



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 April 2011

8525/11

**DROIPEN 25
COPEN 73
JUSTCIV 84
ENFOPOL 92
FREMP 29**

NOTE

from: Presidency
to: Delegations

Subject: Proposal for a Resolution of the Council on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings

Delegations will find in the Annex a proposal from the Presidency for a Resolution of the Council on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings. The document will be submitted to the attention of the Working Party on substantive criminal law at its meeting on 14-15 April 2011.

Resolution of the Council**of...****on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings**

The Council of the European Union,

Whereas

- (1) In the European Union, the Charter of fundamental rights (the "Charter") and the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"), to which all Member States are parties, imposes on States the duty to actively protect victims of crime.
- (2) The European Union has successfully established an area of freedom of movement and residence, from which citizens benefit by increasingly travelling, studying and working in countries other than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have led as an inevitable consequence to an increase in the number of people who become victims of a criminal offence and become involved in criminal proceedings in a Member State other than that of their residence.
- (3) This calls for specific action in order to establish a common minimum standard of protection of victims of crime and their rights in criminal proceedings throughout the Union. Such action, which may include legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.

- (4) In the Stockholm Programme - An open and secure Europe serving the citizen ¹, the European Council stressed the importance to provide special support and legal protection to those who are most vulnerable or find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents. In line with the Council conclusions on a strategy to ensure fulfilment of the rights of, and improve support for, persons who fall victims of crime ², the European Council has urged to take an integrated and coordinated approach to victims. As a first step in responding to the Stockholm Programme, the European Commission has proposed a package of measures on victims of crime including a Directive on the Rights, Support and Protection of victims of crime and a tow Regulations on the mutual Recognition of protection measures ³.
- (5) In its Roadmap for strengthening procedural rights of the suspected or accused persons in criminal proceedings ⁴, the Council invited the Commission to take action in the field of the protection of these fundamental rights, committing itself to examine the proposed measures as a matter of priority.
- (6) Considerable progress has already been made pursuant to the Roadmap, with the approval of the Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings ⁵, pursuant to "measure A" in the Roadmap, and with the presentation by the Commission, on 20 July 2010, of the proposal for a Directive on the right to information in criminal proceedings, pursuant to "measure B" in the Roadmap and the presentation by the Commission in June of the proposal for a Directive on the rights of access to a lawyer, pursuant to "measure C" in the Roadmap.⁶

¹ OJ C 115, 4.5.2010; see point 2.3.4.

² Adopted at the 2969th Justice and Home Affairs Council meeting in Luxembourg, 23 October 2009.

³ Subject to the final Commission proposal.

⁴ Resolution of the Council of 30 November 2009 (2009/C 295/01), OJ C 295, 4.12.2009

⁵ OJ L 280, 26.10.2010, p. 1

⁶ Subject to the final Commission proposal.

- (7) The Council considers it necessary to complement this action in the field of the protection of the fundamental rights of the suspected or accused person with similar action in the field of the protection of the victims of crime, in consideration of the commitment taken with the Stockholm Programme.
- (8) Action in this field is specifically contemplated as part of the process to implement the principle of mutual recognition as founding principle of the creation of a true area of freedom, security and justice: indeed, Article 82 paragraph 2, letter c) TFEU provides that the Union may, by means of Directives, establish minimum rules on the rights of victims of crime when necessary to facilitate mutual recognition of judgements and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension.
- (9) The question of the role of victims in criminal proceedings has been already addressed at the level of the Union through Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. However, more than ten years have passed since the approval of that instrument, and the progress made in the creation of the area of freedom, security and justice, as well as the remaining issues of implementation in the area of victims' rights, require that the Union review and enhance the contents of the Framework Decision.
- (10) Existing mechanisms to ensure that crime victims may be awarded compensations for the damages suffered should also be reviewed and improved, in order to enhance their operability and contributing to complementing the instruments for the protection of victims.
- (11) In addition, a mechanism should be created to ensure mutual recognition among Member States of decisions of judicial or equivalent authorities concerning measures to protect victims of crime from further harm which may be caused to them by a specific person or persons. This mechanism should complete and improve the one envisaged by the Directive of the European Parliament and of the Council on the European protection order, currently under discussion.

- (12) Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step approach, whilst ensuring overall consistency. By addressing future actions, one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.
- (13) Particular attention should be given to the process of implementation of legislative instruments in this field. Practical measures and best practises could be gathered in a non-binding legal instrument, such as a Recommendation, in order to help and inspire Member States in the process of implementation.
- (14) In addressing the necessary measures for enhancing the protection of victims, due account should be taken of the principles contained in Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to crime victims.
- (15) The list of measures in the Annex to this document should be considered indicative, addressing only a first group of measures to be addressed as a matter of priority. Further measures, both legislative and non-legislative, as well as practical measures may be proposed in the future if deemed appropriate, also in the light of the on-going process of approval and implementation of the legal acts contemplated in this Roadmap.

HEREBY ADOPTS THE FOLLOWING RESOLUTION:

1. Action should be taken at the level of the European Union in order to strengthen the rights and protection of victims of crime, in particular in the course of criminal proceedings. Such action may include legislation as well as other measures.
2. The Council welcomes, as a first step, the European Commission's proposal for a package of measures on victims of crime, and invites the Commission to submit proposals regarding the measures set out in the Roadmap.
3. The Council endorses the "Roadmap for strengthening the rights and protection of victims of crime" (hereinafter referred to as "the Roadmap"), set out in the Annex to this Resolution, as the basis for future action. The measures included in the Roadmap, which could be complemented by other measures, should be given priority.
4. The Council will examine all proposals presented in the context of the Roadmap and pledges to deal with them as matters of priority.
5. The Council will act in full cooperation with the European Parliament, in accordance with the applicable rules.

Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings

The order of the measures indicated below is indicative. Explanations provided in relation to each measure merely serve to give an indication of the proposed action, and do not aim to regulate the precise scope and content of the measure concerned. This Roadmap supports and builds on the European Commission's proposals for a package of measures on victims of crime.

General principles

Action at the level of the Union directed at strengthening the rights and protection of victims should aim at introducing high standards and at attaining, among others, the following general objectives:

1. Enhance the right of access to justice of victims of crime, also by fostering the role of victim support services, both provided by the State and by private, accredited organisations, as well as enhancing the support of these services, which are able to provide orientation and guidance to victims of crime wishing to seek the intervention of public authorities in relation to their status.
2. Protect the privacy of victims, imposing where appropriate restrictions on the possibility for parties to the proceedings to access the personal and contact details of victims.
3. Design adequate procedures and structures aimed at protecting victims from unnecessary confrontation with the person or persons they accuse and thus also protect their privacy, dignity, personal and psychological integrity when their participation is required in the course of criminal proceedings, including, where possible, by avoiding repeat questioning of the victim in the course of these proceedings.
4. Provide the victim who does not understand or speak the language of the proceedings with interpretation in a language he understands, as well as with a translation of essential documents of the procedure.

5. Enhance the rights of victims to participate actively in criminal proceedings, and give them the possibility to request the review of law enforcement, prosecutorial and equivalent authorities' decisions not to investigate or prosecute a crime or to discontinue proceedings.
6. Strengthen the right of victims to be informed timely of court hearings and allow them or their legal counsel to receive information about the proceedings and their outcomes.
7. Encourage the recourse to restorative justice and alternative dispute resolution methods where these are in the interest of the victim and of a rapid, efficient and equitable outcome of the proceedings, and foster the use of existing mechanism by introducing minimum standards applicable to procedures already in place in Member States' legal systems.
8. Require Member States to provide training, or to support and encourage those responsible for providing training, to all professionals (e.g., judicial and law enforcement authorities, social workers, etc.) involved in proceedings concerning victims and their protection.
9. Invite the European Commission to analyse how legislation and practical support measures could be further improved for the protection of victims.
10. Undertake to properly implement the existing instruments.
11. Pay special attention to children, understood as part of the most vulnerable group of victims, and always keep in mind the best interest of the child.

The pursuit of these objectives should comprise the measures set out below, as well as any other measure which may prove appropriate in the course of the implementation of existing legislation.

Measure A: A Directive replacing Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings

Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings has been an important step in setting up a comprehensive approach to the protection of victims of crime in the EU. However, ten years after its approval, it is necessary to revise and supplement the principles set out in the Framework Decision and to take significant steps forward in the level of protection of victims throughout the EU, in particular in the framework of criminal proceedings. To this end, the Commission has presented on 18 May 2011 a proposal for a Directive [exact title to follow]. The Council commits itself to examining this proposal as a matter of priority, also in the light of the general principles set out above.

Measure B: Recommendation or Recommendations on practical measures and best practises in relation to the Directive set out in Measure A

Once the comprehensive, binding legal instrument referred to under Measure A has been approved, the Commission is invited, as soon as practicable, to complement this with a proposal (or proposals) for a Recommendation which should act as guidance and a model for Member States to facilitate their implementation of the Directive and where appropriate to go further than the Directive. This Recommendation should take stock of the existing best practises among Member States in the field of assistance and protection to victims of crime, building on them within the framework of the applicable legislative instruments.

The Recommendation should take into account the best practices on the question of the protection of victims, including those established by non-governmental organisations as well as those by institutions other than the European Union, such as the Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to crime victims, and address areas such as:

Support

- § the setting up of rapid support mechanisms for victims of crime, including free national telephone help lines, emergency support services, counselling and guidance to the legal procedures available for victims; this should include specialised services addressed at meeting the needs of victims of particular types of crime;
- § the encouragement to adopt legislative and non-legislative measures aimed at expanding the types and modalities of use of protection measures in favour of victims or crime;
- § the setting up or strengthening of existing mechanisms to assist mediation between victims and offenders;
- § the creation of assistance services by Member States, or the support of assistance services operated by non-governmental organisations, aiming at supporting victims in their rehabilitation from the effects of the crimes they have suffered, providing social care, counselling, medical care, material and psychological support;

Access to justice and to services

- § the encouragement to introduce procedures allowing for individual assessment of victims' needs for assistance and protection;
- § the setting up of adequate mechanisms for the referral of victims from law enforcement authorities to the victim support structures mentioned above, including, in cross-border cases and where appropriate, mechanisms for referral to structures in the Member State of habitual residence of the victim, if different from that where the crime is being investigated, prosecuted or tried;
- § the setting up of a fast mechanism to help victims to secure the freezing of the alleged offender's funds when this proves necessary in order to recover financial damages and compensation, in particular in cross-border cases of fraud;
- § the provision of timely and adequate information to victims and their relatives as to their rights and possibilities to obtain support and assistance under national law, including the setting up of easily accessible information desks in relevant public offices such as police stations, courts, prosecution offices;

Coordination

- § the strengthening of coordination, in relation to concrete cases, among the different agencies, actors, governmental and non-governmental bodies dealing with support and protection of victims;
- § the encouragement of exchange of views and best practises among professionals engaged in victims' support and protection, both at a national level and at the level of the Union, creating, where appropriate, stable mechanisms for consultation and one or more EU-wide networks of governmental and non-governmental actors, which should be involved in policy development, training and research on the issues related to crime victims and their support;

Training

- § the provision of adequate training to all professionals (judicial authorities and other relevant court staff, law enforcement authorities, social workers etc.) who participate in their respective roles to the objectives of protecting and assisting victims of crime, aimed at providing them with the specific skills required for this activity and to practically meet the needs of victims; this could include the provision or facilitation of on-line training schemes;

Awareness raising

- § the encouragement to media to adopt and respect measures of self-regulation to protect the dignity and privacy of victims of crime;
- § the enhancing of public awareness, also through public information campaigns, on the needs of victims, in order to encourage understanding of the effects of crime and facilitate the rehabilitation of victims;

Data collection and research

- § the encouragement to competent authorities in Member States to collect reliable and detailed data on victims of crime, including appropriate victim surveys, and on the operation of governmental and non-governmental victim support mechanisms;
- § the setting up of adequate research procedures, both at national and EU level, or the support to existing non-governmental research endeavours, on victimology, as well as the encouragement to trans-national sharing of research experiences, also through the network or networks mentioned under "Coordination".

Measure C: A Regulation on mutual recognition of protection measures for victims taken in the context of civil proceedings*

The Commission has presented, on 18 May 2011, a proposal to complete the mechanism for mutual recognition envisaged in the Directive of the European Parliament and of the Council on the European Protection Order, currently under discussion. This Directive will provide for mutual recognition of decisions taken by a judicial or equivalent authority in the course of criminal proceedings to protect the victim of crime from further danger which might be caused by the alleged offender. A similar mechanism is envisaged for the mutual recognition of protection measures taken in the context of civil proceedings. The Council commits itself to examining this proposal as a matter of priority, also in the light of the general principles set out above.

* Subject to the final contents of the European Commission's package on victims, to be adopted on 18 May

Measure D: Amending of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

Since the application of Council Directive 2004/80/EC is not satisfactory, the Commission is invited to conduct an in-depth assessment of the reasons for the low number of applications submitted in accordance with the Directive and thereafter present one or more proposals, including but not limited to legislative proposals, to amend the current legal framework.

The proposal should as a minimum aim at revising and simplifying existing procedures for the victim to request compensation, granting easier access to compensation procedures and rapid times for the settlement of claims. It should address the question of coordination between authorities involved in the procedure, and aim at fostering the creation and strengthening the role of the Central Contact Points. The Commission should also examine, with a view to including in a legislative proposal, the question of the creation of a compensation fund for victims who fall victim to crimes in a Member State other than that of which they are citizens or habitual residents. Such a fund could provide both for emergency financial support for victims in need of such assistance and for the awarding of compensation for the damages suffered, save the recovery of such expenses by the Member State having jurisdiction to prosecute the offender.

Measure E: A legal instrument aiming at fighting female genital mutilations

Genital mutilation is a serious violation of the basic rights of dignity, physical and psychological integrity of women and girls, which must be confronted in a coordinated manner, when there is evidence of a prevalence of such type of crime with a cross-border nature throughout the Union. The Commission is invited to present a Green paper on the necessity and possibility of presenting a legislative initiative on this matter, along with any necessary and appropriate complementary non-legislative measures.

Measure F: Accession to the Council of Europe Convention on violence against women

The Commission is invited, once the Convention of the Council of Europe on violence against women is open to signature, to present a proposal for the accession of the European Union to the instrument.

Measure G: Specific needs of victims in relation to special types of crime

In the general legal act envisaged under “Measure A” general rules will be contained, applying to all victims of crimes who are in need of assistance, support and protection in relation to criminal proceedings relative to the crime to which they have fallen victim.

While it is fundamental to protect the rights of all victims of crime, all of which must enjoy equal dignity and be able to benefit from support, it should be recognised that additional safeguards and measures should be provided to victims of particular types of crime, in order to address the specific needs generally associated with the situation of those victims.

As an example, it is recalled that the European Parliament and the Council have recently approved / are in the process of finalising the procedure aimed at approving specific legally binding instruments aiming at enhancing the fight against crimes such as trafficking in human beings (Directive...) and sexual exploitation of children (Directive ...). One could also consider, inter alia, the existing legal instruments adopted by the EU in the field of fight against terrorism (Council Framework Decision 2008/919/JHA of 28 November 2009 amending Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism) and against organised crime (Council Framework Decision 2008/941/JHA of 24 October 2008 on the fight against organised crime).

The victims of these crimes are in need of special support and assistance, given the nature of the offences committed against them and their social, physical and psychological repercussions.

The Commission is invited, in the context of its control of the implementation of the legislative instruments mentioned above and any others addressing specific areas of crime, and after having evaluated their practical operation once the period for implementation has expired, to propose through Recommendation practical measures and suggest best practises to provide guidance to Member States in the process of dealing with the specific needs of victims of said types of crimes.