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COMMISSION STAFF WORKING PAPER

Executive summary of the Impact Assessment

Accompanying the document

Communication from the Commission to the European Parliament, to the Council, to the European economic and social Committee and to the Committee of the Regions -

Strengthening victim's rights in the EU

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1. POLICY CONTEXT AND PROCEDURE

In the Stockholm Programme (2010-2014), the European Council called for further action to place the needs of victims of crime at the centre of our justice systems, which was reaffirmed in the Commission's action plan to implement the Stockholm Programme. The Commission Work Programme 2011, Annex I, lists the rights of and support to victims of crime as a strategic initiative. The European Parliament has also called upon the Council to adopt a comprehensive legal framework offering victims of crime the widest protection. Moreover, the Commission's "Citizenship Report" of 27 October 2010 seeks to dismantle the obstacles to citizens' rights by adding substance to individual rights granted at EU level. Strengthening victims' rights, together with the strengthening of procedural rights of suspects or accused persons in criminal proceedings reflects this approach.

The problems, objectives and policy options assessed were based on the outcome of a public consultation, two studies by external contractors and the expertise brought together by the Commission. An Inter-Service Steering Group was also set up.

2. PROBLEM DEFINITION

The problem of victimisation of crime in Europe is considerable – roughly 15% of the EU's population suffer directly from crimes every year.¹ The impact assessment addresses the quality of treatment that victims receive in the aftermath of crime and during the criminal proceedings that follow, and their right to receive the same minimum standard of treatment, including non-discriminatory access to justice, in all EU Member States, irrespective of their nationality or country of residence.

With the entry into force of the Lisbon Treaty, new provisions on criminal justice provide a clear legal base for the EU to establish minimum rules on victims' rights to ensure mutual trust and the operation of mutual recognition of judgments. This means that judiciaries should have faith in each others' standards of fairness and justice, and EU citizens should have confidence that the same level of minimum rules will be applied should they travel or live abroad.

Today, most Member States have some level of protection and support of victims of crime but the role and needs of victims in criminal proceedings are still generally not sufficiently addressed in their judicial systems. People who fall victim to crime across Europe are not guaranteed to be treated with respect or to receive appropriate support, protection or access to basic elements of justice. To address this problem, Member States need to raise the standards on victims' rights in accordance with standards already established through international instruments and case law of the European Court of Human Rights (ECtHR).

The EU has already addressed the rights of victims in criminal proceedings in existing legislation. However, although the objectives and the scope of such legislation are still relevant, society's views on victims have evolved and new objectives have appeared which need to be addressed. In addition, the implementation of the legislation has been ineffective.

The current EU legislation is therefore inadequate to meet the needs of victims.

The issues identified are covered by the two problems detailed below:

¹ According to Eurostat data, around 30 million crimes (excluding minor crime) were recorded in the EU Member States in 2007 (Eurostat, Statistics in focus, 36/2009). Based on an analysis of the EU International Crime Survey in "The Burden of Crime in the EU" (www.europeansafetyobservatory.eu), to this figure is added an assumed rate of unreported crime of 60%, resulting in approximately 75 million direct crime victims per year (roughly 15% of the EU population).

Problem A: Existing EU legislation is inadequate to improve the situation of victims – it is vague, does not contain concrete obligations and is not enforceable, and has therefore been poorly implemented by the Member States.

Problem B: The needs of victims of crime are not sufficiently addressed in the Member States – victims do not get (1) recognition and respect, (2) protection, (3) support, (4) effective access to justice, and (5) effective access to compensation and restoration.

The consequences of crime and not meeting the needs of victims also have significant hidden costs, including important financial and health costs.

2.1. Problem A – EU Legislation is inadequate to improve the situation of victims

The EU has adopted the Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings (the "Framework Decision") and Directive 2004/80/EC on the compensation of crime victims. The level of implementation by the Member States of these two pieces of legislation has been mixed. The Compensation Directive has been largely transposed by the Member States, but will require further study to establish to what extent it is really effective. The implementation of the Framework Decision, on the other hand, is not satisfactory.

Whilst the scope of the Framework Decision covers most of the rights of victims of all types of crime and is overall still relevant, any new action needs to cover a wider range of rights and obligations on the Member States given the growing awareness and changing judicial culture to address not only the rights and needs of the prosecuted but also those of the victims.

Therefore the scope of EU legislation on victims needs to be updated in light of new research and findings on victims, in particular as regards mutual recognition of protection measures, and access to justice.

The Framework Decision has not been effective in meeting, or moving towards the desired outcomes of addressing the needs of victims and achieving minimum standards for victims across the EU. No Member State can claim to have fully implemented the Framework Decision. The ineffectiveness of this legislation is due to ambiguous drafting, a lack of concrete obligations and a lack of infringement possibilities against Member States.

While building on and complementing existing instruments, this legal framework will establish minimum standards to ensure that the situation of victims is improved in law and policy throughout the EU and that victims of crime receive the same basic rights, services and access to justice in all EU Member States.

2.2. Problem B – Victims' needs are not sufficiently addressed in the EU

The needs of victims can be brought under five categories: the need to be recognised and treated with respect and dignity; the need to be protected; the need to be supported; the need to access justice; and the need for access to compensation and restoration. The fact that these needs generally are not sufficiently or adequately met in the Member States is the key problem that the proposed measures will address.

- **Issue 1 – Victims are not sufficiently recognised and treated with dignity and respect.** Victims need to be recognised as victims and for their suffering to be acknowledged. Victims also need to be treated with dignity and respect in all communications with all persons involved in the judicial process. Particular attention should be given to the needs of vulnerable victims e.g. children, disabled person, victims of sexual violence. Indirect victims (e.g. family members) also need to be recognised as the consequences of the crime affect them too.
- **Issue 2 – Victims are not sufficiently protected.** Victims need to be protected to prevent further crime or intimidation from the offender. For victims of chronic violence, security is both their primary need in reporting a crime, but also their primary concern. Victims also

need to be protected from secondary victimisation during proceedings due to poor treatment in connection with and during the judicial process.

- **Issue 3 – Victims are not sufficiently supported.** In the immediate aftermath of a crime, victims need support mainly through emergency assistance together with psychological first aid. Support during the subsequent judicial process, whether legal, emotional or practical, is also often needed by and crucial to victims, and in particular vulnerable victims. Support may be needed both in the short and long term as a consequence of the crime.
- **Issue 4 – Victims do not have effective access to justice.** Victims must be given access to justice, such as accessibility of court processes, availability of adequate legal representation in criminal trials, access to more informal legal processes and the right to review a decision on whether or not to prosecute the offender. Victims must also be able to understand the information received and the proceedings.
- **Issue 5 – Victims do not have effective access to compensation and restoration.** Victims must be given the choice to access restorative justice services, as a complement to the normal judicial process. Restorative justice gives victims an opportunity to confront their offenders face to face and allows offenders account for what they have done. This process helps victims to get on with their lives.

2.3. Hidden costs linked to victimisation

Every crime inevitably affects those individuals directly or indirectly victimised by it, as well as society at large. Crime has significant economic and health related impacts and such "hidden" costs can be reduced by meeting the needs of victims. The total costs of crime to the individual and to society are considerable. These include tangible costs, mainly in the economic sector, the health sector and the criminal justice system, and intangible costs, such as pain, suffering, and reduction of quality of life.

Meeting victims' needs before, during and after criminal proceedings may considerably mitigate these negative consequences and can also prevent that they potentially worsen due to bad treatment during the process. If a victim receives appropriate support and protection, he/she will recover quicker both physically and emotionally from the crime, and will thus for example limit his/her loss of earnings and uptake of benefits, or reduce the need for further health treatments. Ensuring that the victims' needs are met will thus considerably contribute to reducing the total costs of crime.

2.4. The underlying drivers of the problems

The primary drivers for the identified problems are: non-prioritisation of victims and a lack of knowledge about their needs, rooted in historical and cultural attitudes; a lack of enforcing mechanisms for victims' rights and a lack of practitioner knowledge of victims' issues.

2.5. Baseline Scenario

Analysis suggests that without further action, there is unlikely to be a sufficient development in national legislation and action that ensure that victims receive non-discriminatory treatment, no matter where in the EU they find themselves, in particular when receiving services and accessing justice. The Framework Decision – even after the European Court of Justice acquires jurisdiction in 2014 pursuant to the Lisbon Treaty – will not provide a satisfactory legal framework since it suffers from ambiguous drafting and weak obligations.

As such, enforcement proceedings will be difficult to institute and in many situations little action will need to be taken to demonstrate compliance.

2.6. The need for action at EU level

The Lisbon Treaty provides a clear legal basis to facilitate judicial co-operation and mutual recognition having a cross-border dimension through minimum standards on the rights of victims of crime.

The cross-border dimension of judicial co-operation is wide and can result from a range of situations, most obviously where a person is victimised in a foreign EU state. Moreover, there is also a cross-border dimension for crimes against people in their country of residence (e.g. where victim moves during the course of proceedings or witnesses or assets are abroad). It is evident therefore that the cross-border dimension of victimisation is significant. Given the right to free movement in the EU, there is thus a clear added value of EU action over and above that of national action.

Such EU added value can be seen from several perspectives. Firstly, victims may not be subject to the same rights in their country of residence compared to their home country, or in a country where they temporarily travel or visit. This risks impeding the free movement of people and services, which is one of the fundamental requirements for the good functioning of the internal market. Secondly, a lack of EU-level minimum standards on victims' rights puts the quality of justice in the EU at a lower level than standards identified in international instruments and through ECtHR case law. In a common area of freedom, security and justice, this is difficult to accept. Weaknesses in existing EU legislation and a lack of enforceability of international instruments make a coherent, EU wide application of such standards unlikely. EU action is therefore the most likely means to achieve a level playing field across the Member States. Finally, a lack of common standards reduces confidence in the judicial systems of the Member States, which in turn impedes the effective operation and application of EU instruments based on the Treaty-endorsed principle of mutual recognition of judicial decisions and consequently the strengthening of the European area of freedom, security and justice.

In addition, whilst the establishment of these minimum standards relates to victims of crime, such standards facilitate police and judicial co-operation in general and not just in relation to victims. This reflects the fact that the treatment of the victim and accused are linked in many ways and many general cross-border judicial co-operation or mutual recognition initiatives can impact on victims. As such, improvements in the treatment and protection of victims can improve such co-operation.

EU action will thus make sure that all EU Member States respect common minimum standards for all persons falling victim to crime on their territory, whether national citizens or not.

3. OBJECTIVES

The general objectives are to facilitate the establishment of a European area of freedom, security and justice and the development of mutual trust between criminal justice authorities, by ensuring that the rights of victims are fully respected throughout the EU, whilst also respecting the rights of the defence, and that citizens can circulate freely without being treated differently should they fall victim to crime.

The specific and operational objectives are described in the table below:

| Specific Objective | Operational Objective |
|--|---|
| A. To ensure that victims are recognised and treated with respect and dignity | A.1 Ensure the needs of indirect victims are met. |
| | A.2 Ensure all police, prosecutors, judges and court staff who come into contact with victims receive appropriate victims training. |
| | A.3 Establish needs assessment mechanisms for all victims to identify the needs of victims and vulnerable victims and their needs. |
| B. To ensure that victims are protected | B.1 Ensure victims do not lose the protection they have been given when they travel or move abroad. |
| | B.2 Ensure contact between the offender and victim is avoided during proceedings. |
| C To ensure that victims are supported. | C.1 Ensure effective victims support services are available. |
| D. To ensure that victims have effective access to justice | D.1 Ensure all victims are able to attend trial |
| | D.2 Ensure all victims are assisted in understanding their rights, obligations and the proceedings |
| | D.3 Ensure all victims have a right to have prosecution decisions reviewed. |
| E. To ensure victims have access to compensation and restoration | E.1 Ensure all victims have access to effective Restorative Justice Services. |

The specific objectives to ensure that the needs of victims of crime are respected and met are wide ranging and cut across a number of other EU policies, including trafficking in human beings and sexual abuse and exploitation of children and child pornography, and are consistent with the approach taken in these areas. The proposed measures will build on and complement existing instruments, and establish minimum standards on victims' rights which will improve the general environment for protecting all victims of all types of crime in EU law and policy, including for instance victims of terrorism and road traffic crimes. Fundamental rights of all individuals must be respected in all EU actions and by Member States when they implement EU law. EU action in this field will thus at the same time raise standards in relation to the fundamental rights of victims of crime whilst ensuring that any limitation of the rights of the defence or to other fundamental rights is formulated in a clear and predictable manner and is necessary and proportionate to protect the rights and freedoms of the victim.

4. POLICY OPTIONS

Options examined in this assessment all take a combined approach with varying levels of detail or obligation being imposed, involving both new EU legislation and practical action to ensure proper implementation. Thus for all measures, practical measures will be established to assist in implementation and identification of best practice.

The impact assessment considers five options: retention of the *status quo* (option 1) and three policy options (options 2, 3a, 3b and 4). The retention of the *status quo* would involve taking no action at EU level, which is not sufficient to achieve minimum common standards on the protection of victims across Europe, while the other four alternative policy options have been identified to improve victims' situation across Europe. The four policy options range from

Low - Medium - High level of obligation imposed on Member States and the detail of such obligations:

| | |
|---|--|
| Option 1 – Status Quo | Retention of the status quo. No action at EU level. |
| Option 2 – Low level of obligation | Least prescriptive option. Imposes minimum obligations on Member States to establish systems or services with minimum detail on what standards should be achieved. When necessary to take legal measures, this option requires the least changes in national procedural laws. |
| Option 3a – Medium level obligation | Medium prescriptive option. Imposes medium level of obligation on Member States, to establish services and rights and imposes provisions on what such services should be while defining minimum details on what standards to be applied. However, the level of obligation on Member States to establish of Restorative Justice Services (RJS) (see measure 11 below) is low and does not require Member States to establish RJS but only to ensure that safeguards and minimum quality standards are applied <u>where RJS are used</u> . |
| Option 3b – Medium/High level obligation | Medium prescriptive option. Imposes medium level of obligation on Member States for all measures to establish services and rights and imposes provisions on what such services should be while defining minimum details on what standards to be applied. However, the level of obligation on Member States regarding RJS is higher than option 3a because Member States must establish RJS and apply minimum standards. |
| Option 4 – Highest level of obligation | The most prescriptive option. Imposes a range of obligations on Member States to establish services and rights. It also imposes more detailed provisions on what such services should be and the exact standards that should be applied. |

Each policy option has been assessed against the following eleven measures, which would have the most effect in reaching the operative objectives and that are likely to have the most significant cost implications and impact:

- 1 Coverage of indirect victims
- 2 Provision of training
- 3 Assessment of victims' needs
- 4 Identification of vulnerable victims and provision of specific services
- 5 Cross border provision of protection measures
- 6 Provision of separate waiting areas to avoid contact between victim and offender
- 7 Establishment of a minimum level of Victim Support Services, including support during proceedings
- 8 Attendance of trial
- 9 Provision of interpretation and translation
- 10 Review of decisions
- 11 Establishment of Restorative Justice Services

5. ANALYSIS OF IMPACTS

A broad impact analysis of each option has been carried out. The most relevant likely impacts of the policy options are the economic and social impacts. The greatest cost implications are expected to fall on public authorities. No environmental impacts are anticipated. Moreover, all options, except *status quo*, are expected to have a positive impact on fundamental rights with the options having biggest impact also improving fundamental rights the greatest.

The impact of the different options on the Member States will vary depending on their level of existing standards on victims' rights. Considering that the existing national laws and practices differ to a varying degree from the minimum standards that the proposed measures aim to achieve, the impact of the proposed measures would presumably be greatest in the Member States where victims' rights are not, or not sufficiently, addressed in the way foreseen by these standards, while the impact would be lesser in the States that already have a high level of protection and support of victims.

6. COMPARING THE OPTIONS

Although highly feasible, Policy option 1 (*status quo*) does not meet the identified objectives and is therefore not considered. Policy option 2 is also poor and does not sufficiently fulfil the operational objectives that the European Commission intends to achieve with the adoption of the new measures.

Policy option 4 is the most likely to meet all the objectives and to meet them to the greatest extent. However, it is the most prescriptive providing Member States with the least amount of flexibility. It also imposes additional obligations on Member States. As a result costs are likely to be much higher than in the other options and it is the least feasible in terms of it being agreed. The degree of additional benefit that could be achieved is not considered to be proportionate to the additional costs.

Policy options 3a and 3b are also highly likely to meet the objectives though not to the same extent as option 4. However, with increased flexibility for States these options are both more feasible to negotiate and bear a lower financial burden than option 4. Furthermore, risks of reduced effectiveness will be mitigated through practical measures. Nevertheless, it is considered that in relation to the specific measure on restorative justice services the feasibility and cost implications are such that the mixed option 3a is preferred. Implementing option 3a will in particular considerably reduce the total cost of implementation compared to option 3b.

Policy option 3a is therefore the preferred option.

Implementing the preferred **Policy option 3a** would help achieving the following results:

Adoption of legislation by European Parliament and Council (operational objectives referred to in brackets):

- Easily accessible victim support services are available in all Member States and meet specified minimum standards of service (C1).
- Police, prosecutors and court staff are trained in victims' matters in all Member States. Judicial studies are available to judges (A2).
- Mechanisms exist in all Member States to assess the individual needs of victims and to identify vulnerable victims (A3).
- Where a person is identified as vulnerable certain identified minimum services are available to them (A3).

- Interpretation and translation is available to victims during proceedings in all Member States to an extent proportionate to the circumstances of the case (D2).
 - Where Restorative justice services are provided certain minimum standards are applied in all Member States (E1).
 - Where requested, and based on mutual recognition, protection measures are provided to persons already benefitting from a protection measure, when they travel or move abroad (B1).
 - The victim has a right to request a review of the prosecution in all Member States. The exact mechanism for carrying out such a review is determined at a national level (D3).
 - Exclusion of a victim from a trial is based on an individual assessment and the victim is informed of the date of trial and reimbursed for their attendance (D1).
 - Contact between the offender and victim is minimised during proceedings. Any new courts are constructed with separate waiting areas (B2).
 - In general the legislation will relate to direct victims. However, all rights will be applied to the immediate family of murder victims. Support services and protection will be available to the immediate family of all victims (A1)
- **Establishment of practical measures to accompany legislative action to facilitate implementation and to consider future EU action, including:**
 - Study on state compensation and offender restitution.
 - Study on legal assistance and legal aid available to victims of crime.
 - Support projects to develop best practice which will provide Member States with a more detailed understanding of how best to achieve the objectives in the legislation.
 - The European Commission will also carry out its own projects and studies to further develop knowledge in the field. This could include for instance the establishment of interactive websites in all Member States to enable victims to better understand the criminal justice process and their role in it. Or it could involve the development of training programmes.

7. MONITORING AND EVALUATION

Providing for a robust monitoring and evaluation mechanism is crucial to ensure that the rights envisaged are complied with in practice as well as in legislation. The Commission envisages carrying out a specific empirical study with an emphasis on data collection 3-5 years into the implementation of the proposal to gain in-depth quantitative and qualitative insights into the effectiveness of the proposal. The data, combined with the Victim surveys would enable the Commission to evaluate actual compliance in Member States more robustly

than using the means hitherto available as well as all an evaluation in the perception of victims in term of the meeting of their needs.