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GREEN PAPER

Compensation to crime victims

(presented by the Commission)

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SUMMARY

This Green Paper launches a consultation with all interested parties on possible measures to be taken at Community level to improve state compensation to crime victims in the EU. The main issues addressed in the paper are the following.

- What European norms are relevant for addressing state compensation to crime victims at Community level?
- What possibilities to get state compensation currently exist for crime victims in the EU?
- What is the scope and need for action at Community level, based on what exists in the EU today?
- How could the possibilities for crime victims to receive state compensation be strengthened through a Community initiative?
- How could the access for crime victims to state compensation be facilitated in cross-border situations?

CONSULTATION ON THE GREEN PAPER WITH ALL INTERESTED PARTIES

Chapters 5 and 6 of the paper contain a number of questions, also listed below, on what the Commission sees as the most important issues to resolve in the assessment of a possible initiative on state compensation to crime victims. The Commission would appreciate to receive reasoned answers from all interested parties to these questions. Interested parties should of course not feel confined to these questions if other aspects of state compensation to crime victims, included in the paper or not, give rise to comments they wish to make. Answers to the questions as well as any other comments should be sent before the 31 January 2002 to:

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Answers and comments may be made public on the Commission's website, unless the sender explicitly requests otherwise. In the beginning of 2002 the Commission will assess the need for organising a public hearing to further debate the issues raised in the paper.

SUMMARY OF QUESTIONS

Question 1: Should a Community initiative on state compensation to crime victims pursue the three objectives listed in chapter 4.2? Are there other objectives that should be pursued as well?

Question 2: What should be the eligibility criteria for types of crime and for types of injury covered by a minimum standard?

Question 3: Should the degree of proof required from an applicant for state compensation be included in a minimum standard?

Question 4: Should immaterial damages be included in a minimum standard, and if yes, could a definition of such damages be included?

Question 5: Could compensation for permanent disability be defined for the purposes of a minimum standard?

Question 6: Should a minimum standard allow for taking into account the victim's financial situation, when determining the victim's eligibility or when determining the amount of the compensation?

Question 7: How should the subsidiary character of state compensation, in relation to other sources of compensation to victims, be defined in a minimum standard?

Question 8: What other sources of compensation should be deducted from state compensation?

Question 9: Should a possibility for advance payment be included in a minimum standard?

Question 10: Should criteria related to the victim's behaviour in relation to the crime, to his or her involvement in criminal activity in general, or other considerations of justice or public policy, be included in a minimum standard?

Question 11: What other criteria, not covered in this paper, could be considered for inclusion in a minimum standard?

Question 12: Would a right for the cross-border victim to receive assistance from an authority in his or her Member State of residence when applying for state compensation from another Member State be an appropriate way of facilitating access to state compensation for cross-border victims?

Question 13: Would a possibility for the victim to get state compensation in his or her Member State of residence as well in the Member State where the crime occurred be an appropriate way of facilitating access to state compensation for cross-border victims?

Question 14: What solutions, other than those outlined in this paper, could be envisaged to facilitate access to state compensation for cross-border victims?

Question 15: Should harmonised forms, possible to use when applying for state compensation in all Member States, be established?

1. INTRODUCTION

1.1. The crime victim and the area of freedom, security and justice

With the entry into force of the Treaty of Amsterdam the EU faces the challenge of ensuring that the right to move freely throughout the EU can be enjoyed in conditions of security and justice accessible to all. This challenge involves establishing a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own, and where better compatibility and more convergence between the legal systems of the Member States is achieved. The need to meet this challenge is evident from the ever-increasing number of persons using their right to free movement within the EU, for example, as workers, students or as tourists.

The establishment of an area of freedom, security and justice must also take due account of the needs of crime victims in the European Union. The Vienna Action Plan¹ of the Council and the Commission, adopted by the Council 1998, called for addressing the question of victim support by making a comparative survey of victim compensation schemes and assessing the feasibility of taking action within the EU. The Commission presented a Communication² on crime victims in 1999, covering not only compensation aspects but also other issues that could be addressed to improve the position of crime victims in the EU. Having regard to this Communication, the conclusions of the European Council in Tampere 1999³ 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 on their rights to compensation for damages, including legal costs. It also called for the setting up of national programmes to finance measures, public and non-governmental, for assistance to and protection of victims.

1.2. Measures and initiatives taken so far

The European Parliament has, already since the 1980s, shown a strong and continuous support for improving compensation to crime victims. Reference can in particular be made to its resolution of 1989⁴ and to its resolution⁵ on the Commission's Communication of 1999.

The Council adopted a framework decision⁶ on the standing of the victim in criminal proceedings 15 March 2001. The decision, based on title VI of the EU Treaty, includes an obligation for Member States to ensure that crime victims can obtain a decision on compensation from the offender in the course of criminal proceedings. Member States shall also take measures to encourage the offender to provide adequate compensation to victims. Beyond these provisions, compensation to crime victims is not addressed.

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

² Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee. Crime victims in the European Union – reflexions on standards and actions. COM(1999) 349 final, 14.7.1999.

³ Presidency Conclusions, point 32.

⁴ Resolution on victims of violence. OJ C 256, 9.10.1989, p. 32.

⁵ Resolution on crime victims in the EU. OJ C 67, 1.3.2001, p. 308.

⁶ OJ L 82, 22.3.2001, p. 1.

In terms of preparatory work, a comprehensive study⁷ of the position of crime victims in the EU was completed in 2000, with support from the Grotius programme of the EU. The study covered, among other aspects, the possibilities for crime victims to receive compensation from the State under the national laws of the Member States. The study was followed up by a conference in Umeå, Sweden, in October 2000, also supported through the Grotius programme. The conclusions⁸ of the conference included a number of recommendations on how to improve the position of crime victims as regards compensation issues as well as a recommendation to the Commission to consider binding legislation at EU level.

1.3. Objective and scope

The objective of this paper is, in response to the requests of the Vienna Action Plan and the Tampere Conclusions, to launch a consultation on possible ways forward at Community level for improving the possibilities for compensation to crime victims in the EU.

The paper will focus on compensation from the State and develop the following issues:

- What European norms are relevant for addressing state compensation to crime victims at Community level?
- What possibilities to get state compensation currently exist for crime victims in the EU?
- What is the need for action at Community level, based on what exists in the EU today?
- How could the possibilities for crime victims to receive state compensation be strengthened through a Community initiative?
- How could the access for crime victims to state compensation be facilitated in cross-border situations?

1.4. Demarcations

The possibilities for the crime victim to obtain compensation from the offender will not be covered in this paper. The possibility to obtain 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 to enforce such decisions in cross-border situations, a number of initiatives have been taken or are under preparation on access to justice for cross-border litigations in general. These include, in particular, the recently adopted Brussels I Regulation⁹ on jurisdiction and the recognition and enforcement of judgments. In the context of the

⁷ Wergens, Anna, *Crime victims in the European Union*, Brottsoffermyndigheten, Umeå, 2000.

⁸ The Crime Victim Compensation and Support Authority, Sweden, "Conclusions – The Umeå expert meeting on compensation to crime victims in the European Union", Umeå, 2000.

⁹ Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p.1.

mutual recognition programme¹⁰ initiatives are under way on, among other things, uncontested claims. These initiatives will benefit crime victims as well, seeking to enforce a decision on compensation from the offender in a cross-border situation. An initiative focussing on a specific type of civil claims, that is, compensation to crime victims from the offender, would need further reflection to ensure necessary co-ordination with these horizontal initiatives.

The complexity of each of the issues, compensation from the State on the one hand and compensation from the offender on the other, makes it desirable also to treat them separately, in view of the different legal character of each issue. In particular, further preparatory work is needed with regard to enforcement systems in the Member States, including what specific measures are taken to assist crime victims in this regard.

Thus leaving aside the issue of compensation to victims from the offender for this paper, the Commission will nevertheless further reflect on possible future initiatives on this issue, initiatives that could be seen as accompanying measures in the context of the mutual recognition programme.

2. EUROPEAN NORMS

The principle of non-discrimination and the right to a fair hearing will be briefly reviewed in this chapter, based on what has been established in Community law, in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and in the Charter of Fundamental Rights of the EU. A brief description will be made also of the 1983 European Convention on the compensation of victims of violent crimes, the only international instrument on this subject.

2.1. The principle of non-discrimination

The scope of the non-discrimination clause in article 7 of the EEC Treaty¹¹ was in focus in a case¹² for a preliminary ruling by the European Court of Justice under Article 177¹³ of the Treaty. The case concerned a British national who was subjected to a violent assault while visiting France as a tourist. The assailants were never identified and the victim turned to the French State for compensation under the national compensation scheme. A condition for the awarding of compensation under the scheme was that the victim was either a national of France, a national of a State with reciprocal agreements with France regarding state compensation, or a holder of a residence permit. The Law Officer of the Treasury argued before the authority responsible for reviewing the application that as none of the conditions referred to above were fulfilled, the application should be rejected. The authority asked the European Court of Justice for a preliminary ruling on whether these provisions were compatible with the prohibition of discrimination contained *inter alia* in Article 7 of the EEC Treaty.

¹⁰ Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, OJ C 12, 15.1.2001, p. 1.

¹¹ Now Article 12 of the TEC.

¹² Case 186/87 Ian William Cowan v. Trésor public [1989] ECR 195.

¹³ Now Article 234 of the TEC.

The Court stated that by prohibiting “any discrimination on grounds of nationality” the Treaty requires that persons in a situation governed by Community law must be placed on a completely equal footing with nationals of the Member State. Examples of concrete situations referred to in this Article include the freedom to provide services. That freedom includes the freedom for the recipients of services to go to another Member State in order to receive a service there, without being obstructed by restrictions, and that tourists, among others, must be regarded as recipients of services.

When Community law guarantees a natural person the freedom to go to another Member State, it is a corollary of that freedom that the person is protected from harm on the same basis as that of nationals or persons residing in the Member State in question. Thus, the principle of non-discrimination is applicable to recipients of services within the meaning of the Treaty as regards protection against the risk of assault and the right to obtain financial compensation provided for by national law when that risk materialises.

Consequently the Court held that the prohibition of discrimination laid down by the Treaty prevents a Member State from making the award of state compensation to a crime victim subject to the condition that he holds a residence permit or is a national of a country which has entered into a reciprocal agreement with that Member State.

2.2. The right to a fair hearing

In a ruling¹⁴ from the European Court of Human Rights regarding state compensation to a crime victim, the Court came to conclusions on the application of Article 6(1) of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms in the case before them.

The case concerned a Swedish citizen who claimed to have been a victim of kidnapping and extortion and who had filed for damages within the course of the ensuing criminal proceedings. The Court of Appeal rejected his claim for damages on the grounds that the charges against the defendant were not proven. A subsequent application for state compensation, reviewed by the authority responsible for such matters in Sweden, was refused on the grounds that the victim had not proved that he had suffered damage as a result of a crime. The victim turned to the European Court of Human Rights, alleging that Swedish law did not provide the possibility of having a claim for state compensation reviewed by a court and that therefore there had been a violation of Article 6(1) of the Convention.

Article 6(1) read, in so far as is relevant, ”In the determination of his civil rights... everyone is entitled to a fair and public hearing...by an independent and impartial tribunal established by law.”

The Court stated that the Swedish Act governing state compensation defined in clear, regulatory terms the conditions and procedures that a claimant had to comply with before compensation could be awarded. Accordingly, a claimant who complied with those conditions and procedures had a right to be awarded compensation under the Act. The right asserted by the applicant [in the case in question] could be categorised

¹⁴ Case of Rolf Gustafson v. Sweden, judgment of 27 May 1997.

as civil within the meaning of Article 6(1), the Court noting that the right invoked by the applicant was intended to confer on him a pecuniary benefit in the form of compensation. Consequently the requirements prescribed by Article 6(1) in respect of a tribunal were applicable to the authority in question. The Court concluded that, for the purposes at hand, the authority complied with these requirements.

The conclusion that can be drawn from this case is that a state compensation scheme could be considered to award a civil right, within the meaning of the Convention, to crime victims complying with the conditions and procedures established by the scheme. Consequently the requirements set by Article 6(1) of the Convention must be complied with as concerns the treatment of applications under the scheme.

Moreover it should be noted that in Community law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations but covers all types of disputes.¹⁵ This rule is repeated under article 41 of The Charter of Fundamental Rights of the EU.¹⁶

2.3. The European Convention on the Compensation of Victims of Violent Crimes

The Council of Europe addressed the issue of compensation to crime victims from public funds already in the early seventies, eventually leading to the establishment of the European Convention on the Compensation of Victims of Violent Crimes in 1983. The Convention entered into force 1988. Twelve¹⁷ Member States of the European Union have signed the Convention and in nine¹⁸ Member States the Convention has been ratified and entered into force. The aims of the Convention are to introduce or develop schemes for compensation to crime victims and to establish minimum provisions for such schemes.

The Convention states that compensation shall be paid by the State on whose territory the crime was committed to nationals of the States party to the Convention as well as to nationals of all Member States of the Council of Europe who are permanent residents in the State on whose territory the crime was committed.

Regarding eligibility, those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence as well as the dependants of persons who have died as a result of such a crime shall be eligible for compensation. This shall apply also if the offender cannot be prosecuted or punished. Compensation shall cover, at least, loss of earnings, medical and hospitalisation expenses and funeral expenses and, as regards dependants, loss of maintenance. Compensation may be made subsidiary to compensation obtained by the victim from any other source.

The compensation scheme may include conditions such as requiring the crime to be reported to the police and the lodging of the application within an established

¹⁵ Case 294/83 *Parti écologiste v. European Parliament* [1986] ECR 1339.

¹⁶ OJ C 364, 18.12.2000, p. 1.

¹⁷ Belgium, Denmark, Finland, France, Germany, Greece, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

¹⁸ Denmark, Finland, France, Germany, Luxembourg, Netherlands, Portugal, Sweden and the United Kingdom. The Convention has been ratified also by Azerbaijan, Cyprus, the Czech Republic, Norway and Switzerland.

timelimit. Compensation may be reduced or refused with reference to the victim's conduct in relation to the crime, on grounds of his or her involvement in organised crime, or if an award would be contrary to a sense of justice or to public policy. It may also be refused or reduced on account of the applicant's financial situation.

The Convention obliges the Contracting States to designate a central authority to receive and take action on requests for assistance from any other Party in connection with the matters covered by the Convention.

3. OVERVIEW OF STATE COMPENSATION SCHEMES IN THE MEMBER STATES

3.1. Introduction

This chapter will give an overview of state compensation schemes in the Member States of the EU. The purpose is to identify the main features of the different schemes, not to go in-depth on the particular characteristics of each scheme. The definition of the criteria used to identify these main features should be seen against this background also, and are thus somewhat simplified.

When references below are made to all Member States, this means all Member States that have state compensation schemes with a general scope of application in place. Greece and Italy are therefore not included in the overview, although it should be noted that the latter has a scheme in place compensating victims suffering serious injury as a result of a terrorist act or of organised crime. For the United Kingdom, the description is based on the scheme in place for England, Scotland and Wales, thus not taking into account the differences that exists with regard to the scheme applicable in Northern Ireland. Possible differences that may exist within federal states are neither covered.

3.2. Eligibility

3.2.1. Eligible victims

Victims eligible for compensation from the schemes can be divided in two groups, the direct victim (the person towards whom the crime is directed) which needless to say is covered in all schemes, and the indirect victim (dependants and other relatives of a direct victim). Certain schemes cover also a third group: persons accidentally hurt in the turmoil (so called "bystanders") or persons helping the victim or helping the police to prevent a crime or to apprehend the offender (so called "samaritans"). This third group is often compensated as direct victims in schemes that cover also non-intentional crimes.

All Member States offer compensation to persons who were depending on a deceased victim for financial support. Often this group consists of children and spouse, but it may also include former spouses who received alimony and old or incapacitated parents of the victim. A few Member States also award compensation for immaterial damages to the relatives of a deceased victim, where compensation is not conditional upon the relative being financially dependent on the deceased. This will be further elaborated upon in the section on immaterial damages in general.

Regarding bystanders and samaritans, Austria's scheme covers bystanders, the UK, Irish and Portuguese schemes cover samaritans and the Belgian, Danish, Finnish, French, German and Swedish schemes cover both.

3.2.2. Criteria related to territoriality, citizenship and nationality

All Member States except Austria, France, Germany, Luxembourg and Spain have schemes covering all persons subjected to crime on their territory, thus embracing non-EU nationals. France, Germany, Luxembourg and Spain compensate non-EU nationals that are either permanent residents or are from countries that offer reciprocity, that is, has a scheme in place which would compensate their own nationals if victimised in that country. Luxembourg compensates also nationals from countries that are members of the Council of Europe regardless of reciprocity. Austria offers no possibility for non-EU nationals, except for nationals of the EEA-countries, to be compensated for criminal injuries.

Several Member States (Austria, Denmark, Finland, France, Luxembourg, Portugal, Sweden) offer a possibility for compensation when a resident or citizen is injured abroad, but this is usually subject to a number of restrictive conditions, including that the victim must first seek compensation in the State where the offence occurred.

3.2.3. Criteria related to types of crime and injury

When referring to crime, a common requirement for eligibility is that the crime must have been intentional and/or violent. Regarding injuries, it is sometimes stipulated that the injury must have led to a certain time of incapacity to work, or it is more generally held that the injury must be serious in order for the victim to be eligible.

Denmark, Finland, France, the United Kingdom, Ireland and Sweden cover both intentional and non-intentional crimes. The United Kingdom and Ireland require that the crime is violent. All of these six Member States except Sweden exclude traffic offences from the scope of the scheme.

Belgium, France, Germany, Luxembourg, the Netherlands, Portugal and Spain require that a sustained injury is serious for it to be covered by the scheme. It is generally held among the Member States that an injury entitling to compensation can be either physical or psychological.

3.2.4. Assessment of compensation - eligibility

In those cases where the offender remains unknown or cannot be successfully prosecuted the assessing body responsible for state compensation must normally decide whether an applicant for state compensation has indeed been the victim of a crime. It must also assess whether the injury the applicant has suffered has been caused by that crime. The burden of proof rests with the applicant in all Member States, but the degree of proof varies and is not always set down in the legislation establishing the scheme. It is probably safe to say that in most Member States a lower standard is applied as compared to what applies in criminal procedure, but it is difficult to define more precisely the standards applied in each Member State. In certain Member States there is a connection to tort law, that is, the applicant's eligibility is to be determined in the same way as if the victim had filed a civil suit.

3.3. Losses covered

3.3.1. Medical expenses, loss of earnings, compensation to indirect victims

Medical expenses are covered in all Member States although Spain restricts it to merely covering psychiatric treatment to victims of sexual offences. In addition, most Member States will cover expenses that the victim might have incurred for transport to and from the hospital. Denmark and Sweden compensate transport expenses, Sweden loss of earnings as well, for relatives visiting the victim in hospital.

Loss of earnings is compensated in all Member States but there are differences as to how this is done. The United Kingdom bases their compensation on a tariff calculated so as to include compensation for loss of earnings, with a possibility for additional compensation for long-term injuries. The Netherlands also has a tariff and Spain does not refer to loss of earnings but awards a daily aid during sick leave.

When the victim dies from his injuries, all Member States offer compensation to dependants for loss of maintenance or financial support. All Member States will also cover funeral expenses within reasonable limits.

3.3.2. Property damage

Most Member States offer some kind of compensation for property damage. A distinction can be made between compensating property damaged in connection to a violent crime and compensating stolen goods.

When assaulted or robbed, all Member States except Spain and Luxembourg compensate items damaged in the turmoil with certain variations, for example, torn clothes, broken spectacles and items that are medically necessary such as prostheses. Denmark covers also mobile phones and jewellery.

Regarding stolen goods, where there is no connection to a violent assault, only Denmark, Finland, France and Sweden offer compensation for such losses. Finland, France and Sweden will do so if the loss caused exceptional financial hardship on the victim, France also if it caused exceptional psychological hardship. Denmark, Finland and Sweden will also cover stolen goods if the crime was committed by a convict who committed the crime while escaped from a prison or an institution.

3.3.3. Permanent Disability

All Member States offer compensation to victims whose injuries lead to permanent disability. It can be difficult to assess if this compensation includes a non-pecuniary element or if the compensation is meant to cover expenses caused by the disability. Some Member States clearly indicate that they offer compensation for estimated future loss of earnings (or potential loss of earnings) as well as non-pecuniary compensation that is not connected to any specific costs but calculated with regard to the severity of the disability. This non-pecuniary part is sometimes calculated as to include compensation for aesthetic changes such as scars, while in other Member States scars and disfigurements are compensated independently.

Austria, Ireland, the Netherlands and Portugal link their compensation to costs incurred by the victim. They all offer compensation for future loss of income or earning potential. In addition to that, Ireland and Portugal compensate future

medical- and other expenses that may follow, as does the Netherlands, who will also compensate expenses related to assistance in the home and rehabilitation. Austria awards also a nursing allowance if the victim needs help to perform basic activities and also compensates for special expenses incurred by the victim due to the disability.

In Belgium, Denmark, Finland, Luxembourg and Sweden, non-pecuniary compensation is added to or included in the compensation for the actual costs and loss of earnings incurred by the victim. The assessment is based on the degree of disability established, sometimes calculated as a percentage, where increased severity of the injuries or of the disability will render a higher amount of compensation. The French scheme covers material losses as well as non-pecuniary compensation but the assessment is based on the future loss of earnings and the same degree of disability may thus result in different compensation between persons of different age and with different employment background.

In the other Member States it is more difficult to assess whether compensation for permanent disability includes non-pecuniary compensation or not. Germany has a system where the injury pension is awarded in addition to a pension for income loss. In Spain, the disability is graded on a scale from 1-4 where one is permanent partial incapacitation and four is gross incapacitation and the compensation is then paid accordingly. The tariff-based scheme in the United Kingdom does not divide the compensation in different items. The tariff is calculated so as to include compensation for costs as well as for pain and suffering. In addition, compensation for special expenses incurred for treatment due to the injury or for related equipment and care may be awarded. Belgium, Finland, France, the Netherlands and Sweden compensate scars and disfigurements as a separate item.

3.3.4. *Other immaterial damages*

Apart from material losses such as medical expenses and loss of earnings, a crime will also give consequences that can not be restored and which are difficult to value in terms of money. These can be described as pain and suffering (physical and mental), infringement of personal integrity, long-term mental suffering etc. These effects of the crime can not be restored in the sense of putting the victim in the same position as if the crime had not occurred, but they can be considered as immaterial damages that can be compensated.

Consequently, certain Member States have included immaterial damages in their compensation schemes, as a separate item from what may be compensated as immaterial damage for permanent disability. It aims at compensating the victim for the suffering (both physical and mental) that the victim experiences because of its injuries and/or for the violation of the personal integrity that (certain) crimes constitute. Compensation for bereavement or grief to relatives of a deceased victim can also be put in this category.

The way that this kind of compensation is denominated differs between the Member States, and it is therefore difficult to assess and compare the scope of the various schemes in this regard. Sometimes, common denominations are found, but this is not a guarantee that the content of the compensation is the same.

Pain and suffering is a concept that is found in several Member States. Compensation for pain and suffering is awarded in Belgium, Denmark, Finland, France, the United Kingdom, Luxembourg and Sweden. Of these, Belgium, Denmark, Finland, France and Sweden offer an additional compensation for moral damages or for the violation of the personal integrity. In Denmark, Finland and Sweden, compensation for moral damage is only awarded for certain offences that are particularly offensive. In these States, it could be said that compensation for moral damage is more objectively assessed on the basis of the crime committed, while pain and suffering is subjectively assessed on the basis of the injuries sustained by the victim. France awards moral damages for sexual offences only.

In the Netherlands, the compensation awarded for immaterial damages appears to contain elements of both pain and suffering and moral damages, while Luxembourg appears to consider pain and suffering as a kind of moral damage.

Concerning compensation to relatives of deceased victims, Belgium, Finland, France, the United Kingdom, Ireland, Luxembourg and Sweden offer such compensation. It is referred to as (or covers) compensation for bereavement, suffering, grief or moral damages.

Austria, Germany, Portugal and Spain offer no compensation of the kind assessed above.

3.3.5. *Determining the amount of the compensation*

In several Member States there is a link to the national tort law regarding the assessment of the amount of compensation to be awarded in each particular case. It may be that compensation can be claimed for the same types of losses as in a civil claim, or the calculation of a loss follows the general rules of tort law. Certain Member States indicate that full compensation can be awarded under the scheme. This presumably means that the same compensation is available from the State as would have been available in the course of a civil suit, that is, compensation for actual expenses in terms of material losses and fair compensation for immaterial losses (as defined in each State). A relevant factor in this context is also if the scheme can be seen as establishing a legal right to compensation for victims or if the scheme merely operates on an *ex gratia* basis, where in the latter case “fair and just” compensation is awarded rather than full compensation.

Almost all Member States have maximum ceilings, either for the total amount that can be awarded for an individual victim or for the separate items.

Regarding taking the victim’s financial situation into consideration when estimating the claim, this appears to apply only in those Member States that awards fair and just compensation.

The schemes of all Member States lay down further grounds on which compensation may be refused or reduced. A ground for refusal that is found in all Member States is when the victim is considered as partly to blame for being victimised. This may be because of the victim’s behaviour in connection with the crime through provocation. In some Member States, membership in unlawful criminal organisations may exclude from compensation and in others a previous criminal record may be taken into account. In a few Member States, the victim’s relationship with the offender is a

ground for refusal. Some also has a generally held exclusion rule with reference to public order or inequity.

Denmark, Finland, France, Luxembourg and Sweden aim at providing full compensation, that is, the same compensation as would have been available under national tort law. The assessment of compensation in this group is thus connected to the tort law in the respective country within the limitations that maximum ceilings may constitute.

Belgium, Ireland, the Netherlands, Portugal and Spain do not offer full compensation but rather fair and just compensation. Austria and Germany offer various kinds of awards for material losses and rehabilitation but it is not possible to receive non-pecuniary compensation as under tort law. Belgium, Germany, the Netherlands, Portugal and Spain take the victim's financial situation into account when estimating the award though Belgium and the Netherlands will only do so for the compensation of material losses, and Germany will not do so if the compensation is made by means of a pension. However, the schemes of Austria, Belgium, Ireland and Portugal also have a certain connection to national tort law in the calculation of some of the items of the compensation.

The scheme in the United Kingdom has no link to tort law. The tariff system implies that some victims will receive more than full compensation, others less. The possibility to increase the award beyond the tariff and award additional compensation for expenses and loss of earnings serves as a guarantee for victims more seriously affected by a crime.

3.4. Subsidiary application and state subrogation

The principle of subsidiary application in its strictest form is when state compensation is seen as the last resort and the victim consequently need to eliminate all other possibilities for compensation before turning to the State. The obvious source for compensation is the offender, but also private and public insurance must be exhausted. This is the case at least in Luxembourg, the Netherlands, Portugal and Sweden. In Belgium, Denmark and Finland, this principle is applied less strict, meaning that although the offender is ultimately responsible for paying compensation, the victim must exhaust other sources to a reasonable extent only. Austria, the United Kingdom and Ireland do not apply the principle of subsidiary application at all, and the victim can thus choose where to turn for compensation. In France the principle is only applied with regard to property crimes.

Subsidiary application should not be confused with double compensation, that is, any compensation received for the same loss (whether material or immaterial) will be deducted from the compensation from the State. In most States this means that if the victim subsequently receives compensation for the same loss, the State will reclaim part of or the whole compensation awarded. In this respect, Austria and Ireland will not deduct any compensation awarded from private insurance and Portugal will only deduct such compensation if it is considered fair and just.

When the State compensates the victim for damages that the offender should have paid, the State can reclaim the amount awarded to the victim from the offender. In all Member States but the United Kingdom the State has such a right, but to what extent it is actively used is difficult to assess.

3.5. Formal criteria

3.5.1. Reporting the crime to the police

All Member States except France, Luxembourg, the Netherlands and Portugal require that the crime is reported to investigating authorities for the victim to be eligible for compensation. It is sometimes more generally expressed as an obligation for the victim to co-operate with the legal authorities. Often it is stipulated that the report must be made “without undue delay”. In all Member States except Austria and Belgium it is possible for the awarding authority to accept an application for compensation even if no report has been made. This may be the case if the victim, due to his medical condition, was unable to report the crime. In Finland an acceptable excuse can be that the victim was victimised abroad, making it difficult to report the crime to the police, and the United Kingdom accepts language difficulties as an excuse.

3.5.2. Time limits for filing the application

Most Member States (Austria, Denmark, Finland, the United Kingdom, Ireland, the Netherlands and Spain) set the time limit as from when the crime was committed. Of these, Ireland has the shortest time period, only three months, and Finland has the most generous giving the victim latitude of ten years. In Spain, the time stops running upon the initiation of the criminal justice procedure and starts running again when the procedure is ended. Belgium and Sweden both set their time limits as from the ending of the court proceedings. France, Luxembourg and Portugal have set the time limit from when the crime was committed, but prolong the limit with one year from the date when the criminal procedure was ended. Austria has different limits depending on the type of loss compensation is sought for, but it is always possible to apply after the time limit has expired. However, the consequence is that compensation will not be awarded retroactively, that is, for the period between the crime and the date when the application is made. Germany does not stipulate a time limit. Compensation is granted from the month when the application was submitted and, if the application was filed within one year from the day the injury was sustained, retroactively from that day.

Generally there is a possibility for exceptions from the time limits for filing the application in special cases, for example, due to *force majeure* or in cases when the victim is a child and therefore dependent on an adult to make the application for him.

3.5.3. Content of the application

It is generally required that an application is made in writing, although the Netherlands will accept applications submitted by telephone also. Several Member States use specific application forms and these are sometimes available on the Internet. The applicant must in many cases provide documents to prove income loss or receipts for medical expenses. The assessing body may also ask for a police report, a medical report and proof of the victim’s financial situation.

3.6. Advance payment

All Member States except Sweden and Germany offer some form of advance payment. The reasons for awarding advance payments are connected to the financial

situation of the victim, or that the court procedure or the final establishment of the long-term medical consequences of the crime may be delayed. In Belgium, an emergency award can be an independent claim or an advance on the final compensation.

3.7. Assessing body

The bodies assessing the applications and deciding on the claims in the Member States are largely organised in three different ways. Eight of the Member States have an independent body, referred to as a Commission (Belgium, France and the Netherlands), a tribunal (Ireland) or an authority or board (Finland, the United Kingdom, Denmark, and Sweden). In three Member States (Luxembourg, Portugal and Spain) the applications are decided upon at a section of a Ministry, where in Luxembourg and Portugal a Commission prepares the case. Germany and Austria have decentralised organisations where the federal states are responsible for awarding compensation under the schemes.

3.8. Total compensation paid and number of applications received

The table¹⁹ below gives estimates for the total amount of compensation paid and the total number of applications received during one year under the state compensation schemes in each Member State. The estimates are provided for the purpose of illustration only, to indicate the size of the schemes. The table should not be taken as a basis for drawing any conclusions on the scope or functioning of the schemes.

	Total compensation paid (€)	Applications received
Austria	1 400 000	200-300
Belgium	6 307 000	740
Denmark	5 456 000	3 156
Finland	5 130 000	4 770
France	147 550 000	13 353 (*)
Germany	106 694 000 (*)	9 787
Ireland	3 329 000	232
Luxembourg	42 000	16
Netherlands	4 706 000	3 650
Portugal	972 000	68
Spain	1 540 000	1 468
Sweden	7 421 000	6 522

¹⁹ All estimates are from 2000 except for (*) which are from 1999. Source: Mikaelsson, Julia, and Wergens, Anna, *Repairing the irreparable - State compensation to crime victims in the European Union*, The Crime Victim Compensation and Support Authority, Umeå, Sweden, 2001.

United Kingdom	340 926 000	78 165
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4. NEED FOR ACTION AT COMMUNITY LEVEL

4.1. The background to state compensation schemes

The national compensation schemes reviewed in chapter three have been created for a variety of reasons. For several, social policy forms the main reason, with the purpose being to avoid inequitable results, although it should be noted that within this group substantial differences exist between the schemes with regard to the amounts of compensation available in practice and to the restrictions on, for example, eligibility. Equity and social solidarity constitute the basic principles behind the 1983 European Convention also. Other Member States connect the need for state compensation schemes to considerations of criminal policy. These reasons have needless to say influenced the design of the schemes in each Member State and explain part of the differences between them.

However, a common feature of all Member States, while adhering to the principle that the responsibility to compensate the crime victim lies with the offender, is recognition of the fact that victims cannot always get compensation from the offender. This may be the case when the offender remains unknown or cannot be successfully prosecuted or where the offender lacks the means to compensate the victim. Other sources, such as compulsory or private insurance, may neither provide an adequate cover for the losses sustained by the victim. Consequently victims can be considered as being in a worse situation than other groups who suffer injury or losses of various kind, for example, due to illness, accidents, or unemployment. Thus, the function of state compensation schemes can be seen as providing a safety net for victims.

4.2. Addressing state compensation to crime victims at Community level

The overview given in chapter three of state compensation schemes in the Member States gives, at least *prima facie*, the impression that the possibility for victims in the EU to get compensation leaves something to be desired. The absence of a possibility to state compensation to victims in all Member States, and the lack of convergence between the existing schemes, creates differences for the individual, depending on his or her place of residence or on where a crime is committed. For example, two persons becoming the victim of a crime, under identical circumstances but in different Member States, may receive widely differing amounts in compensation for similar injuries. There are also differences peculiar to cross-border situations. A citizen from a Member State with a compensation scheme travelling to a Member State without or with a very limited scheme will see his or her possibilities to get compensation (in case of becoming a crime victim) decrease or virtually disappear for the extension of the stay. On the contrary a person going in the opposite direction, between the same Member States, will enjoy a drastic, albeit temporary, improvement in his or her rights as a crime victim. A person falling victim to a crime in a Member State where he or she is not a resident may find it difficult to get access to state compensation in the first place, due to a lack of assistance in coping with the administrative procedures involved. These effects, which must appear arbitrary from the individual's perspective, are clearly not satisfactory in view of the objective of establishing the EU as an area of freedom, security and justice for all.

Based on these considerations, three objectives for possible action at Community level can be distinguished.

- Firstly, whether a possibility to get state compensation for victims in the EU should be ensured, that is, a safety net for all EU residents.
- Secondly, whether action should be taken to limit unfair effects that may result from the widely differing levels of compensation available in the different Member States and which are, in practice, dependant on the victim’s Member State of residence or on in which Member State he or she becomes the victim of a crime.
- Thirdly, whether access to state compensation for victims in cross-border situations should be facilitated, that is, the access to state compensation for victims should not be significantly influenced by where in the EU the crime takes place.

It should be stressed that these three objectives are closely intertwined. Without a possibility for state compensation in all Member States, access to state compensation in a cross-border situation cannot be facilitated. Without easy access to state compensation in cross-border situations, the safety net will, in practice, not cover all situations where victims are in need of state compensation.

Question 1: Should a Community initiative on state compensation to crime victims pursue the three objectives listed above? Are there other objectives that should be pursued as well?

4.3. The crime victim as the starting point

The starting point for the considerations will be the needs of victims from a European perspective. The aim is to address this need in an unconditional and unbiased way, with a view to finding the best possible solutions to the three objectives outlined in the previous section. The purpose is therefore not to identify the least common denominator among the schemes in place, but rather to identify how further progress could be made. However, having said that, any Community initiative must also seek to build upon the achievements already made in many Member States, to avoid “reinventing the wheel” and disrupting well-established practices.

In the remaining part of the paper, chapter five will cover how the objective of a safety net for all EU residents could be achieved. This is in essence a question of how common minimum standards could be created at Community level. It thereby addresses also, in part, how the second objective of limiting unfair effects could be achieved. When cross-border situations are addressed in this chapter, it will be based on an assumption that the territoriality principle applies without restrictions in all Member States, that is, the victim has the right to submit an application for state compensation in the Member State where the crime took place. In chapter six the objective of ensuring easy access to state compensation in cross-border situations will be covered.

5. COMPENSATION TO CRIME VICTIMS – MINIMUM STANDARDS

5.1. Overall considerations

The more harmonisation that can be achieved, the lesser the risk for unfair effects resulting from differences between the Member States. On the other hand, there are several demarcations that must be kept in mind. Compensation levels vary widely between the Member States, due to differing views or priorities when it comes to action in support of victims but also due to differences in standards of living between the Member States. Thus, compensation levels expressed in pecuniary terms cannot be made uniform. The principles underlying compensation levels, in terms of what losses are covered, are on the other hand possible to address at Community level. Moreover, and as already stressed, the aim must be to build upon what already exists in the Member States rather than seeking to set in place something totally new.

A Community initiative would consequently aim at setting in place minimum standards rather than achieving harmonisation.

Seeking to identify minimum standards means in essence seeking to identify the restrictions to state compensation for victims that Member States should be allowed to set in place. It deserves to be emphasised that, conversely, nothing would prevent Member States from maintaining or setting in place rules that are more generous towards the victim. Needless to say, the introduction of minimum standards should not be used to justify any deterioration in current practices in the Member States.

The remainder of this chapter will consider the components of a common minimum standard with a particular attention to cross-border situations. The purpose is not to exhaustively cover all considerations that can be raised in relation to each issue, but rather to raise some of the principal aspects that present themselves with a view to stimulating the discussion on ways forward. Before going into the individual criteria, the need for clear and well-defined criteria must be stressed. It is difficult to see any strong reason for why the criteria applied in state compensation schemes should be less clear than those that apply under national tort law or under national social benefit schemes. In order to ensure transparent and predictable rules the room for discretion for the responsible authority applying the system should be kept to a minimum. This will form a guiding principle for the consideration of each criterion.

5.2. The components of a minimum standard – eligibility criteria

5.2.1. Eligible victims

Following the Cowan-case it is clear that the possibility to compensation must be awarded to all EU nationals on the same terms that it is awarded to nationals of the Member State where the crime was committed. It would be appropriate to extend this possibility to all legal residents (by virtue of Community law or national law) of a Member State of the EU, thus including those who has the nationality of a third-country and who becomes victims of crime on the territory of any Member State. This scope reflects that of the Framework Decision on the standing of the victim in criminal proceedings. It is in line also with the principles of the Commission's recent

proposal for a Council Directive²⁰ concerning the status of third-country nationals who are long-term residents.

In all Member States indirect victims are also eligible, and should therefore be included in a minimum standard. Provided the direct victim was a legal resident of a Member State, the indirect victims should be eligible for state compensation also, that is, regardless of the state of residence of the indirect victims themselves. An issue for consideration is whether the terms “dependants” or “relatives” should be defined in a minimum standard or whether this should rather be decided by each Member State.

5.2.2. *Criteria related to types of crime and types of injury*

Several options present themselves with regard to this criterion based on what exists in the Member States and what can be found in the 1983 European Convention. Criteria can be considered in terms of types of crimes and in terms of types of injuries sustained by the victim.

One possibility would be to cover all crimes and to limit the eligibility by introducing various specific restrictions. Crimes considered to be commonly covered by insurance could be excluded, such as traffic offences or offences in the work place. A more far-reaching limitation would be to exclude crimes committed recklessly or carelessly, that is, non-intentional crimes. It could be argued that individuals have the possibility to arrange protection through private insurance against losses caused by all such crimes. However, this could lead to the exclusion of certain violent crimes, such as involuntary manslaughter, where compensation to dependants and other relatives could be particularly called for. A further restriction would be to only cover serious crimes, but this would in itself be a term difficult to define in a similar way in the Member States, and it would also make the scope very narrow. A different approach would be to cover only violent crimes, thus avoiding the need for distinguishing between intentional and non-intentional crimes.

In terms of injury, compensation could be restricted to personal injury, physical and psychological, thus excluding property losses *per se*. The latter could be covered only to the extent the victim has suffered losses in direct connection with a violent crime against the person, such as is the case in many Member States. Excluding property damage could be justified by that individuals have the possibility to arrange insurance cover against such losses. On the other hand, it must be stressed that property damage may also give rise to grave negative effects in certain cases. For example, where a person is deprived of property necessary to earn his or her living, or where a person is living under such circumstances that insurance cover is not affordable, it could be considered inequitable not to compensate property damage.

Requiring that an injury is serious would risk making the coverage too restrictive and raise the problem of defining what is serious and what is not. Minor injuries suffered could rather be excluded through a *de minimis* rule on the amount of compensation that can be awarded.

²⁰ COM(2001) 127 final, 13.3.2001. OJ C 240 E, 28.8.2001, p. 79.

Combinations of criteria related to the type of crime and the type of injury suffered could of course be considered, although care should be taken that this does not result in overly restrictive criteria. At first sight, a minimum standard should at least cover intentional crimes causing personal injury. Noteworthy, such a restriction would nevertheless exclude certain groups considered eligible under many schemes in the Member States, such as bystanders and samaritans.

Question 2: What should be the eligibility criteria for types of crime and for types of injury covered by a minimum standard?

5.2.3. *Principles for assessment of eligibility*

In cases where the offender is unknown or where he or she could not be (successfully) prosecuted, the question arises as to what degree of proof should be required from the victim when applying for compensation. The injuries sustained, as such, would appear to pose a minor problem, as the victim in most cases has the possibility to submit a medical report drawn up following the crime. However, the victim must also prove that he or she has actually been the victim of a crime and that the injuries suffered have been caused by that crime. This is an important issue as the coverage of situations where the offender is not known or not prosecuted is a key function for state compensation in the first place. A balanced solution must be sought, taking into account the need for awarding compensation in such cases without encouraging abuse of the system.

To ensure uniformity among the Member States, a common principle for the assessment could be introduced. This could be expressed, for example, as the strongest degree of probability the Member States would be allowed to apply (bearing in mind that it is a question of minimum standards). However, the difficulty in finding a common principle acceptable to all Member States, as a matter of theory as well as a matter of practical application, should not be overlooked. In addition, it is not easy to assess more precisely the degree of proof that is actually applied in the Member States today. The alternative would consequently be to leave this issue to the Member States, although this could lead to substantial differences within the EU in the practical possibilities for victims to obtain compensation.

Question 3: Should the degree of proof required from an applicant for state compensation be included in a minimum standard?

5.3. **Losses covered**

5.3.1. *Material losses*

In most Member States compensation is given for medical and hospitalisation expenses, loss of earnings, and, in the case of dependants, funeral expenses and loss of maintenance. These items should be covered by a minimum standard as well. Medical expenses should be taken as including mental health counselling, psychiatric therapy or similar that may be needed as a cause of the crime. A possible extension could be that, even if damage to property as such would not be eligible (provided eligibility is restricted to personal injury), material losses directly resulting from crimes against the person could be covered. This could involve, for example, losses resulting from damage to personal belongings that the victim was carrying at the time of the crime, such as glasses or clothes.

5.3.2. *Immaterial damages*

Immaterial damages, such as pain and suffering (*pretium doloris*), presents greater difficulties. These are damages suffered by the victim that have not given rise to any actual expenses and they are therefore sometimes referred to as non-pecuniary losses. The underlying factors that can be taken into account in the assessment of immaterial damages may include the negative effects for the victim during the most acute period of rehabilitation and care following the crime, long-term mental suffering, emotional distress, violation of the personal integrity, invalidity (apart from strictly medical effects), loss of amenities, loss of expectation of life etc. Both objective circumstances, related to the situation of the victim in the particular case, and subjective circumstances, such as the nature or severity of the crime as such, may be taken into account. It is not possible, for the purpose of this paper, to consider further these concepts in detail, as the definition and the very existence of them differ between the Member States.

However, recalling the need to take the perspective of the victim, immaterial damages are not to be neglected. A victim may recover physically fairly quickly following the injuries he or she has sustained, but the psychological effects of the crime may be long-term and cause severe suffering. For this reason, compensation in certain Member States under current practices may in fact cover as its main element (as share of the amount awarded) such losses. This is the case also regarding the possibility to compensate dependants, or other relatives, of persons who have died as a result of a crime, apart from compensation for loss of maintenance. Excluding immaterial damages would also create large differences between what the victim could get from the offender in a civil action and what he or she could get from the State. In view of these considerations, there appears to strong reasons for including immaterial damages in a minimum standard.

The question then arises whether a common definition of immaterial damages, for the purposes at hand, should be introduced. At the very least a general principle should be considered, for example, that compensation should cover pain and suffering and other immaterial damages. However, going further seeking to introduce a definition of what such compensation should cover could be very difficult in view of the differences between the Member States. To make an explicit reference to that the compensation is to be assessed in the same way as under national tort law could be an option, although not much would be achieved in terms of uniform application, considering the differences between such laws between the Member States.

Question 4: Should immaterial damages be included in a minimum standard, and if yes, could a definition of such damages be included?

5.3.3. *Permanent disability*

As was seen in chapter three most Member States compensate as a separate item permanent disability, and this should be included in a minimum standard also. Often this item may include compensation for immaterial damages. In addition it may involve compensation for scars or disfigurements. It could be argued that this latter item should also be compensated for when it is sustained without any relation to permanent disability, thus in effect becoming a separate type of compensation for immaterial damages. Returning to the issue of permanent disability, it would be very difficult to reach any further definition, to include in a minimum standard, as to what

losses would be eligible for compensation under this item. The only requirement that could be considered is that state compensation to victims, under this item, should not detract to any major extent from normal practice in the Member States in the assessment of damages under tort law or of compensation from other sources, such as private insurance.

Question 5: Could compensation for permanent disability be defined for the purposes of a minimum standard?

5.3.4. Determining the amount of the compensation

A straightforward solution for a minimum standard on this issue would be, for the material losses suffered, to compensate fully the actual losses as proven by the crime victim. In other words, the victim should, as a result of the compensation for these losses, be put back in the financial situation he or she would have been in had he or she not been injured. This would ensure full compensation in cross-border cases also, where the victim returns to his or her Member State of residence and sustains most of the actual losses in that State, such as medical expenses and loss of earnings.

Concerning the use of tariff-based systems for calculating the compensation for such expenses, it could be considered compatible with a requirement to compensate actual losses, provided that the tariffs are determined on the basis of actual medical and hospitalisation expenses. It would however not appear to take into account complications that may arise in individual cases, neither the need to assess the loss of earnings in each individual case. Tariffs may also entail a risk for unfair effects in a cross-border situation, as the calculation of such tariffs is made on the basis of national conditions, and may not suffice to cover actual expenses incurred in another Member State. On the other hand, tariff-based systems may simplify the administration of state compensation, allowing the crime victim to receive compensation more quickly, and such aspects must also form part of the overall considerations of how the amount of compensation is to be determined.

Complications arise in relation to compensation for pain and suffering and other immaterial damages, as there are no actual losses to base the amount of compensation on. However, it would probably not be possible to set any common guiding principles for determining the actual amount of compensation for such losses, in spite of the risk of unfair effects. This assessment will therefore have to be left to each Member State, possibly connected to applicable scales used when determining social security benefits, private insurance, or damages under national civil law.

As a further consideration in this part, it deserves to be recalled that from the perspective of the crime victim, the actual amount received is what counts in the end, not how the total amount can be broken down on compensation for various types of losses suffered. The need to define, for the purpose of a minimum standard, how each item should be compensated, should therefore not be exaggerated. The ambition could rather be that all losses, be they material or immaterial, are covered by the standard, regardless of under which specific item such losses are taken into account.

A related question is in what form the compensation should be paid, with the main options being a lump sum or a periodic amount. This will however not be further treated, as it can be considered unnecessary to address this issue at Community level.

5.3.5. *The financial position of the victim*

Several Member States take into account the financial position of the victim not only when determining the amount of compensation but also when assessing the right to compensation as such. This can be based on the consideration that an assessment of the needs of the victim in each individual case is necessary, including his or her ability to cope with financial losses resulting from the crime. However, this can substantially reduce the eligibility of victims of compensation. It introduces discretion in the system, making it difficult for the individual to predict what possibilities he or she actually has to get state compensation following a crime. Moreover, the justifications for compensating immaterial damages apply with equal strength regardless of the financial position of the victim. The risk of unfair effects in cross-border cases is substantial also. The income level of an individual could disqualify from compensation in one Member State but not in the other. A common means test to be applied in all Member States, taking into account differences in standards of living, would be very difficult to design. A condition of this type does therefore not appear to be justified.

Question 6: Should a minimum standard allow for taking into account the victim's financial situation, when determining the victim's eligibility or when determining the amount of the compensation?

5.3.6. *Minimum and maximum levels*

A further issue to consider for a minimum standard is whether to set a minimum and a maximum level for compensation, as is included in most national compensation schemes. One purpose of a minimum threshold would be to avoid having to handle a large number of applications for very small amounts, where the administrative costs involved would be substantially higher than the compensation actually paid out. Moreover, the possibility for the crime victim to obtain compensation from the offender is greater when more modest amounts are involved. A maximum level could be justified by budgetary constraints but also by the argument that the State should not assume limitless responsibility for compensating the victim. A maximum level could serve to avoid extreme situations such as compensating exceptionally high loss of earnings. It is questionable whether common levels could be established in a minimum standard, for the same reasons as outlined in relation to compensation levels in general. However, a maximum minimum threshold and a minimum maximum level could be considered.

5.4. **Subsidiary application**

In most Member States the possibility to get state compensation is subsidiary to the compensation the victim can obtain from other sources. This is justified by that it is the offender who bears the responsibility for making good the losses suffered by the victim and also by the desire to avoid double compensation. There is no reason for abandoning this principle in the consideration of common minimum standards. The issue is rather how strict the principle should be applied - what efforts should, in practice, be required from the victim in getting compensation from the offender?

The question is complicated by differences between the Member States in the means and procedures available to the crime victim to get compensation from the offender. In a cross-border situation it may be difficult for the victim to make such a claim in

the first place, and even more difficult to enforce the judgment or the decision. It is clear that the more that is demanded from the victim in this respect, the longer the time before he or she can turn to the State for compensation. A cross-border situation is likely to make this period of time longer as compared to a national situation, thus further increasing the risk of secondary victimisation.

Noteworthy, in national as well as in cross-border situations, a crime victim could actually be in a better situation where the offender remains unknown. In such cases there is no need to await the outcome of court proceedings on the liability of the offender to pay compensation, nor the outcome of enforcing such a decision or judgment, the latter which may in many cases prove to be fruitless because the offender is insolvent. This somewhat contradictory effect is increased if the principle of subsidiary application is applied strictly.

In addition to seeking compensation from the offender, the crime victim may also be obliged to exhaust other sources such as private insurance. This can however be presumed to be less time-consuming compared to court proceedings, and the cross-border context is likely to have less impact, as normally an individual would be insured in his or her Member State of residence.

One solution, in order to introduce certain flexibility, could be to mitigate this requirement by saying that the victim should exhaust other means for compensation to a reasonable extent. Thus, there would be no absolute requirement for pursuing, in all circumstances, a court action to get compensation from the offender. Neither would there be an absolute requirement to await the outcome of such proceedings, nor any need for a definite establishment of the offender's insolvency. The criterion could thereby accommodate cases where, at an early stage, it becomes obvious that the offender will not be able to pay any damages at all. Moreover, any obstacles caused by a cross-border situation could be taken into account. The reasonableness criterion could also apply in cases where the victim, as a result of the injuries suffered, has severe difficulties in filing a civil claim.

Question 7: How should the subsidiary character of state compensation, in relation to other sources of compensation to victims, be defined in a minimum standard?

Related to this issue are what other types of compensation, which the victim has actually been able to get, should be deducted from the compensation to be paid from the State. Compensation paid out under compulsory insurance, social benefits and similar sources should be deducted, but whether compensation from private insurance should be deducted is less obvious. It could be argued that the crime victim should not be penalised by his own prudence. Deducting compensation paid under private insurance would mean that the individual has taken out a private insurance policy "for nothing". On the other hand, not deducting such compensation means in practice that the victim can receive double compensation for the same loss. This is especially the case where state compensation would offer full compensation for material losses. In any case, issues such as the coverage of insurance policies of losses resulting from crime and the extent to which such insurance is taken out by individuals may differ considerably between the Member States, making this issue difficult to assess at European level. A number of other complicated considerations arise also, such as the particular nature of life insurance policies, but it would take it too far to exhaustively treat these problems here.

The line should in any case be drawn at the actual compensation from other sources the crime victim has been able to get, or can be expected to get (with a certain degree of surety). To also deduct compensation the crime victim should have been able to get had he or she arranged for an appropriate insurance cover would on the other hand be too restrictive and very difficult to apply with some uniformity across the EU.

Question 8: What other sources of compensation should be deducted from state compensation?

5.5. State subrogation

In most Member States, when compensation has been paid to the victim from the compensation scheme, the State subrogates in the rights of the victim to compensation from the offender. A more active role of the State in this regard could go some way towards mitigating the financial consequences of paying state compensation in cases where it is still unclear whether the crime victim will be able to receive compensation from the offender, as argued for above. On the other hand, those Member States that do pursue more vigorously redress from the offender appear to enjoy only limited success, implying that in budgetary terms the subrogation of the State cannot provide for any real impact. It may also be presumed that it is difficult for the State to actively use this right in a cross-border situation, that is, where the offender is resident in another Member State.

5.6. Reporting the crime to the police

As was seen in chapter three, most Member States apply the requirement that the crime victim must have reported the crime to the police. This requirement should be included in a common minimum standard as well. An exception for those cases where the victim may have had substantial reasons for not filing a complaint may be considered. However, it is doubtful whether to make eligibility for state compensation dependent on the victim having filed a complaint to the police within a certain time. A complaint made a long time after the crime is mainly to the detriment of the victim, in any case, as it makes it more difficult to establish whether he or she has actually been the victim of a crime and what injuries he or she sustained. It is therefore in the victim's own interest to file such a complaint as soon as possible.

5.7. The application for state compensation

Most Member States have set time limits within which the application for state compensation must be made. These time limits may be calculated from the time of the crime, from the end of court proceedings, or from the closure of police investigations if court proceedings are not initiated. Such limits appear to be justified. The issue for consideration is whether to include common (minimum) time limits in a minimum standard. Such limits could contribute to the creation of transparent and simple rules on procedures for state compensation, across the EU.

A number of issues arise in this regard, in a national context as well as in cross-border cases. It may be necessary to take into account the need to await the outcome of court proceedings and the efforts by the crime victim to get compensation from the offender, both of which may be very time-consuming. In a cross-border situation it may be more difficult for the victim to exercise his or her rights to compensation

from the offender, and that part of the procedure may therefore be even more time-consuming. In a cross-border situation the victim may use his or her right, as established by the framework decision on the standing of the victim in criminal proceedings, to file the complaint to the police in his or her Member State of residence. In view of these examples it would appear that rather generous time limits should be applied. It may be justified also to let the time limit run from the moment when criminal proceedings have ended. In addition, there are several exceptional situations where the crime victim may make an application for state compensation many years after the crime. One such example could be children who have been the victim of a sexual offence. Consequently any limit would need to be accompanied by an exception to accommodate such situations.

Concerning the content of the application as such, it appears fairly straightforward that the victim should include all documentation that is available, such as police reports, medical reports, income statements, insurance statements etc. The issue for a minimum standard is whether harmonised forms should be created, available in all Community languages. This could facilitate greatly the access to state compensation for victims and contribute towards making administrative procedures more transparent. This issue will be further elaborated upon in chapter six, in relation to facilitating access to state compensation in cross-border situations.

5.8. Advance payment

It is often stressed that current practices for compensation in the Member States are not entirely in tune with the needs of the victim. Expenses related to hospitalisation and loss of earnings, for example, are incurred immediately following the crime while compensation, be it from the offender or from the State, is usually not awarded until after a long time, sometimes several years. This time lapse may be due to inefficiencies in the judiciary and in the administration, but a basic cause is of course also the need for a proper investigation and assessment of each individual case.

One solution, to remedy or mitigate the negative effects for the victim of these delays, is the possibility to award an advance payment on the state compensation. Such a measure can be of great benefit to the victim and contribute to the prevention of secondary victimisation. It may be more time-consuming for a victim to obtain compensation in a cross-border situation, making the possibility of an advance payment even more beneficial. However, in cases where it is still unknown whether the victim will be able to get compensation from the offender, an advance from the State may raise principal objections. It could be argued that the victim has the possibility to arrange for immediate assistance by taking out travel insurance. The assistance available from embassies or consulates to its own citizens abroad also needs to be taken into account.

<p><i>Question 9: Should a possibility for advance payment be included in a minimum standard?</i></p>

5.9. Other criteria

A number of criteria which can lead to the refusal or reduction of state compensation are usually included in the national compensation schemes and can be found in the 1983 European Convention also.

Firstly, this may involve the victims conduct before, during or after the crime. In essence this is related to the concept of the victim having caused or contributed to his or her own injury, a concept well known in tort law. Although the definition of the concept, as to how it is applied for the purpose of state compensation, could be somewhat unclear it should be included in a minimum standard as well.

Secondly, a victim's involvement in organised crime or membership of criminal organisations may also be reason for refusing compensation. This criterion raises more principal objections, as it concerns the victims conduct outside the context of the crime in question. It would appear that this criterion is not commonly found in the tort law of any of the Member States. Situations can be imagined where the application may lead to difficulties or even unfair results, such as where a victim has previously been involved in organised crime but has subsequently renounced his or her former "life-style". A questionmark may also be put on the possibility for a fair assessment of this criterion in cross-border situations.

Thirdly, compensation may be refused where it would be considered contrary to justice or public policy to award it. This appears to be a very vague and unclear criterion where it is difficult to see concrete examples of its practical application. It provides also for a very large discretion in the compensation system, decreasing the predictability of a victim's possibility to get compensation in any given case.

Question 10: Should criteria related to the victim's behaviour in relation to the crime, to his or her involvement in criminal activity in general, or other considerations of justice or public policy, be included in a minimum standard?

Question 11: What other criteria, not covered in this paper, could be considered for inclusion in a minimum standard?

6. COMPENSATION TO CRIME VICTIMS – ACCESS FOR THE CROSS-BORDER VICTIM

6.1. The situation today

This chapter will analyse what measures could be called for to facilitate access to state compensation throughout the EU for the cross-border victim. The term "cross-border victim", which will be used throughout this chapter, is to be understood as an EU citizen who becomes the victim of a crime in a Member State other than that where he or she is permanently resident.

Community legal principles, as established by the Cowan-case, requires that the possibilities afforded by a Member State to its own nationals, in terms of state compensation, must be afforded to all EU citizens also. It could therefore appear sufficient that if all Member States gave a right to state compensation, as such, the cross-border victim would not run the risk of falling between two chairs. Noteworthy, this does not cover non-EU nationals legally residing in one Member State and becoming victims of crime in another, but that is rather an issue to be addressed in the context of a minimum standard.

However, differences between the compensation schemes of the Member States may create unfair effects depending on where in the EU an individual becomes the victim of a crime. This problem has partly been addressed in chapter five. More

importantly, it was clear from the overview of European norms in chapter two and of the existing schemes in chapter three that no mechanism exists to facilitate the access to state compensation for a cross-border victim. The problems that a cross-border victim may face, and possible solutions that could mitigate these problems, will be developed in this chapter.

6.2. Obstacles resulting from the cross-border situation

The obstacles resulting from the cross-border situation that can impair the victim's ability to apply for state compensation can, for the sake of illustration, be grouped in three: obstacles related to information on the possibilities to get state compensation, obstacles related to making an application for state compensation, and obstacles related to the necessary investigation that must accompany the application.

6.2.1. Information

Taking the example of a crime victim that leaves the Member State where the crime took place shortly afterwards, such as a tourist, he or she has a very limited time to get information on the spot regarding the possibilities to get state compensation for the injuries sustained. In his or her Member State of residence there are limited, if any, possibilities for finding such information. To find out, at a distance, which authority to turn to in the Member State where the crime took place, and overcoming possible language differences, could prove difficult. It may be noted also that many Member States have experienced difficulties in reaching victims with information on possibilities to compensation in strictly national situations as well. It can therefore be assumed that the cross-border situation makes this problem worse.

6.2.2. The application

Provided that the crime victim has been able to find the necessary information regarding his or her possibility to apply for state compensation, he or she may still face language difficulties in completing the application. National rules setting short time limits within which the application must be submitted may be more difficult to comply with in a cross-border situation. The crime victim may need to follow, again at a distance, the outcome of the criminal proceedings in the Member State where the crime took place, as he or she may not be eligible to apply until the proceedings have been concluded. The victim may also find it difficult to be heard (in person) before the authority reviewing the application. Again, the victim has limited if any possibilities to obtain assistance in this regard. Moreover, the authority in the Member State where the crime took place may be unused to handling applications from victims resident in another Member State, or maybe even not fully informed of their responsibilities in such situations.

6.2.3. The investigation

The crime victim usually needs to complete the application with various reports that in a cross-border situation is likely to come from different Member States. The police report will, usually, have been drawn up in the Member State where the crime took place. The medical report may have been made in either the Member State where the crime took place or in the Member State of residence, or there may in fact be one report from each Member State, if more long-term care was necessary due to the severity of the injury suffered. In case the victim wishes to claim compensation for

loss of earnings he or she has to supply an income statement from his or her Member State of residence. Certain Member States also require the crime victim to show that the offender is indeed insolvent and unable to pay any damages; again the cross-border situation may make it difficult for the victim to acquire such information from another Member State. All the accompanying reports from his or her Member State of residence may not only need to be translated, but they must also contain the information required according the rules in place in the Member State where the application is to be made. Further to this, the victim may need to arrange for that a copy of the decision or judgment resulting from court proceedings against the offender is joined to his or her application.

6.2.4. *Other observations*

There are consequently a number of practical obstacles that impair the cross-border victims access to state compensation. A financial burden can result from that the victim may have to ensure the necessary translation of the application and the accompanying investigation. These obstacles must be seen against the background of the already sensitive situation that the victim is in following the crime. The difficulties caused by the cross-border situation can give rise to secondary victimisation, possibly to the extent that the victim chooses not to apply in the first place. It is therefore clear that the very existence of state compensation schemes in all Member States, coupled with the principle of non-discrimination as established by the Cowan-case, is not sufficient. Neither can the ratification by all Member States of the 1983 European Convention be expected to improve the situation, as the Convention does not include concrete provisions assisting cross-border victims. Measures at Community level therefore appears necessary to facilitate the access of cross-border victims to state compensation in any Member State as easily as in their Member State of residence.

6.2.5. *Possible solutions to ensure easy access in a cross-border situation*

In the search for a solution on how to implement the objective of easy access to state compensation for the cross-border crime victim, a number of guiding principles can be identified. Firstly, any solution must be simple, transparent and practical, for the crime victim as well as for the authorities involved but with priority given to the interests of the victim. Secondly, the solution must apply with a satisfactory degree of uniformity across the EU, to avoid distortions and unfair effects.

With these principles in mind, two model solutions for ensuring the access to state compensation for victims will be presented. In order to focus on the particular problems connected to cross-border situations, both model solutions are based on the assumption that a possibility for all victims to get an adequate level of state compensation exists in all Member States, through the introduction of a minimum standard at Community level. The models have been chosen for the sake of structuring the discussion on how to move forward. They are certainly not the only solutions that can be envisaged, and neither are they to be taken as “ready-made”; the purpose is to identify the main pros and cons of each model to facilitate comparisons between them.

6.3. The mutual assistance model

The practical obstacles confronting the cross-border victim could be reduced by providing the victim with a right to assistance in his or her Member State of residence.

The basis for this solution would be the territoriality principle, that is, the Member State where the crime took place is responsible for paying the compensation and reviews the application according to its national rules.

This principle would be complemented by a right for the crime victim to submit his or her application to an authority in his or her Member State of residence. This authority (hereafter the transmitting authority) would be obliged to transmit the application to the competent authority (hereafter the receiving authority) in the Member State where the crime took place, thus providing a certain degree of administrative assistance to the victim. The main purpose of this model is, therefore, to provide concrete rules on cooperation between the relevant authorities in the Member States, similar to what has recently been set in place for judicial cooperation between the Member States for service of documents and for taking of evidence²¹. These regulations could serve as inspiration for a number of practical aspects in this context also, for example, the setting of precise deadlines and the use of languages and of standard forms.

The main question that arises is how far the obligation for the transmitting authority to provide administrative assistance to the victim should extend. Some of the obligations that could be envisaged include:

- To assist the victim with information on his or her possibility to get state compensation in the Member State where the crime took place, that is, information on the material content of the rules applicable.
- To assist the victim in getting the necessary material for completing the application (such as the necessary forms) and to make sure that all the required accompanying reports are included.
- To arrange for any necessary translations, ensuring that the application (including the accompanying reports) is submitted in a language accepted by the receiving authority.

The obligations of the transmitting authority would on the other hand not include any review or preliminary assessment of the application.

6.3.1. *Responsible authorities in the Member States*

It would be necessary to decide which authority in each Member State that should assume the obligations outlined above. For the sake of clarity and simplicity the

²¹ Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, OJ L 160, 30.6.2000, p. 37. Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States of the European Union in the taking of evidence in civil and commercial matters, OJ L 174, 27.6.2001, p. 1.

authority responsible for managing the compensation scheme, in each Member State, appears to be the natural solution. Regardless of whether an individual has been the victim of a crime in his or her Member State of residence or abroad, he or she can turn to the same authority in order to submit an application for state compensation. These authorities have also built up a substantial expertise in handling their own state compensation scheme, experience which would be vital for assuming the task of providing information on foreign schemes to the victim. It would however be necessary to further assess whether the existing authorities are actually suitable, and able, to assume this task. It should be considered also whether the responsibility for some of the obligations, such as translations, should rather be put on the receiving authority instead. The second question is how to implement this responsibility in Member States with several (decentralised) authorities. Should all of these assume this obligation, or should one be appointed? The answers to these questions would have to be found through a balance between the desired degree of uniformity within the EU and the respect for the principle of subsidiarity.

6.3.2. *Information and cooperation between the authorities*

Whichever solution is chosen for appointing responsible authorities in the Member States, information must be available for these authorities on the compensation schemes of other Member States, to enable them to give adequate information to the victim. How detailed this information needs to be would be determined by the exact content of the obligations for the transmitting authorities towards the crime victim. At the very least a list of the competent transmitting and receiving authorities in all Member States needs to be established, together with information on how applications are made under each set of national rules. To this may need to be added information on the actual content of the national rules, as this would allow the transmitting authority to give detailed information to the victim on what possibilities to state compensation under the foreign system that he or she has. A standard form for the communication between the authorities, to use when transmitting applications, could be considered. The use of modern communication technology could further facilitate and speed up the communication between the authorities.

A solution will need to be found for compiling and managing the above information, possibly in the form of a continuously updated directory drawn up at Community level, including information on all compensation schemes of the Member States. As previously mentioned, inspiration could be sought in this regard from other legislation in the field of judicial cooperation in civil matters. A complementary aspect to such a directory, and useful also for the day-to-day handling of applications in cross-border situations, could be the creation of a network at experts level to facilitate cooperation and direct contacts between the authorities in the Member States. In this regard the use of the European Judicial Network in civil and commercial matters²² could be considered also, to exchange experiences, identify problems and, notably, improve dissemination of information.

6.3.3. *The right to be heard*

A victim may find it difficult to be heard before the receiving authority, when he or she has returned to his or her Member State of residence. One possibility would be

²² Council Decision 2001/470/EC of 28 May 2001, OJ L 174, 27.6.2001, p. 25.

for the transmitting authority to also assist in this regard, by using modern communications technology. The transmitting authority could arrange for the victim to be heard by the receiving authority through the use of, for example, videoconferencing.

6.3.4. *Other observations*

The considerations outlined above shows that in essence, the “mutual assistance model” entails shifting the administrative burden involved in applying for compensation in another Member State from the victim to an authority in his or her Member State of residence. Noteworthy, this solution would mirror that chosen in the Framework Decision on the standing of the victims in criminal proceedings. In that decision the victim may make a complaint before the competent authorities in his or her Member State of residence, if he was unable to do so in the Member State where the offence was committed. This latter condition may be considered also in this context.

In the implementation of this model, nothing would of course prevent Member States currently giving victims a right to compensation for crimes abroad from continuing to apply this right. Neither would it prevent the victim from applying for compensation directly to the competent authority in the Member State where the crime took place.

Question 12: Would a right for the cross-border victim to receive assistance from an authority in his or her Member State of residence when applying for state compensation from another Member State be an appropriate way of facilitating access to state compensation for cross-border victims?

6.4. **The double responsibility model**

A more ambitious and more extensive solution would be to give the crime victim the right to apply for and receive compensation in two Member States: in the Member State where the crime was committed as well as in his or her Member State of residence. Consequently, two authorities in two different Member States would be responsible, in a mutually exclusive way, for the compensation in any given case. Each authority would treat the application in accordance with its national rules.

6.4.1. *Administration and cooperation between authorities*

The administrative burden from the authorities’ point of view is clearly less of an issue for this model compared to the mutual assistance model, as there would be no need for the national authorities to assist victims with applying in another Member State. The double responsibility model neither requires the drawing up of any directory of the compensation schemes of each Member State. Consequently it would be simpler to design as there would be no need for designating transmitting and receiving authorities. Without the need for transmission of applications between Member States the handling of applications could be expected to be quicker, an important aspect for the victim. However, coordination would still be necessary to avoid the risk of double compensation, that is, a victim applying for and receiving compensation in two Member States.

As regards the investigation, an authority in a given Member State may find it difficult to accurately assess the crime victim's right to compensation in cases where the crime has been committed abroad. It would have to base itself on a police report, and possibly also a medical report, from another Member State. It would have to find, where appropriate, information on the outcome of court proceedings in the other Member State, where the crime victim may have pursued a court action for compensation from the offender. The requirement for exhausting all other means for compensation, prevalent in most Member States, may therefore be difficult to apply.

6.4.2. *Compensation levels*

An advantage of the double responsibility model, from the perspective of the victim, is related to the level of compensation. A cross-border victim may sustain most of his or her losses in the Member State of permanent residence, especially in the case of more severe injuries resulting from the crime. This may include future loss of earnings and long-term hospital costs. The compensation for such losses may vary considerably between the Member States due to, for example, differences in standard of living. For the victim, receiving compensation from his or her Member State of residence may therefore result in a more accurate compensation for the actual losses caused by the crime. There would therefore be less need for harmonising the compensation schemes of the Member States through the establishment of a minimum standard with this model.

The possibility for victims to deliberately choose which system is most advantageous for them may however create unjust effects also. Two persons falling victim to the same crime at the same place may in fact receive very different amounts in compensation, as a result of differences between the compensation schemes in their respective Member States of residence. The model entails a risk for "forum shopping", that is, the victim actively seeking to apply under the scheme which is most advantageous in terms of compensation levels.

6.4.3. *Budgetary issues*

The budgetary consequences for each Member State are of course difficult to predict for this model, but they are unlikely to be reciprocal. It would be easy to find examples of two Member States between which, for example, tourist-streams or streams of temporary workers are basically one-directional. The financial effects for the two Member States involved when paying compensation to cross-border victims would, in such cases, be close to the opposite of applying the territoriality principle. In addition to this, the possible increase in applications for certain Member States are difficult to predict, but could demand an increase in the administrative resources required.

Question 13: Would a possibility for the victim to get state compensation in his or her Member State of residence as well in the Member State where the crime occurred be an appropriate way of facilitating access to state compensation for cross-border victims?

6.5. **General observations and comparisons**

The "double responsibility" model appears simple and straightforward and it is more generous from the perspective of the crime victim. Several Member States do in fact

apply this model today, by offering a possibility for compensation to citizens or residents injured abroad. The model would also guarantee the coverage, across the EU, of legally residing non-EU nationals by the scheme of at least one Member State, regardless of whether such nationals are covered by a minimum standard or not. On the other hand this model, if introduced at Community level, could be regarded as less proportionate compared to the mutual assistance model. It raises a number of issues related to its application, from the perspective of the victim as well as from the perspective of the administration. Until the moment the victim has submitted his or her application, it is unclear which authority is actually responsible for the compensation in a given case. In relations between the Member States the solution provides for less reciprocity than applying the territoriality principle. The mutual assistance model, on the other hand, would require a more far-reaching harmonisation of compensation levels in order to avoid unfair results in cross-border situations.

Recalling the principle to build upon what exists already in the Member States, the mutual assistance model appears to be the most appropriate. The territoriality principle, albeit with some modifications, is recognised by all Member States today. Notably, the mutual assistance model would of course not prevent those Member States that today compensate citizens or residents injured abroad from continuing to do so. Neither would it prevent other Member States from introducing such a possibility. Thus, the mutual assistance model does not require any change in current practices as such, but rather assuming an additional responsibility for assisting cross-border victims. The latter may be the central question – are the authorities in the Member States able to assume this responsibility, or would further administrative resources need to be allocated?

Question 14: What solutions, other than those outlined in this paper, could be envisaged to facilitate access to state compensation for cross-border victims?

6.6. Horizontal implementation issues

6.6.1. Harmonised forms

In the context of both models the possibility to create harmonised forms, available in all Community languages and possible to use for a crime victim regardless of in which Member State the application is made, should be considered. However, it is necessary to be aware of the limitations of such forms, as applications in most cases need to be accompanied by police reports and medical reports. These reports can in fact constitute the most important elements of the application. In addition, the forms in use today in the Member States are quite divergent, reflecting differences in the national rules on compensation in themselves. The creation of harmonised forms, possible to use for all victims regardless of in which Member State the application is made, would however be made more feasible through a greater degree of harmonisation, through the establishment of a common minimum standard.

Question 15: Should harmonised forms, possible to use when applying for state compensation in all Member States, be established?

6.6.2. *Information to the citizen*

A necessary element in the implementation of any of the two models is comprehensive and easily available information to the citizens. Such information campaigns would have to be conducted at all levels, European, national, regional and local, and would benefit from being available in all Community languages as a minimum. In terms of common regulatory measures, an obligation for all police authorities in the EU to give information on victims' rights to state compensation, in all languages, could be envisaged. Such an obligation exists already in many Member States. This information could include, for example, the possibilities to compensation that exist and how the crime victim can apply, including responsible authorities as well as application procedures and required accompanying information.

The cooperation between national authorities that is envisaged by the mutual assistance model would be useful also for the mutual understanding of the schemes of the different Member States. The European Judicial Network in civil and commercial matters could play an important role in improving dissemination of information at a European scale. Finally, reference must be made also to the activities of non-governmental organisations such as victims' service support groups, who can play an important role in improving the access to information for victims.

7. **CONCLUDING REMARKS**

The overview of state compensation schemes in the Member States and the considerations of possible measures at Community level, with a particular focus on cross-border situations, would appear to confirm that a Community initiative on compensation to crime victims could indeed provide real added value. Such an initiative could constitute an important building stone in the construction of an area of freedom, security and justice, creating a basic level of protection for all residents of the EU, easily accessible regardless of where in the EU they may become victims of crime.

In relation to the possible establishment of a common minimum standard, it is clear that each component of such a standard raises a number of considerations, difficult in themselves and highlighting also the differences that exist between the Member States. However, these difficulties should not be allowed to obscure the importance and the desirability of reaching the objectives of a common minimum standard. In particular the considerations have revealed that, in relation to most of the criteria that could be included in a minimum standard, cross-border situations are very relevant for the assessment of different solutions.

The objective of improving access to state compensation for cross-border victims appears more straightforward. Noteworthy, the level of harmonisation that could be achieved through a minimum standard is highly influential on the choice of solutions on how to reach this objective. It confirms therefore that the objectives of providing a safety net and of limiting unfair effects are closely linked to the objective of facilitating access to state compensation for the cross-border victim.

Apart from the issues directly related to the creation of a minimum standard and to an improvement of the position of the cross-border victim, other considerations arise

also. For some Member States, making progress in the possibility for crime victims to get state compensation will involve a need for increasing budgetary and administrative resources, compared to what is currently allocated. While such issues have only been briefly touched upon in this paper, as it would make little sense for the Commission to launch a consultation on such matters, the Commission clearly recognises the relevance of such considerations.

However, the Commission would like to stress, as a final remark, the need to seize this opportunity to make further progress on state compensation to crime victims. Since the 1983 European Convention, whereby a first step was taken towards converging minimum provisions, significant advances have been made in understanding and caring for the situation of victims of crime. At the same time, the EU has set itself the objective of creating an area of freedom, security and justice. It would appear that the conditions are now in place for achieving, at Community level, ambitious objectives to the benefit of victims of crime.

The need for careful considerations of how concrete measures could be designed shows that an active participation of all interested parties in the consultation on this Green Paper is vital, in order to realise the potential for making substantial progress in this field.