

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive on compensation to crime victims'

(COM(2002) 562 final — 2002/0247 (CNS))

(2003/C 95/11)

On 4 November 2002, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 February 2003. The rapporteur was Mr Koryfidis.

At its 397th plenary session on 26 and 27 February 2003 (meeting of 26 February), the European Economic and Social Committee adopted the following opinion by 110 votes in favour and no votes against with two abstentions.

1. Introduction

1.1. The problem

1.1.1. The right of European citizens to move freely throughout the EU necessitates conditions of security and justice accessible to all.

1.1.2. This involves citizens being able to approach courts and authorities in any Member State as easily as in their country of origin.

1.1.3. It also entails the right to protection from the authorities and appropriate compensation for the losses suffered when crimes and terrorist acts occur.

1.2. The treatment of crime victims in the Member States

1.2.1. Based on the data available, it is clear that the prospect of compensation for crime victims is generally less favourable than that of people who have suffered loss or damage of other kinds. There are many major obstacles faced by crime victims in gaining compensation from the offender. These stem from:

- the fact that, in many cases, the offender is unknown, cannot be successfully prosecuted or lacks the funds to compensate the victim;
- the fact that other sources, such as compulsory or private insurance policies, are also insufficient to cover the losses suffered by the victim;
- the fact that the complete absence of any possibility of state compensation for victims in two Member States and the lack of alignment between compensation arrangements in the other Member States mean that European citizens are treated differently depending on their place of residence or the place where the crime is committed.

1.3. The body of Community law on the subject and the need for action at Community level

1.3.1. The history of the Community approach to the problem of compensation for crime victims is as follows:

1983: Ratification of the European Convention⁽¹⁾ on the compensation of victims of crime which was intended to introduce a minimum standard for state compensation schemes.

1989: The European Parliament issued a resolution⁽²⁾ on compensation for victims of violent crimes. The resolution called on the Commission to draw up a draft directive requiring the Member States to harmonise the amount of compensation for the victims of violent crimes at the highest level, irrespective of the country of origin of the victim.

1998: Adoption of the Vienna Action Plan⁽³⁾ of the Council and the Commission which, inter alia, provides for:

- identifying ways of providing victim support,
- carrying out a comparative survey of victim compensation schemes and
- assessing the feasibility of taking action at EU level.

⁽¹⁾ The convention, which was ratified by ten Member States and subsequently signed by two more, does not provide for any specific measure to facilitate access to state compensation in cross-border situations.

⁽²⁾ A 3-13/89 C 256, 12.9.1989, p. 32.

⁽³⁾ OJ C 19, 23.1.1999, p. 1, point 51(c).

1999: The conclusions of the Tampere European Council ⁽¹⁾ stress the need to draw up minimum standards on the protection of the victims of crime while calling on the Member States to set up national programmes to finance measures, public and non-governmental, for assistance to and protection of victims.

1999: The Commission presents a Communication ⁽²⁾ on crime victims covering not only the subject of compensation, but also other issues that could be addressed to improve the response to crime in the EU.

2001: The Council adopted a framework decision ⁽³⁾ on the standing of the victim in criminal proceedings.

2001: Adoption of the Brussels I Regulation ⁽⁴⁾ on jurisdiction and the recognition and enforcement of judgments.

2001: The Commission presented a Green Paper ⁽⁵⁾ on compensation to crime victims. The Green Paper focused on compensation from the state, giving an overview of the relevant schemes in operation in the Member States. On this basis, it formulated the possible objectives that a Community initiative in this field could pursue by proposing the following:

- ensuring that victims are able to get state compensation in the EU;
- taking measures to limit the unfair effects that may result from the widely differing levels of compensation available in the various Member States;
- facilitating access to state compensation for victims in cross-border situations.

The Green Paper was the subject of debate (over the period 2001/2002) within the European institutions, at national level and within organised civil society. The results of this debate confirmed that the current situation regarding compensation of crime victims in the EU is unsatisfactory and that action is needed to achieve the objectives put forward in the Green Paper.

2002: The European Economic and Social Committee adopted its opinion on the Green Paper. The opinion ⁽⁶⁾ welcomed the Commission initiative, highlighting inter alia the following points:

- the difficulty involved in tackling the issue given the different traditions followed in the Member States — a situation which would be compounded by enlargement — but, at the same time, the need to achieve the objectives of the Green Paper as a demonstration of ‘the practical success of the European venture, centred on the individual and his or her practical problems’;

- the need for all concerned to build up positive momentum and to adopt a balanced approach to the problem with a view to approximation;

- the potential risk that the divergence of schemes will be perpetuated by some countries turning the agreed minimum level of compensation into the maximum, and by other countries increasing further the already high level of protection they provide;

- the need to ensure that the standard agreed upon is implemented by means of a system which provides for penalties against those who do not comply with the consensus solution reached and by using a European fund in the interests of complementarity;

- in view of these difficulties, the need to establish ‘the most stringent common standard possible, setting different starting levels and establishing subsequent steps to bring about a gradual alignment’ ⁽⁷⁾.

2002: The European Parliament adopted a resolution ⁽⁸⁾ on the Green Paper welcoming the Commission initiative and highlighting inter alia the following points:

- the major differences between national schemes, the absence of legislative measures at Community level to take account of the specific situations of cross-border crime victims and the need to establish minimum state compensation schemes;

- the need to approximate state compensation schemes and to lay down minimum requirements for subsidiary application of the State’s responsibility;

- the need to create a European coordinating body for crime victims and possibly a European solidarity fund to provide resources based on criteria to be determined by the Commission;

⁽¹⁾ Presidency Conclusions, point 32.

⁽²⁾ COM(1999) 349 final.

⁽³⁾ OJ L 82, 22.3.2001, p. 1.

⁽⁴⁾ Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 15.1.2001, p. 1.

⁽⁵⁾ COM(2001) 536 final.

⁽⁶⁾ OJ C 125, 27.5.2002.

⁽⁷⁾ OJ C 125, 27.5.2002, point 5.2.

⁽⁸⁾ A5-0309/2002 final.

- the need to wage publicity campaigns informing citizens about the Community compensation scheme for crime victims.

2002: The Commission submitted the present draft directive on the compensation of crime victims.

1.3.2. The compensation of crime victims 'is a necessary parallel to the many measures taken to promote judicial cooperation in civil matters and to combat crime and terrorism.' This measure is thus a response to the precepts of the Treaty on establishing an area of freedom, security and justice in the European Union. These precepts constitute the general framework behind the need for Community intervention to tackle this specific problem.

2. The draft directive

2.1. The draft is intended to be a contribution towards achieving the objectives of the Treaty on:

- establishing an area of freedom, security and justice for all and
- the free movement of persons within the EU.

2.1.1. As shown above, the draft directive is a follow-up to the Green Paper on the subject and to the Tampere European Council with the general objective of ensuring adequate compensation for all EU citizens and any person with legal residence in the EU in the event that they should fall victim to crime within its territory.

2.1.2. According to the draft, this objective is to be achieved by:

- ensuring that all EU Member States make provision for adequate state compensation by establishing a minimum standard for state compensation to crime victims;
- ensuring that the possibilities afforded in practice for the crime victim to get state compensation are not adversely affected depending on the Member State in which the crime is committed (cross-border situations — submitting an application to an authority in the Member State of residence).

2.1.3. The scope of the draft directive does not cover the possibilities for the crime victim to get compensation from the offender. According to the Explanatory Memorandum, 'the possibility of obtaining a decision, as such, on compensation from the offender is covered by the framework decision on the standing of the victim in criminal proceedings. Concerning

the possibility of enforcing such decisions in cross-border situations, a number of initiatives have been taken or are in preparation on access to justice for cross-border litigation in civil matters in general, which will be of benefit to crime victims as well' ⁽¹⁾.

2.1.4. According to the draft directive, the unfair and arbitrary effects created by the existing arrangements for compensating crime victims are not compatible with establishing an area of freedom, security and justice for all in the European Union. Furthermore, despite the positive contribution it has made towards establishing state compensation schemes, the 1983 European Convention has not been able to ensure complete coverage of all EU citizens. Nineteen years after its opening for signature, the effects of the minimum standard it sought to establish are not commensurate with the expectations of European citizens and all those who reside legally in the EU. This fact also explains the need for Community intervention.

2.1.5. Confirming the link between the free movement of persons and state compensation to crime victims, the European Court of Justice held ⁽²⁾ that 'the protection of victims of crime is a necessary corollary of the free movement of persons as guaranteed by the Treaty.' However, this particular proposal cannot be considered to fall within the scope of Articles 94 and 95 ⁽³⁾ of the Treaty. The objective pursued by this proposal falls within the overall scope of the provisions of the Treaty establishing the European Community taken as a whole ⁽⁴⁾. Therefore, Treaty Article 308 ⁽⁵⁾ is proposed as the legal basis for the present draft.

3. General comments

3.1. The EESC sees the present Commission draft directive as the concrete result of many years' work on the important question of states awarding compensation to the victims of crimes committed on their territory. The proposal is also seen as a particularly important formal contribution to the wider effort to construct a uniform area of freedom, security and justice. It also marks a substantial shift in the way European citizens' current and existing problems are addressed against the backdrop of the changing territorial function of states and the benevolent role and character which the modern EU Member State must take on.

⁽¹⁾ COM(2002) 562 final, point 3.3.

⁽²⁾ Case 186/87 Ian William Cowan v Trésor public [1989] ECR p. 195.

⁽³⁾ Articles 94 and 95 of the Treaty.

⁽⁴⁾ See EC Opinion 2/94 of 28.3.1996.

⁽⁵⁾ Treaty establishing the European Community, Article 308, p. 163.

3.2. With this in mind, the EESC endorses the proposed directive and its objectives and feels that its provisions, subject to certain important conditions, will help to promote:

- the establishment of an area of freedom, security and justice for all in the EU;
- free movement within the EU;
- the approximation of Member States' legislation on the subject and of the mechanisms for resolving cross-border situations in line with the principles of subsidiarity and proportionality.

3.3. As stated above, the Committee endorses the broad lines of the proposed directive. However, it feels that some articles of the draft require further clarification and clearer wording.

3.4. In particular, the EESC feels that the proposed directive addresses the following important issues:

- it clearly defines the beneficiaries (Article 2). This will prevent the problems which have arisen when Member States have been called upon to compensate citizens of other Member States (see the relevant Court of Justice ruling and Article 3(2) of the draft);
- it obliges those Member States who have not yet done so to set up an appropriate compensation mechanism;
- it introduces a mechanism to facilitate communication for victims who reside in a Member State other than the one liable to pay compensation.

3.5. Nevertheless, the Committee also notes that, as it stands, the proposed directive enables the Member States to set up schemes which differ considerably from one another. This prompts the Committee to urge a careful review of, inter alia:

- Article 4, which lays down the principles for determining the amount of compensation: according to the text, Article 4(1) introduces the principle of full compensation, while paragraphs 2 and 3 go on to allow substantial derogations, with the consequence that the resulting arrangements may differ considerably;
- the provision relating to the assisting authority and the deciding authority: inasmuch as the specifications for cooperation between the two authorities are not sufficiently detailed, problems may arise with such cooperation, which may well deter citizens of the Member States from exercising the rights provided for in the draft directive.

3.5.1. The EESC stresses that it is doubtful whether the scope for perpetuating major differences between Member States' arrangements will ultimately be of benefit in efforts to promote the creation of an area of freedom, security and justice for all in Europe.

4. Specific comments

4.1. In general terms, the EESC takes the view that defining the desired effect precisely is an essential requirement if it is to be achieved by way of political, administrative and legal systems which still differ considerably from one another.

4.1.1. To this end, the EESC feels that the directive should include the following elements:

4.1.1.1. a definition of crimes that comprises not only crimes against the victim's life, health or physical integrity, but also those against the victim's psychological health and integrity (Article 2(1)(a)).

4.1.1.2. a detailed definition of the responsibilities of assisting authorities and of deciding authorities, along with a simplification of cooperation procedures between them so as to reduce bureaucracy and make it easier for citizens of the Member States to exercise the rights provided for in the directive. Particular reference must be made to the law applicable in each case and the relevant distinction between the law of the victim's place of residence and the law of the place in which the crime was committed (Article 16 ff.).

4.1.1.3. broader scope for the victim to receive advance payment. It should be pointed out that the period immediately after the crime has been committed is often the most painful for the victim and the time when he or she needs help the most (Article 5).

4.1.1.4. provisions laying down the procedure for awarding advance payments such that the resulting arrangements come as close as possible to:

- a trans-European scheme applied across the board with uniform criteria for determining the amount of advance payment;
- a scheme which will be run by a legal or administrative authority to be determined by each Member State;
- a scheme which can probably be guaranteed, at least in part, by European funding so as to cater for the considerable variance in the movements of citizens within the EU.

4.1.1.5. When formulating the specifications for the above procedure, it should be possible to draw on successful experience with the specifications for temporary legal protection in the period preceding the conclusion of public supply and public works contracts (Directive 89/665/EEC).

4.1.1.6. It is clear that, in any event, the payment of final compensation by the state will have to be guaranteed in cases where:

- despite all efforts it has not been possible to track down the offender, or
- the offender has been identified, but has insufficient means to adequately compensate the victim.

4.1.1.6.1. Where an upper limit is placed on compensation, this will have to be adjusted regularly in line with cost of living trends.

4.1.1.7. The solution described in 4.1.1.3 and 4.1.1.4 above serves to clarify the objective of state intervention in this area, intervention which takes place at the beginning of the procedure, immediately after the crime is committed, when the victim particularly needs it, and at the end when it has been proven definitively that there is no other source of satisfactory compensation for the victim.

Brussels, 26 February 2003.

The President
of the European Economic and Social Committee
Roger BRIESCH
