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## 32004L0080

### **Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims**

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Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the European Economic and Social Committee(3),

Whereas:

(1) One of the objectives of the European Community is to abolish, as between Member States, obstacles to the free movement of persons and services.

(2) The Court of Justice held in the Cowan(4) Case that, when Community law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. Measures to facilitate compensation to victims of crimes should form part of the realisation of this objective.

(3) At its meeting in Tampere on 15 and 16 October 1999 , the European Council 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.

(4) The Brussels European Council, meeting on 25 and 26 March 2004 , in the Declaration on Combating Terrorism, called for the adoption of this Directive before 1 May 2004 .

(5) On 15 March 2001 the Council adopted Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings.(5) This Decision, based on Title VI of the Treaty on the European Union, allows crime victims to claim compensation from the offender in the course of criminal proceedings.

(6) Crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Community the crime was committed

(7) This Directive sets up a system of cooperation to facilitate access to compensation to victims of

crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their respective territories. Therefore, a compensation mechanism should be in place in all Member States.

(8) Most Member States have already established such compensation schemes, some of them in fulfilment of their obligations under the European Convention of 24 November 1983 on the compensation of victims of violent crimes.

(9) Since the measures contained in this Directive are necessary in order to attain objectives of the Community and the Treaty provides for no powers other than those in Article 308 thereof for the adoption of this Directive, that Article should be applied.

(10) 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 prosecuted.

(11) 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.

(12) This system should ensure that crime victims could always turn to an authority in their Member State of residence and should ease any practical and linguistic difficulties that occur in a cross-border situation.

(13) The system should include the provisions necessary for allowing the crime victim to find the information needed to make the application and for allowing for efficient cooperation between the authorities involved.

(14) This Directive respects the fundamental rights and observes the principles reaffirmed in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.

(15) Since the objective of facilitating access to compensation to victims of crimes of cross-border situations cannot be sufficiently achieved by the Member States because of the cross-border elements and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(16) The measures necessary for the implementation of the Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission(6),

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### ACCESS TO COMPENSATION IN CROSS-BORDER SITUATIONS

#### Article 1

Right to submit an application in the Member State of residence

Member States shall ensure that where a violent intentional crime has been committed in a Member

State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.

## Article 2

### Responsibility for paying compensation

Compensation shall be paid by the competent authority of the Member State on whose territory the crime was committed.

## Article 3

### Responsible authorities and administrative procedures

1. Member States shall establish or designate one or several authorities or any other bodies, hereinafter referred to as «assisting authority or authorities» , to be responsible for applying Article 1.
2. Member States shall establish or designate one or several authorities or any other bodies to be responsible for deciding upon applications for compensation, hereinafter referred to as «deciding authority or authorities» .
3. Member States shall endeavour to keep to a minimum the administrative formalities required of an applicant for compensation.

## Article 4

### Information to potential applicants

Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation, by any means Member States deem appropriate.

## Article 5

### Assistance to the applicant

1. The assisting authority shall provide the applicant with the information referred to in Article 4 and the required application forms, on the basis of the manual drawn up in accordance with Article 13(2).
2. The assisting authority shall, upon the request of the applicant, provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required.
3. The assisting authority shall not make any assessment of the application.

## Article 6

### Transmission of applications

1. The assisting authority shall transmit the application and any supporting documentation as quickly as possible to the deciding authority.

2. The assisting authority shall transmit the application using the standard form referred to in Article 14.

3. The language of the application and any supporting documentation shall be determined in accordance with Article 11(1).

## Article 7

### Receipt of applications

Upon receipt of an application transmitted in accordance with Article 6, the deciding authority shall send the following information as soon as possible to the assisting authority and to the applicant:

- (a) the contact person or the department responsible for handling the matter;
- (b) an acknowledgement of receipt of the application;
- (c) if possible, an indication of the approximate time by which a decision on the application will be made.

## Article 8

### Requests for supplementary information

The assisting authority shall if necessary provide general guidance to the applicant in meeting any request for supplementary information from the deciding authority.

It shall upon the request of the applicant subsequently transmit it as soon as possible directly to the deciding authority, enclosing, where appropriate, a list of any supporting documentation transmitted.

## Article 9

### Hearing of the applicant

1. If the deciding authority decides, in accordance with the law of its Member State, to hear the applicant or any other person such as a witness or an expert, it may contact the assisting authority for the purpose of arranging for:

- (a) the person(s) to be heard directly by the deciding authority, in accordance with the law of its Member State, through the use in particular of telephone- or video-conferencing; or
- (b) the person(s) to be heard by the assisting authority, in accordance with the law of its Member State, which will subsequently transmit a report of the hearing to the deciding authority.

2. The direct hearing in accordance with paragraph 1(a) may only take place in cooperation with the assisting authority and on a voluntary basis without the possibility of coercive measures being imposed by the deciding authority.

## Article 10

### Communication of the decision

The deciding authority shall send the decision on the application for compensation, by using the

standard form referred to in Article 14, to the applicant and to the assisting authority, as soon as possible, in accordance with national law, after the decision has been taken.

## Article 11

### Other provisions

1. Information transmitted between the authorities pursuant to Articles 6 to 10 shall be expressed in:

(a) the official languages or one of the languages of the Member State of the authority to which the information is sent, which corresponds to one of the languages of the Community institutions; or

(b) another language of the Community institutions that that Member State has indicated it can accept;

with the exception of:

(i) 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;

(ii) reports drawn up following a hearing in accordance with Article 9(1)(b), where the use of languages shall be determined by the assisting authority, subject to the requirement that it corresponds to one of the languages of the Community institutions.

2. Services rendered by the assisting authority in accordance with Articles 1 to 10 shall not give rise to a claim for any reimbursement of charges or costs from the applicant or from the deciding authority.

3. Application forms and any other documentation transmitted in accordance with Articles 6 to 10 shall be exempted from authentication or any equivalent formality.

## CHAPTER II

### NATIONAL SCHEMES ON COMPENSATION

#### Article 12

1. The rules on access to compensation in cross-border situations drawn up by this Directive shall operate on the basis of Member States' schemes on compensation to victims of violent intentional crime committed in their respective territories.

2. All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.

## CHAPTER III

### IMPLEMENTING PROVISIONS

#### Article 13

Information to be sent to the Commission and the manual

1. Member States shall, no later than 1 July 2005 , send to the Commission details of:

(a) the list of authorities established or designated in accordance with Articles 3(1) and 3(2), including, where appropriate, information on the special and territorial jurisdiction of these authorities;

(b) the language(s) referred to in Article 11(1)(a) which the authorities can accept for the purpose of applying Articles 6 to 10 and the official language or languages other than its own which is or are acceptable to it for the transmission of applications in accordance with Article 11(1)(b).

(c) the information established in accordance with Article 4;

(d) the application forms for compensation;

Member States shall inform the Commission of any subsequent changes to this information.

2. The Commission shall, in cooperation with the Member States 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.

#### Article 14

##### Standard form for transmission of applications and decisions

Standard forms shall be established, at the latest by 31 October 2005 , for the transmission of applications and decisions in accordance with the procedure referred to in Article 15(2).

#### Article 15

##### Committee

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

3. The Committee shall adopt its Rules of Procedure.

#### Article 16

##### Central contact points

Member States shall appoint a central contact point for the purposes of:

(a) assisting with the implementation of Article 13(2);

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

(c) giving assistance and seeking solutions to any difficulties that may occur in the application of Articles 1 to 10.

The contact points shall meet regularly.

## Article 17

### More favourable provisions

This Directive shall not prevent Member States, in so far as such provisions are compatible with this Directive, from:

- (a) introducing or maintaining more favourable provisions for the benefit of victims of crime or any other persons affected by crime;
- (b) introducing or retaining provisions for the purpose of compensating victims of crime committed outside their territory, or any other person affected by such a crime, subject to any conditions that Member States may specify for that purpose.

## Article 18

### Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2006 at the latest, with the exception of Article 12(2), in which case the date of compliance shall be 1 July 2005 . They shall forthwith inform the Commission thereof.
2. Member States may provide that the measures necessary to comply with this Directive shall apply only to applicants whose injuries result from crimes committed after 30 June 2005 .
3. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.
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.

## Article 19

### Review

No later than by 1 January 2009 , the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive.

## Article 20

### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union .

## Article 21

### Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 2004 .

For the Council

The President

M. Mc Dowell

(1) OJ C 45 E, 25.2.2003, p. 69.

(2) Opinion delivered on 23 October 2003 (not yet published in the Official Journal).

(3) OJ C 95, 23.4.2003, p. 40.

(4) Case 186/87, European Court reports 1989, p. 195.

(5) OJ L 82, 22.3.2001, p. 1.

(6) OJ L 184, 17.7.1999, p. 23.