



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2011)

25 FEB. 2011

Opinion

Title

Impact assessment on legal instruments and other measures on the rights, protection and support of victims of crime and the mutual recognition of protection measures

(draft version of 26 January 2011)

(A) Context

This impact assessment is for an initiative proposing a set of measures on the recognition, protection and support of victims of crime to ensure that they receive a minimum level of legal, psychological and other assistance, access to justice and restoration in all EU Member States. In the Stockholm Programme, the European Council called for further action to place the needs of victims of crime at the centre of our justice systems. The European Parliament has also called upon the Council to adopt a comprehensive legal framework offering victims of crime the widest protection. Article 82 of the Treaty (TFEU) establishes that, to the extent necessary to facilitate mutual recognition and police and judicial co-operation in criminal matters with a cross-border dimension, minimum rules may be established concerning the rights of victims of crime. Article 81 provides for judicial cooperation in civil matters. The EU adopted a Framework Decision on the standing of victims in criminal proceedings in 2001 (2001/220/JHA).

(B) Overall assessment

While the report indicates the likely costs of equalising victims' protection, it still needs to be improved in a number of regards. Firstly, the report should strengthen its intervention logic by clarifying how mutual recognition and judicial cooperation are promoted by assisting victims, and explaining why the five identified problem areas should be addressed. Second, the report should better assess and explain the expected benefits and the broad distribution of corresponding costs across Member States. Third, the report should better explain the methodology behind key estimates. Finally, the report should present the preferred option separately and include it in comparison tables, and should more fully explain its proportionality in relation to fundamental rights issues.

(C) Main recommendations for improvements

(1) Strengthen the intervention logic and clarify the case for EU action. The report should better explain why mutual recognition and judicial cooperation depend on victims' treatment. It should also show that the five broad problem areas considered (e.g. recognition, protection etc) relate to the preconditions for cooperation, and to standards established in the earlier Framework Decision, international initiatives and/or the Charter of Fundamental Rights. To improve the problem analysis, the report should focus more strongly on the gap between existing practice and desired standards and should explain in realistic terms the extent to which clearer standards could improve victims' situation. The report should discuss the available data on the incidence of crimes with a cross-border dimension and should also highlight how, in this case, the need to adopt non-discriminatory standards limits the scope for targeted action. However, efforts should still be made to better differentiate between problems that directly relate to cross-border movements and problems that more indirectly reduce willingness to cooperate. The report should clarify the rationale for creating options from the eleven elements used, and should especially justify the need to tackle issues of provision of waiting areas and translated written information where there is no "critical mass" of Member States with existing standards to indicate an appropriate EU minimum.

(2) Better assess the expected benefits and the distribution of corresponding costs. The report's analysis of impacts should better summarise the gap analysis presented in Annexes 3-7 to highlight whether most, some or few Member States would bear the majority of the costs for reaching the desired EU minimum standards specified in each option. It should identify whether the costs would be high for any particular groups of States and whether changes to legal approaches would be particularly complex in any set of States. The report should similarly highlight the expected distribution of benefits. It should also attempt to clarify how more equal standards for victims would contribute to improved judicial cooperation or could bring wider benefits such as for free movement. The report could use one or two illustrative examples to show that raised standards could have significant impacts for some victims' well-being or earning capacity.

(3) Better explain the methodology used to generate key estimates. The report should more clearly explain the methods that underlie important estimates including the number of victims of crime (§2), the cost of crime in the EU (§2.3) and the availability and actual use of victim support services (§2.2). The data sources used, their reliability and key limitations should be briefly recorded. For the cost of crime, the report should explain if estimates reflect only costs arising from the material harm caused to the victim and the need to justly punish the perpetrator or whether they also include quantified values to represent pain and suffering.

(4) Clearly present the preferred option and explain its proportionality. The report should identify the option which is selected as being preferable in the option section, rather than formulating it at a later stage. Its overall impact should be discussed. For ease of comparison and consistency, it should feature in summary tables and a sum of the cost elements that create its total cost should be provided. In conclusion, the report should clearly explain why the preferred option is considered proportionate and will bring EU added value. Particular attention should be given to explaining the justification for any limits on the fundamental rights of other parties like the accused, and how these will be minimised.

(D) Procedure and presentation

The report should indicate stakeholder views about the proposed options, particularly those of Member States. The report should discuss all significant impacts of its options, even where quantification is impossible, and should clarify the implications of granting victims the right to request the review of a decision not to prosecute a suspected offender. Total scores for each option should be omitted or revised to exclude constituent factors that are not based on evidence. For transparency about option-related estimates, the supporting study should be published alongside the IA report and the IA report should contain a web-link to it.

(E) IAB scrutiny process

Reference number	2009/JUST/006
External expertise used	No
Date of IAB meeting	23 February 2011