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REPORT FROM THE COMMISSION

**on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the
standing of victims in criminal proceedings**

{SEC(2004)102}

1. INTRODUCTION

1.1. Background

Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings¹ requires the European Commission to draw up a report on the measures taken by the Member States to comply with the Framework Decision.

Article 17 of the Framework Decision of 15 March 2001 requires the Member States to take the measures necessary to comply with it by:

- 22 March 2006 with regard to Article 10,
- 22 March 2004 with regard to Articles 5 and 6,
- 22 March 2002 with regard to the other provisions.

Article 18 requires the Member States, within the same time, to “forward to the General Secretariat of the Council and to the Commission the text of the provisions enacting into national law the requirements laid down by this Framework Decision”. The Council, within a year after each of these dates, is to evaluate the measures taken by the Member States to comply with the Framework Decision, on the basis of a report drawn up by the General Secretariat on the basis of information supplied by the Member States and a written report from the Commission.

However, on 22 March 2002, no Member States had notified the Commission of measures taken to transpose the Framework Decision. Only Sweden replied on 25 March 2002. On 31 December 2002, only nine Member States (Austria, Belgium, Finland, Germany, Ireland, the Netherlands, Portugal, Spain, Sweden) had done so.

As the value of this report largely depends on quality and timeliness of the national information sent to the Commission, a document drawn up on these bases would have been virtually meaningless. On 7 January 2003, the Commission accordingly sent reminders to all the Member States who had failed to fulfil their obligation. The report was therefore deferred until 25 March 2003. The Commission decided on this date on the basis of the deadline set by the Framework Decision and the reminder letters as the cut-off date for incorporating late answers from the Member States. This report, therefore, takes stock of the transposal situation on 25 March 2003. Some Member States supplied further information after that date. The Commission will take account of that in a supplementary report.

At the time of this report, only ten Member States (Austria, Belgium, Finland, Germany, Italy, Ireland, Luxembourg, Portugal, Spain, Sweden) had sent relatively complete contributions on the transposal of the Framework Decision in their national legislation. Denmark sent no contribution. Greece, by letter dated 20 January 2003, stated that a committee had been instructed to study and draw up the necessary implementation measures and was to finalise its work in the months ahead. France did not detail, Article by Article, the national measures implementing the Framework Decision. The Netherlands and the United Kingdom did not

¹ OJ L 82, 22.3.2001, p. 1.

attach to their reports the legal instruments transposing the Decision. The analysis which will follow can therefore only be fragmentary. But it did not seem right to delay it any longer.

One last point: the introduction to the United Kingdom report states that it covers England, Wales, Scotland and Northern Ireland, but the United Kingdom sent an additional contribution regarding the transposal of the Framework Decision in Scotland. The Scottish system is mentioned specifically where there is a difference from the general provisions for the rest of the United Kingdom.

1.2. Method and criteria for evaluating the Framework Decision

1.2.1. Framework Decisions based on Article 34(2)(b) of the Treaty on European Union

This Framework Decision is based on the Treaty on European Union (Union Treaty), and in particular Articles 31 and 34(2)(b).

The legal instrument most comparable with the Framework Decision is the Directive.² Both instruments are binding on the Member States as regards the result to be achieved, while leaving national authorities the choice of form and methods; Framework Decisions have no direct effect. But the Commission cannot - at least in the current state of development of European Union law - bring an action in the Court of Justice to force a Member State to transpose a Decision. However, the Court of Justice can hear a case concerning a disagreement between two Member States over the interpretation or implementation (which includes the transposal) of the Decision.³ The possible exercise of this right of action requires a solid factual base, and the Commission report on the basis of the information supplied to it can help to constitute it.

1.2.2. Evaluation Criteria

To determine objectively if a Framework Decision has been fully implemented by a Member State, certain general criteria drawn up for corresponding purposes in relation to Directives must be applied *mutatis mutandis* to Framework Decisions. The following criteria are specifically concerned:

- (a) the form and the means of transposal must be chosen in such a way that the Directive has the intended effect, given its object;⁴
- (b) each Member State must implement Directives in a manner fully corresponding to the legal safety requirement and consequently incorporate the provisions of a Directive in mandatory domestic provisions;⁵
- (c) transposition need not necessarily require enactment in precisely the same words in an express legal provision; the existence of general legal principles (arising, for example, from appropriate measures already into force) may

² Article 249 of the EC Treaty.

³ Article 35(7) of the Union Treaty.

⁴ See case law concerning the implementation of Directives: Case 48/75 *Royer* [1976] ECR 497-518.

⁵ See case law concerning the implementation of Directives: Case 239/85 *Commission v Belgium* [1986] ECR 3645; Case 300/81 *Commission v Italy* [1983] ECR 449-456.

suffice if they actually guarantee the full implementation of the Directive and create a sufficiently precise and clear legal situation;⁶

- (d) Directives must be implemented within the time allowed for the purpose.⁷

Both instruments are binding 'as to the results to be achieved'. It can be argued that the resultant *de jure* or *de facto* position must do justice to the interests that these instruments are to serve under the Treaty.⁸

The general evaluation provided for by Article 18 of the extent to which Member States comply with the Framework Decision must be based as far as possible on these criteria, subject to the differences pointed out above.

1.2.3. *Context of evaluation*

One point must be made regarding the nature of the field regulated by the Framework Decision, which refers to a definition of an overall status for the victims that raises and standardises the level of protection they enjoy. Although most systems appear to converge, there are always differences between the legal orders of the Member States and therefore the insertion of the provisions concerning the victims' statute takes account of the specific features of each of them. In addition, the formulation of the Framework Decision leaves the Member States with considerable room for manoeuvre in transposing it. That is why the evaluation of the extent to which Member States have adopted the rules necessary to comply with the Framework Decision on these points of general criminal law duly reflects the general criminal-law framework in the Member States.

1.3. **General objective of the Framework Decision**

In accordance with the conclusions of the Tampere European Council of 15 and 16 October 1999, the general objective of the Framework Decision of 15 March 2001 is to establish and guarantee victims throughout the European Union a comparable high level of protection, irrespective of the Member State in which they are present. Member States should approximate their laws and regulations to the extent necessary to attain this objective,⁹ with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.¹⁰ The provisions of this framework Decision are therefore not confined to attending to the victim's interests under criminal proceedings proper. They also cover certain measures to assist victims before or after criminal proceedings, which might mitigate the effects of the crime.¹¹

⁶ See case law concerning the implementation of Directives: Case 29/84 *Commission v Germany* [1985] ECR, 1661-1673.

⁷ See case law concerning more specifically the implementation of Directives: Case 52/75 *Commission v Italy* [1976] ECR 277284; and, in general, the annual Commission reports on monitoring the application of Community law: COM (2001) 309 final, for example.

⁸ PJG Kapteyn and P. Verloren Van Themaat, *Introduction to the Law of the European Communities*, third edition, 1998, p. 328.

⁹ Recital 4 to the Council Framework Decision of 15 March 2001.

¹⁰ Recital 3 to the Council Framework Decision of 15 March 2001.

¹¹ Recital 6 to the Council Framework Decision of 15 March 2001.

The rules and practices as regards the standing and main rights of victims therefore need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.¹²

But the Framework Decision does not impose an obligation on Member States to ensure that victims will be treated in a manner equivalent to that of a party to proceedings.¹³

1.4. General objective of this report

This report must enable the Council to evaluate the extent to which Member States have adopted the rules necessary to conform to the Framework Decision.

2. ANALYSIS OF NATIONAL MEASURES TO IMPLEMENT THE DECISION, ARTICLE BY ARTICLE

The following analysis is based on the measures notified by the Member States (see **table attached** to this report):

Article 1: Definitions

Only Finland, Italy, the United Kingdom and Sweden made this first Article their concern. Italy asserts that a list of definitions does not have to be transposed into national law. But the aim of a Framework Decision being to approximate the statutory and secondary provisions of the Member States, these need to have the same terminological basis, since otherwise the effectiveness of the Framework Decision is likely to be affected. However, a review of the national provisions that were notified did not reveal terminological differences having this effect. The United Kingdom drew up a broad definition of “victim” which includes the victim, his parents, his guardian if any and, in the event of murder, the victim's close friends. This definition does not pose problems of conformity since it satisfies the minimum requirements of the definition of the term “victim” in the Framework Decision. Moreover, Article 8(2) of the Framework Decision extends to measures to protect the privacy and photographic image of victims and their families or persons in a similar position.

Article 2: Respect and recognition

Article 2(1) of the Framework Decision follows up the eighth recital, which reads “The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity”. This provision announces the general aim of the authors of the Decision of ensuring a real status for victims in criminal proceedings.

Certain Member States (Austria, Belgium, France, Finland, Germany, Italy, Luxembourg, Portugal, Sweden) referred explicitly to Article 2(1). But in view of the primarily declaratory function of this paragraph, a Member State can be held to have granted a genuine status to victims as required by the Framework Decision only if it has properly transposed all the