

**Proposal for a Council Directive on compensation to crime victims**

(2003/C 45 E/08)

COM(2002) 562 final — 2002/0247(CNS)

*(Submitted by the Commission on 16 October 2002)***EXPLANATORY MEMORANDUM****1. INTRODUCTION****1.1. The crime victim and the area of freedom, security and justice**

With the entry into force of the Treaty of Amsterdam the EU faces the challenge of ensuring that the right to move freely throughout the EU can be enjoyed in conditions of security and justice accessible to all. This challenge involves establishing a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own, and where better compatibility and more convergence between the legal systems of the Member States is achieved. The need to meet this challenge is evident from the ever-increasing number of persons using their right to free movement within the EU, for example, as workers, students or as tourists.

The establishment of an area of freedom, security and justice must evidently consider the need for protection of crime victims in the European Union. It is a necessary parallel to the many measures taken to promote judicial cooperation in civil matters and to combat crime and terrorism. EU citizens have the right to expect easy access to adequate protection and compensation for the losses suffered when crimes and terrorist acts do occur.

The Vienna Action Plan <sup>(1)</sup> of the Council and the Commission, adopted by the Council 1998, called for addressing the question of victim support by making a comparative survey of victim compensation schemes and assessing the feasibility of taking action within the EU.

The conclusions of the European Council in Tampere 1999 <sup>(2)</sup> called for the drawing up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs. It also called for the setting up of national programmes to finance measures, public and non-governmental, for assistance to and protection of victims.

The tragic events of 11 September 2001 reinforced the need to ensure a high level of preparedness in case such events occurred again. This includes not only the need for a high level of preparedness in terms of civil protection — where the EU has already taken a number of measures — but also the need for a complete coverage for the compensation of victims of such acts.

This proposal, which was announced in the latest version of the Scoreboard <sup>(3)</sup>, is the Commission's response to the request by the European Council of Tampere.

<sup>(1)</sup> OJ C 19, 23.1.1999, p. 1. Point 51(c).

<sup>(2)</sup> Presidency Conclusions, point 32.

<sup>(3)</sup> COM(2002) 261 final, 30.5.2002, p. 32.

## 1.2. Measures and initiatives taken so far

The Commission presented a Communication<sup>(1)</sup> on crime victims in 1999, covering not only compensation aspects but also other issues that could be addressed to improve the position of crime victims in the EU.

The Council adopted a framework decision<sup>(2)</sup> on the standing of the victim in criminal proceedings 15 March 2001. The decision, based on title VI of the EU Treaty, includes an obligation for Member States to ensure that crime victims can obtain a decision on compensation from the offender in the course of criminal proceedings. Member States shall also take measures to encourage the offender to provide adequate compensation to victims, as well as promote mediation in criminal cases. Beyond these provisions, compensation to crime victims is not addressed.

As concerns judicial cooperation in civil matters, a number of initiatives have been taken to improve access to justice for cross-border litigants in general, benefiting also crime victims seeking to obtain and enforce a judgment on damages against the offender in a cross-border situation. These include in particular the Brussels I Regulation<sup>(3)</sup> on jurisdiction and the recognition and enforcement of judgments. The Commission has proposed a Directive on legal aid and a Regulation establishing a European Enforcement Order. Further measures are foreseen within the context of the mutual recognition programme<sup>(4)</sup>, including procedures for small claims and for payment orders.

Mention should also be made of the European Convention of 1983 on compensation to victims of crime, which sought to introduce a minimum standard for state compensation schemes. It did not include any concrete measures to facilitate access to state compensation in cross-border situations. The Convention has been ratified by 10 Member States<sup>(5)</sup> and a further two Member States<sup>(6)</sup> have signed it.

## 2. THE GREEN PAPER ON COMPENSATION TO CRIME VICTIMS

As a first step in taking the compensation aspect of victim support and protection from the Tampere Conclusions forward, the Commission presented a Green Paper on compensation to crime victims on 28 September 2001<sup>(7)</sup>. The Green Paper focussed on compensation from the state and gave an overview of what exists in terms of state compensation schemes in the Member States today. On this basis, the Green Paper formulated as its fundamental question the possible objectives that a Community initiative in this field could pursue, by proposing the following:

- Firstly, whether a possibility to get state compensation for victims in the EU should be ensured.
- Secondly, whether action should be taken to limit unfair effects that may result from the widely differing levels of compensation available in the Member States today and which are, in practice, dependant on the victim's Member State of residence or on in which Member State he or she becomes the victim of a crime.
- Thirdly, whether access to state compensation for victims in cross-border situations should be facilitated, that is, to ensure that the access to state compensation for victims should not be significantly influenced by where in the EU the crime takes place.

(1) Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee. Crime victims in the European Union — reflexions on standards and actions. COM(1999) 349 final, 14.7.1999.

(2) OJ L 82, 22.3.2001, p. 1.

(3) Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1).

(4) Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters (OJ C 12, 15.1.2001, p. 1).

(5) Denmark, Finland, France, Germany, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

(6) Belgium and Greece.

(7) COM(2001) 536 final, 28.9.2001.

On the basis of these three objectives the Green Paper explored in more detail the various issues that would need to be considered in terms of practical solutions for reaching these objectives. More than thirty written comments were sent in to the Commission following the publication of the Green Paper, from Member States, victim support organisations, non-governmental organisations and others. The Commission organised a public hearing on 21 March 2002 to further debate the issues raised.

The reactions confirmed by an overwhelming majority that the current situation concerning compensation of crime victims in the EU is not satisfactory and that the three objectives proposed in the Green Paper should be pursued in order to remedy this situation.

The European Parliament, in its resolution <sup>(1)</sup> on the Green Paper, warmly welcomed the Commission's initiative. It recalled the political objective stipulated by the Tampere European Council and noted the unjustifiable differences in the compensation to European citizens that are created by the current situation in the Member States today. It underlined the importance of adopting binding Community provisions in future in relation to citizens who are the victims of crime and welcomed the fact that the latest version of the Scoreboard provides for the presentation by the Commission, before the end of 2002, of a proposal for a directive on this matter.

The Economic and Social Committee, in its opinion <sup>(2)</sup> on the Green Paper, welcomed emphatically the Commission's initiative to launch a consultation on this issue. It considered that the realisation of the Commission's initiative will form a crucial step in meeting the needs of citizens, and a visible and exemplary step by the Member States in the construction of a true European area of justice. The Committee supported the three objectives proposed in the Green Paper and considered that a Directive would appear to be the most appropriate instrument for pursuing these objectives.

As a further follow-up to the Green paper, the Commission held a meeting with experts of the Member States on 24 June 2002 to discuss a first preliminary draft of this proposal.

Further references to the reactions on the detailed questions in the Green Paper and the way in which these have been taken into account in the preparation of this proposal will be made in section 6 of this explanatory memorandum.

The preparatory work that preceded the publication of the Green Paper included a comprehensive study <sup>(3)</sup> of the position of crime victims in the EU, completed in 2000, with support from the Grotius programme of the EU. The study was followed up by a conference in Umeå, Sweden, in October 2000, also supported through the Grotius programme. The conclusions <sup>(4)</sup> of the conference included a number of recommendations on how to improve the position of crime victims as regards compensation issues as well as a recommendation to the Commission to consider binding legislation at EU level. An in-depth study focussing on the state compensation schemes in the Member States was published by the Swedish Crime Victim and Support Authority in September 2001 <sup>(5)</sup>.

### 3. OBJECTIVES AND SCOPE

#### 3.1. Overall objective

The objective of this proposal is to ensure that all EU citizens and all legal residents in the EU can receive adequate compensation for the losses they have suffered in case they fall victim to a crime within the EU. The proposal will contribute to reaching the objective of the Union and of the Community to establish an area of freedom, security and justice for all, as well as the objective of ensuring free movement of persons within the EU. The proposal also forms part of the response of the EU to the events of 11 September 2001, by ensuring that victims of terrorism are ensured of adequate compensation regardless of where within the EU such acts may take place.

<sup>(1)</sup> Not yet published.

<sup>(2)</sup> OJ C 125, 27.5.2002, p. 31.

<sup>(3)</sup> Wergens, Anna, *Crime victims in the European Union*, Brottsoffermyndigheten, Umeå, 2000.

<sup>(4)</sup> The Crime Victim Compensation and Support Authority, Sweden, 'Conclusions – The Umeå expert meeting on compensation to crime victims in the European Union', Umeå, 2000.

<sup>(5)</sup> Mikaelsson, Julia, and Wergens, Anna, *Repairing the irreparable — State compensation to crime victims in the European Union*, The Crime Victim Compensation and Support Authority, Umeå, Sweden, 2001.

The objective of the proposal is directly in line with what was outlined in the Green Paper and as supported by the reactions to it and with the conclusions of the Tampere European Council 1999.

### 3.2. Specific objectives

The specific objectives of the proposal are the following:

- First, to ensure that a possibility to get adequate compensation from the state are put in place by all Member States of the EU. By formulating this objective so as to include the notion of adequate compensation, the objective merges objectives one and two of the Green Paper: to ensure the existence of state compensation in the EU and to limit unfair effects that may arise due to the currently large differences between the Member States. This objective is pursued through the creation of a minimum standard for state compensation to crime victims, which includes the definition of clear and transparent minimum criteria for:
  - Personal and territorial scope of the compensation schemes;
  - Losses covered and principles for determining the amount of compensation;
  - Relationship between state compensation and compensation sought or obtained from the offender or other sources; and
  - Possibilities to introduce certain restrictive criteria for the award of state compensation.
- Secondly, to ensure that the possibilities afforded in practice for the crime victim to get state compensation are not negatively influenced by in which Member State the crime is committed. This aims to facilitate access to compensation in situations where the crime took place in another Member State than that of the victim's residence (cross-border situations). This objective is pursued through the creation of a system of cooperation between authorities of the Member States, allowing in practice the victim to always be able to submit an application to an authority in the Member State of residence.

It should be stressed that these two objectives are closely intertwined. Without a possibility for state compensation in all Member States, access to state compensation in cross-border situations cannot be facilitated. Without easy access to state compensation in cross-border situations, the very existence of a possibility for state compensation will, in practice, not reach all victims in the EU.

### 3.3. Scope

The possibilities for the crime victim to get compensation from the offender are not covered in this proposal. The possibility to obtain a decision, as such, on compensation from the offender is covered by the framework decision on the standing of the victim in criminal proceedings. Concerning the possibility to enforce such decisions in cross-border situations, a number of initiatives have been taken or are under preparation on access to justice for cross-border litigation in civil matters in general, which will be of benefit for crime victims as well.

## 4. NEED FOR ACTION AT COMMUNITY LEVEL

### 4.1. Problem of the situation in the EU today

There is widespread recognition of the fact that crime victims, in many cases, cannot obtain compensation from the offender. This may be the case when the offender remains unknown or cannot be successfully prosecuted or where the offender lacks the means to compensate the victim. Other sources, such as compulsory or private insurance, may neither provide an adequate cover for the losses sustained by the victim. Consequently victims can be considered as being in a worse situation than other groups who suffer injury or losses of various kind, for example, due to illness, accidents, or unemployment.

The obstacles for victims to get compensation from the offender are hard to overcome through measures in the area of civil law, civil proceedings or enforcement of judgements. As recognition of this fact, 13 Member States <sup>(1)</sup> have introduced state funded compensation schemes with a general scope of application that allow for compensating victims of crime for the injuries suffered.

These schemes display however large differences between them in terms of the criteria applicable for awarding state compensation. The eligibility of applicants is in seven Member States restricted to those having sustained serious injuries as a result of the crime. The types of losses that can be compensated vary greatly, for example, five Member States do not award any compensation for non-pecuniary losses. The principles for determining the amount of the compensation display large differences between them also. Six Member States retains the possibility to reduce or refuse compensation based on one or several of the following discretionary criteria: the relationship between the victim and the offender, the victim's financial situation, or public policy grounds in general. One Member State does not cover all permanent residents that become victims of crime on their territory.

The current situation as concern possibilities for crime victims to get compensation from the state is therefore not satisfactory. The very absence of a possibility to state compensation to victims in two Member States, and the lack of convergence between the compensation schemes in the other Member States, creates differences for the individual, depending on his or her place of residence or on where a crime is committed. For example, two persons becoming the victim of a crime, under identical circumstances but in different Member States, may receive widely differing amounts in compensation for similar injuries, or no compensation at all.

There are also differences peculiar to cross-border situations. A citizen from a Member State that has a compensation scheme travelling to a Member State without or with a very limited scheme will see his or her possibilities to get compensation (in case of becoming a crime victim) decrease or virtually disappear for the extension of the stay. On the contrary a person going in the opposite direction, between the same Member States, will enjoy a drastic, albeit temporary, improvement in his or her rights as a crime victim. A person falling victim to a crime in a Member State where he or she is not a resident may find it difficult to get access to state compensation in the first place, due to a lack of assistance in coping with the administrative procedures involved.

These differences create large discrepancies in terms of what crime victims can actually get, the compensation being completely dependant on in which Member State the crime took place. The latter is a circumstance that the victim has no control over whatsoever and which can only appear arbitrary from the perspective of the citizen. Such unfair and arbitrary effects are not compatible with establishing the EU as an area of freedom, security and justice for all.

The 1983 European Convention has undoubtedly had an important impact in stimulating the introduction of state compensation schemes. However, as demonstrated by the situation in the Member States today, it has not reached all the way in ensuring a complete coverage of all citizens of the EU. Nineteen years after its opening for signature, the minimum standard it sought to establish is not commensurate with the degree of protection that EU citizens and legal residents should be able to expect. This is all the more the case in a Community context, after the coming into force of the Amsterdam Treaty and the adoption of the Tampere conclusions.

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<sup>(1)</sup> Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

## 5. LEGAL BASIS

### 5.1. State compensation to crime victims and the Treaties

The very basis for state compensation to victims is the existence of a civil claim. This claim may have materialised but proved impossible to satisfy, in view of the inability of the offender to pay any damages awarded to the victim. It may not have materialised in cases where the offender remains unknown. Regardless of which, it is the underlying civil liability of the offender that provides the justification and the need for compensating the victim. This proposal for a Directive is based on a close link with the material laws on civil liability and torts in each Member State, in turn the same model that all existing compensation schemes are based on today.

The civil nature of state compensation is clear from that it serves to confer a pecuniary benefit on individuals, without seeking to achieve any objective related to sanctioning the behaviour of the offender or providing any direct benefit for the public good.

In a ruling <sup>(1)</sup> from the European Court of Human Rights regarding state compensation to a crime victim, the Court considered that Article 6(1) of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms was applicable to the case before it. Since it concerns a pecuniary benefit, and provided that the conditions and procedures applicable for the award of state compensation are defined in clear and regulatory terms, the Court held that the right invoked by an applicant for state compensation can be categorised as civil within the meaning of Article 6(1) of the Convention.

The measures foreseen in this proposal, and in particular those creating a system for direct cooperation between national authorities for the purpose of the smooth handling of cross-border cases, display many similarities with existing Community law in the field of judicial cooperation in civil matters. This includes in particular the Regulations on the Service of documents and on the taking of evidence <sup>(2)</sup>.

However, although state compensation is closely linked to civil law in several respects, it cannot be regarded as a civil matter within the sense of Article 61(c) of the Treaty, since it does not concern rights or obligations between individuals.

The improvement of compensation to crime victims will contribute to the free movement of persons. The link between the free movement of persons and state compensation to crime victims has been confirmed by the European Court of Justice, which has held that the protection of victims of crime is a necessary corollary of the free movement of persons as guaranteed by the Treaty <sup>(3)</sup>.

Links to the other freedoms guaranteed by the Treaty can however not be made. Since a sufficiently direct link between protecting victims of crime and establishing the internal market cannot be made, this proposal must be regarded as falling outside the scope of Articles 94 and 95 of the Treaty.

In view of its essentially civil nature and the link to the free movement of persons, it is clear that the proposal would not fall within the scope of the TEU. The provisions of that Treaty, as concerns protection of crime victims, have already been explored through the framework decision on victims referred to above.

<sup>(1)</sup> Case of Rolf Gustafson v. Sweden, judgment of 27 May 1997.

<sup>(2)</sup> Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (OJ L 160, 30.6.2000, p. 37). Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

<sup>(3)</sup> Case 186/87 Ian William Cowan v. Trésor public (1989) ECR 195.

## 5.2. The objectives of this proposal and the area of freedom, security and justice

The need for measures to improve compensation to crime victims to establish an area of freedom, security and justice was clearly stated by the Tampere conclusions, where the European Council was called upon to address how to best implement this objective following the entry into force of the Treaty of Amsterdam. In its response, the Heads of State and Government did not fail to award a high importance to measures aimed at the protection of victims of crime.

The need for and value added of such measures taken at Community level was confirmed by the positive reactions to the Commission's Green Paper, including the Resolution by the European Parliament and opinion of the Economic and Social Committee.

Measures confined to judicial cooperation in civil matters, aiming at facilitating access to justice for civil litigants, would not be capable of fulfilling the objective of Tampere conclusions in view of the inherent problems for victims in getting compensation from the offender.

Seen from a criminal policy perspective, the EU cannot confine itself to measures aimed at preventing or combating crime but must also ensure that the appropriate mechanisms are in place for the benefit of victims when crime and terrorist acts do occur. In other words, measures of a repressive character must be coupled with measures aimed at restorative justice.

The objective pursued by this proposal, taking into account its contribution to the establishment of an area of freedom, security and justice and the free movement of persons, is therefore within the overall scope of the provisions of the Treaty establishing the European Community taken as a whole <sup>(1)</sup>.

Since the pursuit of the objective of this proposal is necessary to achieve the objectives of the Treaty and since no other provision of the Treaty gives the Community institutions the necessary power to adopt the measures in question, it is therefore necessary to have recourse to Article 308 TEC as the legal basis for this proposal.

## 5.3. Subsidiarity

In view of what has been outlined in section 4 and of the objectives set by the Treaty, it is clear that there is a Community dimension of the problem caused by the unsatisfactory situation in the EU of today. The necessary approximation of the laws of the Member States and the mechanisms needed for cross-border situations can be better achieved by the Community than by the Member States acting alone and will thereby provide an added value.

## 5.4. Proportionality

The proposal confines itself to what is necessary for reaching the objectives set. In particular, a minimum standard is proposed, not harmonisation. The latter would not be appropriate in view of the current differences between the Member States, due to the close connection to national laws on civil liability and tort and also due to socio-economic discrepancies.

The minimum standard proposed will allow Member States that so wish to introduce more ambitious provisions for the benefit of victims of crime. A minimum standard not confined to cross-border situations will allow for avoiding the creation of reverse discrimination, which would be particularly grave in view of the absence of state compensation for domestic cases in two Member States today.

The proposal provides for several different solutions for the implementation of the minimum standard — through a tariff system or through a system based on case-by-case assessments. It also allows for a strong connection with national civil law in each Member State, through the link made between the determination of the actual compensation and the provisions of national laws on civil liability and torts.

<sup>(1)</sup> Cf. ECJ Opinion 2/94 of 28.3.1996.

In terms of administrative procedures the proposal addresses only the central aspects and those related to cross-border situations while leaving Member States free to appoint the responsible authorities and to design the procedures for receiving and deciding upon applications.

The proposal is therefore limited to the minimum required to achieve the objectives pursued and does not exceed what is necessary to this end.

#### **5.5. Consistency with other EU/EC initiatives**

The Council Framework decision on the standing of victims in criminal proceedings covered, as its name suggests, the 'penal part' of victim support and addressed the question of compensation from a limited and strictly procedural point of view only. The current proposal will complement this decision by ensuring that the compensation aspect is duly covered at European level also.

By facilitating access to justice for citizens, in particular in cross-border situations, it will mirror the measures taken to promote judicial cooperation in civil matters.

The proposal will ensure that due attention is paid to the other side of the coin in relation to the measures taken by the EU to combat crime and terrorism. A number of measures have been taken or are under discussion for the purpose of agreeing common definitions and minimum sanctions for certain types of serious crimes, including terrorism, racist crimes and sexual exploitation of children. The protection of the victims of such serious crimes must be addressed at EU level also.

The Community has already adopted wide-ranging measures to ensure compensation to victims of road accidents through the four motor insurance Directives, with a proposal for a fifth Directive currently under discussion to further extend the coverage of such victims. The current proposal will ensure that victims of crime do not find themselves in a less fortunate situation than victims of road accidents, by introducing provisions based on — to a large extent — similar principles as these Directives.

Consequently the proposal is consistent with other policies pursued and will fill the current gap as concerns substantive measures for the purpose of protecting and supporting victims of crime.

#### **6. COMMENTS ON THE SPECIFIC ARTICLES**

The starting point for the definition of the minimum standard is the needs of crime victims from a European perspective. The proposal aims at finding a balance between satisfying this need, and avoiding a restrictive approach entailing merely the establishment of a standard based on the lowest common denominator, while at the same time introducing realistic solutions building upon the achievements already made in many Member States.

Establishing a minimum standard means in essence defining the restrictions to state compensation for victims that Member States should be allowed to set in place. Conversely, nothing will prevent Member States from maintaining or setting in place rules that are more generous towards the victim. The introduction of the minimum standard should not be used to justify any deterioration in current practices in the Member States.

A further guiding principle has been to establish clear and well-defined criteria that provide for predictability and equality before the law. It is difficult to see any reason why the criteria applied in state compensation schemes should be less clear compared to those that apply under, for example, national tort law or social benefit schemes. Only by limiting the room for discretion in the award of state compensation can transparent and predictable rules be ensured.

#### Article 1

The Article describes the main objective of the proposal, which has been elaborated upon in section 3 of this explanatory memorandum.

#### Article 2

The Article defines the basic scope for the minimum standard. The definition excludes victims of non-intentional crimes, since losses resulting from such crimes are often, but in different ways, covered by insurance policies in the Member States. Since it is a question of establishing a minimum standard this issue is better left to the Member States to decide. Crimes that have only caused damage to or loss of property are excluded also. Such losses are often covered by insurance and are not necessary to cover for the purposes of establishing a minimum standard. Beyond these restrictions a wide scope must be ensured, in particular in order to cover crimes directed against a person but without the use of violence. This can include crimes such as certain types of sexual offences or racist and xenophobic crimes.

Only victims of crime committed on the territory of one of the Member States are covered by the minimum standard.

The scope of the minimum standard includes close relatives and dependants of victims that have died as a result of the injuries sustained, provided that the direct victim falls within the scope of Article 2(1)(a), that is, the crime causing the death must have been intentional. The inclusion of close relatives is necessary to ensure compensation to, for example, the parents of under age children that have died as a result of a violent crime. The definition of close relatives and dependants is left to the Member States to decide.

'Victim' is defined in accordance with Article 1(a) of the Council Framework Decision on the standing of victims in criminal proceedings.

Overall the scope is in line with the majority of the reactions to the Green Paper and is within — or similar to — the scope of the compensation schemes currently in place in several Member States.

#### Article 3

The Article establishes the territoriality principle as the basis for the minimum standard. This solution was supported by a clear majority of the comments received on the Green Paper. The second paragraph lays down the principle of non-discrimination. First, and in accordance with the judgment in the Cowan-case, discrimination based on nationality with regard to EU-citizens is prohibited. Secondly, third-country nationals that are legal residents in any Member State must be able to receive compensation on the same conditions as EU citizens. This is in line with the Tampere conclusions and the principles underlying the Commission's proposal for a Council Directive on the status of third-country nationals who are long-term residents<sup>(1)</sup>. Since the purpose of the Directive is to establish a minimum standard the scope has not been extended to cover all persons becoming victims of crime on the territory of a Member State. It deserves nevertheless to be recalled that in the implementation of the Directive, Articles 20 and 21 (equality before the law and non-discrimination) of the Charter of Fundamental Rights of the EU must be respected.

#### Article 4

This Article lays down the principles for deciding which items of losses that can be compensated and how the compensation should be calculated. Together with Article 2 it establishes the basic scope of the minimum standard. The aim is full compensation of the losses the victim has suffered, including non-pecuniary losses, while leaving it to the Member States how to reach this aim. A balance is thereby achieved between two objectives that were stressed in a majority of the comments received on the Green Paper: to ensure adequate compensation to all crime victims in the EU while avoiding solutions entailing harmonisation.

<sup>(1)</sup> COM(2001) 127 final, 13.3.2001 (OJ C 240 E, 28.8.2001, p. 79).

Material losses are excluded from the minimum standard, due to the definition of the scope in Article 2 and since only those losses resulting directly from the personal injury sustained are covered.

The solution described in paragraph 2 of the Article is to connect the definition of the individual items of losses, and the calculation of the amount, to the tort law in each Member State. Such a connection is already found in all Member States that have compensation systems in place. This solution also allows for respecting socio-economic differences between the Member States.

By allowing for some deviation the solution entails in essence that it is the principles of national tort law that must provide the basis for the decision on state compensation. The authority that takes the decision is nevertheless free to make its own assessment of each application and is not bound by any previous judgment on damages from the offender. In practice, compensation may be higher or lower compared to what has been or could have been awarded in damages based on civil law. A further reason for allowing deviations is that the amount of damages awarded to the victim is not always known – the most obvious case being when the offender has not been identified.

An alternative solution allows Member States to use a tariff-based system for the award of state compensation (already in use in one Member State today). A tariff-based system will still have to be connected to national tort law; this is provided for by the reference to the average amount of damages awarded for similar losses.

The third paragraph allows Member States to establish a ceiling for the total amount of compensation that can be awarded, to limit the budgetary impact of the compensation scheme. It allows also for limiting the compensation for loss of earnings or loss of maintenance in case of applicants who have a very high income or are particularly wealthy, or to reduce the compensation for such items on the same basis.

#### *Article 5*

The Article introduces a right for crime victims to receive an advance payment on the compensation sought. This is already possible in all but two Member States today, among those that have compensation systems in place. An advance can be made conditional on four cumulative criteria: the basic eligibility of the applicant must be reasonably clear, the victim must suffer financial hardship as a result of the crime, the final decision on the award of compensation from the state cannot be taken quickly, and it can be assumed that the offender will not be able to satisfy a judgement on damages, due to a lack of means. The latter criteria will apply also in cases where the offender has not been identified. The calculation of advance payments is left to the Member States to decide, since this by necessity will depend on the assessment of the hardship in each particular case.

#### *Article 6*

Member States can exclude, if they so wish, applicants who have only suffered minor injuries. In practice this can be done by, for example, the introduction of a minimum amount of the compensation that can be awarded.

#### *Article 7*

The Article gives the Member States the right to refuse or reduce compensation in cases of contributory negligence, which is a basic principle of tort law and applied also in all compensation schemes in existence in the Member States today.

#### *Article 8*

The Article gives Member States the right to make state compensation subsidiary to compensation from the offender. Most of the Member States that have compensation schemes in place today consider that the primary responsibility to compensate the victim lies with the offender, and that the state should not assume an unlimited responsibility for compensating victims of crime.

The definition of the principle of subsidiary application in this Article has been tempered somewhat, since a strict application of this principle can cause undue delay for the victim in actually obtaining compensation and entail a risk of secondary victimisation. Thus only reasonable efforts are required on the part of victim. Exceptions shall be made where it is reasonably clear that the offender will lack the means to pay any damages to the victim. In such cases it makes little sense to require the victim to go through lengthy procedures for claiming damages from the offender and subsequently seeking to enforce the judgment in question. An exception shall also be made in cases where, due to a lengthy police investigation or criminal proceedings, the victim has not been able to have a civil claim tried by the competent court. The occurrence of such delays is outside the victim's control and should not be to the detriment of the victim's possibilities to be compensated within a reasonable time following the crime. Further exceptions shall be made where the victim has faced obstacles in pursuing a civil claim against the offender.

The possibility to receive an advance payment shall not be negatively affected by the application of the criteria in this Article. The possibility to receive an advance payment is exclusively governed by the criteria defined in Article 5.

The principle of subsidiary application can only apply to the direct victim; a dependant or close relative cannot be required to sue the offender before being able to seek compensation from the state.

#### *Article 9*

To avoid double compensation Member States may deduce compensation or other benefits received from other sources including, for example, the offender, the state or insurance policies.

#### *Article 10*

The Article lays down the possibility of subrogation of the Member State in the rights of the victim, thus allowing the Member State to seek to enforce a judgment on compensation from the offender after the state compensation has been paid out.

#### *Article 11*

The Article gives Member States the right to request an applicant to report the crime to the competent authorities — normally the police — before applying for compensation. The report can be made in the Member State where the crime was committed or in the Member State of residence. A time limit may be set for making the report. Exceptions shall be made, as laid down in paragraph 3 of the Article; for example, it cannot always be expected that the victim is prepared to report the crime in cases involving organised crime or violence against women or minors.

#### *Article 12*

While the principle of subsidiary application as laid down in Article 8 covers the relationship between an application for compensation and a civil claim against the offender, Article 12 covers the relationship between the application and the criminal proceedings instituted as a result of the crime. It could lead to substantial delays for the victim if compensation cannot be awarded until after the criminal proceedings have ended. Consequently the possibility for Member States to await the outcome of such proceedings are limited to cases where it has a practical influence on the decision to be taken on the application for compensation, and provided that undue delay or financial hardship is not caused for the victim. These two criteria are cumulative. A suspension of the decision on an application for compensation for these reasons can however not influence the possibility for the applicant to receive an advance payment, the latter being exclusively governed by the criteria defined in Article 5.

*Article 13*

Member States may stipulate that an application must be made within, as a minimum, two years of the crime or of the end of the police investigations or criminal proceedings. Exceptions must however be provided for. These exceptions include cases where the victim was prevented from submitting the application in time, such as where the victim was a minor when the crime occurred. Exceptions shall also be made for cross-border situations.

*Article 14*

The Article concerns the administrative procedures for the receipt and treatment of applications. This area is left entirely to the discretion of the Member States, with three exceptions: Procedures must be as simple and swift as possible, for the purpose of preventing secondary victimisation. Secondly, an application must be accepted in any of the official languages of the European Communities, to avoid discrimination between EU citizens and residents and to further facilitate victims' access to compensation in cross-border situations. Thirdly, an applicant must have the possibility to appeal against a decision rejecting the application for compensation.

*Article 15*

The Article lays down an obligation for Member States to ensure access to information on state compensation for all victims, information that should normally be provided by the police. The information should cover, as a minimum, the criteria covered by this Directive as implemented by each Member State and the administrative procedures required for the submission of applications in the Member State in question. The need for indicating the territorial or special jurisdiction of the authorities will only be necessary in Member States that have appointed several authorities as responsible for deciding upon applications for compensation. The importance of information to victims on the availability of compensation was strongly emphasised in many of the comments on the Green Paper. The information that the competent authorities have to provide corresponds to that foreseen for the manual to be established in accordance with Article 24. Consequently the necessary translations of the information will be arranged by the Commission.

*Article 16*

The Article lays down the basic principle for facilitating access to state compensation in cross-border situations, which forms the second specific objective of the proposal. The principle reflects what was outlined in the Green Paper as the 'mutual assistance model' and which received support from a clear majority of the comments made. It obliges Member States to appoint one or several authorities for the purpose of implementing this principle; it is left to the Member States' discretion if they wish to appoint the same authority as that responsible for treating and deciding upon applications.

*Article 17*

The Article covers the assistance that the applicant is entitled to when turning to an authority in the Member State of residence for the purpose of applying for compensation from another Member State. The assisting authority shall provide the applicant with the necessary forms and information on the compensation scheme in the Member State from which compensation will be sought. The assisting authority is not required to provide any in-depth advice on the functioning of the compensation scheme in the other Member State or to answer questions of a detailed nature on the interpretation of various criteria. It must however be able to give basic advice on how to complete the application form and to explain to the applicant the types of supporting documents that are required — medical reports, police reports, etc. Since it is the Member State where the crime was committed which is responsible for deciding upon the application the role of the assisting authority does not involve any assessment of it, except in cases where it is obvious that the application is not submitted in good faith.

*Article 18*

Once the application has been completed the assisting authority shall send it to the deciding authority. The assisting authority shall draw the attention of the deciding authority to the issues listed in points (a) to (d) of the Article, for the purpose of speeding up the treatment of the application and facilitating the cooperation between the authorities involved.

*Article 19*

The deciding authority shall acknowledge receipt of the application and inform the assisting authority of the issues listed in points (a) to (d). This includes information on its own contact person, in order to establish a direct link at working level between the authorities involved.

*Article 20*

The Article reflects Article 17 by obliging the assisting authority to transmit any supplementary information that the deciding authority may have requested following receipt of the application.

*Article 21*

The Article provides for cooperation between the two authorities involved for the purpose of, to the greatest extent possible, allowing the applicant to be heard in the Member State of residence. The need for such a hearing, and the decision itself, rests with the deciding authority, to be taken in accordance with its national law. The possibilities whereby this can be done is either by the assisting authority hearing the applicant and sending a transcript of the hearing to the deciding authority, or by the deciding authority hearing the applicant directly via tele- or video-conferencing. This reflects the possibilities afforded by the Council Regulation on the taking of evidence, and the same principles as laid down in that Regulation as concerns the law applicable for the hearings are established in this proposal also.

*Article 22*

The Article obliges the deciding authority to send the decision, and a summary of this decision, to the assisting authority and the applicant. This shall apply to any separate decision on an advance payment as well.

*Article 23*

The Article lays down the rules for the use of languages in the cooperation between authorities. The language used for application forms is the choice of the applicant. The language used for the drafting of the decisions is, obviously, a matter for each Member State to decide, in accordance with its official languages. However, the summary of the decision as required by Article 22(1) must be enclosed in a language that the assisting authority has indicated it can understand. The language used for drawing up a transcript following a hearing of the applicant is left to the assisting authority to decide. This may depend on, for example, the use of interpretation during the hearing. The information the authorities have to provide each other with, as specified by Articles 18-22 shall be in a language the receiving authority — in each particular case — has indicated it can understand. Taken together the provisions on languages include what is necessary for a smooth cooperation between the authorities, while the main responsibility for any translations necessary rest with the deciding authority.

Paragraphs 2 and 3 exclude arrangements for fees or authentication of documents, in order to avoid cumbersome or bureaucratic procedures that may prevent efficient cooperation between the authorities involved.

*Article 24*

The Article contains the necessary provisions for establishing the manual to be used by the assisting authorities. The manual will provide the assisting authority with all the information necessary to enable it to fulfil its obligations arising from section 2 of the Directive, including:

- Which is the deciding authority in the Member State from which compensation is sought;
- What is the language that authority can accept;
- What are the criteria and conditions laid down by the compensation scheme in that Member State, and which are the application forms required.

The European Judicial Network in civil and commercial matters <sup>(1)</sup> will provide the necessary framework for the development of the manual, thereby avoiding the creation of any new structure such as a committee. The Commission will be responsible for ensuring the necessary translations and for updating the manual, in cooperation with the Member States through the Network whenever necessary. Through the translation of the manual, the language versions needed by the Member States to fulfil their obligations arising from Article 15(2) will be made available to them.

*Article 25*

The Article creates a system of central contact points in each Member State to further facilitate cross-border cooperation between the Member States on compensation to crime victims, in particular by seeking solutions to any difficulties that may occur in the implementation of section 2 of this proposal. The contact points will also be responsible for cooperating with the Commission on the drawing up of the manual referred to under Article 24. As for the development of the manual, the Network on civil matters will provide the necessary framework for the cooperation between the contact points, as foreseen by Article 2(1)(b) of the Decision setting up the network.

*Article 26*

The Article contains the standard clause allowing Member States to implement more favourable provisions than those of the minimum standard laid down by this proposal. It mentions specifically the possibility for each Member State to compensate its nationals or residents victimised outside its territory; such a possibility is not necessarily more favourable for the victim in each individual case. Paragraph 2 prevents Member States from justifying any deterioration of current practices by referring to this Directive.

*Articles 27-29*

The Articles contain the standard provisions found in Community Directives and specify the time limit for implementation. To this has been added that Member States need not provide for any retroactivity in the sense of compensating victims of crime committed before the last date for implementation of the Directive but where the application has been made after this date.

<sup>(1)</sup> Council Decision 2001/470/EC of 28 May 2001 (OJ L 174, 27.6.2001, p. 25).

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Whereas:

Having regard to the proposal from the Commission,

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. Measures for the protection of the victims of crime must form part of the realisation of this objective.

Having regard to the opinion of the European Parliament,

- (2) The Vienna Action Plan of the Council and the Commission of 1998 called for addressing the question of victim support by making a comparative survey of victim compensation schemes and assessing the feasibility of taking action within the EU.
- (3) The Commission presented a Communication on 'Crime victims in the European Union — reflexions on standards and action' in 1999.
- (4) Having regard to the Commission's Communication, the Tampere European Council on 15 and 16 October 1999 called for the drawing-up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and their rights to compensation for damages, including legal costs. It also called for the setting-up of national programmes to finance measures, public and non-governmental, for assistance to and protection of victims.
- (5) On 15 March 2001 the Council adopted Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings<sup>(1)</sup>. This decision, based on Title VI of the Treaty establishing the European Union, allows crime victims to claim compensation from the offender in the course of criminal proceedings. Beyond this provision, compensation to crime victims was not addressed.
- (6) The Commission adopted a Green Paper on compensation to crime victims on 28 September 2001. The Green Paper launched a consultation on the possible objectives that a Community initiative, for the purpose of realising the Tampere Conclusions as regards compensation to crime victims, could pursue.
- (7) The reactions to the Green Paper, including the resolution of the European Parliament and the opinion of the Economic and Social Committee, called for the creation of a minimum standard for compensation to crime victims in the EU and for better access to such compensation in cross-border situations.
- (8) The objectives of this Directive are to establish a minimum standard for compensation to crime victims in the European Union and to facilitate access to such compensation in cross-border situations. The pursuit of these objectives respond to the request of the Tampere European Council and is in line with what was covered in the Green Paper and the reactions on it.
- (9) The objectives of this Directive will contribute to the establishment of the European Union as an area of freedom, security and justice and to the free movement of persons. The measures contained in it will complement those taken by the European Union to promote judicial cooperation in civil matters, to combat crime and terrorism, and to ensure compensation for victims of road accidents.
- (10) Since the measures contained in this Directive are necessary in order to attain the objectives of the Community and the Treaty has not provided the specific powers to establish such a legal instrument, Article 308 of the Treaty should be applied.
- (11) It is well known that crime victims will often not be able to obtain compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender cannot be identified or successfully prosecuted.
- (12) To remedy this situation, thirteen Member States have introduced State-funded compensation schemes to allow for compensation to crime victims. These schemes display wide divergences, in terms of which crime victims can be compensated and how the compensation is determined. Two Member States have no general compensation scheme in place.
- (13) Crime victims in the European Union should be entitled to adequate compensation for the injuries they have suffered, regardless of the Member State in which they are resident and regardless of the Member State in which the crime was committed.
- (14) In view of the wide divergences between the Member States that have a compensation scheme in place, and taking into account socio-economic discrepancies, an approach aiming at a minimum standard rather than harmonisation is to be preferred.
- (15) A minimum standard should cover victims of offences against the person, including violent crime, terrorist offences, sexual offences, crimes against women and minors and racist and xenophobic crimes. It should cover the losses sustained by a crime victim resulting from personal injury, excluding damage to and loss of property. It must also cover the dependants and close relatives of crime victims who have died as a result of injuries sustained.
- (16) Compensation should be available to all citizens of the European Union and to all legal residents of any Member State without discrimination.
- (17) The minimum standard should be connected to the national tort laws of each Member State, to ensure adequate levels of compensation and predictable and transparent rules while avoiding harmonisation.
- (18) The compensation must cover non-pecuniary losses, in particular to ensure adequate compensation to victims of serious crimes and to dependants and close relatives of victims who have died as a result of a crime.

<sup>(1)</sup> OJ L 82, 22.3.2001, p. 1.

- (19) Member States should have the possibility to maintain or introduce the principle that the primary responsibility for compensating the crime victim lies with the offender. Certain limitations on the application of this principle should, however, be introduced in order to avoid undue delay in compensating the victim and to limit risks of secondary victimisation.
- (20) The minimum standard should cover the restrictions that can be placed on the award of compensation, in particular when those restrictions relate to obligations on the part of the crime victim, including the need for the victim to report the crime to the police and to make the application for compensation within a certain time, in order to ensure equal treatment of all crime victims in the European Union. Exceptions to these restrictions must be provided for, to avoid requiring unrealistic efforts from the crime victim and to take into account any obstacles the victim may face in a cross-border situation.
- (21) A system of cooperation between the authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence.
- (22) This system should ensure that crime victims can always turn to an authority in their Member State of residence, to ease any practical and linguistic difficulties that occurs in a cross-border situation, without prejudice to the right of Member States to apply the territoriality principle as the basis for the obligation to pay compensation.
- (23) The system should include the provisions necessary for allowing the crime victim to find the information needed to make the application and to allow for efficient cooperation between the authorities involved.
- (24) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.
- (25) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objectives of this Directive, namely to establish a minimum standard for compensation of crime victims and to facilitate access to such compensation in cross-border situations, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the impact of the Directive, be better achieved by the Community. This Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

##### **Objective**

The objective of this Directive is to establish a minimum standard for compensation of victims of crime and to facilitate access to such compensation in cross-border situations.

#### *Section 1*

##### ***Minimum standards for compensation to crime victims***

#### *Article 2*

##### **Personal and territorial scope**

1. Subject to the provisions of this Directive, Member States shall compensate
  - (a) victims who have sustained personal injury directly caused by an intentional crime against the victim's life, health or personal integrity committed on the territory of one of the Member States;
  - (b) close relatives and dependants of victims as defined in point (a) who have died as a result of the injuries sustained.
2. For the application of paragraph 1 the following shall apply:
  - (a) 'victim' shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State;
  - (b) 'intentional crime', 'close relatives' and 'dependants' shall be defined in accordance with the law of the Member State where the crime was committed;
  - (c) 'personal injury' shall include psychological as well as physical injury.

#### *Article 3*

##### **Responsibility for paying compensation; non-discrimination**

1. Compensation shall be paid by the Member State on whose territory the crime was committed.

2. Compensation shall be paid to citizens of the European Union and to legal residents of any Member State without discrimination.

#### Article 4

##### Principles for determining the amount of compensation

1. Compensation shall cover pecuniary and non-pecuniary losses that have resulted as a direct consequence of the personal injury the victim has sustained, or, as concerns close relatives or dependants, of the death of the victim.

2. The amount of compensation shall be determined:

(a) on a case-by-case basis where the compensation, taken as a whole, does not deviate significantly from what has been or could be expected to be awarded in damages to the applicant in accordance with civil law in the Member State responsible for paying the compensation; or

(b) in accordance with pre-defined tariffs, for the entire compensation or for some or all of the individual items of losses that is covered by the compensation.

The tariffs referred to in point (b) shall reflect the average of what would be awarded in damages for similar losses as those suffered by the applicant, in accordance with civil law in the Member State responsible for paying the compensation.

3. By way of derogation from paragraph 2 Member States may define a maximum amount of no less than EUR 60 000 for the total compensation that can be paid out to an individual applicant.

Member States may also provide that compensation for a victim's loss of earnings or for a dependant's loss of maintenance can be reduced on the basis of the applicant's financial situation or be restricted to a maximum amount to be defined by the Member States.

4. The compensation may be paid out as a lump sum or through instalments, for the entire compensation or for some or all of the individual items of losses that are covered by the compensation.

#### Article 5

##### Advance payment

1. Member States shall provide for an advance payment on the compensation applied for wherever:

(a) the basic eligibility of the application has been established;

(b) there is reason to believe that the final decision cannot be taken within a short delay following the submission of the application for compensation;

(c) it is justified in view of the financial situation of the applicant; and

(d) it can be assumed with reasonable certainty that the offender will not be able to satisfy, in full or in part, any judgement or decision awarding damages to the victim.

2. Member States may demand full or partial repayment of an advance paid out if the final decision on the application for compensation results in a rejection of the application or in the award of an amount of compensation below the level of the advance payment.

#### Article 6

##### De minimis rule

Member States may exclude the award of compensation to victims who have sustained only minor injuries.

#### Article 7

##### Behaviour of the applicant in relation to the crime

Member States may provide that compensation shall be reduced or refused on grounds of the behaviour of the applicant in direct relation to the event that caused the injury or death.

#### Article 8

##### Subsidiary application

1. Member States may, in the cases referred to in Article 2(1)(a) and without prejudice to the application of Article 5, make the award of compensation conditional upon the applicant having made reasonable efforts to obtain and enforce a judgment or decision on compensation against the offender.

2. In applying a condition as referred to in paragraph 1 Member States shall make exceptions for cases where:

(a) it is probable that the offender will not be able to satisfy, in full or in part, any judgement or decision awarding damages to the victim;

- (b) the applicant has not been able to obtain a judgment or decision on compensation against the offender within two years from when the crime was committed, on the grounds that the police investigations or criminal proceedings instituted as a result of the crime have not been concluded within that time; or
- (c) the applicant has faced obstacles in obtaining a judgment or decision as referred to in paragraph 1 as a consequence of not having been able to pursue a civil claim for damages against the offender in the applicant's Member State of residence.

#### Article 9

#### **Deduction of compensation received from other sources**

1. With a view to avoiding double compensation, Member States may deduct from the compensation awarded, or may reclaim from the person compensated, any damages, compensation or benefits actually received from other sources for the same losses.
2. The provisions of paragraph 1 shall apply also with regard to any advance payment awarded or paid out.

#### Article 10

#### **Subrogation**

The Member State or the competent authority may be subrogated to the rights of the person compensated for the amount of the compensation paid.

#### Article 11

#### **Reporting the crime**

1. Member States may, in the cases referred to in Article 2(1)(a), make the award of compensation conditional upon the applicant having reported the crime to the competent authorities in the Member State where the crime was committed.

This requirement shall be considered fulfilled if the applicant reports the crime in the Member State of residence in accordance with Article 11(2) of the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

2. Member States who apply a condition as referred to in paragraph 1 may provide that the report shall be made within a specified time. However, that period shall not be less than seven days from the date of commission of the crime.

3. In applying a condition as referred to in paragraphs 1 or 2 Member States shall make exceptions for cases where the victim had valid reasons for not reporting the crime or for not doing so within any prescribed period. Such reasons shall include:

- (a) circumstances surrounding the crime or the victim's relationship with the offender; or

- (b) significant obstacles faced by the victim as a consequence of being a resident in another Member State than that where the crime was committed.

#### Article 12

#### **Situation pending criminal investigations**

1. Compensation shall not be made conditional upon that the offender has been identified or successfully prosecuted.
2. Member States may, without prejudice to payment of an advance pursuant to Article 5, provide that the decision on an application for compensation shall be suspended until the police investigations or criminal proceedings instituted as a result of the crime have ended, subject to the following conditions:
  - (a) such a suspension must be necessary for the purpose of establishing that the injuries suffered were caused by an intentional crime; and
  - (b) suspension must not give rise to undue delay or financial hardship for the applicant.

#### Article 13

#### **Time limit for submitting an application**

1. Member States may make the award of compensation conditional upon submission of the application within a specified time, which in any event shall not be less than two years from the end of the police investigations or the end of the criminal proceedings instituted as a result of the crime, whichever comes latest. If no police investigations or criminal proceedings have been instituted the period shall run from the date of commission of the crime.

2. In applying a condition as referred to in paragraph 1 Member States shall make exceptions for cases where the applicant could not have been reasonably expected to submit the application within the prescribed period. This shall include cases where the victim has faced significant obstacles as a consequence of being a resident in a Member State other than that in which the crime was committed.

#### Article 14

#### **Responsible authorities and administrative procedures**

1. Member States shall establish or designate one or several authorities to be responsible for deciding upon applications for compensation.

2. Member States shall endeavour to keep to a minimum the administrative formalities required of an applicant for compensation, without prejudicing the ability to make a proper assessment of the eligibility of the application and of the amount of compensation to be paid out.

3. Applicants shall have the right to submit an application in any of the official languages of the European Communities.

4. Member States shall make provision for appeals against decisions rejecting applications for compensation.

#### Article 15

##### Information to potential applicants

1. Member States shall ensure that potential applicants for compensation have access to information on the possibilities to apply for compensation as from their first contact with the competent authorities to which the crime should be reported, by any means Member States deem appropriate.

2. The information referred to in paragraph 1 shall cover the criteria, as applicable, set out in Articles 2 to 13 and the administrative procedures applicable to the submission of applications, including where appropriate the special and territorial jurisdiction of the authorities referred to in Article 14(1). The information shall be available in all of the official languages of the European Communities.

#### Section 2

##### Access to compensation in cross-border situations

#### Article 16

##### Right to submit an application in the Member State of residence

1. If the crime was committed in a Member State other than that of the applicant's residence the applicant shall have the right to submit the application to an authority in the latter Member State, provided that the applicant falls within the scope of Article 2(1).

2. Member States shall establish or designate one or several authorities, hereinafter referred to as 'assisting authorities', to be responsible for applying paragraph 1.

#### Article 17

##### Assistance to the applicant

1. The assisting authority shall provide the applicant with the information referred to in Article 15(1) and the required application forms, on the basis of the manual drawn up in accordance with Article 24(2).

2. The assisting authority shall assist the applicant in completing the application for compensation and shall ensure, as far as possible, that it is accompanied by any supporting documentation that may be required.

3. The assisting authority shall not make any assessment of the application. It may reject the application only if it is obvious that the application is not made in good faith.

#### Article 18

##### Transmission of applications

The assisting authority shall transmit the application and any supporting documentation directly to the competent authority in the Member State responsible for deciding upon the application, hereinafter referred to as 'deciding authority'.

The assisting authority shall at the same time provide the deciding authority with the following information:

- (a) the contact person handling the matter;
- (b) a list of supporting documentation enclosed;
- (c) whether the application includes a request for an advance payment; and
- (d) where appropriate, the language in which the application form has been completed.

#### Article 19

##### Receipt of applications

Upon receipt of an application transmitted in accordance with Article 18, the deciding authority shall send the following information as soon as possible directly to the assisting authority:

- (a) the contact person handling the matter;
- (b) an acknowledgement of receipt of the application;
- (c) if possible, an indication of the approximate time by which a decision on the application will be made, including where appropriate the same indication for any decision on a request for an advance; and
- (d) where appropriate, any request for supplementary information.

#### Article 20

##### Requests for supplementary information

The assisting authority shall assist the applicant in meeting any request for supplementary information from the deciding authority and shall subsequently transmit it as soon as possible directly to the deciding authority, enclosing where appropriate a list of any supporting documentation transmitted.

*Article 21***Hearing of the applicant**

1. If the deciding authority wishes to hear the applicant in accordance with the law of its Member State it shall inform the assisting authority accordingly.
2. Following such a request, the assisting and the deciding authorities shall cooperate for the purpose of arranging the hearing, in particular by arranging, as far as possible, for:
  - (a) the applicant to be heard by the assisting authority, in accordance with the law of its Member State, which will subsequently transmit a transcript of the hearing to the deciding authority; or
  - (b) the applicant to be heard directly by the deciding authority, in accordance with the law of its Member State, through the use of telephone- or video-conferencing.

*Article 22***Communication of the final decision**

1. The deciding authority shall send the decision on the application for compensation, and a summary of the decision, to the applicant and to the assisting authority, as soon as possible after the decision has been taken.
2. The provisions of paragraph 1 shall apply also with regard to any separate decision on a request for an advance payment.

*Article 23***Other provisions**

1. Information transmitted between authorities in the application of Articles 18 to 22 shall be expressed in a language that the authority to which the information is sent has indicated that it can accept, with the exception of:
  - (a) the application forms and the supporting documentation, where the use of languages shall be governed by Article 14(3);
  - (b) the full text of decisions taken by the deciding authority, where the use of languages shall be governed by the law of its Member State;
  - (c) transcripts drawn up following a hearing in accordance with Article 21(2)(a), where the use of languages shall be determined by the assisting authority.
2. Services rendered by the assisting authority in accordance with Articles 16 to 22 shall not give rise to a claim for any reimbursement of charges or costs from the applicant or from the deciding authority.

3. Application forms and any other documentation transmitted in accordance with Articles 18 to 22 shall be exempted from authentication or any equivalent formality.

*Section 3***Implementing provisions***Article 24***Information to be sent to the Commission; manual**

1. Member States shall, no later than 31 December 2004, send to the Commission:
  - (a) the list of authorities established or designated in accordance with Article 14(1) and 16(2), indicating the language(s) the authorities can accept for the purpose of applying Articles 18 to 22 and including where appropriate information on the special and territorial jurisdiction of these authorities;
  - (b) the information established in accordance with Article 15(1); and
  - (c) the application forms for compensation.

Member States shall inform the Commission of any subsequent changes to this information.

2. The Commission shall, in cooperation with the Member States and in the framework of the European Judicial Network in civil and commercial matters set up by Decision 2001/470/EC, establish and publish on the internet a manual containing the information provided by the Member States pursuant to paragraph 1. The Commission shall be responsible for arranging the necessary translations of the manual.

*Article 25***Central contact points**

Member States shall appoint a central contact point for the purposes of

- (a) assisting with the implementation of Article 24(2);
- (b) furthering close cooperation and exchange of information between the assisting and deciding authorities in the Member States; and
- (c) giving assistance and seeking solutions to any difficulties that may occur in the implementation of Articles 16 to 22.

The contact points shall meet regularly in the framework of the European Judicial Network in civil and commercial matters.

*Article 26***More favourable provisions**

1. This Directive shall not prevent Member States, in so far as such provisions are compatible with this Directive, from:

- (a) introducing or maintaining more favourable provisions for the benefit of victims of crime or any other persons affected by crime;
- (b) introducing or retaining provisions for the purpose of compensating victims of crime committed outside their territory, or any other person affected by such a crime, subject to any conditions that Member States may define for that purpose.

2. The implementation of this Directive may not constitute grounds for making less favourable any provisions already applied by Member States on compensation of victims of crime or of any other persons affected by crime.

*Article 27***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2005 at the latest. They shall forthwith inform the Commission thereof.

2. Member States may provide that those provisions shall apply only to applicants whose injuries result from crimes committed after the closing date mentioned in paragraph 1.

3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

*Article 28***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 29***Addresses**

This Directive is addressed to the Member States.

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