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REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

on the application of Council Directive 2004/80/EC relating to compensation to crime victims

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1. INTRODUCTION

Crime victims in the European Union are entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Community the crime was committed. Council Directive 2004/80/EC relating to compensation to crime victims[1] (hereafter "the Directive") set up a system for cooperation to facilitate access to compensation to victims of crime in cross-border situations. The system operates on the basis of the Member State's schemes on compensation to victims of violent intentional crime, committed in their respective territories.

Article 19 of the Directive stipulates that the Commission is to present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the Directive by 1 January 2009. This report complies with that obligation. It covers the period of 1 January 2006[2] to 31 December 2008[3].

In order to prepare the report, the Commission requested a study on the application of the Directive, which was prepared by a contractor[4]. The main objective of the study was to assess the current stage of implementation of the Directive in all Member States. For this purpose, the contractor undertook a survey of:

- The application of the Directive: assessing the compensation schemes on an operational level;
- The effectiveness of the Directive: identifying contextual factors, regulations, and procedures (if any) that have caused implementation difficulties;
- The content of national legislation: comparing Member States' compensation schemes; assessing whether Member States' compensation schemes comply with the provisions of the Directive.

Furthermore, the application of the Directive was discussed at a meeting of the Central Contact Points appointed by the Member States in accordance with Article 16 of the Directive, which was organised in the framework of the European Judicial Network in Civil and Commercial Matters and took place on 23 October 2008.

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1 OJ L 261, 6.8.2004, p.15. It is to be noticed that the legal basis of the Directive is Article 308 of the EC Treaty. The Directive is thus applicable in all Member States, including Denmark, which is not covered by such Community measures in the area of civil justice cooperation that are adopted under Title IV of the EC Treaty.

2 According to Article 18(1) of the Directive, the Member States were to implement the Directive by 1 January 2006 at the latest.

3 The Annexes of the report are presented in the Commission Staff Working Document n°

4 Matrix Insight: The application of Directive 2004/80/EC relating to compensation to crime victims EMPIRICAL REPORT, 12.12.2008, and Analysis of the application of Directive 2004/80/EC relating to compensation to crime victims SYNTHESIS REPORT, 12.12.2008 (hereafter "the study"). The study is available at: http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm.

The Directive and all information provided by the Member States under the provisions of the Directive are available in the European Judicial Atlas in Civil Matters (hereafter "the Atlas").[5]

2. THE MAIN ELEMENTS OF THE DIRECTIVE

Article 1 of the Directive requires Member States to ensure that the victim of a "violent intentional crime" committed in a Member State other than the Member State where the applicant for compensation is habitually resident has the right to submit an application for compensation in that state. The competent authority in the Member State in which the applicant is currently residing (the "Assisting Authority") assists the applicant; its obligations towards the victim are set out in Articles 5 – 11 of the Directive. The Assisting Authority does not make any assessment of the application. This assessment is left to the authority of the Member State under whose compensation scheme the victim is applying (the "Deciding Authority").

Member States are thus required to establish Assisting and Deciding Authorities and to appoint Central Contact Points (Articles 3(1), (2) and 16).

Assisting Authorities are responsible for:

- Informing potential claimants about the compensation scheme (Article 4);
- Assisting claimants in filling in the compensation application (Article 5);
- Transmitting the application to the Deciding Authorities (Article 6);
- Providing guidance to the applicant in case additional documents are required (Article 8);
- Organising a hearing if requested by the Deciding Authority (Article 9).

Deciding Authorities are responsible for:

- Acknowledging the receipt of the application, providing a contact person in charge of the handling the matter and indicating an estimated time for the decision to be taken (Article 7);
- Informing both the Assisting Authority and the claimant about the decision (Article 10).

Article 12(1) of the Directive provides that access to compensation in cross-border situations should operate on the basis of Member States' own national compensation schemes. In specifying the constituent elements of such schemes, Article 12(2) provides that all Member States "shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims."

The Member States must ensure that the potential applicants have access to essential information on the possibilities to apply for compensation (Article 4). The compensation has to be paid by the competent authority of the Member State on whose territory the crime was committed (Article 2). Administrative formalities

[5] http://ec.europa.eu/justice_home/judicialatlascivil/html/cv_information_en.htm.

should be kept to a minimum (Article 3(3)) and standard forms should be used for the transmission of applications and decisions (Article 14).

3. THE APPLICATION OF THE DIRECTIVE

The following section gives an overview of different aspects of the application of the Directive, in particular the notification of transposing measures, compliance with the Directive, application and effectiveness of the Directive and national compensation schemes under Article 12. In addition, the implementing measures required by Chapter III of the Directive are presented.

3.1. Notification of the transposing measures

In accordance with Article 18(1), Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 1 January 2006[6][7]

15 Member States adopted the national transposing measures before the said deadline: Bulgaria, Denmark, Germany, Estonia, Spain, France, Ireland, Luxembourg, Netherlands, Austria, Poland, Slovenia, Finland, Sweden and United Kingdom. The notifications from 7 further Member States (Belgium, the Czech Republic, Cyprus, Lithuania, Hungary, Portugal and Slovakia) were received in early 2006.

The Commission launched the infringement procedure under Article 226 of the EC Treaty against Greece, Italy, Latvia, Malta and Romania for non-notification in 2006-2007. Since then, Italy, Latvia, Malta and Romania have notified national transposing legislation in accordance with their obligation.

To date, Greece has not notified national transposing measures for the Directive. It was condemned by the European Court of Justice in July 2007.[8] The Commission launched the procedure under Article 228 of the EC Treaty against Greece in 2008; it is currently pending.

The transposing measures notified by the Member States are listed in Annex 1.

3.2. Compliance with the Directive

The assessment of the conformity of the transposing measures with the requirements of the Directive is not fully completed because of the late notifications. On the basis of the current information, the situation is as follows:

Articles 1-3: All Member States except Greece and Italy have schemes in place which allow victims to submit an application (Article 1) and have implemented Articles 2 - 3 (the creation of responsible authorities and administrative procedures). The responsible authorities are published in the Atlas.[9]

Article 4: There is information available on measures and methods for informing the potential applicants from 20 Member States. Mostly, the Member States have provided information on their compensation schemes through the internet, either on

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6 The deadline was 31 December 2006 for Bulgaria and Romania.

7 See the Commission Staff Working Document n°

8 Case C-2007/026, Commission v Greece, judgement of 18 July 2007.

9 They are also listed in Chapter 9.2 of the Analysis of the application of Directive 2004/80/EC relating to compensation to crime victims – SYNTHESIS REPORT, 12 December 2008.

national websites or in the Atlas. They have also prepared leaflets and brochures. The information measures are presented in Annex 2[10].

Articles 5-10: There is currently information on the functioning of the procedures required in Articles 5-10 of the Directive from 12 Member States: the Czech Republic, Denmark, Ireland, Spain, Cyprus, Latvia, Luxembourg, Hungary, Portugal, Finland, Sweden and the UK.

Article 11: 17 Member States accept applications in languages other than their official language(s). The most widely accepted foreign language is English. Spain, France, Luxembourg, Slovenia and Slovakia accept only the use of their official language(s). The information on languages is presented by Member State in Annex 3[11].

3.3. Application and Effectiveness of the Directive in practice

Only limited data is available on the practical application of the Directive in the different Member States.[12] The number of cross-border applications made with the help of the Assisting Authority and the number of actions taken by the Deciding Authority are presented in the table below. The main conclusion is that there have been very few cases to date.

Member State	**Number of cross-border applications (acting as Assisting/Deciding Authority)[13]**
Belgium	1 case / 22 cases
Bulgaria	(no data yet)
Czech Republic	0 cases / 3 cases
Denmark	2 cases / 2 cases
Germany	(no data)
Estonia	3 cases / 4 cases
Greece	(not transposed)
Spain	(no data for assisting authority) / 48 cases
France	(no data for assisting authority) / 28 cases
Ireland	1 case / 31 cases
Italy	(no authorities)
Cyprus	(no data for assisting authority) / 2 cases
Latvia	2 cases / 1 case
Lithuania	3 cases / 0 cases
Luxembourg	0 cases / 1 case
Hungary	0 cases / 0 cases
Malta	0 cases / (no data for deciding authority)
Netherlands	39 cases / 3 cases
Austria	(no data for assisting authority) / 3 cases
Poland	5 cases / 5 cases

10 See the Commission Staff Working Document n°

11 See the Commission Staff Working Document n°

12 In the survey carried out by the contractor, the majority of respondents chose not to answer questions about applications, requests for information, decisions, hearings, etc. Therefore, EU-wide data is quite approximate on these matters.

13 The periods covered by the available data vary. The numbers are based on the study and on the information received in the meeting of the Central Contact Points of 23 October 2008.

Portugal	(no data for assisting authority) / 3 cases
Romania	1 case / 0 cases
Slovenia	0 cases / 1 cases
Slovakia	0 cases / 0 cases
Finland	6 cases / 1 case
Sweden	7 cases / 14 cases
United Kingdom	Around 100 cases / (no data for deciding authority)

According to the study, the reason for the unavailability of relevant data appears to be that some Member States have only recently implemented the Directive. Others encountered barriers to implementation including language, a lack of knowledge of other Member States' legal system and procedures, and differing attitudes towards speed and efficiency. These respondents also noted that there had been few successful cases which could be shared.

In addition to the statistical outcome, the following main findings can be presented based on the study:

3.3.1. Effectiveness of the Directive

Deciding and Assisting Authorities on the whole had a positive opinion of the operation of the current system as well as of the Central Contact Points, the use of standard forms, languages and the use of communications technology. However, the relatively low response rate raised questions regarding the extent to which these respondents actually made use of the system.

Deciding and Assisting Authorities mostly rated their leading interlocutors as effective. There were few respondents who were critical of their official counterparts. Central Contact Points also received positive assessments.

However, claimants were much less positive about the process than authorities. They found the process of applying complicated and time-consuming. Language barriers, lack of information and legal advice were rated as major problems. It seems therefore that despite the requirements of Article 11 of the Directive, language barriers – and communication in general – continues to be a major problem in the application process.

3.3.2. Workload and decisions

The EU-wide estimate of the approximate number of applications under the Directive during the reporting period is very low, as presented in the table above. There are indications however, that the number of applications, hearings and requests for information rose substantially between 2006 and 2008. Despite the rise in numbers of applications, the success rate remained roughly the same (around 10%). According to the study, there has been a substantial rise in the absolute amounts both claimed and paid out. As a percentage of the amount claimed, the payouts tend to vary widely, depending on year and location.

3.3.3. Organisation and communication

The study indicates that the ability to process and transmit applications and decisions appears to vary widely across the European Union. On average, it takes approximately four weeks to transmit an application, and roughly two weeks for the

Deciding Authority to receive the application. Requests for follow-up information can take up to four months.

The use of communications technology seems to have helped increase the number of hearings, but not substantially. Around 10% received hearings in 2006, and 19% in 2007. There were few examples of tele- or videoconferencing causing difficulty. A significant minority of Deciding Authorities (1/4) were also willing to use email and fax.

Finally, the majority of respondents expressed themselves satisfied with the use of language. However, a substantial minority (about 1/4) expressed concerns, and there were several suggestions about ways to improve the situation, including the use of native language interpreters.

3.3.4. Attrition rate

On the basis of the evidence available in the context of the study, it is likely that only a relatively small number of victims have sought to pursue claims for cross-border compensation.

Possible explanations range from unawareness of the schemes' existence and unwillingness to engage with the claims agency (the Assisting Authority). In addition, contextual factors – perceived language barriers, absences of a central source of information and the involvement of two agencies – may also have lead to a high attrition rate during the claim process.[14]

3.4. Compensation Schemes of Member States (Article 12)

3.4.1. Existence of national compensation schemes

Article 12 requires first the existence of national scheme on compensation to victims of violent intentional crimes committed in their respective territories.

All Member States except Greece seem to fulfil this obligation.

3.4.2. Victimising events covered by schemes and "fair appropriate compensation" required by Article 12

The study and the website of the European Judicial Network in Civil and Commercial Matters[15] contain a substantial amount of information on national compensation schemes. The following section provides an overview of the current practices of national compensation schemes with regard to two essential respects, namely the question of "victimising events" and the issue of "fair and appropriate compensation".

All Member States except Greece provide compensation for victims of intentional crimes against a person. With respect to relatives of victims of intentional crimes against a person that result in the victim's death, the number of schemes that cover fatal injury is 2:1 compared with those that do not. A majority of Member States exclude unintentional injuries, whether to victims or their relatives.

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[14] Other reasons of a more general nature for the high attrition rate (i.e. high drop out rate) can be found in the study.

[15] http://ec.europa.eu/civiljustice/comp_crime_victim/comp_crime_victim_gen_en.htm.

The vast majority of Member States provide compensation for both personal injury and death. There is also a large majority that include disease and mental injury in their schemes.

In most cases, both victims and their close relatives (where the offence is homicide) may be eligible for compensation.

All but two Member States impose a time limit for the completion and submission of a claim for compensation, and most (3:1) provide that in certain circumstances that limit may be extended. These circumstances largely relate to the medical consequences of the crime on the victim.

By contrast, a majority of Member States (2:1) does not impose any financial minimum as a threshold to compensation, and in the case of those that do, the minimum ranges widely.

Given that none of the schemes sets the completion of criminal proceedings or the identification of the offender as a condition of eligibility, it is required in almost all schemes that the victim report the offence to the police. There is, however, an almost equal split between schemes as to the imposition of a time limit for such reports. Where they do impose a limit, schemes are also almost equally split on the questions whether the limit could be extended.

Virtually all schemes contain a provision that victims who in some way contribute to the circumstances in which they were injured may have their compensation reduced or their claim rejected altogether. By contrast, there is a substantial majority (4:1) of schemes in which victims who have a criminal record are not for that reason precluded (in whole or in part) from compensation.

The survey asked whether respondents felt that their schemes provided, as the Directive requires, for "fair and appropriate compensation". The question was answered by less than half of the Deciding Authorities. Those that did claimed that their schemes did meet this standard.

Respondents were asked a number of questions concerning the assessment and scope of the compensation that their schemes provide. For a majority of respondents (2:1) the assessment of compensation is based on their national law of damages for personal injury or death. Some schemes operate a tariff that fixes a financial value to specified injuries.

In addition to non-pecuniary loss, the vast majority of schemes provides compensation for pecuniary loss arising from the injury (loss of earnings, for example), and most provide compensation for longer term disabilities. Similarly, the majority of schemes provide for compensation to dependants both for non-pecuniary (bereavement) and pecuniary loss (loss of dependency).

There is a majority of schemes (4:1) which impose an upper limit on the total of compensation in any case. But there is an equal split on the question whether there should be an upper limit on any award for loss of earnings.

A claimant might benefit from two other sources of compensation: The first is recovery from the offender. National law may provide that the claims agency is subrogated to the victim’s civil law claim against the offender. The survey showed that a slight majority of national schemes did not require victims to take reasonable steps to recover from the offender. The second source is collateral benefits that may

accrue from the state, the claimant's employer or own insurance policies. In this regard, respondents agreed that schemes may seek to prevent double recovery.

Although the compensation schemes are complex and characteristics differ among Member States, it seems that all Member States surveyed have established a functioning scheme on compensation to victims of violent intentional crimes.

As regards the requirement of fair and appropriate compensation, respondents to the survey agreed that there was a substantial degree of compliance across Member States with respect to the provision of "fair and appropriate compensation for victims of violent intentional crimes":

- All respondents stated that compensation for victims of intentional crimes against the person is provided.
- A majority of Member States exclude unintentional injuries from their compensation scheme.
- The vast majority of Member States provide compensation for both personal injury and death.
- There is also a consensus that disease and mental injury should be included within schemes.
- There is very high compliance with the minimum standard that proposes that both victims and their close relatives (where the offence is homicide) should be eligible.
- All but two Deciding Authorities reported that they impose a time limit for the completion and submission of a claim for compensation.
- Virtually all schemes contain a provision that victims who contribute to the circumstances in which they were injured may have their compensation reduced or their claim rejected altogether.
- A substantial majority takes the view (not proposed in the minimum standards) that victims who have a criminal record should not for that reason be precluded from compensation.
- The vast majority of schemes provide compensation for financial loss arising from the injury and most provide compensation for longer term disabilities.
- Some schemes operate a tariff that fixes a financial value to specified injuries.
- A majority of schemes imposes an upper limit on the total of compensation in any case.

4. THE IMPLEMENTING MEASURES UNDER CHAPTER III OF THE DIRECTIVE

Article 13(1) requires the Member States to send the Commission the details of the lists of Assisting and Deciding Authorities, of the languages referred to in Article 11, of the information measures under Article 4 and of the application forms for compensation.

13 Member States have sent all required information: Belgium, Czech Republic, Denmark, Ireland, France, Latvia, Hungary, the Netherlands, Austria, Portugal, Slovakia, Sweden and United Kingdom. For the others, there are still points of information to be complemented.

On this basis, the Commission established a manual containing this information in accordance with Article 13(2). The manual is translated to all languages and published in the internet, in the Atlas. It is being updated regularly, on the basis of the subsequent additions and changes notified by the Member States.

The standard forms for the transmission of applications and decisions foreseen in Article 14 were established on 19 April 2006 by Commission Decision 2006/337/EC.[16]

The Central Contact Points mentioned in Article 16 have met once, on 23 October 2008.

5. CONCLUSIONS

Based on the above findings, the Commission draws the following conclusions concerning the application of the Directive:

- Concerning the national compensation schemes required by the Directive, it appears that Member States provide fair and appropriate compensation for victims of violent intentional crimes. In this regard, there seems to be a substantial degree of compliance across Member States.
- As far as the procedural aspects of the Directive for cross-border cases are concerned, Deciding and Assisting Authorities are broadly positive about the operation of the current system including Central Contact Points, the use of standard forms, languages and the use of communications technology. Claimants are, however, much less positive about the process than authorities. Many find the process of applying complicated and time-consuming and consider that language barriers – and communication in general – constitute a major obstacle in facilitating the victim application process.

The Commission is therefore of the opinion that the functioning of the Directive should be improved with regard to the following aspects of its application:

- Member States should seek to collect data on the application of the Directive in order to able to better assess the effectiveness of the process.
- Member States should – as far as possible – ensure that more information on the Directive and on national compensation schemes is provided to citizens since too few potential claimants seem to be aware of their rights.
- Furthermore, Member States should ensure that the language requirements of the Directive are respected in order to ensure the most efficient processes for claimants.
- Finally, clarity and transparency concerning key elements of national compensation schemes is important. This concerns in particular the questions of which offences are included in the schemes and which injuries are covered by them. The Atlas and the website of the European Judicial Network in Civil and Commercial Matters contain already a substantial amount of information on national compensation schemes. It should, however, be considered whether efforts

[16] OJ L 125, 12 May 2006, p. 25.

are required to further improve information available on the Directive and on national compensation schemes in these websites.

Because of the short period and consequent limited practical experience on the application of the Directive, the Commission will not propose amendments to the Directive but considers that the implementation can be improved on the basis of the current provisions. Furthermore the Commission will use its powers under the Treaty to urge the Member States to complete the possible deficient measures.