



MINISTRY  
OF JUSTICE

## The Informal Justice and Home Affairs Council Provisional agenda (justice)

18-19 July, Sopot

### Possible EU actions - supporting victims of crime

For more than a decade the protection of victims of crime has been an important element of the area of freedom, security and justice. 10 years ago, the *Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA)*<sup>1</sup> laid ground for common EU standards of protection. Outside of the judicial cooperation in criminal matters, *Council Directive relating to compensation to crime victims (2004/80/EC)*<sup>2</sup> introduced a system, which allows victims to quickly obtain compensation in another Member State. Moreover, the Court of Justice of the EU stressed that the equal treatment of victims irrespective of their nationality, with regard to their right to compensation, is an inherent consequence of the free movement of persons<sup>3</sup>.

However, in recent years most activities undertaken in the framework of judicial cooperation in criminal matters have focused on repressive aspects. The mutual recognition of different kinds of penalties and stepping up EU efforts aimed at combating serious offences has been the main strand of action. This approach was fully understandable, as it was necessary to ensure that criminals cannot abuse open European borders to get away and evade punishment.

While significant progress has been made, the major goal should now be to bring a new perspective to EU actions by putting the citizen at the centre of interest. Therefore, protection of victims should become an essential element of operation of judicial authorities, both at national and at European level. The way the victims are treated by the authorities will often determine the perception of effectiveness of the EU justice systems in the eyes of the general public. Taking into account that already nearly 12 million EU citizens live in another

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1 OJ L 82, 22.3.2001, p. 1.

2 OJ L 261, 6.8.2004, p. 15

3 Case of Cowan vs. Trésor public 186/87

Member State than their country of origin, this is of crucial importance. Hence, it is in this area that we can best demonstrate to the citizens of the EU the practical results of our efforts.

The Lisbon Treaty has provided us with new opportunities to take a determined action in this field. The Stockholm Programme expressly mentions the protection of victims as one of priorities<sup>4</sup>. The roadmap concerning victims of crime<sup>5</sup> adopted by the Council during the Hungarian Presidency translates these objectives into a list of concrete actions to be undertaken in the EU.

#### QUESTION 1:

The European Commission submitted on 18 May 2011 a package of instruments aimed at improving the current system of protection of victims. The package includes a Communication on protection of victims of crime<sup>6</sup> as well as the *Proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime*<sup>7</sup> and the *Proposal for a Regulation on mutual recognition of protection measures in civil matters*<sup>8</sup>. The necessary component, which must be addressed jointly with the recent package, is the Member States initiative for a Directive of the European Protection Order (EPO), which concerns the mutual recognition of protection measures taken in criminal matters<sup>9</sup>.

The current task of the Polish Presidency is to make good progress on the instruments which are now on the table. The negotiations are most advanced with regard to the proposal of the EPO in criminal matters. This allows us to believe that we are close to an agreement in the Council and that negotiations with the European Parliament may resume soon. However, coherence should be ensured between the two instruments, namely the Directive on the EPO and the proposed Regulation concerning protection measures taken in civil matters, in particular on their scope of application.

The Polish Presidency fully subscribes to reaching this objective. It will not necessarily entail modification of national systems, where different legal traditions are at stake, but is rather about ensuring a clear approach to cooperation mechanisms between competent authorities of the Member States.

**Against this background, the Polish Presidency plans to give priority to finalizing the work on the EPO in criminal matters. The conclusion of negotiations in the Council would define a firm point of reference, thus paving the way for a more constructive**

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4 Section 2.3.4.

5 11108/11.

6 10612/11.

7 10610/11.

8 10613/11.

9 9667/11.

discussion on the scope of the regulation concerning civil matters. Such an approach is also strongly advocated by the European Parliament<sup>10</sup>.

Simultaneously, the Polish Presidency intends to initiate and make steady progress in the discussions on the proposal of a directive establishing minimum standards on the rights, support and protection of victims of crime.

**1. Can delegations agree with this approach to the discussions on the current proposals of instruments concerning protection of victims?**

#### QUESTION 2:

A framework of rights granted to victims of crime operates within the overall system of criminal proceedings, in which every actor (i.e. prosecutor, defense counsel, judge, accused person, victim) has a well-defined role. Creating a balanced structure, where the scope of their respective rights and entitlements is properly weighed against each other is inherently linked to a notion of a fair trial and, more generally, to a proper administration of justice.

**While a number of rights of victims proposed in the directive may be neutral to the position of other participants, some others (e.g. confidentiality, avoidance of contacts between the victim and the offender, right to review a decision not to prosecute) may have an impact on the procedural situation of the accused.**

This link may be particularly relevant in the context of the current parallel negotiations of instruments included in the roadmap on procedural rights. Therefore, certain aspects of the current proposals may deserve special attention.

**2. How to best strike a balance between the protection of rights of the victims and those of the accused? Are there any particularly sensitive elements which would require specific focus during negotiations?**

#### QUESTION 3:

The current discussion on measures of protection of victims of crime takes place in a restrained budgetary situation. Most Member States are confronted with austerity measures, where the budgets of justice systems are also affected. This situation may pose a challenge for strengthening measures raising the level of victims' protection. At least certain elements

of the new proposal (e.g. translation, interpretation, training, special arrangements in courts for vulnerable victims) may entail additional expenses<sup>11</sup>.

Obviously, the potential calculations must be seen against an overall background, where resources invested in efficient protection of victims may in the long run reduce negative financial consequences of crime. **Yet, while a general need for enhancement of the position of victims should be recognized, it is worth reflecting on ways of tackling a financial burden which it may entail for the justice systems in a near perspective.**

**3. How can ambitious plans of protection of victims of crime be compatible with current financial restrictions in Member States?**