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NOTE

from:	Presidency
to:	Working Party on Substantive Criminal Law
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Subject:	Proposal for a Resolution of the Council on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings

On 18 May 2011 CATS discussed and gave guidance to the proposal for a Resolution of the Council on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings¹. CATS discussed two items in particular: 1) the need to balance the position of the victim in criminal proceedings with that of the other parties, first and foremost the suspected or accused person, as well as taking into account the general interests of the criminal justice systems, and 2) "Measure G" of the Roadmap: "Specific needs of victims in relation to special types of crimes". In addition, a number of other points were discussed.

¹ See doc. 85245/11 DROIPEN 25 COPEN 73 JUSTCIV 84 ENFOPOL 92 FREMP 29.

Delegations will find in the Annex a new draft of the Roadmap, reflecting delegations' written comments and the indications which emerged during the CATS meeting. Changes with respect to the previous version of the text are highlighted by underlining and (...).

The draft Roadmap has also been supplemented with respect to the presentation, on 18 May of the Commission's "package" of measures on victims of crime.

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
- (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.

² DE, supported by AT, ~~and SE, FR and UK~~, suggests replacing the existing wording by the following "*The active protection of victims of crime is a high priority for the European Union and its Member States*".

- (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 citizen³, 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 crime⁴, 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 as well as a Regulation on the mutual Recognition of protection measures adopted in civil matters⁵.
- (5)⁶ In its Roadmap for strengthening procedural rights of the suspected or accused persons in criminal proceedings⁷, 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.

³ OJ C 115, 4.5.2010; see point 2.3.4.

⁴ Adopted at the 2969th Justice and Home Affairs Council meeting in Luxembourg, 23 October 2009.

⁵ Subject to the final Commission proposal.

⁶ FR suggests replacing recitals (5)-(7) with the following new recital: "*In light of the considerable progress made pursuant to the Roadmap for strengthening[the] procedural rights of the suspected or accused person in criminal proceedings, the Council considers that a similar approach should be adopted in the field of the protection of the victims of crime*". This suggestion received support from the AT, DE, ES, ~~and~~ PT and UK delegations.

⁷ Resolution of the Council of 30 November 2009 (2009/C 295/01). (OJ C 295, 4.12.2009, p.1).

- (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 proceedings⁸, 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.⁹
- (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

⁸ OJ L 280, 26.10.2010, p. 1

⁹ Subject to the Commission proposal.

¹⁰ AT and FR suggested inserting a reference to the Commission's implementation report instead.

- (10) Existing mechanisms to ensure that crime victims may be awarded¹¹ compensations for the damages suffered, such as that provided for by Council Directive 2004/80/EC of 29 April 2004 relating to crime victims, should also be reviewed and if necessary improved, in order to enhance their operability and contributing to complementing the instruments for the protection of victims.¹²
- (11)¹³In addition, a mechanism should be created¹⁴ to ensure mutual recognition among Member States of decisions of judicial or equivalent authorities in civil matters concerning measures¹⁵ to protect victims of crime from further harm which may be caused to them by a specific person or persons. This mechanism should¹⁶ 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.¹⁷
- (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 balance. 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.

¹¹ DE suggests inserting "*fair and appropriate*".

¹² DE suggests adding: "*In addition, the compliance of the national compensation schemes in the Member States with the Directive should be examined*".

¹³ ES suggests replacing recital (11) with the following: "*In addition, a mechanism should be created to ensure mutual recognition among Member States of decisions of judicial or equivalent authorities concerning protection measures of a civil nature [...] from further harm [...]. 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 in criminal matters, currently under discussion.*"

¹⁴ DE suggests replacing this terminology by "*could be examined*".

¹⁵ FR proposal: "*... concerning protection measures taken in the context of civil proceedings*".
DE proposal to add: "*adopted in civil matters*".

¹⁶ DE suggests replacing "should" by "*could*".

¹⁷ DE proposal to add: "*The provisions set out in both proposals should not establish obligations to modify national systems for protection measures but leave it to the member states to decide in which system they may issue or execute protection measures.*"

- (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 principles¹⁸ contained in Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to crime victims¹⁹ as well as the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted, which has been opened to signature on 11 May 2011.
- (15) The list of measures in the Annex to this document should be considered indicative, addressing only a first group of measures to be dealt with 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,

¹⁸ PL suggestion: "*In addressing the necessary measures for enhancing the protection of victims, due account should be taken of the principles **such as** contained in Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to crime victims as well. ...*"

¹⁹ DE suggests ending the recital here and inserting a new recital (14a) as follows: "*The Union should especially take into account the standards set out in the Convention of the Council of Europe on preventing and combating violence against women and domestic violence adopted by the Committee of Ministers of Council of Europe on 7 April 2011 and consider accession to the Convention.*"

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 step²⁰, 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 intends 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.

²⁰ ES suggests deleting "as a first step".

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 as 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 common minimum standards and at attaining, among others, the following general objectives:

1. Establish adequate procedures and structures to respect the dignity, personal and psychological integrity as well as the privacy of the victim in criminal proceedings.
2. Enhance the access to justice by victims of crime, also by fostering the role of victim support services.
3. Design adequate procedures and structures aimed at preventing secondary and repeat victimisation.

4. Where necessary, 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 procedure²¹
5. Where appropriate, encourage victims to participate actively in criminal proceedings.
6. Strengthen the right of victims and of their legal counsel to receive timely information about the proceedings and their outcomes.
7. Encourage the recourse to restorative justice and alternative dispute resolution methods taking into account the interest of the victim.
8. Pay special attention to children, as part of the most vulnerable group of victims, and always keep in mind the best interest of the child.

²¹ A number of delegations, supported by the Commission, found this point too specific. Many delegations expressed a preference for very general principles, not going into details. CZ proposal, supported by DE: "*Encourage the interpretation and translation provided for the victim within the criminal proceedings/trial*". UK proposes to replace the current text with the following: "*Ensure so far as possible that the victims attending proceedings is able to understand those proceedings, whether through an interpreter or other form of communication assistance, in accordance with their role in proceedings*".

9. Ensure that training is provided to all professionals (e.g., judicial and law enforcement authorities, social workers, etc.) involved in proceedings concerning victims and their protection.²²

²² DE proposal to replace point 9 by the following: "*Require Member States to provide or support training of all relevant professionals*" and to add a new point 10, as follows: "*Ensure fair and efficient mechanisms of compensation for victims of crime.*"

²³ NL suggests adding a 10th point, as follows: "The offender is responsible for compensation the loss of the victim. Create easy accesible procedures for victims to claim and receive compensation from the offender and give victims adequate support during these proceedings."

²⁴ COM suggested amending this entire section to read as follows:

"Action on victims of crime, at both the EU and national level should be founded on the following general principles:

1. *A comprehensive approach to the treatment of victims of crime should be taken which aims both at preventing crime and dealing with its aftermath whether in the context of criminal proceedings or in a wider setting within the community.*
2. *As part of this approach, in relation to both the development of victims' policy and when dealing with specific cases, action should be coordinated ensuring co-operation between criminal justice agencies as well as with health and social welfare services and non-governmental organisations.*
3. *Action should in particular be aimed at ensuring that victims:*
 - a. *Are treated with respect and dignity in particular by treating them as individuals and seeking to meet their individual needs;*
 - b. *Are protected from further harm, in particular from intimidation or repeat victimisation by the offender or his associates or from secondary victimisation during the course of proceedings;*
 - c. *Receive effective support to facilitate their recovery and to enable them to exercise their rights;*
 - d. *Have effective access to justice including through alternatives to the formal justice system through for example restorative justice;*
 - e. *Have access to State and offender compensation as appropriate.*
4. *Particular attention in all policies and actions should be paid to vulnerable victims.*
5. *A strong empirical base for further action should be pursued through effective research, data gathering and monitoring.*
6. *The fundamental rights of all those who participate in proceedings should always be respected.*

In seeking to achieve the above principles the following areas are considered to be of priority:"

When fostering the rights of victims in criminal proceedings the Union shall be mindful of the fundamental elements of national criminal law systems and duly take into account the rights and interests of all parties involved, as well as the general aim of the criminal proceedings.²⁵

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 was 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 establishing minimum standards on the rights, support and protection of victims of crime²⁶. The Council commits itself to examining this proposal as a matter of priority, also in the light of the general principles set out above.

²⁵ NL suggests adding the following phrase: "*An overall equilibrium of all parties in criminal procedural law is essential*".

²⁶ See doc. COM(2011) 275 final.

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, building on the principles provided for by 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 those covered by measure A²⁷.

- Recognition;
- Support;
- Protection;
- Access to justice and to services;
- Compensation;

²⁷ A majority of delegations suggested deleting "covered by Measure A is adequate" or at least shortening all the following bullet points, measure B being disproportionate in relation to the other measures suggested.

- Coordination of the action of different agencies, actors, governmental and non-governmental bodies dealing with support and protection of victims;
- Training, ~~to be provided to all~~ of the²⁸ professionals, who, in their respective roles, contribute to the objectives of protecting and assisting victims of crime²⁹;
- Awareness raising;
- Data collection and research.

²⁸ DE proposal.

²⁹ In case the bullet points are maintained, UK would like to add the following at the end of the sentence to clarify the scope of training requirements: "*in relation to criminal proceedings*".

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 for a Regulation on mutual recognition of protection measures in civil matters 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 envisages to provide for mutual recognition of decisions taken in criminal matters by a judicial or equivalent authority 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 civil matters. The Council commits itself to examining this proposal as a matter of priority, also in the light of the general principles set out above.³⁰

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

In light of the conclusions drawn from its report on the application of Council Directive 2004/80/EC, the Commission is invited to³¹ make a proposal for a Recommendation and any other appropriate action in order to ensure the proper implementation of the Directive.

Action in this regard should as a minimum aim at³² revising and simplifying existing procedures for

³⁰ DE proposal to replace the text of this Measure, as follows: "*The Commission has presented, on 18 May 2011, a proposal of a Regulation 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 Regulation will provide for mutual recognition of [...] protection measures taken in the context of civil proceedings. The Council commits itself to examining the Directive of the European Parliament and of the Council and the proposal of the Commission closely, also in the light of the provisions set out in recital 11 and the general principles set out above.*"

³¹ UK urges an evidence based approach to this Measure. According to UK further research should be undertaken before it is agreed proposals are necessary. UK suggests replacing the last part of the sentence with the following: "*... is invited to conduct further assessment to establish the reasons for issues relating to its legislative and practical implementation. Dependent on the outcome of the assessment the Commission may thereafter present proposals to ensure the proper application of the current legal framework*".

³² DE suggests inserting the following: "*examining the compliance of the existing national compensation schemes with the Directive, particularly focusing on the access of all types of*"

the victim to request compensation.

victims of violent crimes to fair and appropriate compensation payments in the Member States. It should also focus on ..."

[Measure E-F deleted]³³

Measure G: Specific needs of victims ~~in relation to special types of crime~~³⁴

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 proceedings³⁵ relative to the crime to which they have fallen victim.

³³ DE opposed the deletion of Measure F ("Accession to the Council of Europe Convention on violence against women").

³⁴ Based upon a BE proposal to divide measure G into two parts: "Specific needs due to the circumstances of the crime" and "Specific needs due to personal characteristics of the victim". The wording of these subtitles is based on principle 3.4 contained in Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to crime victims.

³⁵ NL proposal for adding the following and consequently deleting the two sections "Specific needs due to the circumstances of the crime" and " Specific needs due to personal characteristics of the victim" (see DS 1342/11): "This general legal act will also contain general rules for all kinds of vulnerable victims. Victims can be vulnerable depending on the characteristics of the victim (for example children), the circumstances the victim is living in, the type of crime they are victim of or the circumstances of the crime. Some victims have specific needs based on the type of crime they are victim of. Their special needs are addressed in specific legislation like the directive on sexual exploitation of children or the directive on trafficking in human beings."

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 victims³⁶ of particular types of crime³⁷, in order to address the specific needs generally associated with the situation of those victims³⁸.

Specific needs due to the circumstances of the crime

As an example, it is recalled that specific legally binding instruments aiming at enhancing the fight against crimes such as trafficking in human beings (Directive...) and sexual exploitation of children (Directive ...) have recently been approved or are in the process of finalisation and to be approved by the European Parliament and the Council. 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).

³⁶ LT suggests shortening the proposed text as follows: "... should be provided to victims, who have specific needs, which may occur due to the personal characteristics of the victims or due to circumstances of the crime.[...] Children should always be considered particularly vulnerable. ...". LT's main concern is an establishment of various types and categories of victims, in particular, depending on the type of crime. LT fears that such categorization would eventually lead to fragmentation of provisions on various types of victims and would unnecessarily intrude into national legal systems and the criteria used there.

In general, LT agrees that "victims who have specific needs/who are particularly vulnerable" should be protected additionally. However, according to LT, being a victim of particular types of crimes not necessarily mean that they are "victims who have specific needs/who are particularly vulnerable". EE is in line with LT.

³⁷ UK suggests the following formulation "...should be provided to vulnerable victims and victims of particular types of crime ..." and deleting the sections "Specific needs due to the circumstances of the crime" and " Specific needs due to personal characteristics of the victim"

³⁸ ES suggests adding the following and deleting the two sections "Specific needs due to the circumstances of the crime" and " Specific needs due to personal characteristics of the victim": "..., given the social, physical and psychological repercussions of these crimes, such as victims of trafficking in human beings, children victims of sexual exploitation, victims of terrorism and victims of organised crime.

On the other hand, some victims of crime are in need of special support and assistance due to the personal characteristics of the victim. In this respect, children should always be considered particularly vulnerable".

Specific needs due to personal characteristics of the victim

The victims of these crimes are³⁹ in need of special support and assistance, on the basis of their personal circumstances to be evaluated case-by-case. Vulnerable victims are often in need of increased assistance to be able to recover from the given the nature of the offences committed against them and their social, physical and psychological repercussions of the crime. Children should always be considered particularly vulnerable. (...)

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 expired⁴⁰, 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 crimes⁴¹.

³⁹ DE suggests replacing "are" by "*may be*".

⁴⁰ NL proposes to delete "..., and after having evaluated their practical operation once the period for implementation has expired, ..."

⁴¹ ES suggests adding at the end of the sentence: "*and vulnerable victims*".