 violations of civil protection orders. Significant differences can be observed in the application of the law between different courts and judges, which have to do with the fact that many judges prefer hearings where both parties are present and settlements while others issue immediate court orders without hearings. Further critical aspects are a general lack of enforcement and sanctions for non-compliant perpetrators. It is reported that a relevant risk of expenses, challenging proceedings, the prospect of a common hearing with the offender, and possibly little hope of effective protection cause a number of victims to omit or withdraw applications. With regard to emergency barring orders a lack of systematic control of compliance (safety check) is criticized as well as a lack of enforcement in cases of breach. On the other hand barring orders and civil protection orders work very well, as does cooperation between police and support organisations. The system as a whole is seen as an important achievement in fighting domestic violence and establishing the principle that „whoever commits violence has to leave“.

In **Poland** the legal system also offers protection orders within civil, criminal, and administrative legal system. In civil law the Act on preventing domestic violence (art. 11a section 1-2) states that if a person, by their behavior, makes cohabiting particularly burdensome, the victim of violence may demand that the court remove the perpetrator from their place of residence. In these cases the case is taken in a non-litigious mode (Civil Proceeding Code) and the hearing should take place within a month of the motion being made. But it is reported

⁶ E-Mail Ministry of the Interior, 27 March 2015.

that this type of proceeding is rarely applied and was not a topic of the Polish research. Protection measures that are related to domestic violence are imposed almost exclusively in criminal proceedings. Depending on the stage of the criminal proceedings, these may be issued as preventive measures (pre-trial and trial phase proceedings) or as measures that accompany the judgment. (van der Aa 2015 p. 53f.) Options are (preventive) short term arrest of the perpetrator, removal from the shared home, restraining and barring orders. They may be combined with measures like reporting obligations, electronic surveillance and perpetrator programmes (working groups/ corrective-educational efforts/ rehabilitation). Such orders can be imposed on the initiative of the prosecutor by the court as a condition for not opening the trial, as a sentence or as a probation condition. In the case of a risk of further crime or threat prosecutors may also issue orders, to the effect that the perpetrator has to leave the place of residence. This order can be imposed for up to three months and can be extended for the same period but is not often used. Fast-track proceedings are only possible in high risk cases. Indeed the duration of proceedings, which often exceeds three months and may take up to one year or more, often limits protective effects of measures taken. The number of evictions from common places of residence by the prosecutor is increasing but in 2015 it only happened in 2,474 cases.⁷ The conclusion of the Polish team is, that preventive measures in reality are „in many cases (...) little more than legal theory“. General implementation problems are seen in inconsistent decisions, but problems are also reported with regard to negative effects of measures in terms of an increase in threats and retaliation. The Polish report shows that separation via detention and eviction is not in the interest of the victim in all cases; a tendency to feel guilty often leads to withdrawal from the criminal proceedings. For Poland short-term detention orders are issued quite frequently, but practitioners and experts see a lack of options for a longer immediate separation. They state that 48 hours maximum separation by detention is not enough for victims to calm down and to find other solutions as well as to prevent perpetrators from further violence in the family.

Although in **Portugal** civil protection orders exist, protection orders in domestic violence cases are issued almost exclusively in criminal proceedings. The protection orders cover all stages of the criminal procedure. They are usually imposed as coercive measures. They can be issued as conditions to suspended pre-trial detention, provisional suspension of proceedings, suspended sentence, conditional release and accessory penalty. Although the protection order can only be issued by an (investigative) judge, the public prosecutor has the initiative and plays a crucial role. Victims cannot formally request that a coercive measure is

⁷ The total number of domestic violence cases which came to the knowledge of authorities within the Polish intervention procedure (blue card) was in 2015 75495.



issued, they can only suggest its promotion to the public prosecutor in charge of the case. In domestic violence cases and in the event of particular urgency and risk the police can also apply for the issue of a protection order on behalf of the victim. (van der Aa 2015 p. 54) One of the preventive measures that is applied in some cases is a restraining order or a contact ban together with electronic surveillance. That means perpetrators get a GPS tracking bracelet and also victims might get such a bracelet to be warned in case a certain distance has been overstepped by the perpetrator. Different technical tools for protection, like tele-assistance, are used cumulatively. In Portugal, the police cannot impose coercive measures. Although, there is a special regime for the crime of domestic violence established in article 30 of the Domestic Violence Law. According to this article, the police can arrest the perpetrator (detention omitting in *flagrante delicto*) not only when there is a risk of continuity of the criminal activity but also if it is indispensable for the protection of victims upon warrant by the judge or the public prosecutor. A detention by the police that is considered illegal results in a disciplinary procedure, as well as it can fulfil a crime of abuse of power and a crime of kidnapping. A considerable recent increase in the application of coercive non contact and barring measures monitored by means of electronic surveillance is described in the report. Imposing restraining orders in the field of domestic violence where contact was forbidden and the aggressors' movements were monitored by means of electronic surveillance represented more than half (52%) of the total number of cases being tried in court in 2015. But still there is limited use of protection orders, as was stated by the recent CEDAW report (PT p. 11), urging the introduction of new mechanisms without the need to engage in criminal proceedings.

In Germany and Austria both emergency barring orders and civil protection orders were analysed. In Ireland the focus of the research was on civil protection orders, in Poland and Portugal on criminal law based protection measures. In Poland all criminal law based protection measures were included, thus also arrests by the police, compulsory rehabilitation programmes (drug related) and detention were included in the analysis.

4. Specific needs and circumstances and protection orders

The concept of specific needs and the identification of groups

In Ireland, Poland and Austria the issue of victims with specific needs was the subject of controversy and some of the interview partners stated that this concept would not help to clarify, but is unclear and would be more likely to obscure the topic. They argued that in the first place all victims of violence have specific needs: „a female victim of DV is by definition a person with specific needs“ (PL p. 30). Some, and for Ireland and Poland this seemed to be mostly the view of legal practitioners, follow a universal approach, stating that all victims of domestic violence have similar needs and that everyone is equal before the law. Therefore everyone should be treated equally. The idea of specific needs was seen as interfering with the universal claim of the law. This position was not shared by other interview partners, who criticized any uniform approach to domestic violence victims and pointed out that a standardized approach tends to obscure specific needs. But some of them also objected to the notion of victims with specific needs, because they emphasized that all victims of domestic violence have individual needs, which need to be assessed and recognized individually and are specific and unique. In Austria the majority of interviewees saw it that way. One argued, that the concept of specific needs “is vague regarding the dividing line with “normal” needs” (AT p. 18).

Specific needs: it is a position of some of the interviewed experts in Ireland and Austria that specific needs are not unique to any one population group, but rather they „exist independently of population groups“ (IE p. 31). Especially when it comes to policy, the identification of predefined population groups may enforce stereotyping and profiling, and „could be to the detriment of the wider hidden or unlabelled population of women with similar specific needs“ (IE p. 31). Also in Austria similar problems were addressed, some experts therefore even refused to name groups with specific needs.

Identified specific needs (groups) and overarching concepts

In the interviews interviewers named examples of features that might characterize specific needs and / or groups of victims with specific needs. This was meant to initiate a reflection on further specific needs or groups with specific needs. Interview partners added further features and circumstantial factors which lead



to specific needs to the examples and explained their rationale, thereby pointing out that these features never apply to the whole group, that they are also not limited to one group and that they may overlap and accumulate.

What constitutes a specific need was seen as very similar in the participating countries. Partners referred to individual features of victims and/or perpetrators – always in interaction with the circumstances - and to features related to certain circumstances (including social and legal conditions). The following vulnerabilities / specific needs were identified by more than one country:

- serious health problems (like chronic diseases)
- old age combined with impairment and / or fragile health condition
- cognitive impairment or learning disabilities
- mental health problems
- physical disabilities (e.g. hearing impairment)
- having minor children
- financial dependence on the perpetrator
- adult sons or partners who are financially dependent
- migration background combined with lack of language skills, social isolation and undocumented residence status
- residence status depending on the perpetrator
- pregnancy
- homelessness or at risk of homelessness
- dependence on the perpetrator for support or care
- having a partner who is dependent on support or care
- family background with a highly traditional patriarchal orientation not accepting separation
- lack of awareness that violence is illegal
- restricted choices because of religious beliefs
- prostitution
- emotional dependence on the perpetrator

What emerged from the research was an attempt to establish broader headings instead of fixed groupings, used as well in the analysis of the interviews, in the case clusters and in the recommendations given. Partners were concerned to avoid rigid stereotyping of victims of domestic violence into discrete and fixed population groups. But the concern was also to make specific conditions visible by naming and describing clusters of specific needs. On these grounds project partners developed compilations of needs / groups and overarching concepts linked to more general aspects and issues. With regard to case analysis most countries developed case clusters, thus bringing together types of cases that are linked by comparable features in relation to vulnerability and specific needs.

Case clusters

All reports contain case vignettes which differ in the level of detail included. The German and Irish case vignettes mainly have an illustrative purpose; the case vignettes from Ireland serve as hypothetical examples for cases with multiple and cross-cutting needs connected to issues of accessibility, dependency, cultural norms and situational vulnerabilities. German case vignettes mainly refer to emergency barring orders and illustrate specific problems linked to access to and effectiveness of these orders. Researchers in Poland, Austria and Portugal developed case clusters following an identified pattern obtained from their case sample.

It is important to mention that the sampling of cases in all countries was purposive in the sense that partners searched for cases fulfilling predefined criteria and this was additionally limited by the choice of resources as described in chapter 1. Both selection filters determine the composition of the sample and both the resources for the cases and the selection criteria differed significantly between the countries. Therefore results are not comparable. If topics and clusters of specific needs are missing in one country's sample this does not mean that comparable cases do not exist, but this could be due to the selection process. It is possible in the following compilation, however, to provide an overview of the main issues and characteristics of vulnerabilities across countries.

In fact, the comparison of the research reports shows that results are similar in many ways with regard to the basic problems that women face in terms of domestic violence and vulnerability factors. In fact what differs to a much higher degree is the intervention and the use of protection orders and measures in the cases.



Case types and clusters from Poland, Portugal and Austria include the following features:

- limitations in communication skills due to physical impairment and/or migration
- dependency on perpetrator for residence status
- dependency on support for activities of daily living due to mental or physical health problems or cognitive or physical impairment / combined with old age
- economic dependency, social isolation, restrictive values of a social group and anticipated social costs of separation

In the Polish report the stance of the victim towards prosecution of domestic violence is also an important aspect for grouping of the cases.

In Table 3 the German analytical grid for barriers to access and gaps in protection relating to (anticipated) consequences of measures and the access to and availability of measures is presented. (GE p. 30)

Table 3: Barriers to access and gaps in protection of instruments protecting against violence

Relevance to use being made Resources / preconditions for use being made	Consequences / anticipated consequences of measures	Access to / availability / de facto availability
Personal capacities / resources	<ul style="list-style-type: none"> - Ability to independently conduct life (victim / perpetrator) - Availability of alternative support 	<ul style="list-style-type: none"> - Understanding information - Ability to express oneself - Organisational resources (e.g. filing an application/petition) - Willingness to separate / emotional dependencies
Situational life circumstances / underlying social and legal framework conditions	<ul style="list-style-type: none"> - Legal issues involving residence - Custody and visiting arrangements - Economic / social resources - Family / social networks (impeding / supportive) 	<ul style="list-style-type: none"> - Access to knowledge / information on instruments - Integration in institutional structures - Family / social networks (inhibiting / supporting)
Meeting legal prerequisites for making use of specific instruments (protective orders)		<ul style="list-style-type: none"> - Legal capacity - Only adults - Definition of domestic
Institutional practice by the police and judicial authorities - implementation and enforcement of instruments	<ul style="list-style-type: none"> - Local design of enforcement of measures (controls/sanctions) - Legal preconditions for intervention in the event of violations 	<ul style="list-style-type: none"> - Local implementation of the statutory mission (decisions/settlements) - High / low thresholds regarding access (above all with respect to court instruments)
Institutional practice in protection against violence	<ul style="list-style-type: none"> - Availability / spectrum of services on offer - Equipment - Resources - Cooperation with the police and judiciary / procedures 	<ul style="list-style-type: none"> - Availability / spectrum of services - Equipment - Resources - Cooperation with police and judiciary / procedures

Derived from this grid and the results of the study in the German summary a set of headings was developed which referred to preconditions for access to, availability in principle and the effective implementation of protection measures. As preconditions cutting across different groups, a number were identified. These included: the availability of information, accessibility of help systems and authorities, communication possibilities, familiarity with and trust and confidence in (support) systems and state agencies, relationship between protection needs

and other legal provisions and/or actual practice, availability of alternatives to the current living and economic situation and adjustment of legal measures to living situations and individual situations where women are faced by a threat.

In the Irish national report four broad headings were identified which each related to a type of barrier which might prevent protection orders being accessed or, once accessed, from being effective. Irish researchers asked interviewees about clusters of specific needs under several general headings, where these barriers were relevant, and could thereby identify unexpected clusters, vulnerability features and needs for support and/or barriers to accessing protection orders. Those needs may be pre-existing, created/exploited by the perpetrator or created by the protection order process. The following headings were developed

- **Accessibility:** This heading includes physical and practical access. Accessibility may be limited for some isolated, rural, migrant, older women, women without independent access to transport for essential journeys, women whose movements and/or finances are controlled by the perpetrator, women who cannot communicate fluently in English language (written or spoken) and women living in communities where local Gardaí (Irish police) are perceived as non-responsive to domestic violence.
- **Dependency:** The issue of dependency may be relevant for some women with disabilities, women with diagnosed mental health conditions, women dependent on a carer perpetrator, women dependent on partner for maintenance or legal right to remain in the country, women with dependent children, women with a dependent perpetrator, women with no housing alternative or at risk of homelessness and women without a trusted confidante
- **Cultural norms:** Cultural norms may pose barriers to protection for some groups of women living in non-integrated or closed communities, some Traveller women, women who live within a culture where domestic violence is regarded as acceptable, women at risk from their own family for reporting a perpetrator, women who live within a culture that does not allow or punishes attempts at recourse to justice, women who live in a culture where relationships are valued over the individual, women in cross-cultural relationships and women without trust in the Gardaí
- **Situational/circumstantial vulnerabilities:** Temporary specific needs at the time of the violence and/or at the time of the protec-

tion order being sought may include pregnancy, insecure accommodation and/or prescribed accommodation, active addiction issues, perpetrators with alcohol or substance abuse issues, immigration status issues, mental health issues or trauma as a result of domestic violence, (anticipated) negative social consequences of making a DVA application, women of children with suicidal tendencies, women at risk of losing custody of children, women who do not receive counselling prior to court proceedings, women who may be judged negatively in court by undertrained judges, and/or women with criminal or prostitution backgrounds.

It became clear in all reports that barriers to protection may be linked to barriers at the level of the legal and social framework, of the implementation of existing instruments, of the availability and accessibility of other protection measures. Also included are barriers in terms of personal capacities and resources and of situational circumstances.

Austrian colleagues therefore referred to a systematic presentation of findings to the three levels of analysis commonly used in social sciences: the macro, meso and micro level. Although not strictly separable or distinct from each other, these help to establish that specific needs are often due to structural inadequacies in the legal or funding systems (macro), develop in the interaction between the system and the subject (meso) or are located on the level of individuals (micro). (AT p. 19)

Findings on specific needs and protection measures

The case clusters highlighted structural or somehow typical problems met in the research and these were also addressed in the chapters which give an overview of the interview findings. In the following section the most important results are presented, common features and major characteristics are described and the question is raised if protection orders in these cases were issued and showed satisfactory results. Of necessity, full details cannot be provided but some topics are illustrated by including some examples.

One main aspect is the **dependency of the victim on the perpetrator for support for activities of daily living due to physical impairment and/or chronic diseases, possibly combined with old age**. Research reports indicate that in such cases victim and perpetrator usually live in a shared household, the offender being often the (ex-) partner, but also in a significant number of cases male offspring and sometimes other relatives. In cases of male offspring economic dependency, substance abuse and mental health issues on the part of



the offender are reported as being of relevance, but also in cases of partner violence substance misuse may be very relevant. In this group of cases not only access problems and the dependency on support and care were identified as a barrier to seeking protection, but also a fear of being institutionalized, the emotional attachment of the victim to the offender, feelings of gratefulness for support, responsibility for, guilt and pity for the offender and isolation may be relevant factors. Many women were highly ambivalent in relation to protection (and penal) measures aiming at separating them from the offender. For most of them the main aim was to seek protection in situations of immediate violence and to stop the violence in the long run, preferably by changing the behaviour of the perpetrator with rehabilitation programmes or other forms of treatment. Although in all partner countries it was reported that protection orders were issued in a few of cases, in all cases that concerned male offspring with mental health problems as perpetrators, no permanent separation could be achieved.

Some of the cases reported also involved very determined older victims who tried any measures available to achieve protection. A successful separation was reported as being more likely to occur when victims were not fully dependent but had the ability to mostly live autonomously; a case in point was reported from Poland where an 84 year old woman supported by social assistance which was responsible monitoring the case after a police intervention, used a court intervention after numerous other outreaches for attempts to obtain protection had failed. A suspended prison sentence for the perpetrator was the outcome and this had the effect that the offender stopped the aggressive behaviour.

If the options to live independently are very limited, not surprisingly the availability of alternative or accessory support and care options is the precondition for effective protection for many victims; but even in such situations for some women social and emotional dependencies may limit their interest in separation. In all countries it was clear that it is very difficult for women to reach out for help and protection if they have impairments and particularly when perpetrators are in charge of support and care.

In Portugal examples were described, where non-contact orders and barring orders, sometimes monitored by an electronic tagging bracelet, were issued by the criminal court. Due to different factors, one of them the dependency of the perpetrator, the victim and the perpetrator undermined the protection measures. A shortage of resources for alternative support and care solutions is a crucial problem and limits the scope for possible action on the part of public prosecutors. Protection measures which are imposed without organising replacement care and support put victims at new or further risks. One Portuguese Public Prosecutor

described the difficulties: *„If I apply a measure barring the perpetrator from the house I will be benefitting the victim, but in order to do that, if the victim is vulnerable due to disease or old age, I need the help of social services (...) and then that does not work" (Pt p. 42).* Social infrastructure is deficient in Portugal and one practitioner from a victims support service pointed out that the situation even deteriorated through economic austerity policy: *„We had the homecare services, the nurses and aid providers, but there are less and less." (Pt p. 42)*

In Austria it was reported that in many of the cases involving older women with physical limitations an emergency barring order was issued by the police. As prescribed, afterwards the police informed the support agency in charge (violence intervention center), which activated a wider network of services in order to secure assistance regarding economic security, shelter, care and support with daily routines. No fundamental difficulties in this respect were reported which may on the one hand be due to the fact that social services are available and affordable for women to a much higher degree than for example in Portugal. Organising help for the victim – as pointed out by a police interviewee– is in cases of care dependency often more effective than an emergency barring order and may be necessary to facilitate change. On the other hand, the Austrian example shows that emergency barring orders can also be effective for this group, given that someone (or an organisation) assumes the case responsibility, coordinates a joint approach of services able to solve problems and if means for alternative support are available. Also in the aforementioned Polish case, the protection could finally be achieved with the support of social services, which was instigated through standardized referral procedures. Although some interviewees in Germany and Poland criticized mandatory referral protocols in relation to the right to self-determination of victims, examples show that these procedures may be the key to changing violent situations in cases of dependence. In the German case sample emergency barring orders in cases of dependency on care from the perpetrator were reported only in cases where care and support were granted because the victim was injured and received hospital care and treatment.

Specific problems may arise in cases of women with diverse mental health problems, which are sometimes also linked to old age (e.g. dementia) but often are not. In Austria the vulnerability of these victims was reported to be increased because of risk factors on the part of the perpetrators (addiction, previous convictions, mental ill-health, physical disability, or subject to guardianship provisions), however, in Portugal it was reported that perpetrators in cases involving cognitive impairment were often other family members (e.g. parents). Also for these cases, a diverse and sometimes ambivalent stance of the victims towards separation was a key barrier for effective protection. In the Portuguese report

one case was reported, where despite extensive violence the victim did not want the perpetrator to be removed because she feared institutionalisation; however, against her will a barring order was issued by the criminal court. In this case no information about accompanying social measures of support and care was provided. In contrast, the Polish team reported the case of a woman with schizophrenia, who was treated and monitored and who functioned normally on an everyday basis. Over the years neither the police or prosecuting lawyers believed her complaints about her violent husband because she had a psychiatric history. She was very determined and finally a criminal court found him guilty of violence and sentenced him to a 15 months prison sentence suspended for three years with a probation order, which had the effect that he moved out and did not approach or contact the victim any more. The Polish report points out that protection can be reached, but that women with mental health problems „must put considerably more effort into providing security for themselves“ than women without mental health problems (PL p. 64). In Austria in many of the cases involving women with mental health problems and cognitive impairment as victims emergency barring orders were issued, although in some cases this only happened after several calls for help. Practitioners suggested that the problem was that these victims are assessed as unreliable by the police (and court), but some were „surprised by the sensitive and understanding manner of the officer“ dealing with these cases (p. 33). Unfortunately this situation could not be confirmed in the German report, where a lack of sensitivity on the part of the police in questioning victims with mental health problems was reported in some cases. While some of the victims in Austria also opted for continuation of the relationship with the perpetrator, some of the women applied successfully for civil protection orders. In contrast in Germany, no such case was reported and German experts agreed that it is too challenging and beyond the reach of women with severe mental health problems to apply for a civil protection order, not at least because the credibility of an affidavit by them would be even more at stake.

Communication problems are also especially relevant for **deaf women**. Examples were reported from Austria and Ireland, where sign language interpreters were not in all cases (and for all languages) available, thereby limiting the options for women to understand and to be understood in communication with police and the justice system about protection orders.

In relation to victims in day care or long term care institutions and homes for the disabled people, alternative solutions to police or justice based protection measures were reported as being useful and sometimes easier to manage. The reported options are to ban perpetrators from the premises, which can be initiated by the management of the facility and without involvement of the justice sys-

tem or police, and / or to place perpetrators in another facility or ward of the facility. This, however, needs to be accompanied by social support of both the perpetrator and the victim. In one Austrian case involving a woman with severe cognitive impairment, one of the professional caregivers welcomed the fact that no emergency barring order was issued, but options for crisis intervention were discussed in an interdisciplinary team with participation of the police, because the situation remained unclear, the victim would not have understood the measure and support for the perpetrator was also a crucial issue. But what was particularly welcomed was the involvement of the police. Similarly, several German interviewees advocated that mentally impaired victims and perpetrators should be taken seriously, as evidenced by means such as questioning them and even pressing charges. This helps to, as outlined by an Austrian expert, „establish reality“ and establish ground rules for acceptable non-violent behaviour (AT p. 36).

In all countries studied, access to shelters or refuges as a further means to secure protection, was very limited or appeared to be almost impossible for women with all kinds of impairments and (mental) health problems (including active addiction). This appears to be even more impossible in Poland and Portugal, where in most cases preventive / coercive measures take some time to attain and short-term alternatives like emergency barring orders do not exist or are not used to a significant extent. It is therefore very difficult to bridge the time gap between the violent incident and the issue of a protective measure. This problem is particularly germane in Poland, where proceedings can last up to one year or more and in cases in which no further violence occurred in the meantime courts will not see an urgent protection need.

For women who are dependent on support because of mental health problems, relevant issues include communication deficits and isolation, resulting in limited potential for detecting and reporting violence. In these cases legal guardians play a crucial role, because they may recognize violent incidents, and may assist in accessing outreach for help and also support the victim in dealing with police and the justice system in relation to proceedings for protection measures. On the other hand, access to help is even more restricted in cases where legal guardians are perpetrators of violence.

Multiple barriers are reported for women with **active addiction issues**, especially if these are connected to mental health issues and / or homelessness. Women with such difficulties often have the experience that they are judged negatively in court and may fear approaching the police because they have little experience of trust in them based on their earlier experience of them. They can

therefore have substantial difficulties in presenting their case. Experts and practitioners described a close connection between addiction, mental health problems, homelessness and experiences of violence. In Germany many **homeless women** were described as having some experience of violence in their lives and many of them are likely to still be subject to violence by male „buddies“ they depend on for accommodation or even protection on the streets. In Germany, however, no cases were reported, relating to protective measures applied to homeless victims of domestic violence. This may be due to the limited scope of the legislation (e.g. in Germany allocation of a shared home has the precondition that one is a legal tenant and any cohabitation must be one of a significant duration), but access problems are of the utmost importance. In Poland, Portugal and Ireland the combination of economic dependence, lack of affordable housing and domestic violence often leads victims to remain living with the abusive partner and thus limits the effect of any protection measure(s). This also seems to be a relevant factor in Germany and Austria, but there seems to be more state/ community level (AT) support for alternative housing solutions. The Irish report states that „orders based on establishing distance are inappropriate when housing alternatives are not available“ (IRE p. 50) and points out that judges can be reluctant to provide a barring order when the perpetrator is at risk of becoming homeless. Additional problems exist for state-prescribed housing (social housing, halting sites for travellers, refuges, homeless shelters, transitional housing and homes for asylum seekers) in the different countries to differing degrees.

As a group with multiple problems in the access of protection measures all reports identified **women with a migration background who at the same time are socially isolated and have an very limited knowledge of the language of the country**. A smaller number of these cases was only reported in Poland, and these occurred mainly in bigger cities. In these cases perpetrators were mostly (ex-)partners. In all countries the reports described particular difficulties where communication problems are often not recognized by the police or in court and thus protection needs are not met. This may be due to a limited pool of minority language interpreters being available, a lack of impartial interpreters or it may be that language skills of victims are at times overestimated. This may lead to inadequate reactions by the police and possibly an unjustified denial of protection orders. In Portugal this deficit was seen as especially problematic in the interaction with social services, including healthcare, and the initial point of contact with the police.

In Austria, in most reported cases an emergency barring order was issued and there were no indications of breaches so the measure was seen as effective. The proportion of these victims having (successfully) applied for a PO is similar to the

general number of applications. In other countries access was seen as much more problematic. In Germany practitioners explained that migrant women are in general not very reluctant with regard to applying for civil protection orders and usually benefit a lot from emergency barring orders, but that there are quite a lot of migrant women where access to civil protection orders is quite limited. Such multiple barriers were also described by a practitioner in the Irish report: *„The woman is trapped often with Stamp no 3 which prevents her from working and usually has very little income on which to survive she has limited rights to social welfare, and this can be the case even when she comes from a country from which a visa is not needed to enter Ireland. The loneliness and the lack of support is enormous.“* (IRE p.44)

Additional problems can arise if the **women’s residence status is at risk** because such status depends upon the perpetrator, the violent partner withholds papers from them or where the women are undocumented. Additionally, economic dependence is often relevant in these cases and in situations where minor children live in the family, women fear that they may lose custody and any contact with their children in the case of deportation. This dependency arises if joint/family applications for any form of visa or citizenship were made or if the residence status is dependent on a marriage with a native or naturalised partner. Such situations were described as one form of coercive control to exploit the powerless situation of migrant victims and to threaten women with deportation, loss of children, to withhold papers and to make them remain in an illegal status and unconscious of their rights. Although in some countries mechanisms exist which are meant to regularise the legal status of domestic violence victims, procedures are reported to be particularly difficult and bureaucratic (PT) or in many cases not successful (GE). However, they are now working better in Ireland. In Austria only in one case was an emergency barring order issued with unclear effects and the woman did not file for a civil protection order. This example shows that orders are often not effective when several family members are offenders or are supporting the offender and that women are at risk of losing custody or not getting contact rights.

Multiple factors related to migration may severely restrict even reporting instances of abuse, which is the precondition of protection. The Portuguese report states: *“The many barriers that undocumented migrants face may indeed hamper their initiative to report, which is the only way to access protection measures”* (PT p. 39). It may also restrict the effectiveness of protection measures if perpetrators are undocumented. Cases were reported from Portugal and Ireland, where the enforcement of coercive measures / protection orders was complicated because the whereabouts of the aggressors were unknown.

When domestic violence occurs during an application for refugee or asylum status or any other visa or citizenship process, any report to the police and involvement in criminal proceedings may endanger the residence status and *"women seeking protection orders may be perceived by the community as sabotaging the perpetrator's visa or citizenship application"* (IRE p. 44), because most residence permits are at risk if any party breaks the law.

All country partners mentioned another extremely negative factor for accessing protection occurred in situations, which they framed as restrictive cultural or religious norms and values and in a wider sense any situations where separation or turning to protection is hindered by (anticipated) social costs, like completely losing one's social network. These situations often involve migrant women but do not necessarily affect migrant women in general; the situation appears to be aggravated by having underage children and no access to gainful employment or sufficient amounts of social support. The Austrian report states that an accumulation of gender specific disadvantageous factors may occur in such cases, which turns separation into an extremely challenging decision. Their own values may complicate a separation, especially if both women and community have an attitude that some degree of violence is „customary“.

That such social norms and ties are not limited to migrant and Muslim communities is very clear in the reports, when rural communities and Catholic values – which are often both linked, for example, for many older Polish, Irish and Portuguese women, close bonds in communities of deaf people or other similar groups are described. It is obvious that initiating protection by individuals themselves is extremely difficult for these women. The Austrian report provides an example, where a youth and welfare office successfully applied for a civil protection order on behalf of the children. The fact that it was not the victim herself who initiated the proceedings protected her from social pressure from the community to have the order suspended. In this case the order was effective. The social closeness or isolation of minority communities is often also linked to both social and cultural isolation and, as the Portuguese report points out, to discrimination and prejudices within official agencies relating to such communities. Another inhibiting factor identified in all reports is living in a culture that does not allow or punishes attempts at recourse to justice. That might be relevant for women from well-known and influential families, and professional women.

Only the German and Polish reports put specific emphasis on mothers with underage children. Nonetheless the specific needs of this group are also addressed in the other country reports. The Irish report additionally names pregnancy as a

specific risk and vulnerability factor. **Mothers of underage children** face specific barriers for obtaining protection in manifold ways, which the Austrian report links to the fact that children extend the sphere of vulnerability of women. However, on the other hand, as was stated in the Polish report, police and judicial organisations tend to act more often in favour of the protection of women with underage children and more often perceive the need for urgent action. Having children makes women more dependent and increases risk, because economic dependence is an inhibiting factor and the perpetrator often owns the accommodation. In addition women with children may stay in relationships because they assume this is in the interests of the children. Yet children may also be a strong motivation and factor for change for women and thus for making use of protection measures. The Austrian report indicates that in some cases, fathers use their children in order to assert pressure on the mother, on the legal level as well as through violence. When the mother is “out of reach” of the father, because of a communication ban for instance, the violence may be directed against the children instead of her, thus exerting revenge for the separation and continuing to abuse the woman.

The Polish case sample was characterized by alcohol dependency on the part of the perpetrator, abuse of the children, long years of experience of violence, sometimes in close family systems, local isolation with with shared economies and with mutual dependency. In these cases especially, detention and other forms of separation of the offender did not turn out to be useful for the victim and in one example provided, the victim turned to the court and requested alternative measures which allowed her husband to continue the work on the farm. Thus a prison sentence was changed into a suspended prison sentence connected with supervision by a probation officer and an order to refrain from abusing alcohol. In the Polish case sample some mothers of underage children were very determined to separate and thereby end violence for themselves and their children, and in such situations, the women supported the judicial proceedings. In several of these cases an eviction order was granted in combination with a suspended prison sentence, but perpetrators mostly did not comply with such orders.

In other cases, women with minor children felt guilty following the detention of their partner, and withdrew charges. A lack of further reports in these cases may not necessarily mean that the violence stopped but rather that victims feared the consequences of the prosecution more than the violence itself. In the Polish case sample of women with minor children, the importance of separation was stressed, because this gives women the opportunity to experience managing



their lives alone and to determine that they are less dependent than they thought.

In several national reports, the threat of the abduction of children for non-national families was also a relevant factor. In the Irish report another issue related to mothers of underage children was cited: that the risk of losing custody of the children may result in their mothers not reporting domestic violence.

In Germany, there were no reports of general problems of mothers in accessing the protection system. With regard to emergency barring orders, in some cases problems were mentioned where the perpetrator was responsible for child care and therefore could not easily be banned from the home. A further topic detailed in the German report, but also raised in the other reports, was that women with minor children have additional specific needs because they have to face claims of the perpetrator on parental rights. In Austria, in one of the exceptions to the generally very effective protection system this combination of factors is described: cases where the fathers have court-ordered visiting rights, but no third parties are available to hand over small children. This, however, in practice may either lead to renewed situations of endangerment for the mother, or to accusations by the father that he is being denied his rights.

German experts and practitioners reported some problems with civil protection orders, because protection orders and the exercise of parental rights may be in conflict. It seems that the principles of family law, namely to reach solutions by settlement, agreement and, if necessary, forced consensus, can be in tension with the principles established in the system of protection against violence system. In many cases family law principles are thought to have more importance. Thus often it appears that risk of violence and the protection needs of mothers are not sufficiently recognized and precautionary measures for contact with children, such as accompanied or supervised contact, are not sufficiently enacted. Additionally, in some courts there is an increased tendency of judges to favour hearings and settlements instead of court orders in cases in which children are involved. Anticipation of these problems sometimes has effects on applications and may deter women from reporting situations.

This compilation of results is not exhaustive. Other important constellations and specific needs were described in the national reports but have not been explored in detail in this report.

5. Summary

In this report results from Austria, Germany, Ireland, Poland and Portugal have been presented. The reports describe the specific needs of women applying for protection orders and the impact that those specific needs may have on protection outcomes. Partners in all countries carried out interviews with a total of 208 experts and practitioners from different professions and institutions and analysed 257 cases which were derived from court files, from professionals recalling verbally or in writing their work experiences, and also from victims of domestic violence themselves.

It can be shown, firstly that the legal regulations and the implementation of measures with regard to all victims of domestic violence sets a crucial frame also for the protection of victims with specific needs. With the exception of Austria, in all countries studied, major deficiencies in the legal framework and / or the implementation of the protection measures are cited. The Portuguese report appositely states, thereby reflecting problems found also in Germany, Ireland and Poland, that if the situation of especially vulnerable women poses specific challenges, in many respects the whole system of protection of victims of domestic violence is at stake.

For victims with specific needs it is particularly relevant that civil law based protection orders presuppose an application and thus are predicated on the will and initiative of the victim. On the contrary, criminal law based protection measures are predominantly independent from the will of the victims, which may also cause specific problems. However, a connection with criminal prosecution also acts to limit access, because many women, especially those with specific needs, want the violence to stop, but they – like many other victims – do not want the perpetrator to be punished and don't want to be part of criminal proceedings. An aggravating factor is that in criminal proceedings, the requirement for sufficient proof and evidence is much stricter than in civil proceedings.

In relation to the legal framework, it must be stated that in both Poland and Portugal, no real protection orders exist. Existing measures are based in criminal law or criminal procedural law and linked to criminal prosecution; civil regulations exist but are not adapted to domestic violence or are only rarely used. Guiding principles of the criminal and criminal procedural system focus on the offender and aim to stop the criminal activity as a first line principle and therefore are not focussed primarily on the protection of the victim.

In Austria and Germany, police based emergency barring orders exist and are frequently used in situations of domestic violence. No general application problems are encountered in cases with victims with specific needs and in particular, the Austrian report provides many examples of successful implementation in such cases. In Poland, Portugal and Ireland, a need for such short-term measures granting separation without litigious proceedings in situations of immediate risk is indicated as necessary. However, emergency barring orders as required by the Istanbul Convention are not yet established in these countries and yet they are seen as necessary, because short-term arrests by the police are regarded as not sufficiently used and of too short duration.

From the report it emerged that not one single type of protection measure may be adequate for victims in general, and especially for victims with specific needs, but that different options are needed; these would be used individually, subsequently or in a complementary way. A combination of emergency barring orders and civil protection orders as reported in Germany and Austria is regarded as very useful. However, it is apparent that the use of protective measures within criminal law may ensure protection in some cases, where for many reasons the victim may not be able or willing to apply for a protection order herself but when the type of crime and the consequences for the victim require long-term protection for the woman (and possibly others, such as care dependants or children).

For victims with specific needs, accessibility of help and support is of the utmost importance. In that respect, for many reasons, the situation in most of the countries is not satisfactory, but as seen, differences between the countries are substantial. Standardized referral procedures are necessary; these are seen as insufficient in Portugal and Ireland and in need of improvement in Germany and Poland. For victims who are dependent on support and/or care of the perpetrator, the precondition for any separation from the offender is immediately available alternative support. Whilst in Austria in that respect conditions are described as satisfactory, countries such as Portugal, Ireland and Poland described a general lack of services that might be needed in such circumstances.

General implementation problems of criminal law and civil law based protection measures are relevant for all victims, but they often affect victims with specific needs more substantially and more seriously. In all the study countries, except Austria, significant inconsistencies in the decisions of the judiciary were observed, related to the finding that protection measures are generally not used sufficiently; that outcomes of proceedings very much depend on single judges / prosecutors and that a number of factors limit the effectiveness and adequacy of the measures. Some of the constraining factors mentioned were costs (for civil

protection orders), the duration of proceedings and therefore possible protection gaps, a procedure which is demanding overall and a risk in some countries (for example, DE) that the judges favour settlements instead of orders. Furthermore, possible negative effects of measures like increased risk, remorse on the part of the victim and withdrawal of support for the judicial process, problems with the enforcement of measures and limited sanctions in cases of breaches were all cited as constraints militating against the use of protection measures.

Whilst in many of the cases from Ireland, Poland and Portugal protection measures did not bring the needed change, with regard to the application and effectiveness of measures for victims with specific needs, the Austrian report indicated that the instruments were generally applicable and applied in many of the cases with victims with specific needs. In Austria far more effective interventions and protection orders were reported. Yet experts also stated that protection measures are not often used for some groups of victims. Examples of such situations are when the victim is nursed by relatives, when she lives in an assisted living community, or suffers from serious cognitive or mental disabilities. Another group in which the Austrian case files indicated limited access to EBOs and POs are migrants who depend on the perpetrator's residence status. The rare use of both of these instruments indicates that foreigners and residence laws hamper and restrict victim protection.

In Germany the most important finding was that the implementation of civil protection orders was not the main problem, but that for many victims with specific needs, access to the instruments is extremely limited, or for some individuals even almost impossible. In other countries, barriers to accessibility were also numerous, and the Irish report stated that many women with specific needs who could benefit from protection do not appear to apply for protection orders. For Ireland, Poland, Portugal and Germany it is true that responses from participants varied according to background. Victims and DV support service workers voiced more concerns and were less satisfied with both the process and outcomes than legal representatives and Courts Service.

In Poland, Portugal, Ireland and Germany many problems were described. Problems were seen to be related to

- a lack of procedures in place to evaluate specific needs and identify them (following Art. 22 of the Victims' Directive)
- a lack of coherent and generalised system for addressing and meeting these needs (e.g. a system for evaluation of the appropriateness of a protective measure to the specific case is necessary but not in place)



- deficiencies in enforcing and monitoring the protective measures issued
- deficiencies in inter-agency cooperation
- lack of mandatory training for the judiciary and partly the police

In the country reports, multiple factors were identified which are related to specific needs. Participants described specific needs in groups of complex and inter-related requirements. Concepts and systems were developed to better understand the comparable features of these factors. As stated in the Irish report, specific needs may be created, or taken advantage of by the perpetrator within a coercive control dynamic.

It became clear through our analysis, that on the whole, barriers and gaps in protection may arise in connection with individual features of vulnerability and the need of the women involved for protection as a result of their current life and living circumstances, the associated underlying social and legal conditions and due to the preconditions for access to various instruments. These factors relating to specific persons, situations and instruments cannot be viewed in an isolated manner. Rather, they interact with each other in multi-faceted ways. They may constitute barriers to access, to availability in principle, and to the implementation of measures that are particularly salient for the particular groups of people.

The identified barriers and gaps relate to specific topics:

- availability of relevant and appropriate information
- accessibility of help systems and authorities
- communication opportunities
- familiarity with, and trust and confidence in (help) systems and authorities
- conflicts between protection measures and other legal provisions and/or actual practice
- dependency as a lack of alternatives to current life circumstances and economic situations
- adjustment of measures to diverse and variable case constellations (legal framework)
- cultural norms and social networks

Based on the concept of vulnerability, and thus on specific needs that primarily arise from the situation, this study not only focused on women with physical,

cognitive or mental disabilities, but also on victims of violence who face barriers in accessing victim protection because of legal or social factors and/or individual characteristics, or for whom it is particularly difficult to remain in the network of support, as is the case with female migrants and refugees who have very limited knowledge of the national language or whose residence is not assured, or for women who experience mental illness. Basing our analysis on a social, not a medical model of disabilities, which assumes that disabilities are socially produced by mechanisms of exclusion and denigration (Shuttleworth, 2007, 176) allowed for the recognition of both the structural bases of disadvantages and also the potential for change.

In all countries studied, we encountered a deficient data-base in relation to protection orders and particularly a lack of data on victims of domestic violence who have specific needs. Some studies exist on victims with specific needs and protection orders, but they tend to focus on single groups or vulnerabilities, not on victims with specific needs in general. So it can be stated that it is very difficult to adequately explore access to protection.

In cases where protection orders cannot (alone) adequately protect women, shelters and refuges are reported to be important; but in all countries there are profound and serious difficulties in finding shelters for victims with specific needs. In many cases facilities are not suitable and adequate for the women, and very often victims with specific needs are not admitted because it is difficult to integrate them into (daily procedures of) the shelters.

In order to implement improvements, reference can be made in all countries to existing international obligations and provisions (the European Directive on Protection of Victims 2012/29/EU, the Istanbul Convention, the Convention on Persons with Disabilities). These conventions contain wide-ranging stipulations on the reduction of the said barriers to access and problems in implementation, especially for victims with specific needs for protection. The Directive on Protection of Victims already offers a suitable basis with which to call for and implement national improvements in many of the areas described. On the whole, codes, bodies of laws, conventions and guidelines contain the following stipulations and rules which bear relevance to this study, that:

- all measures must consider the needs of victims with a specific need for protection and take these into account
- vocational groups that are involved with victims of domestic violence have to be sufficiently trained



- victims of domestic violence must receive sufficient information on their rights and the possibilities for support in an understandable language
- victims must be afforded opportunities to understand and be understood
- there must be sufficient, appropriate and accessible services, including for groups of victims requiring special protection
- in proceedings involving custody and visiting rights, interests in relation to needs for protection and the occurrence of domestic violence must be taken into account
- the economic independence of victims of violence must be strengthened.

Implementation of these provisions would constitute a major step forward for victims with specific needs and in specific living situations towards an improved protection for victims. Such provisions must be on the agenda for actions against violence at local, regional, national and international levels in coming years in order to offer appropriate and sufficient protection for those affected by such violence, and to add strength to the work to combat violence.

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