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Proposal for EU Recommendation for Assistance to Victims of Acts of Terrorism

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Draft EU Recommendation for Assistance to Victims of Acts of Terrorism

Preamble

Fully aware of the EU Council Framework Decision of 13 June 2002 on Combating Terrorism, in particular paragraph 8 stating that victims of terrorist offences are vulnerable and therefore specific measures are necessary with regard to them;

Bearing in mind the Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings and the Council Directive of 29 April 2004 relating to Compensation to Crime Victims;

Having regard to the 1983 Council of Europe Convention on the Compensation of Victims of Violent Crimes (CETS No. 116), the 2005 Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), the 2005 Council of Europe Guidelines on the Protection of Victims of Terrorist Acts and the 2006 Council of Europe Recommendation (2006)8 on Assistance to Crime Victims;

Considering that terrorist acts seriously jeopardise human rights, threaten democracy, aim to destabilise legitimately constituted governments, undermine pluralistic civil societies and challenge the ideals of everyone to lead a life free from fear;

Considering that terrorist acts cause great harm to the victims by injuring them, inflicting psychological damage and causing death;

Considering that terrorist attacks have repeatedly aimed at causing mass casualties, challenging available institutional capacities;

Considering that terrorist acts can have devastating effects on the quality of life of primary and secondary victims and others who have reason to fear to be targeted and the community as a whole;

Aware that the public nature of terrorist victimisation and the targeting of civilians and non-combatants requires a public response based on solidarity with victims and special attention to their needs;

Aware that victimisation by terrorist acts often results in cross-border victimisation, complicating the provision of assistance;

Recognising the important role of associations dedicated to the protection of victims of terrorist acts;

Recognising that restorative justice approaches and processes are increasingly used to meet victims' needs and aware that they can play a valuable role in assisting victims to come to terms with their victimisation;

Adopts the following Recommendation for Assistance to Victims of Acts of Terrorism and invites Member States to implement them and make sure that they are widely disseminated among authorities responsible for the protection of victims of terrorist acts and those who provide care to them.

I. Use of terms

1. The definition of act of terrorism coincides with the use of the term 'terrorist offence' as contained in articles 1 and 2 of the Council Framework Decision of 13 June 2002 on Combating Terrorism.
2. 'Victim' is a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss directly caused by the terrorist act. The term also includes, where appropriate, dependants or close relatives of the injured or deceased.
3. A 'first responder' is a person who intervenes to assist victims in distress or to prevent further victimisation or damage in the immediate aftermath of a terrorist act.
4. A 'witness' is a person who could be called to a court or other appropriate forum to provide testimony.
5. 'Secondary victimisation' is victimisation that occurs not as a direct result of the terrorist act but as a result of the response of public or private institutions, including the media and individuals, to the victim.
6. 'Restorative justice' is a response to crime in which victims have an opportunity to express their needs and concerns at individual or collective level and to actively participate in the proceedings. Restorative justice aims to repair, in so far as possible, the harm suffered and to bring offenders to understand the consequences of their behaviour and accept responsibility.

II. Principles

1. Member States should ensure that all victims, without discrimination on the basis of any kind, such as race, colour, gender, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability, can benefit from services and measures contained in this Recommendation.
2. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator(s) of the terrorist act or the involvement of the victim(s) in investigations or proceedings.
3. Member States must respect the dignity, private and family life of victims of terrorist acts and take all necessary steps to avoid secondary victimisation.

III. Emergency Assistance

1. In order to address the immediate needs of the victims, Member States should ensure that evidence-based and well-coordinated emergency assistance, including the provision of information and medical, psychological, social, and material support is made available. Member States should, when requested by a victim, also facilitate access to spiritual assistance.
2. In cases of mass victimisation, Member States should develop additional procedures and implementation strategies, including the identification of lead agencies.
3. Wherever possible, assistance should be provided in a language understood by the victim.

IV. Continuing Assistance and Support of Victim Involvement

1. Member States should provide for evidence-based continuing assistance, including medical, psychological, social, material assistance and information services for victims as well as for first responders.
2. Member States should promote and support community-based initiatives, including the formation of groups of victims or relatives with a view to stimulate mutual support, to empower them, and to strengthen solidarity in society.
3. If the victim does not normally reside on the territory of the Member State where the terrorist act occurred, that State should co-operate with the State of residence in ensuring that the victim receives such assistance, including through establishing links between victim support organisations or consular services.

V. Investigation and Prosecution

1. Member States on whose territory a terrorist act has taken place must launch an effective independent criminal investigation into this act.
2. In this framework, special attention must be paid to the interests of victims without it being necessary for them to make a formal complaint.
3. In cases where, as a result of an investigation, it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, Member States should allow victims to ask for this decision to be re-examined by another competent authority.
4. In appropriate cases, Member States should consider launching independent public inquiries in the aftermath of a terrorist act in order to give full and public disclosure of the background, circumstances and responsibilities.

5. Each Member State shall ensure that the victim of a terrorist act in a Member State other than the one where s/he resides can make a report before the competent authority of her/his State of residence, if s/he was unable to do so in the Member State where the terrorist act was committed. This competent authority shall transmit the report without delay to the competent authority in the jurisdiction in which the act was committed. In addition, each Member State should ensure that its authorities have recourse, as far as possible, to the provision of video conferencing and telephone conference facilities as laid down in the Convention on Mutual Assistance in Criminal Matters of the European Union of 29 May 2000(3).

VI. Access to Justice and Administration of Justice

1. Member States shall, in accordance with their national legislation, bring individuals suspected of terrorist acts to justice and obtain a decision from a competent civilian tribunal within a reasonable time.
2. Member States shall ensure that the position of victims is adequately recognised in criminal proceedings in accordance with domestic law, including by safeguarding the possibility for individual victims and/or associations representing victims' interests to communicate orally or in written form their views and concerns in the proceedings.
3. Member States shall provide effective access to justice for victims of terrorist acts, including through associations representing victims' interests, by providing them with:
 - (i) the right of access to competent courts in order to bring a civil action in support of their rights;
 - (ii) the status of parties to criminal proceedings in Member States where such possibility exists;
 - (iii) the right of access to restorative justice programmes;
 - (iv) free legal aid that should be ensured by the State or through special legal aid systems.

VII. Compensation and other Reparative Measures

A. Compensation

1. Victims of terrorist acts, and, where appropriate, first responders and dependants or close relatives, should receive fair, appropriate and timely compensation for damage resulting from a terrorist act, including for pain and suffering incurred. When compensation is not available from other sources, in particular through the confiscation of assets of the perpetrators, organisers and sponsors of terrorist acts, the Member State

on the territory of which the terrorist act occurred should contribute to the compensation of victims for the consequences of direct material or psychological harm, irrespective of their nationality, either by applying existing provisions for compensation for victims of crime or by establishing a special fund for victims of terrorism.

2. Compensation from the State should be readily accessible to victims, irrespective of nationality. To this end, the Member State on the territory of which the terrorist act occurred should introduce a simple procedure allowing for fair and appropriate compensation within a reasonable time, taking into account special complexities in cases of mass victimisation.

3. Member States whose nationals were victims of a terrorist act on the territory of another Member State should facilitate the use of systems of cooperation as foreseen in the Council's Directive relating to Compensation to Crime Victims. In addition, administrative cooperation should be encouraged between the competent authorities of Member States and non-Member States to facilitate access to compensation for their nationals.

4. Member States are encouraged to promote the principle that insurance policies should not exclude damages caused by acts of terrorism through consultation with insurance companies.

B. Other Reparative Measures

Apart from the payment of compensation, Member States are encouraged, depending on the circumstances, to consider taking other measures to mitigate the negative effects of the terrorist act suffered on the victims, their dependants and close relatives as well as first responders. Such other measures could include:

- (1) The search for the whereabouts of the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims;
- (2) Commemorations and tributes to the victims and first responders.

VIII. Restorative Justice

1. Member States should promote competent restorative justice programmes that prepare for and support dialogue between victims and perpetrators of terrorism, and/or between members of the communities involved. As a minimum, these processes should allow victims to communicate the full impact of the terrorist acts on their lives and to seek information about the offenders' motives. This dialogue can also take place between those victims or perpetrators who have not been involved in the same terrorist act. Through the involvement of affected

communities, the societal consequences of terrorist acts should be recognised and dealt with.

2. Member States should ensure that qualified and/or experienced facilitators are available to assist the parties in these processes.

IX. Protection of the Private and Family Life

1. Member States should take appropriate steps to avoid, as far as possible, the undermining of respect for the private and family life of victims of terrorist acts, in particular when carrying out investigations or providing assistance after a terrorist act as well as within the framework of proceedings initiated by victims.

2. Member States should ensure that private and public institutions which interact with victims provide confidential services, including confidential record systems.

3. Member States should, where appropriate, while recognising the principle of freedom of expression, encourage the media and journalists to adopt self-regulatory guidelines and take appropriate measures to ensure the protection of the private and family life of victims of terrorist acts as well as their relatives and first responders in the framework of their information activities. This protection is especially important in the immediate aftermath of a terrorist attack, when those involved are in a state of shock.

4. Member States shall ensure that victims of terrorist acts have an effective remedy when they raise a plausible claim that their right to respect for their private and family life has been seriously violated.

X. Protection of Dignity and Security

1. At all stages of the proceedings, victims of terrorist acts and their dependants and close relatives, as well as first responders should be treated in a manner which respects their personal security, their rights and their dignity.

2. Member States must ensure the protection and security of victims of terrorist acts as well as those of their dependants and close relatives and first responders and should take measures, where appropriate, to protect their identity, in particular where they intervene as witnesses.

XI. Information to Victims and the Public

1. Member States should provide information, in an appropriate form, to victims of terrorist acts about the act which led to their harm, except

where victims indicate that they do not wish to receive such information. For this purpose, States should:

- (i) set up an appropriate mechanism for the provision of information to victims regarding their rights, the existence of victim support bodies, and the possibility of obtaining assistance, practical and legal advice as well as compensation;
- (ii) ensure the provision to victims of appropriate information in particular about the progress of the investigations, decisions concerning prosecution, the date and place of the hearings in court, sentencing decisions including the granting of bail and release from custodial sentence and the conditions under which they may acquaint themselves with the contents of judicial decisions handed down. All information should be provided at the earliest possible stage and with full and clear explanations of the decisions which have been taken.

2. Member States should take steps to prepare an adequate information strategy with a view of minimising undue apprehension, fears and social stigmatisation among the larger public, bearing in mind the risks of retaliatory action against members of communities associated with the perpetrators of terrorist acts. Such an information strategy should be focused on well-balanced background information in order to achieve the required results.

XII. Specific Training for Persons Responsible for Assisting Victims

1. Member States should encourage specific training for persons responsible for assisting victims, including first responders and consular personnel, as well as granting the necessary resources to that effect.
2. Training should, as a minimum, include:
 - (1) evidence-based knowledge of the possible impact of terrorist acts on victims and first responders;
 - (2) state of the art knowledge and skills on ways to assist victims and first responders and prevent secondary victimisation.

XIII. Research and Exchange of Information

1. Member States should promote, support, and, to the extent possible, fund or facilitate fund-raising for victimological research concerning the impact of terrorist acts on victims, first responders and the public at large, including comparative cross-national and cross-cultural research in order to develop better coping mechanisms and strengthen the resilience of communities to terrorist acts.
2. Member States should encourage all governmental and non-governmental agencies dealing with victims to share their expertise with

similar agencies in their country, in the European Union and where needed, elsewhere.

XIV. Increased Protection

Nothing in this Recommendation restrains Member States from adopting more far-reaching services and measures than described in this Recommendation.