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COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

**pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the
standing of victims in criminal proceedings (2001/220/JHA)**

[SEC(2009) 476]

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1. INTRODUCTION

1.1. Background

According to Article 18 of Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings¹ ("the Framework Decision") requires the Commission to draw up a report on the implementation measures taken by Member States. The Commission published a first report on 16 February 2004² which examined transposal as of 25 March 2003 when only AT, BE, FI, DE, IT, IE, LU, PT, ES and SE had sent relatively complete contributions on transposal into their national legislation.

This final report takes into account implementation of all Articles of the Framework Decision as at 15 February 2008 in all 27 Member States.

Despite Article 18 laying down an obligation for Member States to submit implementing legislation to the Commission by 22 March 2006, in November 2007 only 13 Member States (AT, DK, DE, ES, LU, NL, PT, SE, UK, CZ, HU, LT, PL) had sent relatively complete contributions. The Commission sent reminders to Member States; the final deadline was set at 15 February 2008. This report is based on the transposal situation on 15 February 2008, almost two years after the 22 March 2006 deadline. It should be read in conjunction with the first report which has information on the evaluation method and criteria, and with the annex which lists in tabular form the implementing provisions submitted by Member States for each Article.

1.2. General remarks

2 Member States (MT and EL) did not submit legislation and therefore the Commission cannot assess whether they have implemented the Framework Decision.

LV sent a set of national provisions in Latvian on 12 December 2007 and further provisions on 6 March 2008 (after the deadline), without a description of the national implementing measures or explanatory notes. Therefore, the Commission cannot assess whether LV has fulfilled the obligation as set out in Article 18. Other Member States submitted national provisions that purport to implement the Framework Decision, in full or in part. LU informed the Commission that the Bill referred to in the first report has still not become law. It will not be taken into account in the assessment of the implementation by LU. UK states that it covers England, Wales, Scotland and Northern Ireland, but UK sent an additional contribution regarding transposal in Scotland (the Scottish system is mentioned specifically where it differs from the general provisions for the rest of the UK).

¹ OJ L 82, 22.3.2001, p. 1.

² COM (2004) 54 final/2

No Member State transposed the Framework Decision in a single piece of national legislation. Member States all relied on existing provisions and many referred to their Code of Criminal Procedure for transposal. A few adopted new legislation covering one or more Articles. Many Member States submitted non-binding codes, Instructions and charters in lieu of legislation.

Several Member States have covered the provisions piecemeal by virtue of overlap with a variety of existing national provisions or newly adopted national provisions.

2. ARTICLE BY ARTICLE ANALYSIS

See the annexed table for measures submitted by Member States.

Article 1: Definitions

This provision lays down definitions of 'victim', 'victim support organisation', 'criminal proceedings', 'proceedings' and 'mediation in criminal cases'. No Member State adopted new legislation to implement this Article, though several referred to existing national definitions of 'victim' which corresponded to a greater or lesser extent to the definition in the FD. The other terms defined were not addressed.

A wide definition of 'victim' is given by UK, BG, RO, LT and SE. The SK definition includes legal persons. ES, NL, DK, LU, EE, FI, BE and PT did not submit any transposing legislation. FR states that definitions match the notions commonly used anyway. IE states that it complies with the Framework Decision through its law, regulation and administrative provisions.

Article 2: Respect and recognition

Article 2(1) requires that the victim be given "a real and appropriate role" in the criminal legal system. The 2004 report found that AT, BE, FR, FI, DE, IT, LU, PT and SE had complied with the Framework Decision. BG, EE, CZ, HU, IE, PL, LT, RO, UK and ES make explicit reference to "a real and appropriate role". DK and SI point out that this provision is very general and specific rights are covered by other Articles. Article 2(2) concerns "particularly vulnerable victims" (not defined) for whom "specific treatment best suited to their circumstances" should be provided.

FR, IE, BE, PT, PL, UK, SE, SI and IT protect certain persons considered vulnerable owing to their physical or mental fragility (minors and physically disabled). ES, NL, CY, FI and RO focus on situations which can lead to vulnerability (family violence, sexual offences, terrorism, trafficking in human beings). Others chose broader protection, covering all types of persons and situations. In SK and DE, when the witness cannot appear for questioning owing to age, illness, or handicap, videoconferencing is used, LT, HU and CZ provide for a protection regime (anonymity or other measures) in certain circumstances (serious threat to the victim's or witness's life, serious crimes, relevance of the statement). In HU the victim's age is a criterion. BG and PL grant specific protection to certain categories of vulnerable people and when certain serious crimes are involved (trafficking in human beings or domestic violence). EE submitted no specific provisions protecting vulnerable individuals.

Article 3: Hearings, and provision of evidence

Article 3 lays down the right for victims to be heard during proceedings and to supply evidence. Most countries (AT, BE, FI, FR, DE, IT, LU, NL, PT, ES, SE, HU, CZ, BG, PL,

SK, SK, RO and EE) grant victims a number of rights as parties to the criminal proceedings. Victims are not parties to criminal proceedings in common law countries but the right to be heard is recognised in UK and IE.

Victims may give evidence in proceedings in most Member States. 3 countries did not submit specific provisions (DK, NL, UK).

10 Member States (AT, FI, IT, LU, ES, SE, HU, PL, CZ, BE) transposed the second paragraph of Article 3, which states that "judicial authorities shall question victims only insofar as necessary for the purpose of criminal proceedings" correctly. IT limits questioning to facts relevant to the charge. HU provides for the witness to be able to give a written statement in evidence. In CZ, a victim can not be forced to attend subsequent proceedings if there is no need. In PL, the Supreme Court and Attorney General's Guidelines lay down the right for a victim not to be questioned repeatedly. UK refers to training courses for practitioners on how to question victims.

Article 4: Right to receive information

Article 4 covers the rights of victims to receive different types of information.

Article 4(1) lists 10 types of information that must be transmitted to victims. AT, CY, FI, DE, IE, NL, UK (Scotland) and SE transposed this obligation by posting most of the information on websites and/or by creating information booklets. It is not clear from the legislation submitted, however, whether the victim has effective access to this information from first contact with enforcement authorities.

In IT and UK authorities are under no obligation to provide victims with all the information. PT measures do not oblige national authorities to transmit information to victims.

BE, EE, FR, ES, CZ, HU and SK have an acceptable system whereby there is an obligation on police officers, prosecutors and judges to inform victims of most of their rights. FI limits the pre-trial investigation authorities' duty to informing victims about the right to compensation.

In RO, BG, FI, LT and PL the approaches are combined. The authorities are obliged to inform victims of their rights and these countries set up websites. In BG, CY and RO there is a telephone number to provide information to victims.

The SI and CY legislation is incomplete and insufficient. SI refers to Ministry of Interior Guidelines which do not appear to be binding (the text was not submitted). LU implementation is poor given that the Bill has not passed into law.

Two other weaknesses should be noted. The first concerns languages. Information should be given "as far as possible in languages commonly understood". Certain Member States, (DE, the UK (Scotland), NL, SE, BG and FI) have information available in several languages (English among them). Most Member States are silent on this. Only BG and RO legislation specifically requires information to be given to the victim in a language that he understands. CZ and HU have provisions ensuring the right of a person who does not understand the language of the country to communicate with authorities in a language they understand.

The second concerns special arrangements available to non-resident victims. This provision was ignored by Member States except the UK (Scotland) and BG, which has a telephone link

making it possible to reach interpreters directly. In IE a special unit in the victim support organisation supports victims residing in another country.

Article 4(2) on information about the outcome of the case, was correctly transposed except that DK, EE, UK, LU, SI and FR did not submit information on sentence. IT only notifies the decision to victims who have brought *partie civile* proceedings. FI has integrated obligation (c) in its national system but provided no legislative basis. The PT Code of Criminal Procedure does not ensure that the victim is informed actively by the national authority if he “expressed a wish to this effect”. The IE Victims' Charter lacks mandatory status. EE did not submit implementing legislation.

Article 4(3) on notifying the victim of the offenders' release was correctly transposed only by FI, CZ, PL, SK and SE. IE's Victims' Charter states that the victim will be informed when the offender is released; if this is not done, the victim can only write to the Garda Victim Liaison Officer/local Superintendent. BG, LU, EE, HU, LT, RO and SI submitted no transposition. [The UK rules have two weaknesses. The Criminal Justice and Court Service Act 2000 requires the victim to be informed of plans to release the offender and of conditions to which the offender is to be subject on his release, but this applies only where the offender was sentenced to more than 12 months for a sexual or violent offence. The Scottish legal system provides for the victim to be informed of his aggressor's release but the instrument is not mandatory. Giving information on release on parole is the police's “current practice”.] ES refers to a provision concerning the duty to inform the victim of any procedural step which may affect his safety. FR states that work is in hand. PT states that it will take this provision into account in a forthcoming Bill amending the Code of Criminal Procedure.

Article 4(4) is on the victim's right not to receive information on the offender's release. Only FI, SE and SK fully transposed this provision. HU, CY, LT and IT state that they have no provisions to this effect. AT, DK, the UK, DE, FR, EL, NL, LU, LT, EE, RO, SI and ES did not submit provisions. In IE, where provision of information to which Article 4(3) applies is optional, the problem is, again, the Victims' Charter's status. PT provisions do not guarantee the victim the right not to receive the information. BE transposed this provision partially since it provides only for notification of information concerning the release of the offender on parole.

Article 5: Communication Safeguards

Article 5 contains an obligation to "minimise as far as possible communication difficulties" as regards victims' understanding of, or involvement in, the relevant steps of the criminal proceedings, to an extent comparable with the measures of this type which Member States take in respect of defendants. Communication difficulties could be interpreted more broadly so as to include the understanding of the procedure itself, but all Member States understood this to be limited to linguistic barriers. Only FI has an effective interpretation regime which extends to pre-trial investigations. In FR, IT, SI and BE the assistance of an interpreter or translator is given if the victim becomes a party to the proceedings or is a witness. SK, BG, CZ, IE, DK, FI, HU, SI, ES, PL and RO offer full linguistic assistance.

Transmitted provisions show a poor level of implementation in 5 Member States (LT, LU, SE, UK, NL) in relation to the higher protection granted to defendants. It is not clear whether in EE the victim support services provide a translation service or whether assistance is limited to helping victims with overall understanding of the process.

PL and CY did not submit implementing provisions.

Article 6: Specific assistance to the victim

This Article imposes a two-fold obligation.

First, Member States are required to ensure that victims have access, free of charge if necessary, to any form of advice other than legal advice and legal aid. Only 10 Member States (BG, EE, BE, ES, IE, SE, FR, RO, UK and DK) have acted on this obligation. The definition of *any form of advice* differs from one State to the other, from psychological assistance to medical treatment or information.

Generally, implementation by Member States is incomplete. SI transmitted Article 65 of the Criminal Procedural Act which does not match the obligation set out in Article 6. IT only sent legislation on specific assistance to minors who are victims of serious crimes and to victims of trafficking of human beings. 9 Member States (LU, HU, CZ, FI, PL, SK, LT, CY and NL) do not ensure that victims have free access to advice other than legal advice and legal aid.

Second, Member States are required to ensure that victims have access to legal aid when it is possible for them to have the status of parties to the proceedings. This provision was correctly transposed by most Member States except SI. There are differences in who can benefit from the assistance. NL informed the Commission of its system of limited legal aid (half an hour's advice) regardless of income.

Article 7: Victims' expenses with respect to criminal proceedings

Article 7 covers the expenses of victims who are parties to, or witnesses in, the criminal proceedings. AT, DE, EE, DK, PL, IT, PT, FI, LT, ES and SE made a distinction between victim as party and victim as witness. Most Member States (except BE, IE, NL and UK) cover lawyers' expenses if the victim is a party in the proceedings. Unless victims are entitled to legal aid, under IT, HU, ES, CZ, RO and SK law, the victim's lawyer's expenses can only be charged to the offender. This could create problems if the offender is insolvent. In BG, legal costs can be paid. In LT, witnesses' and victims' expenses are covered. In PL, victims' legal expenses are covered by the offender and under some unspecified circumstances by the State. In FI, if the victim's legal expenses are not covered by public funds, the offender may be required to pay them.

CY's submission is incomplete and EE only mentions reimbursement of expenses incurred by victims when heard as witness.

Article 8: Right to protection

Article 8 confers different rights to protection.

Article 8(1) covers the obligation to ensure the safety of victims and their families and protection of their privacy; it was transposed by AT, BE, FI, DE, PT, NL, ES, SE, CY, CZ, RO, SK, SI, BG and HU. FR, LT and PL have taken measures to protect victims but not the family; they have not submitted provisions transposing other aspects of Article 8(1). IE transposed Article 8(1) in its Victims' Charter (not mandatory). As for protection of victims' privacy, all Member States except SI mentioned the possibility of holding *in camera* proceedings. Protection of the victim's family's privacy is mentioned explicitly only by FI, although the relevant text was not sent.

Article 8(2) refers to privacy in relation to court proceedings. AT, BE, BG, FR, SK, HU, DE and PT supplied information on protection of the photographic image.

DK provided incomplete information on Articles 8 (1) and (2) referring only to the witness protection regime.

Article 8(3) aims to reduce contact between victim and offender, in particular by providing for separate waiting areas in courts. Only DE, IT and ES sent provisions transposing Article 8(3). DE has transposed this correctly; ES has provided only for separate premises for victims as witnesses. FI, IE, LU, CZ, UK and SE say that they comply in practice (but not in law). PL stated that Presidents of Courts are aware of the need and DK stated that the Ministry of Justice had sent communications to this effect. SK states that the judge can take the necessary measures to ensure that there is no contact between accused and victim at court, but this is limited to certain cases and does not ensure separate premises.

Article 8(4) requires Member States to protect victims by allowing them to testify in a manner that will respect their vulnerability. Most Member States have transposed this article to a certain extent. FR, SI, EE, LT and EL sent no legislation. FI mentions a Bill providing for protective measures for minors. UK applies measures in Crown Courts but their application in Magistrates' Courts is confined to the use of audio-visual link-ups. CZ provides for limited protection of persons under 15. DK provides for a general regime of protection (non communication of the person's personal data) when an individual might be in danger. This doesn't achieve the objective of this provision e.g. in respect of young children. EE's implementation of Article 8 is unsatisfactory as there is no reference to protection of families and vulnerable persons. Similarly, LU implementation is poor; the Bill has not passed into law.

Article 9: Right to compensation in the course of criminal proceedings

Article 9(1) obliges Member States to ensure that the decision on compensation by the offender is taken within a reasonable time. Most Member States considered that it could be transposed by means of *partie civile* proceedings joined to criminal proceedings.

Common law countries do not have *partie civile* proceedings. IE has a compensation scheme for certain categories of victim. DK, EL and UK notified no transposal provisions. CY, DE, FR, LT, BE, ES and SE provide only for certain categories of victims to be compensated. Such measures do not transpose Article 9(1).

Article 9(2) requires Member States to encourage the offender to provide compensation. AT, FR, DE, FI, IE, IT, ES and NL took appropriate measures to implement it. Release on bail or parole is conditional on the offender's conduct towards the victim. In RO, the prosecutor or the judge may take provisional measures, such as seizure or confiscation of the offender's assets, to ensure that compensation is paid, but there are no provisions for payment if the offender is insolvent. In LT, FI, HU, SI and CZ, reparation of damage caused by the offence can be a mitigating circumstance in relation to sentence. DK, EE, EL and UK did not notify any transposal provisions.

Article 9(3) requires Member States to ensure that the victim's property is returned promptly. Most Member States have introduced this obligation. DK, FR, DE, EL and ES did not submit provisions. IE and UK state that this obligation is fulfilled, although they sent no legislation.

Article 10: Penal mediation in the course of criminal proceedings

Article 10 obliges Member States to promote mediation in appropriate cases. Most Member States have a regime making mediation available. LU limits the choice of recourse to penal mediation to the *procureur d'Etat*; parties have no right of initiative. In SI, the state prosecutor decides to transfer the case to mediation, but mediation may take place only with the offender and victim's consent; on receiving notification that the terms of the agreement have been met, the state prosecutor dismisses the charge. In PL and FI, mediation can reduce the severity of the penalty. In LT, if parties agree to mediation, the criminal proceedings stop and in BG, a mediation agreement is binding on the parties. In SE mediation is available when the offender is under 21.

In CY and DK, mediation is not regulated. DK is exploring the possibility of introducing mediation on a permanent basis after a pilot project started in 1994 and extended further in 2003 and 2007.

Article 11: Victim resident in another Member State

Article 11(1) requires Member States to consider enabling non-resident victims to make a statement immediately or to allow the use of videoconferencing, as laid down in Articles 10 and 11 of the 2000 Convention on Mutual Legal Assistance. The Convention is not in force in EL, IT, IE and LU anyway. AT, BE, DK, DE, EL, LU, NL and SI did not submit provisions. Their legislation appears to allow a statement to be made immediately after an offence has been committed. ES has not transposed the article. NL, LU, SE and UK describe their system, but do not specify the legislative sources.

Article 11(2) enables non-resident victims to make a complaint in their state of residence. FR, IT, CY, PT, ES and SE have not transposed it AT, BE, DK, DE, LU, NL, LT, RO, EE, SI and SE did not submit any provisions. BE, IE, DK, HU, NL and SK accept complaints and transmit them if necessary to the country where the offence was committed. Only LU and FI transposed this paragraph.

Article 12: Cooperation between Member States

Article 12 covers cooperation between Member States. PT, HU and BG cited national implementing provisions. UK and CZ refer to the role played by their victim support organisations within the European Forum for Victim Services (now renamed Victim Support Europe). SE mentions its role in organising international conferences. IT and ES claim to have transposed Article 12 by implementing respectively the 2004 Directive on Compensation and the Convention on Mutual Legal Assistance. FR, CY, SI, SK, DK and EE did not mention this provision. CY, FI and LT state that legislation is not required in order to implement it.

Article 13: Specialist services and victim support organisations

Article 13 requires Member States to promote the role of victim support organisations for reception, accompaniment and support of victims. Most Member States say that they have a State financed victim support service providing information, guidance and support. Only AT, BE, BG, FR, PT EE and SE submitted provisions on the functions of these organisations, and in particular on support after criminal proceedings. CY, SI and SK made no mention of this Article. IT provides assistance only to certain categories of victims (abused minors, extortion related crimes etc.). RO provides psychological support free of charge for victims of certain

categories of offence. ES and FR refer to existing national legislation without specifying articles, and it is consequently not possible to check transposition. LT has "national victim support programmes" (no further information). UK (Scotland), PL and CZ note that the state subsidises victim support organisations and describes their functions, but gives no legislative basis.

Article 14: Training for personnel involved in proceedings or otherwise in contact with victims

Article 14 requires personnel coming into contact with victims (especially police officers and legal practitioners) to be suitably trained. PT, RO and SE are the only countries to have transposed both paragraphs of this Article. It is not clear whether the "victims of crime assistance personnel" mentioned by BG covers police and legal practitioners. Most other countries, except DK and IT, merely refer to bodies tasked with providing vocational training for relevant personnel. It is not always clear whether these bodies are financed by the State, as Article 14 prescribes. The AT transposal provision does not transpose Article 14 since it does not address training for personnel.

Article 15: Practical conditions regarding the position of victims in proceedings

Article 15(1) governs the prevention of secondary victimisation. Only AT, IT and ES transposed this Article. Other Member States, except DK and IT, state that they have introduced the necessary measures, although the description given by those Member States is vague and unsatisfactory. In BE, police officers are entitled to subsidies to arrange facilities for victims, but only for victims of physical or sexual violence.

Article 15(2) requires Member States to adapt facilities to prevent secondary victimisation. Most Member States have not referred to Article 15(2) at all. SE states that most police departments now have a separate room for children; for other categories of victim, work is in hand and suitable conditions will exist in the future.

Article 16: Territorial scope

The UK has not provided information suggesting that this provision was transposed for Gibraltar.

3. CONCLUSION

The implementation of this Framework Decision is not satisfactory. The national legislation sent to the Commission contains numerous omissions. Moreover, it largely reflects existing practice prior to adoption of the Framework Decision. The aim of harmonising legislation in this field has not been achieved owing to the wide disparity in national laws. Many provisions have been implemented by way of non-binding guidelines, charters and recommendations. The Commission cannot assess whether these are adhered to in practice.

The Commission invites Member States to consider this Report and to take the opportunity to provide all further relevant information to the Commission and to the Council Secretariat, in order to fulfil their obligations under Article 18 of the Framework Decision. In addition, the Commission encourages those Member State that have indicated that they are preparing relevant legislation, to enact and submit these national measures as soon as possible.