

# EUROPEAN PARLIAMENT

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**A5-0330/2003**

7 October 2003

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## **REPORT**

on the Commission proposal for a Council directive on compensation to crime victims  
(COM(2002) 562 – C5-0517/2002 – 2002/0247(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Roberta Angelilli

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 4 November 2002 the Council consulted Parliament, pursuant to Article 308 of the EU Treaty, on the Commission proposal for a Council directive on compensation to crime victims (COM(2002) 562 – 2002/0247(CNS)).

At the sitting of 7 November 2002 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0517/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Roberta Angelilli rapporteur at its meeting of 10 December 2002.

The committee considered the Commission proposal and draft report at its meetings of 21 January, 9 July and 30 September 2003.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Johanna L.A. Boogerd-Quaak, vice-chairman; Giacomo Santini, vice-chairman; Roberta Angelilli, rapporteur; Marco Cappato (for Mario Borghezio), Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Marie-Thérèse Hermange (for Mary Elizabeth Banotti.), Timothy Kirkhope, Eva Klamt, Ole Krarup, Alain Krivine (for Ilka Schröder), Jean Lambert (for Alima Boumediene-Thiery), Baroness Ludford, Lucio Manisco (for Fodé Sylla), Manuel Medina Ortega (for Sérgio Sousa Pinto), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Thierry Cornillet), Hubert Pirker, Martine Roure, Patsy Sörensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Christian Ulrik von Boetticher and Christos Zacharakis (for Bernd Posselt).

The Committee on Legal Affairs and the Internal Market decided on 20 February 2003 not to deliver an opinion.

The report was tabled on 7 October 2003.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the Commission proposal for a Council directive on compensation to crime victims  
(COM(2002) 562 – C5-0517/2002 – 2002/0247(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2002) 562)<sup>1</sup>,
  - having regard to Article 308 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0517/2002),
  - having regard to the opinion of the Economic and Social Committee<sup>2</sup>,
  - having regard to the opinion of the Committee of the Regions,
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0330/2003),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
  5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  6. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1  
Recital 1

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice in

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice in

<sup>1</sup> OJ C45 E, 25.2.2003, pp. 69-89.

<sup>2</sup> OJ C 95, 23.4.2003, pp. 40-44.

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.***

which the free movement of persons is ensured. ***The gradual creation of that area calls for the adoption by the Member States of minimal legislative measures introducing a compensation scheme for crime victims.***

#### *Justification*

*Self-explanatory.*

#### Amendment 2 Recital 2

(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.

(2) The Action Plan of the Council and the Commission ***on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice, adopted by the JHA Council of 3 December 1998 (1)***, called, ***notably in its paragraphs 19 and 51(c)***, for addressing the question of ***aid and support to victims*** by making a comparative survey of victim compensation schemes and assessing the feasibility of taking action within the EU.

***(1) OJ C 19, 23.1.1999, p. 1***

#### *Justification*

*The 'Vienna Action Plan' needs to be mentioned in more specific terms, at least on first occurrence in a legislative text.*

*It is also desirable to specify the paragraphs of the Action Plan that underpin the legislative initiative.*

Amendment 3  
Recital 3

(3) The Commission presented a Communication *on* "Crime victims in the European Union – *reflections* on standards and action" *in 1999*.

(3) ***On 14 July 1999*** the Commission presented, ***to the European Parliament, the Council and the Economic and Social Committee***, a Communication ***entitled*** "Crime victims in the European Union – *reflections* on standards and action". ***On 15 June 2000 (1) the European Parliament adopted a resolution on the Commission communication.***

***(1) OJ C 67, 1.3.2001, p. 304***

*Justification*

*Self-explanatory: the amendment specifies the key factual elements relating to the origins of the directive.*

Amendment 4  
Recital 4

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.

4. ***The conclusions of*** the Tampere European Council on 15 and 16 October 1999, ***require, notably in paragraph 32***, 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, ***with reference also to*** legal costs. It also called for the setting-up of national programmes to finance measures, ***both*** public and non-governmental, for assistance to and protection of victims.

*Justification*

*It is necessary to specify the paragraph in the European Council's conclusions which contains the specific political mandate for legislating at EU level to protect the victims of crime.*

Amendment 5  
Recital 5

(5) On 15 March 2001 the Council adopted Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. 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.

(5) On 15 March 2001 the Council adopted Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. **Article 9 of this framework decision invites the Member States to guarantee the right of the victim of a criminal offence to redress in respect of compensation from the author of the offence** in the course of criminal proceedings. Beyond this provision, compensation to crime victims **at EU level** was not addressed.

#### *Justification*

*The text has been made more specific, while superfluous matter has been removed.*

#### Amendment 6 Recital 6

(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.

(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, **and notably their paragraph 32**, as regards compensation to crime victims, could pursue.

#### *Justification*

*Stress needs to be laid on the paragraph in the Tampere European Council's conclusions which includes the specific political mandate for legislating at Community level in favour of crime victims.*

#### Amendment 7 Recital 7

(7) The reactions to the Green Paper,

(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.

including the resolution of the European Parliament **of 24 September 2002** 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.

#### *Justification*

*Indicating the exact date of adoption of the resolution permits its location in time.*

#### Amendment 8 Recital 8

(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.

(8) The objectives of this Directive are, ***on the one hand, to establish minimum standards aimed at ensuring, at European Union level, that all Member States compensate the victims of crimes committed on their territory, and, on the other, to facilitate access to such compensation in cross-border situations, i.e. in cases of crimes committed in a Member State other than that in which the victim resides.*** The pursuit of these objectives *responds* to the ***guidelines laid down by*** the Tampere European Council and is in line with what was covered in the Green Paper and the reactions on it.

#### *Justification*

*This amendment significantly clarifies the two main objectives of the proposal for a directive. The first is 'the drawing up of minimum standards on the protection of the victims of crime' (first section of the directive, Articles 1 to 15); the second is 'access to state compensation for victims in crossborder situations' (second section, Articles 16 to 23).*

Amendment 9  
Recital 8a (new)

***(8a) It is desirable for the Member States to approximate their laws and regulatory provisions by means of the adoption of minimum standards, to the extent necessary to achieve the objective of offering crime victims a sufficient level of protection, in whatever Member State they may find themselves.***

***These provisions should be adopted without prejudice to Member States' freedom to introduce or maintain standards that are more favourable to crime victims. Equally, no Member State may invoke these provisions to justify reducing its existing level of protection.***

*Justification*

*The EU needs to take the measures required to limit the potential unfair effects of the existence, as things stand, of different levels of compensation in the Member States. The amount and the possibility of compensation vary with the Member State of residence of the victim and with the Member State in which the crime was committed. Two Member States still have no legislation at all on the matter.*

*The EU should also ensure that access to state compensation for victims is not adversely conditioned by the place of the crime. Special measures must therefore be adopted to take account of victims in crossborder situations, i.e. those who are victims of crimes committed in a Member State other than that in which they reside.*

*Given the substantial differences existing between Member States in this area, as well as their varying social and economic circumstances, this proposal aims not to harmonise but to introduce a minimum standard. This will enable those Member States which so wish to maintain or introduce provisions that are more favourable to crime victims.*

Amendment 10  
Recital 8b (new)

***(8b) The needs of crime victims must be considered and dealt with in an integrated fashion, so as to avoid partial or inconsistent measures which could lead to secondary victimisation.***

*Justification*

*Victims must be offered a choice of forms of help, organised in an integrated fashion. The two main types of help required are those aimed respectively at dealing with psychological distress and providing compensation for material damage.*

Amendment 11  
Recital 10

(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***.

(10) Since the measures contained in this Directive are necessary in order to attain the objectives of the Community and the ***EC Treaty*** has not ***provided for specific measures attributing competences and powers of action to the Community institutions*** to establish such a legal instrument, Article 308 of the Treaty should be ***chosen as the legal basis***.

*Justification*

*This amendment improves the clarity and precision of the text.*

Amendment 12

Recital 11

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***.

(11) ***In practice***, crime victims will ***rarely*** be able to obtain ***full*** compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender ***has disappeared or*** cannot be identified, ***prosecuted or sentenced***.

*Justification*

*Self-explanatory.*

Amendment 13

Recital 12

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.

(12) To remedy this situation, thirteen Member States have introduced State-funded compensation schemes to allow for compensation to crime victims ***on a subsidiary basis, where they can be reasonably said to have exhausted all possibilities offered by other channels of compensation***. 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.

*Justification*

*State-funded compensation should be the last-resort safety net for the compensation of victims for the harm they have suffered. The victim should therefore have, within reason, exhausted all other possibilities available to him. The state should, where necessary, make good any shortfall as between the amount received by the victim from other sources and the total he is entitled to in compensation.*

Amendment 14

Recital 13

(13) Crime victims in the European Union

(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.

should be entitled to ***full and effective compensation in reparation of the harm inflicted and adequate to the nature of*** 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.

#### *Justification*

*This amendment sets out the necessary criteria for the compensation of victims.*

#### Amendment 15 Recital 14

(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.***

(14) In view of the wide divergences ***in legislation as regards compensation to crime victims, the first step must be to establish minimum standards on the matter, while aiming for future harmonisation on a gradual basis.***

#### *Justification*

*The rewording introduces greater clarity and precision.*

#### Amendment 16 Recital 15

(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.

(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 ***directly or indirectly*** by a crime victim resulting from personal injury. It must also cover the dependants and, ***where applicable, spouses and relatives in the first degree*** of crime victims who have died ***or become permanently and irreversibly incapacitated from*** injuries sustained.

### *Justification*

*Where the harm inflicted on the victim is the result of an intentional violent crime, compensation is essential and must cover any loss of property resulting directly from the criminal act.*

*The notion of dependants should refer primarily to the first-degree relatives of a victim who has died or become, permanently and irreversibly, totally incapacitated*

*It is important to include the possibility of compensation for losses sustained indirectly from personal injury in order to allow for compensation for loss of earnings, which may constitute a major part of the victim's overall loss.*

### Amendment 17

#### Recital 16

16. Compensation should be available to all citizens of the European Union and to all legal residents of any Member State without discrimination.

16. Compensation should be available to all citizens of the European Union and, ***on the basis of the principle of social justice***, to all legal residents of any Member State without discrimination.

### *Justification*

*It is necessary to provide philosophical and legal grounds for compensating victims who are not European citizens.*

### Amendment 18

#### Recital 17

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.

17) The minimum standard should be ***based on the approximation of the existing rules on civil and criminal liability*** of each Member State and ***on the model that underlies all the existing compensation schemes***, to ensure adequate levels of compensation and predictable and transparent rules while avoiding harmonisation.

### *Justification*

*The minimum standard should be based on the approximation of the Member States' existing rules on civil and criminal liability, taking account of the compensation model underlying the various schemes now existing at Member State level.*

#### Amendment 19

##### Recital 18

(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.***

18) The compensation must cover non-pecuniary losses ***resulting from the non-material harm suffered***, in particular to ensure adequate compensation to victims of serious crimes and, ***where a victim has died from the injuries inflicted, also to his dependants and, where applicable, spouses and first-degree relatives.***

### *Justification*

*Non-pecuniary losses are losses suffered by the victim which cannot be repaired and are difficult to evaluate financially (e.g. distress, physical and psychological suffering, etc). It is also the duty of the Member States to compensate this kind of non-material damage. The minimum standard must also ensure that, in whatever circumstances, where close relatives are eligible for compensation such relatives are considered to be, as a matter of priority, those of the first degree.*

*The term 'close relatives' is over-inclusive and legally vague. It is therefore preferable to refer specifically to spouses and first-degree relatives, thus avoiding confusion.*

#### Amendment 20

##### Recital 19

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.

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, ***especially where the offender cannot be identified, located or put on trial or lacks the means to pay, or where there are clear signs that the trial will last more than one***

*year.*

*Justification*

*The offender is the author of the harm caused to the victim and is therefore legally responsible for repairing that harm*

*However, it often happens that the offender lacks the means to pay, or has not been discovered, identified or put on trial. In other cases, the trial, once begun, may last more than six months. In all of these circumstances, the State should pay compensation, even though it may later itself claim compensation on the basis of subrogation to the victim's rights.*

Amendment 21

Recital 20

(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.

(20) The minimum standard should cover the restrictions ***which Member States are authorised to apply to*** the award of ***state-funded*** 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.

*Justification*

*The compensation referred to in the text is at all points state-funded compensation.*

*The minimum standard entails the need to define what restrictions are permissible at Member State level. It requires Member States to ensure a minimum level of compensation, while not preventing them from providing improved or higher levels should they so wish.*



Amendment 22  
Recital 21

(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*.

(21) A system of **efficient** cooperation between the authorities of the Member States should be introduced to facilitate access to compensation in cases where the *victim was the object of a crime committed in a Member State other than that of his permanent residence*.

*Justification*

*The text gains in clarity and precision if the case of crossborder victims is specifically mentioned.*

Amendment 23  
Recital 22

(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*.

(22) This system should ensure that crime victims can always turn to an authority in their Member State of residence, **to submit his application for compensation and** 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, **under which responsibility to pay compensation lies with the Member State on whose territory the crime was committed**.

*Justification*

*The mutual help model offers the most promising means of dealing with the problems of crossborder victims. In the first place, the principle of territoriality should apply: the Member State where the crime was committed is responsible for paying compensation. This should apply in conjunction with the concept of the right of the victim, with a view to avoiding secondary victimisation, to submit his application for compensation to an authority in his Member State of residence.*

Amendment 24  
Recital 25

(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.

(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 *magnitude and impact at Community level* of the Directive, be better achieved by the *European Community*. This Directive does not go beyond what is necessary in order to achieve those objectives.

Or. es

*Justification*

*While the term 'Community' is not incorrect in this context, adding 'European' enhances precision - which is also the objective of the rest of the amendment.*

Amendment 25  
Article 1

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.

The objective of this Directive is to establish a minimum standard for *state-funded* compensation of victims of *crimes committed on the territory of the Member States of the European Union* and to facilitate access to such compensation in cross-border situations.

*Justification*

*The objectives of the proposal for a directive need to be fixed with all possible clarity. Its primary concern is the need to ensure the compensation of victims of crimes committed on the territory of the Member States of the European Union.*

Amendment 26  
Article 2(1)(a)

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**;

1. Subject to the provisions of this Directive, **each Member State** shall compensate

(a) victims who have **become permanently incapacitated or have** sustained personal injury directly caused by an intentional crime **or by an act of grave negligence for which the author of the crime can reasonably be held responsible** against the victim's life, health or personal, **physical or psychological integrity**, committed on the territory of **that Member State**;

#### *Justification*

*All cases of injury leading to permanent incapacity, and all cases of psychological damage, must be taken into account when calculating compensation levels.*

*The victim may suffer personal injury and associated losses as a result of serious negligence on the part of the offender, for which the victim is entitled to a minimum standard of compensation.*

#### Amendment 27 Article 2(1)(aa) (new)

***(aa) victims who have suffered damage to or loss or destruction of property as a direct result of an intentional crime of violence affecting their health or personal, physical or psychology integrity and committed on their territory;***

#### *Justification*

*Compensation should also be payable in respect of any damage to property sustained by the victim as a direct result of an intentional crime involving serious violence. Examples here are damage to clothing, glasses and other personal possessions.*

Amendment 28  
Article 2(1)(b)

(b) *close* relatives and dependants of victims *as defined in point (a)* who have died as a result of the injuries sustained.

(b) *spouses and first-degree* relatives and dependants of victims who have died as a result of the injuries sustained, *as referred to in point (a)*.

*Justification*

*For the first part of the amendment, see the second section of the justification to Amendment 16 (to recital 15); the second part relates to the need for greater terminological precision.*

*The term 'close relatives' is over-inclusive and legally vague. It is therefore preferable to refer specifically to spouses and first-degree relatives, thus avoiding confusion.*

Amendment 29  
Article 2(2)(a)

(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;

(a) "victim" shall mean a natural person who has suffered *material damage and/or* physical or mental injury, *permanent incapacitation, non-material harm or damage to property*, directly caused by acts or omissions that are in violation of the criminal law of a Member State;

*Justification*

*The aim is to introduce a clearly-ordered and detailed list of the types of harm which a crime victim may suffer. Such harm may be material or non-material and may include damage or loss to property directly caused when the crime was committed.*

Amendment 30  
Article 2(2)(b)

(b) "intentional crime", "**close relatives**" and "dependants" shall be defined in accordance with the law of the Member State **where** the crime was committed;

(b) "intentional crime", "**spouses**", "**first-degree relatives**" and "dependants" shall be defined in accordance with the law of the Member State **in whose territory** the crime was committed;

*Justification*

*The term 'close relatives' is over-inclusive and legally vague. It is therefore preferable to refer specifically to spouses and first-degree relatives, thus avoiding confusion.*

Amendment 31  
Article 2(2)(c)

(c) "personal injury" shall include psychological as well as physical injury.

(c) "personal injury" shall include psychological as well as physical injury, **as well as permanent incapacitation caused by such injury.**

*Justification*

*Self-explanatory.*

Amendment 32  
Article 4(1)

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.

1. Compensation shall cover **pecuniary losses in compensation for material damage and damage to property, and non-pecuniary losses such as reparation of non-material harm**, that are the direct consequence of the personal injury the victim has sustained, or, as concerns **spouses, first-degree relatives** or dependants, **losses which are a direct consequence** of the death of the victim.

*Justification*

*See, mutatis mutandis, justifications to Amendments 29 and 30.*

Amendment 33  
Article 4(2)(a)

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

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 *national civil liability law* in the Member State responsible for paying the compensation; or

*Justification*

*Greater clarity.*

Amendment 34  
Article 4(2)(b)

(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.

(b) in accordance with pre-defined tariffs, for the entire compensation or for some or all of the individual items of *material or non-material damage or damage to property* that *are* 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. *They shall be updated annually upwards or downwards in line with the increase or decrease in the cost of living index as defined officially.*

### *Justification*

*See Amendment 29. The tariffs need to be updated in line with the upward or downward evolution of the cost of living .*

### Amendment 35

#### Article 4)(3), first subparagraph

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.

3. By way of derogation from paragraph 2 Member States may define a maximum amount of no less than EUR **100 000** for the total compensation that can be paid out to an individual applicant.

***This amount shall be updated **annually upwards or downwards in line with the increase or decrease in the cost of living index as defined officially by Eurostat.*****

### *Justification*

*Given the considerable variations now existing between the maximum sums payable as compensation to crime victims under national law in the different Member States (compensation may in some cases be as high as EUR 800 000), it appears reasonable to stipulate that the minimum amount set by Member States shall in no circumstances be less than EUR 100 000. This figure should ensure that the budgetary impact is not found excessive. The objective is to limit or avoid situations of over-differentiated or unfair treatment where two persons have suffered similar harm as a result of similar crimes but receive widely varying sums in compensation in different Member States.*

*This shall not prevent those Member States which so wish from setting levels that are well in excess of this threshold, which should be considered as a minimum for the Member States.*

### Amendment 36

#### Article 4(4)

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.

4. The compensation may be paid out as a lump sum or through instalments, for the entire compensation or ***under some or all of the individual headings of material or non-material damage, damage to property or permanent incapacitation that are***

*or permanent incapacitation* that are covered by the compensation, *save in cases of severe financial hardship*.

*Justification*

*See justification to Amendment 29.*

*An exception where serious financial hardship would result will ensure that the adequacy of the compensation will not be undermined in this respect.*

Amendment 37

Article 5(1), first indent

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

1. Member States shall provide for an advance payment on the compensation applied for wherever ***the following conditions are met***:

Or. es

*Justification*

*This payment should be subject to all the conditions being met.*

Amendment 38

Article 5(1)(b)

(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;

(b) there is reason to believe that the final decision ***or the final assessment of the long-term medical effects and consequences of the crime*** cannot be taken within a short delay (***not exceeding three months***) following the submission of the application for compensation;

*Justification*

*There should also be provision for an advance payment in cases where it is not possible to make a final assessment of the medical effects and consequences of the crime other than over a considerable period of time, where the victim's financial situation makes it desirable.*



Amendment 39  
Article 5(1)(c)

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

(c) it is justified in view of the **particularly difficult** financial situation of the applicant;

*Justification*

*Advance payment should apply in cases where the victim is in extreme financial difficulties.*

Amendment 40  
Article 5(1)(d)

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

***Deleted***

*Justification*

*This point should be deleted since, even where it is established that the offender has sufficient resources to meet the liability arising from the harm and damage caused, a victim who is experiencing extreme financial difficulties is not in a position to wait for a legal decision which may take years.*

Amendment 41  
Article 5(2)

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.

2. Member States **shall** 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.

### *Justification*

*Member States should demand repayment, since failure to do so would give rise to cases of unjustifiable enrichment creating unacceptable variations between Member States.*

#### Amendment 42 Article 6

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

Member States may ***set a minimum threshold not exceeding EUR 250 in order to*** exclude the award of compensation to victims who have sustained only minor injuries, ***defined as injuries that do not have a significant pecuniary or non-pecuniary, direct or indirect, impact on the victim's life and its quality.***

### *Justification*

*In cases where the total amount of compensation payable to the victim does not exceed EUR 250, Member States may rule out compensation on the grounds that the administrative and bureaucratic costs would be well in excess of the sum payable. This provision shall not prevent those Member States which so wish from providing for compensation in respect of all amounts, however small.*

*The concept of 'minor injuries' requires specification to ensure that all victims receive adequate compensation.*

#### Amendment 43 Article 7

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.

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

*Justification*

*Any reduction in compensation must be proportional to the extent that the victim was responsible for the occurrence of the crime.*

*Member States should have the possibility of reducing or refusing compensation where the victim was partially responsible for the crime (e.g. in case of provocation).*

Amendment 44  
Article 8(1)

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.

1. Member States may, in the cases referred to in Article 2(1)(a) **and (aa)** and without prejudice to the application of Article 5, make the award of compensation conditional upon the applicant having made reasonable **but unsuccessful** efforts to obtain and enforce a judgment or decision on compensation against the offender **and having exhausted the possibilities of compensation through state or private insurance schemes.**

*Justification*

*Before applying for state-funded compensation the victim should have exhausted the possibilities of compensation through state or private insurance schemes.*

Amendment 45  
Article 8(2)(a)

(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;

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

*Justification*

*Self-explanatory.*

Amendment 46  
Article 8(2)(b)

(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;

the applicant has not been able to obtain a judgment or decision on compensation against the offender within **one year** 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;

*Justification*

*The two-year deadline is too long and would only serve to worsen secondary victimisation.*

Amendment 47  
Article 9(1)

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.

1. With a view to avoiding double compensation, Member States **shall** deduct from the compensation awarded, or reclaim from the person compensated, any damages, compensation or benefits actually received from other sources for the same losses.

*Justification*

*To avoid situations of unjustified enrichment and variations between Member States, provision must be made by Member States to ensure that double compensation does not occur.*

Amendment 48  
Article 10

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

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

*Justification*

*Self-explanatory.*

Amendment 49

Article 11(1)

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.*

1. Member States may, in the cases referred to in Article 2(1)(a) **and (aa)**, 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 to the competent authorities in the Member State of residence, *should he not have been able to in the Member State where the crime was committed or, in the case of a serious crime, should he have chosen not to do so.*

*The competent authority to which the complaint is made shall, if it does not possess competence in the field, forward it without delay to the competent authority in the Member State where the crime was committed. The complaint shall be dealt with under the national law of the Member State on whose territory the crime was committed.*

*Justification*

*It is desirable to avoid references to other legislative acts (see point 6 of the interinstitutional agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation).*

Amendment 50

Article 11(2)

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.

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 **one month** from the date of commission of the crime.

*Justification*

*A deadline of one month is more reasonable, as victims are likely to be encountering difficult circumstances.*

Amendment 51  
Article 11(3)(b)

(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.

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

*Justification*

*Any language problems experienced by the victim should be taken into account in crossborder cases.*

Amendment 52  
Article 11(3)(c) (new)

***(c) other significant obstacles faced by the victim that may reasonably be considered to have prevented the victim from reporting the crime.***

Or. en

*Justification*

*Circumstances that may have legitimately prevented the victim from reporting the crime may be unconnected to the crime and the victim being resident in another Member State than that in which the crime was committed (e.g. serious illness or an unrelated serious injury).*

Amendment 53  
Article 12(2)(a)

(a) such a suspension must be necessary for the purpose of establishing that the *injuries* suffered were caused by an intentional crime; and

(a) such a suspension must be necessary for the purpose of establishing that the *physical or mental injuries, non-material damage or damage to property* suffered were caused by an intentional crime; and

*Justification*

*Non-material damage is damage suffered by a victim which cannot be made good or which it is difficult to evaluate financially (e.g. distress, physical and mental suffering, etc), and which should be compensated by the Member State on the same basis as material damage.*

Amendment 54  
Article 12(2)(b)

(b) suspension must not give rise to *undue* delay or financial hardship for the applicant.

(b) suspension must not give rise to delay *exceeding one year* or financial hardship for the applicant.

Or. es

*Justification*

*Criminal proceedings may last for several years, and it is difficult to establish at what point a delay becomes 'undue'.*

Amendment 55  
Article 13(2)

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.

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 *of force majeure and those* 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 *or where the victim is a minor*.

*Justification*

*There should be exceptions to the deadlines in cases of force majeure and where the victim is a minor and cannot act without a representative. When the victim reaches adulthood you should be able to act on the rights that he could not exercise at the time.*

Amendment 56

Article 14(2)

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.

2. Member States shall 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.

*Justification*

*Self-explanatory.*

Amendment 57

Article 15(2)

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.

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 ***at no additional cost to the applicant.***

*Justification*

*In order for the information to be fully accessible, it must be available free of charge. This is consistent with the principle set out in Article 23(2).*



Amendment 58  
Article 16(1)

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).

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 **the competent** authority in the **Member State of residence**, provided that the applicant falls within the scope of Article 2(1).

*Justification*

*Greater clarity and precision.*

Amendment 59  
Article 16(2)

2. Member States shall establish or designate one or several authorities, hereinafter referred to as 'assisting authorities', to be responsible for applying paragraph 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. **These shall be attached, where applicable, to the authorities responsible for the state-funded compensation scheme in each Member State.**

*Justification*

*The assisting authorities should be identical with or attached to the national authorities responsible for the state-funded compensation scheme in each Member State.*

Amendment 60  
Article 17(1)

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).

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

*Justification*

*There must be harmonised Community-wide forms, in the interests of facilitating administration.*

Amendment 61  
Article 17(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.

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 ***with whatever additional reports*** may be required.

*Justification*

*Self-explanatory.*

Amendment 62  
Article 17(2a) (new)

***2a. The assisting authority shall supply the necessary translations, ensuring that the application for compensation and the reports and additional documents are forwarded in a language that is accepted by the receiving authority.***

*Justification*

*The necessary translations must be supplied by the assisting authority handling the victim's case.*

Amendment 63  
Article 17(3)

3. The assisting authority shall not make

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.

any assessment of the application. It may reject the application, **supplying its grounds in writing**, only if it is obvious that the application is not made in good faith.

#### *Justification*

*Rejection must be made in writing with the grounds duly set out, so that it can be subjected to judicial controls.*

#### Amendment 64 Article 18

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 transmit, **using the harmonised form for communication between authorities**, 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".

#### *Justification*

*Communication between the assisting and deciding authorities should be carried out using a harmonised form. This has obvious advantages for administration and legal certainty.*

#### Amendment 65 Article 18(a)

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

(a) the contact person handling the matter;

The assisting authority shall at the same time, **using the harmonised communication form**, provide the deciding authority with the following information:

(a) the contact person handling the matter;

*Justification*

*See justification of previous amendment.*

Amendment 66  
Article 18(b)

(b) a list of supporting documentation enclosed;

(b) a list of supporting documentation enclosed, ***together with any translations that are required;***

*Justification*

*See justification to Amendment 61 (to Article 17(2a) (new)).*

Amendment 67  
Article 18(d)

(d) where appropriate, the language in which the application form has been ***completed.***

(d) where appropriate, the language in which the ***harmonised*** application form has been ***filled in.***

*Justification*

*This clarifies the text; cf. also Amendment 59 (to Article 17(1)).*

Amendment 68  
Article 19

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:

Upon receipt of an application transmitted in accordance with Article 18, the deciding authority shall send, ***using the harmonised form for communication between authorities,*** the following information as soon as possible directly to the assisting authority:

*Justification*

*See Amendment 63.*

Amendment 69  
Article 20

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.

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

*Justification*

*Immediate transmission is called for.*

Amendment 70  
Article 21(2)(b)

(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.

(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 ***or any other equivalent medium.***

*Justification*

*Modern communications technologies now offer alternatives to the telephone and to video-conferencing, and these should be taken into account. The speed of today's technological revolution is such that other, future means of communication should also be provided for.*

Amendment 71  
Article 23(1)(b)

(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;

***Deleted***

*Justification*

*Provision must be made to ensure that the text of the decision can be understood by the victim. Responsibility for translating documents must be shared between the assisting authority and the deciding authority.*

Amendment 72  
Article 24(1a) (new)

***1a. The Commission, in cooperation with the Member States, shall establish the harmonised compensation application form referred to in paragraph ... of Article ..., as well as the harmonised form for communication between authorities referred to in paragraph ... of Article ....***

***The Commission shall have these forms translated into all the official languages of the European Community.***

*Justification*

*Harmonised forms should be drawn up by the Commission in cooperation with the Member States.*

Amendment 73  
Article 24(2)

2. The Commission shall, in cooperation with the Member States and in the framework of the European Judicial Network in civil and commercial matters

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.

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 *into all the official languages of the European Community*.

*Justification*

*The manual should be translated into all the official languages of the EC.*

Amendment 74  
Article 25(b)

(b) furthering close cooperation and exchange of information between the assisting and deciding authorities in the Member States; and

(b) ***developing, supporting, furthering and improving*** close cooperation and exchange of information between the assisting and deciding authorities in the Member States; and

*Justification*

*The amendment introduces a fuller and more detailed definition of the responsibilities of the contact points..*

Amendment 75  
Article 27(4)

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.

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

*Justification*

*The Member States should forward to the Commission all provisions adopted by them, not merely those they believe are the 'main' ones.*



## **EXPLANATORY STATEMENT**

### **I - INTRODUCTION**

Most countries' substantive criminal law, and therefore also the EU's, remains centred on the definition of types of offence, considered as forms of behaviour that are incompatible with the social norms and fundamental principles of the constitutional state; the state accordingly reacts to acts and behaviour considered to be criminal by imposing on the author of the offence the penalties that correspond to the damage inflicted, with the aim of deterring those who commit offences from repeating the punishable acts and others from imitating them.

It may therefore be affirmed that today's penal system confines itself essentially to applying the law in its sphere as the embodiment of the relationship between the state and the author of the crime, thus focusing its attention on the punishment of the latter, with - though only in more recent times - accompanying measures relating to the social reintegration and rehabilitation of those found guilty.

### **II - THE VICTIM OF CRIME: NATIONAL AND INTERNATIONAL SUPPORT MEASURES**

#### **a) General considerations**

Paradoxically, under such a system of criminal law, the victim of crime does not receive sufficient attention, and is frequently left without proper protection or compensation.

In recent decades, therefore, criminologists and penal policy administrators have come to pay particular attention to the status of the victim as regards the crime itself and the protection of the victim's interests.

Recent victimological studies have highlighted the psychological and material distress suffered by the victim in the wake of the crime, as well as the obstacles typically encountered by victims. These considerations provide further strong support for the position that support for the victim needs to be an important concern of the penal law at all moments.

Support for victims entails two types of complementary measure: material, psychological, health and social aid; and compensation for the material and non-material damage caused to victims or those dependent on them.

From this viewpoint, compensation for the victim must be guaranteed, not only to alleviate the harm and suffering caused as far as this can be done, but also to deal with the social conflict produced by the crime and facilitate the application of a properly rational criminal policy.

In the first place, reparation or compensation should be made by the author of the crime as the direct author of the damage, the level concerned being set by decision of a civil court (or, in some countries, a criminal court) or else determined by a judicial or out-of-court settlement between the victim of the crime and its author. However, while this is theoretically a means by which victims may obtain satisfaction, in practice full compensation by the author of the offence has been a rare event: in many cases, the offender remains unidentified, has died or is unable to pay.

### **b) Measures at national level**

Since the 1960s numerous countries have, for these reasons, been obliged to adopt legislative measures aimed at creating compensation systems for crime victims, via the establishment, on the basis of the principles of solidarity and social justice, of public funds for those cases (the majority) in which the victim cannot be compensated by any other means.

The first steps in victim protection were taken in 1965 by the US and Canada, both of which adopted laws to protect the victims of crime. Their example was followed in Europe by Finland (1973), Ireland (1974), the Netherlands (1975), Norway (1976), France (1977), Luxembourg (1984), Belgium (1985), Germany (a law of 1976 was modified in 1983 and 1987) and Spain (1995). In addition, a number of countries, including Italy (1980), France (1986) and Spain (1992), have adopted laws specifically for the victims of terrorist attacks, in response to the systematic and brutal fashion in which those countries are afflicted by terrorist crimes which threaten to undermine the very foundations and essential values of civilisation and of humanity itself.

### **c) Measures at international level**

Outside the framework of the EU itself, we may note the following:

1) Convention No 116 of the Council of Europe of 24 November 1983 (European Convention on Compensation to Victims of Violent Crimes); despite the importance of this convention as a key point of reference in Europe, it has still not been ratified by a number of EU Member States.

This convention entered into force - for those countries which had ratified it - on 1 February 1988. It obliges the signatories to operate, in law or administrative practice, a system for the financial compensation, from the public purse, of the victims of intentional crimes of violence leading to bodily harm or even to the death or the victim.

It lists the elements constituting damage giving rise to mandatory compensation. These include: loss of income of a person immobilised by physical injuries; medical costs; hospitalisation costs; funeral expenses; and, in the case of dependants, loss of material support.

The convention is founded on the principle of social justice, under which all countries are required to compensate not only their own nationals but also other victims of violence perpetrated on their territory, including migrant workers, tourists, students and others;

2) the recommendations of the Council of Europe (Nos 11 of 1985 and 21 of 1987) on the position of the victim in the framework of criminal law and procedure;

3) the UN Declaration of basic principles of justice for victims of crime and abuse of power, adopted in Resolution 40/34 of the UN General Assembly of 29 November 1985.

### **III. EU POLICY TOWARDS THE VICTIMS OF CRIME**

The EU has instituted a single market presupposing the establishment of an area without internal borders in which the free movement of goods, persons, services and capital is to be guaranteed within the territory of the Member States, under Article 14 of the EC Treaty.

With the entry into force of the Treaty of Amsterdam, the EU has set as one of its primary objectives its maintenance and development as an area of freedom, security and justice where the free movement of persons is guaranteed. One of the most evident corollaries of this is the need to protect the victims of crime.

European citizens will not be able to exercise their right to freedom of movement unless the Union adopts the necessary measures to ensure them protection should they become victims of crime anywhere on its territory, irrespective of their nationality, and to secure them compensation for the damage suffered.

Accordingly, the Vienna Action Plan, drawn up by the Council and Commission and adopted by the JHA Council on 3 December 1998, called for a debate on the issue of aid to victims and for the possible adoption of measures at EU level.

Subsequently, the Tampere European Council of 15 and 16 October 1999 called in its conclusions for the establishment of minimum rules on the protection of victims of crime, with particular respect to their access to justice and to their right to compensation for damage suffered.

On 14 July 1999, with a view to fulfilling the above guidelines, the Commission submitted a communication to the Council, the European Parliament and the Economic and Social Committee on 'Crime victims in the European Union - Reflections on standards and action'<sup>1</sup>, following which the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs adopted a report by Patsy Sørensen (A5-0126/2000) on 25 April 2000. The EP adopted a resolution on the subject on 15 June 2000<sup>2</sup>.

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<sup>1</sup> COM(1999) 349

<sup>2</sup> OJ C 67, 1.3.2001, p. 304

In the wake of this, on 15 March 2001 the Council adopted Framework Decision 2001/220/JHA<sup>3</sup> on the standing of victims in criminal procedure, with the aim of guaranteeing, for all persons who have been victims of crime anywhere in the EU, an active role in the penal procedure and, where applicable, the right to obtain a settlement under the criminal law obliging the offender to pay compensation. This measure reflected the report by Carmen Cerdeira Morterero (A5-0355/2000) and Parliament's resolution of 12 December 2000<sup>4</sup>.

On 28 September 2001, in a measure also intended to implement the political mandates of Tampere, the Commission submitted a green paper on compensation to crime victims<sup>5</sup>, with the aim of launching a wide-ranging consultation process targeted on public administrations and society in general. The author of this report was appointed Parliament's rapporteur on the matter (adoption: 13 September 2002 - A5-0309/2002).

#### **IV. THE PROPOSAL FOR A COUNCIL DIRECTIVE ON COMPENSATION TO CRIME VICTIMS - EVALUATION**

As things stand, 13 EU Member States have established national systems for compensating crime victims for damage suffered.

However, some European countries still have no specific legislation on the matter, while there are enormous differences among the Member States which do have specific legislation, thanks to which the very possibility of compensation, let alone the amount payable, can be dependent on someone's place of residence or on where the offence was committed. In other words, two persons who have been victims of a crime in very similar circumstances but in two different Member States may receive wildly varying compensation (or none at all) for similar damage.

Your rapporteur considers that this state of affairs cannot be tolerated in the EU: it produces unfair and arbitrary effects for crime victims that are totally incompatible with the objective of the creation of an area of freedom, security and justice. At present, the compensation available to crime victims depends on the Member State in which the crime was committed, while national legislation varies enormously.

Your rapporteur therefore welcomes and, on the basis of an initial general approach, expresses a positive assessment of the Commission's proposal for a directive, with its objectives of limiting the unfair effects arising from the present different levels of compensation in the Member States and ensuring that EU citizens and persons legally resident in the Union are properly compensated for the damage caused where they have been victims of crime anywhere within the Union's territory.

Nonetheless, your rapporteur considers it desirable to submit to the committee 59 draft amendments, tabled with a view to helping achieve a final text which reflects the real needs of EU citizens and legal residents who are victims of crime within Union territory.

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<sup>3</sup> OJ L 82, 22.3.2001, p. 1

<sup>4</sup> OJ C 232, 17.8.2001, p. 36

<sup>5</sup> COM(2001) 536