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NOTE

from:	Presidency
to:	COREPER / Council
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Subject:	Proposal for a Resolution of the Council on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings

On 12 April 2011 the Presidency has presented a proposal for a Resolution of the Council on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings.

The proposal has been examined by the preparatory bodies of the Council. CATS has given orientation on outstanding issues at its meeting of 18 May 2011.

Delegations will find in the Annex to this note the revised text of the Resolution as it results from the discussions held at the meeting of the Working Party for Substantive Criminal Law on 26 May 2011. Changes with respect to the previous version of the text are highlighted by underlining and (...). The Presidency would like to thank delegations for the constructive attitude shown in the course of discussions.

While agreement has been found on the general structure of the text, certain issues remain open. These issues are set out in the footnotes to the text.

COREPER is invited to endorse the proposed text, to resolve the last outstanding issues and to invite Council to adopt the Resolution.

Resolution of the Council

of...

on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings

The Council of the European Union,

Whereas

- (1) The active protection of victims of crime is a high priority for the European Union and its Member States. In the European Union, the Charter of fundamental rights (the "Charter") and the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"), to which all Member States are parties, calls on States (...) to actively protect victims of crime.
- (2) The European Union has successfully established an area of freedom of movement and residence, from which citizens benefit by increasingly travelling, studying and working in countries other than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have led as an inevitable consequence to an increase in the number of people who become victims of a criminal offence and become involved in criminal proceedings in a Member State other than that of their residence.

- (3) This calls for specific action in order to establish a common minimum standard of protection of victims of crime and their rights in criminal proceedings throughout the Union. Such action, which may include legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.
- (4) In the Stockholm Programme - An open and secure Europe serving the citizen¹, the European Council stressed the importance to provide special support and legal protection to those who are most vulnerable or find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents. In line with the Council conclusions on a strategy to ensure fulfilment of the rights of, and improve support for, persons who fall victims of crime², the European Council has urged to take an integrated and coordinated approach to victims. As a step in responding to the Stockholm Programme, the European Commission has proposed a package of measures on victims of crime including a Directive on the Rights, Support and Protection of victims of crime³ as well as a Regulation on the mutual Recognition of protection measures adopted in civil matters⁴.
- (5) In the light of the considerable progress made pursuant to the Roadmap for strengthening procedural rights of the suspected or accused persons in criminal proceedings⁵, the Council considers that a similar approach should be adopted (...) in the field of the protection of the victims of crime.
- (6) (...)
- (7) (...)

¹ OJ C 115, 4.5.2010; see point 2.3.4.

² Adopted at the 2969th Justice and Home Affairs Council meeting in Luxembourg, 23 October 2009.

³ COM (2011)275 final of 18 May 2011.

⁴ COM (2011)276 final of 18 May 2011.

⁵ Resolution of the Council of 30 November 2009 (2009/C 295/01). (OJ C 295, 4.12.2009, p.1).

- (8) Action in this field is specifically contemplated as part of the process to implement the principle of mutual recognition as founding principle of the creation of a true area of freedom, security and justice: indeed, Article 82 paragraph 2, letter c) TFEU provides that the Union may, by means of Directives, establish minimum rules on the rights of victims of crime when necessary to facilitate mutual recognition of judgements and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension.
- (9) The question of the role of victims in criminal proceedings has been already addressed at the level of the Union through Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. However, more than ten years have passed since the approval of that instrument, and the progress made in the creation of the area of freedom, security and justice, as well as the remaining issues of implementation in the area of victims' rights, require that the Union review and enhance the contents of the Framework Decision, also in the light of the Commission's findings with respect to the implementation and application of the instrument.⁶

⁶ See 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 (COM(2004) 54 final/2 of 16.2.2004); Report from the Commission pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) (COM(2009) 166 final of 20.4.2009); Impact assessment accompanying the Commission proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime (SEC(2011) 780 final of 18.5.2011).

- (10) Existing mechanisms to ensure that crime victims may be awarded fair and appropriate compensation for the damages suffered, such as that provided for by Council Directive 2004/80/EC of 29 April 2004 relating to crime victims, should also be reviewed and if necessary improved, in order to enhance their operability and contributing to complementing the instruments for the protection of victims.⁷
- (11) In addition, a mechanism should be created⁸ to ensure mutual recognition among Member States of decisions (...) in civil matters concerning measures⁹ to protect victims of crime (...), along the lines drawn by the Commission proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters. This mechanism should¹⁰ complete the one envisaged by the Directive of the European Parliament and of the Council on the European protection order, concerning mutual recognition of protection measures adopted in criminal matters, currently under discussion. The provisions set out in both proposals should not establish obligations to modify national systems for protection measures but leave it to the Member States to decide according to which system they may issue or execute protection measures.
- (12) Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step approach, whilst ensuring overall consistency balance. By addressing future actions, one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.

⁷ DE suggests adding: "*In addition, the compliance of the national compensation schemes in the Member States with the Directive should be examined*"; FR, LU, COM oppose this proposal.

⁸ DE suggests replacing this terminology by "*could be examined*".

⁹ FR proposal: "*... concerning protection measures taken in the context of civil proceedings*". DK, FI, SE oppose this proposal.

¹⁰ DE suggests replacing "should" by "*could*".

- (13) Particular attention should be given to the process of implementation of legislative instruments in this field. Practical measures and best practises could be gathered in a non-binding legal instrument, such as a Recommendation, in order to help and inspire Member States in the process of implementation.
- (14) In addressing the necessary measures for enhancing the protection of victims, due account should be taken of the principles such as those contained in Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to crime victims (...). The Union should also take into account the standards set out in the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted by the Committee of Ministers of the Council of Europe on 7 April 2011.
- (15) The list of measures in the Annex to this document should be considered indicative, addressing only a first group of measures to be dealt with as a matter of priority. Further measures, both legislative and non-legislative, as well as practical measures may be proposed in the future if deemed appropriate, also in the light of the on-going process of approval and implementation of the legal acts contemplated in this Roadmap,

HEREBY ADOPTS THE FOLLOWING RESOLUTION:

1. Action should be taken at the level of the European Union in order to strengthen the rights and protection of victims of crime, in particular in the course of criminal proceedings. Such action may include legislation as well as other measures.
2. The Council welcomes (...) the European Commission's proposal for a package of measures on victims of crime, and invites the Commission to submit proposals regarding the measures set out in the Roadmap.
3. The Council endorses the "Roadmap for strengthening the rights and protection of victims of crime" (hereinafter referred to as "the Roadmap"), set out in the Annex to this Resolution, as the basis for future action. The measures included in the Roadmap, which could be complemented by other measures, should be given priority.
4. The Council will examine all proposals presented in the context of the Roadmap and intends to deal with them as matters of priority.
5. The Council will act in full cooperation with the European Parliament, in accordance with the applicable rules.

Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings

The order of the measures indicated below is indicative. Explanations provided in relation to each measure merely serve as an indication of the proposed action, and do not aim to regulate the precise scope and content of the measure concerned. This Roadmap supports and builds on the European Commission's proposals for a package of measures on victims of crime.

General principles

Action at the level of the Union directed at strengthening the rights and protection of victims should aim at introducing common minimum standards and at attaining, among others, the following general objectives:

1. Establish adequate procedures and structures to respect the dignity, personal and psychological integrity as well as the privacy of the victim in criminal proceedings.
2. Enhance the access to justice by victims of crime, also by fostering the role of victim support services.
3. Design adequate procedures and structures aimed at preventing secondary and repeat victimisation.

4. Encourage the provision of interpretation and translation for the victim within criminal proceedings.
5. Where appropriate, encourage victims to participate actively in criminal proceedings.
6. Strengthen the right of victims and of their legal counsel to receive timely information about the proceedings and their outcomes.
7. Encourage the recourse to restorative justice and alternative dispute resolution methods taking into account the interest of the victim.
8. Pay special attention to children, as part of the most vulnerable group of victims, and always keep in mind the best interest of the child.
9. Ensure that Member States provide training, or encourage the provision of training, to all relevant professionals (...).
10. Ensure that the victim may be awarded compensation as appropriate.

When fostering the rights of victims in criminal proceedings the Union shall be mindful of the fundamental elements of national criminal law systems and duly take into account the rights and interests of all parties involved, as well as the general aim of the criminal proceedings.

The pursuit of these objectives should comprise the measures set out below, as well as any other measure which may prove appropriate in the course of the implementation of existing legislation.

Measure A: A Directive replacing Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings

Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings was an important step in setting up a comprehensive approach to the protection of victims of crime in the EU. However, ten years after its approval, it is necessary to revise and supplement the principles set out in the Framework Decision and to take significant steps forward in the level of protection of victims throughout the EU, in particular in the framework of criminal proceedings. To this end, the Commission has presented on 18 May 2011 a proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime¹¹. The Council commits itself to examining this proposal as a matter of priority, also in the light of the general principles set out above.

¹¹ See doc. COM(2011) 275 final.

Measure B: Recommendation or Recommendations on practical measures and best practises in relation to the Directive set out in Measure A

Once the comprehensive, binding legal instrument referred to under Measure A has been approved, the Commission is invited, as soon as practicable, to complement this with a proposal (or proposals) for a Recommendation which should act as guidance and a model for Member States to facilitate their implementation of the Directive, building on the principles provided for by the Directive. This Recommendation should take stock of the existing best practises among Member States in the field of assistance and protection to victims of crime, building on them within the framework of the applicable legislative instruments.

The Recommendation should take into account the best practices on the question of the protection of victims, including those established by non-governmental organisations as well as those by institutions other than the European Union, such as the Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to crime victims, and address areas such as those covered by Measure A.

Measure C: A Regulation on mutual recognition of protection measures for victims taken in (...) civil matters

The Commission has presented, on 18 May 2011, a proposal for a Regulation on mutual recognition of protection measures in civil matters to complete the mechanism for mutual recognition envisaged in the Directive of the European Parliament and of the Council on the European Protection Order, currently under discussion. This Directive envisages to provide for mutual recognition of decisions taken in criminal matters by a judicial or equivalent authority to protect the victim of crime from further danger which might be caused by the alleged offender. A similar mechanism is envisaged for the mutual recognition of protection measures taken in civil matters. The Council commits itself to examining this proposal as a matter of priority, also in the light of the general principles set out above.¹²

Measure D: Review of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

In the light of the conclusions drawn from its report on the application of Council Directive 2004/80/EC and any further analysis, the Commission is invited to review the Compensation Directive and present any appropriate legislative or non-legislative proposals in the area of compensation of victims of crime.

Action in this regard should as a minimum aim at¹³ revising and simplifying existing procedures for the victim to request compensation.

¹² DE proposal to replace the text of this Measure, as follows: "*The Commission has presented, on 18 May 2011, a proposal of a Regulation to complete the mechanism for mutual recognition envisaged in the Directive of the European Parliament and of the Council on the European Protection Order, currently under discussion. This Regulation will provide for mutual recognition of [...] protection measures taken in the context of civil proceedings. The Council commits itself to examining the Directive of the European Parliament and of the Council and the proposal of the Commission closely, also in the light of the provisions set out in recital 11 and the general principles set out above.*" CZ supports this proposal, PL opposes it.

¹³ DE suggests inserting the following: "*examining the compliance of the existing national compensation schemes with the Directive, particularly focusing on the access of all types of victims of violent crimes to fair and appropriate compensation payments in the Member States. It should also focus on ...*"; FR, LU, PT oppose this suggestion.

[Measure E-F deleted] ¹⁴

Measure G: Specific needs of victims.

In the general legal act envisaged under Measure A general rules will be contained, applying to all victims of crimes who are in need of assistance, support and protection in relation to criminal proceedings relative to the crime to which they have fallen victim. This legal act will also contain general rules for all kinds of vulnerable victims.

Some victims have specific needs based on the type of crime they are victim of, given the social, physical and psychological repercussions of these crimes, such as victims of trafficking in human beings, children victims of sexual exploitation, victims of terrorism and victims of organised crime. Their special needs could be addressed in specific legislation dealing with the fight against these types of crime.

On the other hand, some victims of crime are in need of special support and assistance due to their personal characteristics, to be evaluated on a case-by-case basis. In this respect, children should always be considered particularly vulnerable.

The Commission is invited, in the context of its control of the implementation of the legislative instruments mentioned above and any others addressing specific areas of crime, and after having evaluated their practical operation once the period for implementation has expired ¹⁵, to propose through Recommendations practical measures and suggest best practises to provide guidance to Member States in the process of dealing with the specific needs of victims (...).

¹⁴ DE opposes the deletion of Measure F ("Accession to the Council of Europe Convention on violence against women").

¹⁵ NL proposes to delete "..., and after having evaluated their practical operation once the period for implementation has expired, ..."