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**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**

{SEC(2004)102}

## **1. INTRODUCTION**

### **1.1. Background**

Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings<sup>1</sup> requires the European Commission to draw up a report on the measures taken by the Member States to comply with the Framework Decision.

Article 17 of the Framework Decision of 15 March 2001 requires the Member States to take the measures necessary to comply with it by:

- 22 March 2006 with regard to Article 10,
- 22 March 2004 with regard to Articles 5 and 6,
- 22 March 2002 with regard to the other provisions.

Article 18 requires the Member States, within the same time, to “forward to the General Secretariat of the Council and to the Commission the text of the provisions enacting into national law the requirements laid down by this Framework Decision”. The Council, within a year after each of these dates, is to evaluate the measures taken by the Member States to comply with the Framework Decision, on the basis of a report drawn up by the General Secretariat on the basis of information supplied by the Member States and a written report from the Commission.

However, on 22 March 2002, no Member States had notified the Commission of measures taken to transpose the Framework Decision. Only Sweden replied on 25 March 2002. On 31 December 2002, only nine Member States (Austria, Belgium, Finland, Germany, Ireland, the Netherlands, Portugal, Spain, Sweden) had done so.

As the value of this report largely depends on quality and timeliness of the national information sent to the Commission, a document drawn up on these bases would have been virtually meaningless. On 7 January 2003, the Commission accordingly sent reminders to all the Member States who had failed to fulfil their obligation. The report was therefore deferred until 25 March 2003. The Commission decided on this date on the basis of the deadline set by the Framework Decision and the reminder letters as the cut-off date for incorporating late answers from the Member States. This report, therefore, takes stock of the transposal situation on 25 March 2003. Some Member States supplied further information after that date. The Commission will take account of that in a supplementary report.

At the time of this report, only ten Member States (Austria, Belgium, Finland, Germany, Italy, Ireland, Luxembourg, Portugal, Spain, Sweden) had sent relatively complete contributions on the transposal of the Framework Decision in their national legislation. Denmark sent no contribution. Greece, by letter dated 20 January 2003, stated that a committee had been instructed to study and draw up the necessary implementation measures and was to finalise its work in the months ahead. France did not detail, Article by Article, the national measures implementing the Framework Decision. The Netherlands and the United Kingdom did not

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

attach to their reports the legal instruments transposing the Decision. The analysis which will follow can therefore only be fragmentary. But it did not seem right to delay it any longer.

One last point: the introduction to the United Kingdom report states that it covers England, Wales, Scotland and Northern Ireland, but the United Kingdom sent an additional contribution regarding the transposal of the Framework Decision in Scotland. The Scottish system is mentioned specifically where there is a difference from the general provisions for the rest of the United Kingdom.

## **1.2. Method and criteria for evaluating the Framework Decision**

### *1.2.1. Framework Decisions based on Article 34(2)(b) of the Treaty on European Union*

This Framework Decision is based on the Treaty on European Union (Union Treaty), and in particular Articles 31 and 34(2)(b).

The legal instrument most comparable with the Framework Decision is the Directive.<sup>2</sup> Both instruments are binding on the Member States as regards the result to be achieved, while leaving national authorities the choice of form and methods; Framework Decisions have no direct effect. But the Commission cannot - at least in the current state of development of European Union law - bring an action in the Court of Justice to force a Member State to transpose a Decision. However, the Court of Justice can hear a case concerning a disagreement between two Member States over the interpretation or implementation (which includes the transposal) of the Decision.<sup>3</sup> The possible exercise of this right of action requires a solid factual base, and the Commission report on the basis of the information supplied to it can help to constitute it.

### *1.2.2. Evaluation Criteria*

To determine objectively if a Framework Decision has been fully implemented by a Member State, certain general criteria drawn up for corresponding purposes in relation to Directives must be applied *mutatis mutandis* to Framework Decisions. The following criteria are specifically concerned:

- (a) the form and the means of transposal must be chosen in such a way that the Directive has the intended effect, given its object;<sup>4</sup>
- (b) each Member State must implement Directives in a manner fully corresponding to the legal safety requirement and consequently incorporate the provisions of a Directive in mandatory domestic provisions;<sup>5</sup>
- (c) transposition need not necessarily require enactment in precisely the same words in an express legal provision; the existence of general legal principles (arising, for example, from appropriate measures already into force) may

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<sup>2</sup> Article 249 of the EC Treaty.

<sup>3</sup> Article 35(7) of the Union Treaty.

<sup>4</sup> See case law concerning the implementation of Directives: Case 48/75 *Royer* [1976] ECR 497-518.

<sup>5</sup> See case law concerning the implementation of Directives: Case 239/85 *Commission v Belgium* [1986] ECR 3645; Case 300/81 *Commission v Italy* [1983] ECR 449-456.

suffice if they actually guarantee the full implementation of the Directive and create a sufficiently precise and clear legal situation;<sup>6</sup>

- (d) Directives must be implemented within the time allowed for the purpose.<sup>7</sup>

Both instruments are binding 'as to the results to be achieved'. It can be argued that the resultant *de jure* or *de facto* position must do justice to the interests that these instruments are to serve under the Treaty.<sup>8</sup>

The general evaluation provided for by Article 18 of the extent to which Member States comply with the Framework Decision must be based as far as possible on these criteria, subject to the differences pointed out above.

### 1.2.3. Context of evaluation

One point must be made regarding the nature of the field regulated by the Framework Decision, which refers to a definition of an overall status for the victims that raises and standardises the level of protection they enjoy. Although most systems appear to converge, there are always differences between the legal orders of the Member States and therefore the insertion of the provisions concerning the victims' statute takes account of the specific features of each of them. In addition, the formulation of the Framework Decision leaves the Member States with considerable room for manoeuvre in transposing it. That is why the evaluation of the extent to which Member States have adopted the rules necessary to comply with the Framework Decision on these points of general criminal law duly reflects the general criminal-law framework in the Member States.

## 1.3. General objective of the Framework Decision

In accordance with the conclusions of the Tampere European Council of 15 and 16 October 1999, the general objective of the Framework Decision of 15 March 2001 is to establish and guarantee victims throughout the European Union a comparable high level of protection, irrespective of the Member State in which they are present. Member States should approximate their laws and regulations to the extent necessary to attain this objective,<sup>9</sup> with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.<sup>10</sup> The provisions of this framework Decision are therefore not confined to attending to the victim's interests under criminal proceedings proper. They also cover certain measures to assist victims before or after criminal proceedings, which might mitigate the effects of the crime.<sup>11</sup>

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<sup>6</sup> See case law concerning the implementation of Directives: Case 29/84 *Commission v Germany* [1985] ECR, 1661-1673.

<sup>7</sup> See case law concerning more specifically the implementation of Directives: Case 52/75 *Commission v Italy* [1976] ECR 277284; and, in general, the annual Commission reports on monitoring the application of Community law: COM (2001) 309 final, for example.

<sup>8</sup> PJG Kapteyn and P. Verloren Van Themaat, *Introduction to the Law of the European Communities*, third edition, 1998, p. 328.

<sup>9</sup> Recital 4 to the Council Framework Decision of 15 March 2001.

<sup>10</sup> Recital 3 to the Council Framework Decision of 15 March 2001.

<sup>11</sup> Recital 6 to the Council Framework Decision of 15 March 2001.

The rules and practices as regards the standing and main rights of victims therefore need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.<sup>12</sup>

But the Framework Decision does not impose an obligation on Member States to ensure that victims will be treated in a manner equivalent to that of a party to proceedings.<sup>13</sup>

#### **1.4. General objective of this report**

This report must enable the Council to evaluate the extent to which Member States have adopted the rules necessary to conform to the Framework Decision.

## **2. ANALYSIS OF NATIONAL MEASURES TO IMPLEMENT THE DECISION, ARTICLE BY ARTICLE**

The following analysis is based on the measures notified by the Member States (see **table attached** to this report):

### **Article 1: Definitions**

Only Finland, Italy, the United Kingdom and Sweden made this first Article their concern. Italy asserts that a list of definitions does not have to be transposed into national law. But the aim of a Framework Decision being to approximate the statutory and secondary provisions of the Member States, these need to have the same terminological basis, since otherwise the effectiveness of the Framework Decision is likely to be affected. However, a review of the national provisions that were notified did not reveal terminological differences having this effect. The United Kingdom drew up a broad definition of “victim” which includes the victim, his parents, his guardian if any and, in the event of murder, the victim's close friends. This definition does not pose problems of conformity since it satisfies the minimum requirements of the definition of the term “victim” in the Framework Decision. Moreover, Article 8(2) of the Framework Decision extends to measures to protect the privacy and photographic image of victims and their families or persons in a similar position.

### **Article 2: Respect and recognition**

**Article 2(1)** of the Framework Decision follows up the eighth recital, which reads “The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity”. This provision announces the general aim of the authors of the Decision of ensuring a real status for victims in criminal proceedings.

Certain Member States (Austria, Belgium, France, Finland, Germany, Italy, Luxembourg, Portugal, Sweden) referred explicitly to Article 2(1). But in view of the primarily declaratory function of this paragraph, a Member State can be held to have granted a genuine status to victims as required by the Framework Decision only if it has properly transposed all the

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<sup>12</sup> Recital 8 to the Council Framework Decision of 15 March 2001.

<sup>13</sup> Recital 9 to the Council Framework Decision of 15 March 2001.

Articles of the Framework Decision. The fact remains that, as the following analysis will show, no Member State can claim to have transposed all the obligations arising from the Framework Decision.

**Article 2(2)** concerns “particularly vulnerable” victims, whom Member States must assure of “specific treatment best suited to their circumstances”.

Firstly, and generally, the scope of the notified measures differs according to the point of view adopted regarding the definition - non-existent in the Framework Decision - of “particularly vulnerable” victims.

- Some Member States, such as France, the United Kingdom and Italy, especially protect certain persons considered vulnerable owing to their physical or mental fragility (minors and the physically disabled).
- Others, such as Spain, the Netherlands and Finland, focus rather on the situations which can create vulnerability (family violence, terrorism).
- Yet others chose broader protection, covering all types of person and situation. For example, Germany envisages recording the victim's testimony if it is proved that he will not be able to face a public hearing but his contribution is needed to elucidate the truth.

Likewise, the means implemented to protect these particularly vulnerable victims differ: while the audio or audio-visual recording of the victim's hearing is found several times (Luxembourg, Germany, Austria, Belgium, United Kingdom),<sup>14</sup> Spain and Finland mentioned only the existence of financial support for these victims.

More specifically, the answers received from certain Member States call for the following comments:

Greece notified no provisions transposing Article 2(2) of the Framework Decision.

The Irish Department of Justice has published a Victims' Charter describing the criminal justice system from the perspective of a crime victim. But the Charter explicitly states that it is intended as a guide only and does not purport either to interpret the legislation it refers to or to confer legal rights.<sup>15</sup> Moreover, section 3(5) of the Act of 1996 refers only to the victims of domestic violence, leaving numerous other categories of vulnerable persons without suitable protection.

Transposal in France, according to the documents received by the Commission, concerns only the protection of information concerning the minors.

Lastly, the United Kingdom does not seem especially sensitive to particularly vulnerable victims except in Scotland, where measures to look after them and protect them from the various pressures generated by the criminal procedure are mentioned. But the legislation for Scotland is not yet in force: the Sexual Offences (Procedure and Evidence) (Scotland) Act is awaiting Royal Assent. It would be helpful to be kept up to date on the legal status of these measures. Moreover, for the other measures taken to protect these victims, such as the introduction of specialised departments in the police, no legislative basis is indicated.

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<sup>14</sup> On the audio or audio-visual recording of the victims' hearing, see comments on Article 8(4).

<sup>15</sup> Page 5 of the Victims' Charter.

Therefore, even if particularly vulnerable victims are properly protected in most Member States, there are doubts about the mandatory nature of some of the measures taken.

### **Article 3: Hearings, and provision of evidence**

#### ***Article 3(1): Hearing the victims***

Regarding measures to guarantee victims the possibility of being heard in the proceedings:

- Most countries (Austria, Belgium, Finland, France, Germany, Italy, Luxembourg, Netherlands, Portugal, Spain) allow victims to bring *partie civile* proceedings. This is an integral part of the criminal proceedings and the victim enjoys a number of rights, such as the right to call witnesses (in particular France, Finland and Luxembourg).
- Likewise, the presentation of written reports is a common technique in the Member States enabling the victim to set forth his claim more fully.
- But, certain Member States have not provided full information on this point of the Framework Decision. As the table shows, transposal provisions were not notified by Denmark, Finland, Germany or Greece, or were incomplete in the case of Ireland, France and the United Kingdom.

#### ***Article 3(1): Evidence***

On the whole victims have the possibility of giving evidence in the proceedings in most Member States. However, the following comments can be made:

Five countries did not notify transposal provisions (Denmark, Finland, Greece, Netherlands, United Kingdom). In Ireland, Sweden and Italy, the possibility for the victim of proving his claims is provided for, but it is regrettable that there is no reference in the documents provided to the victim's right to ask that the formalities needed to investigate the criminal acts be carried out. This possibility offers real protection for the victim's interests: it exists in Belgium, France, Luxembourg and Spain.

#### ***Article 3(2): Questioning victims***

With regard to the questioning of victims, only six Member States (Austria, Finland, Italy, Luxembourg, Spain, Sweden) notified national rules transposing Article 3(2) of the Framework Decision properly. Denmark, France, Germany, Greece, Portugal and the United Kingdom (except Scotland) did not notify provisions transposing this Article.

Scotland, apart from the Sexual Offences (Procedure and Evidence) (Scotland) Act, not yet in force at the time of the report, reports measures which, although relevant, have no solid legal basis: there are doubts as to about the real mandatory status of the Law Society of Scotland's guidelines.

In conclusion, the possibility for the victim of being heard during the procedure and providing evidence largely depends on its status as party to the proceedings. Once again, one can only deplore the incomplete implementation of this Article, especially the second paragraph.

## **Article 4: Right to receive information**

### ***Article 4(1): Right to receive information, in particular at the beginning of criminal proceedings***

The first paragraph of Article 4 deals with the victims' right to receive information, "in particular ... as from their first contact with law enforcement agencies".

Concerning this provision, the Member States fall into four different categories:

1. Certain Member States (Austria, Belgium, Finland, Germany, Ireland, Netherlands and United Kingdom (Scotland)) transposed this obligation by posting the requisite information on the websites of the relevant agencies and/or by creating information booklets. But this does not fulfil completely the obligations imposed by Article 4 (1). Two comments are called for here:

First of all, while Article 4(1) of the Framework Decision leaves the Member States free to choose all the means that they consider suitable for access to relevant information, it must be remembered that the provisions of Framework Decisions bind the Member States as to the result to be achieved. According to Article 4(1), which is entitled "Right to receive information", "Each Member State shall ensure that victims in particular have access ... to information of relevance for the protection of their interests." This means that Member States must take the necessary measures to oblige their authorities to transmit this information to victims of their own motion. But in this case, the aim described by Article 4(1), i.e. obtaining information as from the first contact with the enforcement authorities, is not achieved by simply issuing information booklets or setting up websites, without the authorities actively providing individual victims with information. For example, the information provided does not make it possible to know how the Irish Victims' Charter is distributed and whether it truly reaches its target audience.

In addition, while our societies are increasingly mediatised and the Internet is in common use, it is legitimate to ask whether everybody is in a position to seek this information on the Internet: this would assume knowing that the information is available and that everyone has access to a computer, which is far from being the case of all victims. In addition, what guarantee is there that the person truly understood the information made available?

Italy and the United Kingdom gave insufficient guarantees on the matter, since authorities are under no obligation to provide victims with relevant information.

However, Scotland has set up websites and published various information booklets.

The measures notified by Portugal do not transpose correctly Article 4(1) as they do not oblige the national authorities to transmit the information required under Article 4(1) to victims of their own motion. Moreover, Council of Ministers Resolution No 6/99 is only valid for a period of two years from 1 January 1999.

2. Other Member States (France, Luxembourg, Spain) have adopted a different system, certainly more in line with the objective pursued by Article 4(1) of the Framework Decision. There is an obligation on those involved in the criminal procedure, such as senior criminal investigation officers or the prosecutor, to inform victims of their

rights and possibilities of action. A simple remark is necessary here: the provisions referred to in Luxembourg are all contained in a Bill which may or may not have passed into law.

3. Denmark and Greece did not notify provisions transposing this Article.

Lastly, two other weaknesses in the incorporation of Article 4(1) should be noted in all the Member States. The first concerns the problem of languages. The Framework Decision states that information should be given “as far as possible in languages commonly understood”. But while certain Member States, such as Germany, the United Kingdom (Scotland), the Netherlands and Finland, have information available in several languages (English among them), most of the other Member States are silent on this aspect of the question. The second gap concerns Article 4(1)(h), which was simply ignored by all the Member States except the United Kingdom (Scotland), which has a telephone link making it possible to reach interpreters directly.

***Article 4(2): Right to receive information concerning the conduct of the proceedings***

By and large this Article was correctly transposed by most of the Member States (except Denmark, Greece, and the United Kingdom): victims do indeed have the possibility of knowing the outcome of their case in the courts.

But there are still certain weaknesses in the national systems.

With regard to Article 4(2)(c) concerning information on the sentence, France indicates no such information in the documents provided. Italy notifies the courts' decision only to victims who have brought *partie civile* proceedings. Finland appears to have integrated obligation (c) in its national system but provided no legislative basis. Sections 86, 89, 90, 313(2), 321 and 372 (4) of the Portuguese Code of Criminal Procedure guarantee that the victim can obtain information, but they do not ensure that the victim is informed actively by the national authority if he “expressed a wish to this effect”.

Lastly, two remarks which were made previously can be reiterated here. The transposal of obligations (a) and (b) is envisaged in a Luxembourg Bill, and it would be helpful to know if it has passed into law. The only legal basis of the information given by Ireland is the Victims' Charter, which regrettably lacks mandatory status; moreover, communication of the information specified in Article 4(2) will only be taken into account at the time of a forthcoming review of the Charter.

***Article 4(3): Right to receive information concerning the release of the author***

Only Finland correctly transposed the obligation to inform the victim of the release of the accused or convicted offender.

- Ireland's Victims' Charter states that the victim will be informed when the offender is released. But if this is not done, the victim can only write to the Garda Victim Liaison Officer or the local Superintendent, who will reply within twenty-one days. Thus this measure has little in the way of mandatory status.
- Italy states that “the measures provided for by this provision do not exist in the Italian legal order”.

- The rules in force in the United Kingdom have two weaknesses. For one thing, the Criminal Justice and Court Service Act 2000 requires the victim to be informed of plans to release the offender and of the conditions or requirements to which the offender is to be subject on his release. But this applies only where the offender was sentenced to more than 12 months for a sexual or violent offence. For another, the specific legal system of Scotland provides for the victim to be informed of his aggressor's release but the mandatory status of the instrument is dubious, all the more so as it is stated that the system is soon to be made statutory. Moreover, information on release on parole is simply guaranteed by the "current practice" of the police.
- Luxembourg mentions no transposal measure on this subject, so that it cannot be ascertained whether provisions have been adopted.
- France and Spain are content to state that work is in hand.
- Portugal acknowledges that it has not yet implemented Article 4(3) of the Framework Decision.
- The transposal provisions notified by Sweden (section 13 of the Code of Preliminary Investigations (1947:948)) concern only the situation before the beginning of the criminal procedure. With regard to the time of the release of the accused or the convicted offender, no transposal provisions have been notified.
- Denmark, Germany, Greece and the Netherlands did not notify provisions transposing this Article.

***Article 4(4): Right not to receive information***

The Member States took very little action on this provision. Only Finland fully transposed it. Elsewhere, the picture is not too good:

- In their reports, Spain and Italy state simply that there is currently no provision to this effect in their legal orders.
- Austria, Denmark, the United Kingdom, Germany, France, Greece, the Netherlands, Luxembourg and Sweden did not notify provisions transposing this Article.
- With regard to Ireland, where provision of the information to which Article 4(3) applies is optional, the problem of the mandatory status of the Victims' Charter arises again. The transposal in Ireland cannot be considered fully satisfactory.
- The transposal provisions notified by Portugal (sections 89, 90, 277(3), 283(5) and 313(3) of the Code of Criminal Procedure) do not transpose Article 4(4) of the Framework Decision because they do not guarantee the victim the right not to receive the information in question.
- Belgium integrated this provision in only a fragmentary manner, since it provides only for notification of information concerning the release of the offender on parole.

Analysis of the transposal of Article 4 of the Framework Decision prompts the following conclusion:

- Member States must be more proactive and reach out to victims. Thus booklets and websites do not make it possible truly to guarantee that victims will have access to relevant information for the protection of their interests.
- Regarding Article 4(3) and (4), one can only regret the partial and sometimes non mandatory transposal measures.

### **Article 7: Victims' expenses with respect to criminal proceedings**

It is to be regretted that, in the documents provided, only six Member States (Austria, Germany, Italy, Portugal, Spain and Sweden) took account of the distinction made by the Framework Decision between the victim as party and the victim as witness. Depending on the category under consideration, the type of aid required will not be the same: if the victim as witness mainly needs to have his transport costs refunded, the victim as party will initially be concerned to have his lawyer's fees met.

If the victim brings *partie civile* proceedings, all the Member States except Ireland, the United Kingdom, the Netherlands and Belgium provide for the possibility of meeting lawyers' expenses. In legislation enacted on 9 September 2002, France even excluded the resource concept from the conditions for access to judicial aid for certain offences considered particularly serious.

Italy and Luxembourg (in its Bill) stipulate that the victim's lawyer's expenses can only be charged to the offender. But there are doubts as to the real effectiveness of such a measure, given that the offender might be insolvent.

In conclusion, while Article 7 leaves the Member States with a degree of latitude allowing differentiated transposal depending whether the victim is party or a witness, the refunding of the expenses of the victim as party is unreliable where it is not covered by the state in the event of the offender's insolvency.

### **Article 8: Right to protection**

#### ***Article 8(1) and (2): Safety and privacy***

Incorporation of the first two paragraphs of Article 8 of the Framework Decision in national law will be examined together, since they deal with the same subject-matter. As the Finnish answer stresses, “paragraph 1 contains the general provision for the obligation to assure the victim and his family of an adequate level of protection as regards safety and privacy. This obligation is spelled out in paragraph 2 with regard to the protection of privacy in criminal proceedings”.

1. The obligation to ensure the safety of threatened victims and their family seems to have been transposed by Austria, Belgium, Finland, Germany, Portugal, the Netherlands, Spain and Sweden.

It should be remembered in the context of Article 8 (1) of the Framework Decision and the objective to be reached (“suitable level of protection ... particularly as regards their safety”) that Framework Decisions are binding on the Member States as to the result to be achieved but leave to the national authorities the choice of form and methods (Article 34(2)(b) of the Union Treaty). Here, the “suitable level of protection ... particularly as regards their safety” comprises several very different

elements or sub-objectives (for example the physical protection of the victim as witness, the confidentiality of evidence, the various procedures for questioning the victim as witness, the absence of the accused during questioning etc.) and Article 8(1) leaves the Member States with a degree of latitude as to the choice of these elements or sub-objectives.

But the transposal of this provision prompts the following objections:

- France incorporated a new section 434-5 in the Criminal Code, providing that “any threat or other measure of intimidation with regard to any person, made with a view to persuading the victim of a criminal offence to refrain from filing a complaint or to withdraw a complaint already made shall be punishable by imprisonment for a term of three years or by a fine of €45 000”. But this offence protects only the victim himself and not his family, as Article 8(1) of the Framework Decision requires however. France did not notify provisions transposing the other aspects of Article 8(1).
  - In Ireland, as already pointed out, the obligation to protect the victim is present only in the Victims' Charter, whose mandatory nature is open to doubt.
  - Luxembourg included this obligation in its Bill: it would be helpful to know when that will be passed into law.
2. With regard to the **protection of victims' privacy**, Member States all mentioned the possibility of ordering that proceedings be *in camera*. But certain reservations can be expressed on this subject:
- First, it is regrettable that certain countries, such as Ireland or Germany, did not notify provisions enabling them to penalise dissemination of information concerning victims, or at least the most vulnerable categories of them.
  - Second, the protection of the privacy of the victim's family is mentioned explicitly only by Finland, but the text of the Transparency of Public Authorities Act was not notified.
3. The fact that the vast majority of the Member States did not supply information on the **protection of the photographic image** mentioned in Article 8(2) must be deplored. Only Austria, France, Germany and Portugal notified provisions in conformity with the Framework Decision.

Denmark and Greece did not notify any provisions fully transposing paragraphs 1 and 2.

### ***Article 8(3): Separate waiting areas for the victims***

Only Germany has transposed this requirement of the Framework Decision correctly. Belgium, Denmark, France, Finland, Greece, Ireland, Luxembourg, the Netherlands and the United Kingdom have not notified provisions fully transposing this Article. Austria, Portugal and Sweden have not notified transposal provisions for the creation of separate waiting areas. Spain took Article 8(3) of the Framework Decision into account only partially since the provision of separate buildings applies only to the victims as witnesses. For Finland, Ireland, Luxembourg and - in part - Sweden, incorporation is said to exist in practice. The problem is

that no national legislation clearly provides for a victim's right to avoid contact with the offender.

***Article 8(4): Rules of evidence adapted to the situation of particularly vulnerable victims***

This concern for witnesses' protection was already found in the Council Resolution of 23 November 1995.<sup>16</sup> Most of the Member States have transposed Article 8(4), in particular by establishing the possibility for victims of testifying by audio-visual link-up or by preserving the anonymity of certain witnesses considered particularly vulnerable.

Denmark, France and Greece did not notify transposal provisions on this point.

Finland mentions protective measures for minors. But they are included in a Bill which may or may not have been passed into law.

The United Kingdom applies certain measures to the Crown Court, such as the use of screens around the witness stand; proceedings for sexual offences and intimidation offences *in camera*; audio-visual link-ups and the removal of wigs and robes. But the application of these measures to the Magistrates' Court is confined to the use of audio-visual link-ups.

In conclusion, the transposal of Article 8 remains highly fragmentary. Only the transposal of Article 8(4) is satisfactory. On the other hand, the obligation to protect the victims' privacy and safety under Article 8(1) and 8(2) was not fully acted on in all the Member States. Regarding the adoption of separate waiting areas for victims, most of the Member States merely state that they exist in practice while other countries supplied no information.

**Article 9: Right to compensation in the course of criminal proceedings**

***Article 9(1): Right to compensation in the course of criminal proceedings***

Most of the Member States considered that paragraph 1 could be transposed by means of *partie civile* proceedings joined to criminal proceedings, so that the procedure is more rapid. Ireland mentions no mechanism of this kind but only compensation schemes for certain categories of victim. Denmark, Greece and the United Kingdom notified no transposal provisions. Certain Member States, such as Germany, France, Belgium, Spain and Sweden, provide for certain categories of victims to be compensated by the state. But such measures do not actually transpose Article 9(1), unless they are considered to be among the exceptions permitted by the final sentence of this paragraph.

***Article 9(2): Measures to encourage the offender to provide adequate compensation to victims***

With regard to Article 9(2), seven Member States (Austria, France, Germany, Italy, Ireland, the Netherlands, Spain) notified provisions encouraging the offender to provide adequate compensation to the victim. Finland claims to have transposed this obligation, but does not cite any legislation in its report. Luxembourg states that there is a Bill, in which release on bail or parole would be subject to provision of a security guaranteeing in particular compensation for the damage caused to the victim, and his expenses. Release on bail or parole could be accompanied by special conditions, in particular in consideration of the behaviour of the offender with respect to the victim. Belgian law has no rule on this subject. Denmark,

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<sup>16</sup> Resolution of the Council of 23 November 1995 on the protection of witnesses in the fight against international organized crime, *OJ C 327*, 7.12.1995, p. 5.

Greece and the United Kingdom notified no transposal provision, though in Scotland, it seems that it is possible to check that the offender has paid compensation.

***Article 9(3): Return of assets belonging to the victim***

Article 9(3) provides for an obligation to return assets to the victim if they were seized during the procedure. Most of the Member States (Austria, Belgium, Finland, Italy, the Netherlands, Luxembourg, Portugal, Sweden) have introduced this obligation. Denmark, France, Germany, Greece and Spain did not notify transposal provisions. Ireland and the United Kingdom state that this obligation is probably fulfilled in practice, although they notified no legislation providing a basis for such an obligation.

Subject to checking with the Member States which did not provide sufficient information, Article 9(1) has by and large been put into effect. But it is to be regretted that overall the transposal of the subsequent paragraphs of Article 9 is very partial and proven by less than half the Member States.

**Article 11: Victims residing in another Member State**

***Article 11(1): Victims residing in another Member State***

Austria, Belgium, Denmark, Germany, Greece, Luxembourg, the Netherlands and Sweden did not notify provisions transposing the possibility of making a statement immediately after the offence was committed, though their legislation seems to allow an immediate statement. Spain acknowledges that it has introduced no new provisions into its national legislation, while France provides no document. The Netherlands, Luxembourg, Sweden and the United Kingdom describe their complaints system, but do not specify the legislative sources.

With regard to the provisions concerning video-conferencing and teleconferencing, the EU Convention on mutual judicial assistance in criminal matters of 29 May 2000 has so far been ratified only by Portugal and Spain and is not yet in force.<sup>17</sup> Several Member States have nevertheless made the effort to transpose Articles 10 and 11 of the Convention of 29 May 2000 (Austria, Belgium, Finland, Germany, Ireland, Italy, Portugal, Spain, Sweden, the United Kingdom). But the reports from Germany, France, Luxembourg and the Netherlands remain incomplete. Denmark and Greece have not notified transposal provisions.

***Article 11(2): Possibility of making a complaint in the state of the victim's residence***

The state of transposal of Article 11(2) of the Framework Decision is highly unsatisfactory: France, Italy, Portugal, Spain and Sweden have not transposed it. Austria, Belgium, Denmark, Germany, Greece, the Netherlands and Sweden have not notified transposal provisions. Several countries (Belgium, Ireland, the Netherlands) seem to accept the complaints and transmit them if necessary to the country where the offence was committed, though there is no reference to the precise legal basis. Only Luxembourg and Finland seem to have transposed this paragraph properly.

It is clear that this Article contains important provisions which have hardly been implemented.

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<sup>17</sup> See Article 27 of the Convention of 29 May 2000.

## **Article 12: Cooperation between Member States**

Most of the Member States simply refer to the conventional networks of victim support organisations and Community initiatives in this field. Apart from Portugal, no country cited legislation. Belgium mentioned its initiative for the adoption of a Council Decision setting up a European network of national contact points for restorative justice. This initiative is more appropriate to Article 10 of the Framework Decision of 15 March 2001 and is therefore somewhat irrelevant to Article 12. In addition, this initiative cannot serve as a national provision transposing a European Union instrument. The United Kingdom refers to its financing of Victim Support, being a member of the European Forum for victim-offender mediation. But France and Italy mentioned nothing in relation to cooperation between Member States. Lastly, Finland argued that the transposal of this Article does not require legislation.

In conclusion, if it is true that this Article leaves the Member States with considerable room for manoeuvre and does not necessarily impose an obligation to legislate, it does require Member States to take more than a passive attitude.

## **Article 13: Specialist services and victim support organisations**

Article 13 deals with the initial reception of victims and victim support and assistance thereafter. Apart from Denmark and Greece (which did not supply substantial information in this respect) and Italy (which has not transposed this provision), the other Member States generally state that there is a victim support service financed by the state which provides the public with information, guidance and support as regards their rights. But only Austria, France (paragraph 1), Portugal and Sweden notified relevant national provisions on the various functions that these associations can fill, and in particular on the possibility of victim support after the criminal procedure.

Spain and to some extent France refer to existing national laws without further particulars, and it is consequently not possible to check if all were transposed. Belgium specifies certain transposal provisions but did not append them. The United Kingdom (Scotland) notes that the executive subsidises victim and witness support associations and describes their functions but gives no legislative basis.

In conclusion, as for other Articles, the transposal measures were not provided sufficiently by the various Member States.

## **Article 14: Training for personnel involved in proceedings or otherwise in contact with victims**

Portugal and Sweden are the only countries to have transposed both paragraphs of this Article. Most other countries, except Denmark, Italy and Greece (which did not supply substantial information), are content to refer to certain bodies tasked with providing vocational training for relevant personnel. It is not always clear if these bodies are also financed by the Member State, as Article 14 prescribes. In addition, the description of these programmes in the national reports is too vague and does not concentrate on the training aspect. The transposal provision notified by Austria does not transpose Article 14 of the Framework Decision because it does not address the issue of training for personnel here.

### **Article 15: Practical conditions regarding the position of victims in proceedings**

Two Member States only (Austria and Spain) have taken the necessary measures to comply with this Article.

The other Member States, except for Denmark, Italy and Greece (which did not supply information), claim to have introduced the necessary measures, although the description of the measures is too vague and not very satisfactory. Belgium acknowledges that it has not transposed the Article.

Concerning paragraph 2, Member States - except Denmark, Italy and Greece (which did not supply information) and Sweden - refer simply to the first paragraph. Sweden states that most police departments have a separate hearing room for children; for other categories of victims, work is in hand so that suitable conditions exist in all the other places by March 2005.

### **Article 16: Territorial scope**

This provision stipulates that the Framework Decision applies to Gibraltar. The United Kingdom has not provided information making it possible to conclude that this provision was transposed.

## **3. GENERAL CONCLUSIONS**

In conclusion, having regard to the absent or incomplete contributions from some of the Member States, the Commission could acquire only a superficial impression of the state of transposal of this Framework Decision. But this superficial impression does make it possible to conclude that the current state of transposal of the Decision is unsatisfactory.

a. In detail, the situation regarding transposal, article by article, at the reference date of 25 March 2003 is as follows:

#### **Article 1**

Only Finland, Italy, the United Kingdom and Sweden dealt with this first Article. Italy asserts that a list of definitions does not have to be transposed into national law. However, the aim of a Framework Decision being to approximate the statutory and secondary provisions of the Member States, these need to have the same terminological basis, since otherwise the effectiveness and uniformity of application of the Framework Decision is likely to be affected. However, a review of the national provisions that were notified did not reveal terminological differences having this effect.

#### **Article 2**

In view of the essentially declaratory function of the **first paragraph**, a Member State can be held to have granted a genuine status to victims as required by the Framework Decision only if it has properly transposed all the Articles of the Framework Decision. However, no Member State can claim to have transposed all the obligations arising from the Framework Decision and no Member State has correctly transposed the first paragraph of Article 2.

The scope of the notified measures for the **second paragraph** differs according to the point of view adopted regarding the definition - non-existent in the Framework Decision - of "particularly vulnerable" victims. Likewise, the means implemented to protect these

particularly vulnerable victims differ: while the audio or audio-visual recording of the victim's testimony is found several times (Luxembourg, Germany, Austria, Belgium, United Kingdom), Spain and Finland mentioned only the existence of financial support for these victims. With the following reservations, particularly vulnerable victims can be said to be properly protected in most Member States. Denmark and Greece had not notified provisions transposing this Article by the deadline (25 March 2003). Transposal in France, according to the documents received by the Commission, relates only to the protection of information concerning minors. There are doubts about the mandatory nature of the measures taken by Ireland. Transposal by the United Kingdom is incomplete and, particularly in the case of Scotland, the legislative measures mentioned are not yet in force.

### **Article 3(1)**

Most countries (Austria, Belgium, Finland, France, Germany, Italy, Luxembourg, Netherlands, Portugal, Spain) allow victims to bring *partie civile* proceedings. This gives the victim a number of rights, such as the right to call witnesses (in particular France, Finland and Luxembourg). However, certain Member States (Denmark, Finland, France, Germany, Greece, Ireland and the United Kingdom) have not provided full information on this point of the Framework Decision.

On the whole, victims have the possibility of giving evidence in the proceedings in most Member States. Five countries did not notify transposal provisions (Denmark, Finland, Greece, Netherlands, United Kingdom). In Ireland, Sweden and Italy, the possibility for the victim of proving his claims is provided for, but it is regrettable that there is no reference in the documents submitted to the victim's right to ask that the formalities needed to investigate the criminal acts be carried out. This possibility offers real protection for the victim's interests: it exists in Belgium, France, Luxembourg and Spain.

### **Article 3(2)**

Only six Member States (Austria, Finland, Italy, Luxembourg, Spain, Sweden) notified national rules transposing Article 3(2) of the Framework Decision properly. Denmark, France, Germany, Greece and Portugal did not notify provisions transposing this Article. The United Kingdom reported only the Sexual Offences (Procedure and Evidence) (Scotland) Act, which was not yet in force at the time of the deadline, and other measures which, although relevant, give rise to doubts as to the real mandatory status of the guidelines.

### **Article 4(1)**

Certain Member States (Austria, Belgium, Finland, Germany, Ireland, Netherlands and United Kingdom (Scotland)) transposed the obligations under Article 4(1) by posting the requisite information on the websites of the relevant agencies and/or by creating information booklets. This does not fulfil the obligations imposed by Article 4(1), since Member States must take the necessary measures to oblige their authorities to transmit this information to victims of their own motion. France and Spain have adopted a different system, certainly more in line with the objective pursued by Article 4(1) of the Framework Decision. There is an obligation on those involved in the criminal procedure, such as senior criminal investigation officers or the prosecutor, to inform victims of their rights and possibilities of action. Luxembourg has notified a Bill only. The measures notified by Portugal do not transpose correctly as they do not oblige the national authorities to transmit the information required under Article 4(1) to victims of their own motion. Moreover, the Council of Ministers' Resolution No 6/99 is only valid for a period of two years from 1 January 1999.

On the question of languages, while certain Member States, such as Germany, the United Kingdom (Scotland), the Netherlands and Finland, have information available in several languages (English among them), most of the other Member States are silent on this aspect of the question. The second gap concerns Article 4(1)(h), which was simply ignored by all the Member States except the United Kingdom (Scotland).

#### **Article 4(2)**

This Article was correctly transposed by most of the Member States (except Denmark, Greece, and the United Kingdom). With regard to Article 4(2)(c) concerning information on the sentence, France indicates no such information in the documents provided. Italy notifies the courts' decision only to victims who have brought *partie civile* proceedings. Finland appears to have integrated obligation (c) in its national system but provided no legislative basis. The mandatory nature of the measures taken by Ireland does not seem to be guaranteed. The sections of the Portuguese Code of Criminal Procedure notified guarantee that the victim can obtain information, but they do not ensure that the victim is informed actively by the national authority if he “expressed a wish to this effect”. The transposal of obligations (a) and (b) is envisaged in a Luxembourg Bill but the Commission does not know whether it has passed into law.

#### **Article 4(3)**

Only Finland has transposed this provision correctly. France and Spain state that work is in hand. Ireland's transposal measures lack mandatory status. Italy states that “the measures provided for by this provision do not exist in the Italian legal order”. Luxembourg mentions no transposal measure on this subject. Portugal acknowledges that it has not yet implemented Article 4(3) of the Framework Decision. The transposal provisions notified by Sweden concern only the situation before the beginning of the criminal proceedings. With regard to the time of the release of the accused or the convicted offender, no transposal provisions have been notified. The rules in force in the United Kingdom are distinctive in two ways: provision is made for the victim to be informed only where the offender was sentenced to more than 12 months for a sexual or violent offence and, secondly, the specific legal system of Scotland which provides for the victim to be informed of his aggressor's release is simply guaranteed by the “current practice” of the police. Denmark, Germany, Greece and the Netherlands did not notify provisions transposing this Article.

#### **Article 4(4)**

Only Finland has transposed this provision correctly. In their reports, Spain and Italy state simply that there is currently no provision to this effect in their legal orders. Austria, Denmark, the United Kingdom, Germany, France, Greece, the Netherlands, Luxembourg and Sweden did not notify provisions transposing this Article. In the case of Ireland, the problem of the mandatory status of the Victims' Charter arises again. The transposal provisions notified by Portugal do not transpose Article 4(4) of the Framework Decision because they do not guarantee the victim the right not to receive the information in question. Belgium integrated this provision in a fragmentary manner, since it provides only for notification of information concerning the release of the offender on parole.

#### **Article 7**

Only Austria, Germany, Italy, Portugal, Spain and Sweden took account of the distinction made by the Framework Decision between the victim as party and the victim as witness. Most

Member States (with the exception of Belgium, Ireland, the Netherlands and the United Kingdom) provide for the possibility of meeting lawyers' expenses if the victim brings *partie civile* proceedings. Under Italian law and the Luxembourg Bill, the victim's lawyer's expenses can only be charged to the offender. This could create problems if the offender is insolvent.

## **Article 8**

The obligation to ensure the safety of victims and their family seems to have been transposed by Austria, Belgium, Finland, Germany, Portugal, the Netherlands, Spain and Sweden. France would appear to have taken measures to protect the victim but not his family; it has not notified provisions transposing the other aspects of Article 8(1). Ireland has transposed Article 8(1) in its Victims' Charter, whose mandatory nature is in question, while Luxembourg has included this obligation in its Bill, which has not yet been adopted. With regard to the protection of victims' privacy, Member States all mentioned the possibility of ordering that proceedings be *in camera*. Certain countries, such as Ireland or Germany, did not notify provisions enabling them to penalise dissemination of information concerning victims, or at least the most vulnerable categories of victim, and the protection of the privacy of the victim's family is mentioned explicitly only by Finland, although the relevant text was not notified. The vast majority of the Member States (with the exception of Austria, France, Germany and Portugal) did not supply information on the protection of the photographic image. Denmark and Greece did not provide information on the transposal of paragraphs 1 and 2.

Only Germany, Italy and Spain notified provisions transposing Article 8(3) on the creation of separate waiting areas for victims. Only Germany has transposed this paragraph correctly; Spain has done so only partially since the provision of separate premises applies only to the victims as witnesses. For Finland, Ireland, Luxembourg and - in part - Sweden, incorporation is said to exist in practice. No national legislation clearly provides for a victim's right to avoid contact with the offender.

Most Member States have transposed Article 8(4) on the rules of evidence adapted to the situation of particularly vulnerable victims. Denmark, France and Greece have not notified anything. Finland mentions a Bill providing for protective measures for minors. The United Kingdom applies a number of measures to the Crown Court but their application to the Magistrates' Court is confined to the use of audio-visual link-ups.

Regarding the transposal of Article 8, only the transposal of paragraph 4 is satisfactory; transposal of the first three paragraphs remains disappointing.

## **Article 9**

Most of the Member States considered that the transposal of Article 9(1) on the right to compensation in the course of criminal proceedings could be transposed by means of *partie civile* proceedings joined to criminal proceedings. Ireland mentions no mechanism of this kind but only compensation schemes for certain categories of victim. Denmark, Greece and the United Kingdom notified no transposal provisions. Certain Member States (such as Germany, France, Belgium, Spain and Sweden) provide for certain categories of victims to be compensated by the state. The point has already been made that such measures do not actually transpose Article 9(1).

Seven Member States (Austria, France, Germany, Ireland, Italy, Spain and the Netherlands) notified provisions on the undertaking by Member States to take appropriate measures to

encourage the offender to provide adequate compensation to victims referred to in Article 9(2). Finland claims to have transposed this obligation, but did not cite any legislation in its report. The Luxembourg Bill would make release on bail or parole subject to provision of a security guaranteeing compensation for the damage caused to the victim, and his expenses. Release on bail or parole could also be accompanied by special conditions, in particular in consideration of the behaviour of the offender with respect to the victim. Denmark, Greece and the United Kingdom did not notify any transpositional provisions. In Scotland, it seems that it is possible to check that the offender has paid compensation.

Although most Member States have introduced the obligation to return property belonging to the victim under Article 9(3), Denmark, France, Germany, Greece and Spain did not notify anything on this provision. Ireland and the United Kingdom state that this obligation is fulfilled, although they notified no legislation providing a basis for such an obligation.

### **Article 11**

Austria, Belgium, Denmark, Germany, Greece, Luxembourg, the Netherlands and Sweden did not notify provisions transposing Article 11(1). However, their legislation seems to allow a statement to be made immediately after the commission of an offence. Spain acknowledges that it has done nothing in this matter, while France provides no document. The Netherlands, Luxembourg, Sweden and the United Kingdom describe their complaints system, but do not specify the legislative sources.

France, Italy, Portugal, Spain and Sweden have not transposed Article 11(2); Austria, Belgium, Denmark, Germany, Greece, Luxembourg, the Netherlands and Sweden did not notify any provisions. As we have seen, some countries (Belgium, Ireland, the Netherlands) seem to accept the complaints and transmit them if necessary to the country where the offence was committed, though there is no reference to the precise legal basis. Only Luxembourg and Finland seem to have transposed this paragraph properly.

### **Article 12**

Apart from Portugal, no country cited legislation transposing Article 12. France and Italy made no mention of it, while Finland argued that the transposal of this Article did not require legislation. It has already been stated that, although it is true that this Article allows the Member States considerable room for manoeuvre, it does require them to take more than a passive attitude.

### **Article 13**

Regarding Article 13, the vast majority of the Member States generally state that there is a victim support service financed by the state which provides the public with information, guidance and support as regards their rights. But only Austria, France (paragraph 1), Portugal and Sweden notified relevant national provisions on the various functions that these associations can fill, and in particular on the possibility of victim support after the criminal procedure.

Spain and to some extent France refer to existing national legislation without specifying the articles, and it is consequently not possible to check if all were transposed. Belgium specifies certain transpositional provisions but did not append them. The United Kingdom (Scotland) notes that the state subsidises victim and witness support associations and describes their functions but gives no legislative basis.

## **Article 14**

Portugal and Sweden are the only countries to have transposed both paragraphs of this Article. Most other countries, except Denmark, Italy and Greece (which did not supply substantial information), are content to refer to certain bodies tasked with providing vocational training for relevant personnel. It is not always clear if these bodies are also financed by the Member State, as Article 14 prescribes. The transposal provision notified by Austria does not transpose Article 14 of the Framework Decision because it does not address the issue of training for personnel.

## **Article 15**

Only Austria and Spain transposed this Article. The other Member States, except for Denmark, Italy and Greece, claim to have introduced the necessary measures, although the description of the measures is too vague and not very satisfactory. Belgium acknowledges that it has not transposed the Article. Concerning paragraph 2, most Member States refer simply to the first paragraph, while Sweden states that most police departments now have a separate hearing room for children; for other categories of victims, work is in hand so that suitable conditions will exist in all the other places by March 2005.

## **Article 16**

The United Kingdom has not provided information suggesting that this provision was transposed for Gibraltar.

b. Despite the shortcomings referred to above, it can be recognised that in certain Member States, such as France and Luxembourg, the transposal process is already in hand for some of the provisions which remain to be transposed: Luxembourg has transposed certain provisions of the Framework Decision in a Bill, while France has notified us of a programme of 14 victim-related measures that are to be developed over the next five years.

In addition, it must be acknowledged that some of the provisions of the Framework Decision set general aims leaving the Member States considerable room for manoeuvre, which makes it difficult for the Commission to check that the Framework Decision has been properly transposed: for example, Article 8 stipulates that “Each Member State shall ensure a suitable level of protection for victims”. Similarly Article 11 on the victims residing in another Member State, mentions some of the measures which must “in particular” be taken by the Member States concerned.

On top of that, the nature of the provisions to be transposed is very varied: some (Article 7 in particular) require legislation while others, such as Articles 8 (3) or 15 (1), require practical facilities. Lastly, the Member States are sometimes required to give financial support for non-official victim support organisations.

In view of the foregoing, the Commission invites Member States to ensure a rapid and complete transposal of the Framework Decision and to inform it of this immediately, no later than, 15 March 2004, providing a description of the measures taken with the text of the statutory provisions or rules in force in support.