

DG JUSTICE GUIDANCE DOCUMENT

related to the transposition and implementation of

**Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012
 establishing minimum standards on the rights, support and protection of victims of
 crime, and replacing Council Framework Decision 2001/220/JHA**

The purpose of this guidance document is to facilitate the effective and timely transposition of Directive 2012/29/EU by the European Union (EU) Member States that are bound by its provisions. This document is intended to assist the Member States to have a common understanding of the provisions contained in the Directive.

This document is the result of a **process of consultation** of the various interested parties (Member States' national authorities, victims' support organisations, other concerned NGOs).

This document is not legally binding and is intended for guidance only. It will not serve as a checklist for assessing Member States' compliance with the Directive's provisions.

The authoritative interpretation of EU law remains within the sole remit of the European Court of Justice (CJEU) in accordance with the TFEU and TEU Treaties¹. This document can therefore neither provide a formal interpretation of EU law, nor provide legal advice on issues of national law.

Obligations imposed on the Member States stemming from this Directive will demand transposition by a legislative instrument, while practical and technical implementation to achieve objectives of the Directive might be ensured by appropriate non-legislative measures. Member States have to put in place a specific legal framework to enable individuals to recognise clearly their rights and obligations under this Directive.

In all individual provisions of the transposition measures of this Directive the general principles of EU law (e.g. equality and non-discrimination) and the Charter of Fundamental Rights must be respected. Moreover, it is necessary to recall the positive obligations and existing case-law standards of the European Court of Human Rights which contains various references to victims' rights, in particular as regards the access to justice and respect of due process requirements. In addition, Member States should take into account a number of relevant **international standards on victims' protection** that have been developed by the **United Nations²** and by the **Council of Europe³**.

¹ Treaty on the functioning of the European Union, consolidated version OJ C 326/47 of 26.10.2012
 Treaty on the European Union, OJ C 326/13 of 26.10.2012

² Including the UN Convention on the Elimination of All Forms of Discrimination against Women (1979), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002/12, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005), Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power (2006).

³ Including Council of Europe Recommendation (1985)11 on the Position of the victim in the Framework of Criminal Law and Procedure, Council of Europe Recommendation (2006) 8 on Assistance to Crime Victims, the

This document is meant to lead Member States through the Directive and suggest possible ways to tackle both - the transposition and implementation process.

Taking into account the fact that some Member States have a federal structure (having legislation, policies and cooperation at state, regional, provincial or local level), all references to "national" in this document also refer to such regional or local contexts, where appropriate.

2011 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, the 2005 Convention on Action against Trafficking in Human Beings and the 2011 Convention on preventing and combating violence against women and domestic violence.

1. INTRODUCTION — PURPOSE OF THIS DOCUMENT

The Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA (the ‘Directive’) was published in the Official Journal of the European Union on 14 November 2012. According to Article 27, Member States must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 16 November 2015.

Improving the rights, support, protection and participation of victims in criminal proceedings is a Commission priority. Thus, the Directive forms an essential part of a horizontal package of measures, launched by the European Commission in May 2011. This aims to strengthen the rights of victims of crime so that any victim can rely on the same basic level of rights, whatever their nationality and wherever in the EU the crime takes place. In addition to this horizontal Directive on rights, support and protection of **all victims** of crime, other Directives, such as Directive on Trafficking in Human Beings and Directive on Child Sexual Exploitation were previously adopted by the EU in order to address specific situation of victims of these crimes.⁴

To ensure that the new measures of the Victims' Directive bring real change for victims in Europe, the Commission will offer its assistance to Member States to implement the Directive adequately into national legislation within the next two years, in the wider context of measures set out in the Budapest Roadmap on victims.⁵ The goal is to improve the real, day-to-day situation of millions of victims of crime across Europe to the greatest extent possible.

For many Member States, and for practitioners working in the national systems, the transposition and implementation of this Directive will undoubtedly be complex and sometimes challenging. **The Directorate General Justice of the Commission gives its views and suggestions for each of the Directive's Articles in Section 3 below.** This guidance paper will be available on-line on the DG JUSTICE website (www.ec.europa.eu/justice) and it should help national authorities, practitioners and relevant service providers to understand some of the most complicated and far-reaching provisions of the Directive. The implementation of the Directive will greatly benefit from a **coordinated, comprehensive and timely implementation process involving all relevant stakeholders**. Close dialogue with national administrations, experts (academics and practitioners) and civil society, including non-governmental organisations enables all involved to anticipate problems stemming from implementation. Moreover, it can avert diverging interpretations between Member States that would be detrimental to the **effective and coherent application** of the Directive throughout the Union. DG JUSTICE therefore aims to organise experts' meetings and workshops to give impetus to work on implementation and provide Member State authorities with guidance and assistance.

⁴ Directive 2011/36/EU -

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>;
Directive 2011/92/EU-

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF>

⁵ Resolution of 10 June 2011 on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings.

2. VICTIMS DIRECTIVE — CONTENT AND APPROACH

This horizontal cross-cutting Directive is divided into six thematic Chapters: **General Provisions; Provision of Information and Support; Participation in Criminal Proceedings; Protection of Victims and Recognition of Victims with Specific Protection Needs; Other Provisions; and Final Provisions**. These Chapters, according to their thematic content, require different methodological approaches for effective implementation, to ensure that all the rights granted and the services listed will be effectively available for victims and meet their needs. Victims have a whole range of needs that should be addressed to help them recover: to be **recognised** and treated with **respect** and dignity; to be **protected and supported**; to have **access to justice**; and to obtain **compensation and restoration**.

The core objective of this Directive is to deal with victims' needs in an **individual manner**, based on an **individual assessment** and a targeted and participatory approach towards the provision of information, support, protection and procedural rights. Special attention is given to special support and protection for victims of certain crimes, including victims of gender-based violence, predominantly women, due in particular to the high risk of secondary and repeat victimisation, of intimidation and of retaliation. The Directive also insists on a **child-sensitive approach, whereby the best interests of a child victim must be the primary consideration** throughout their involvement in criminal proceedings.

Furthermore, the Directive is built on the key principle of the '**role of the victim in the relevant criminal justice system**'. The victim's formal role in national systems will determine the approach taken in implementing some of the key rights in the Directive in the course of criminal proceedings. Since the formal role of victims in criminal proceedings varies significantly between Member States, the implementation of these Articles will be different to some extent and influence the particular procedural consequences and the extent of the rights of the victims set out in this Directive.

Recital 20 is of utmost importance to understand the scope of application of procedural rights of victims in this Directive. Although not a definition in itself, the meaning of 'the role of victims in the criminal justice system' is a guiding element for many Member States and their national systems (victims may have a role as e.g. civil party, witness or private prosecutor in some States, or no formal role at all in other States).

To safeguard **the principle of legal certainty**, Member States **should establish at national level the exact legal criteria** — while doing this they might use as guidance Recital 20.

IMPLEMENTATION MODALITIES AT NATIONAL LEVEL

The objectives of this comprehensive, far-reaching Directive can be achieved by **various means, combining legislative, administrative and practical measures**, and should take into account **good practices** in the field of assistance and protection for victims. **Extensive national coordination** among competent authorities when preparing national transposition measures can facilitate the preparation of consistent and effective transposing measures. This coordination should include the Ministry of Justice, Ministry of Interior, the police and public prosecution authorities, the courts, ministries and/or public bodies in charge of equality, non-discrimination, health and social welfare. Other relevant actors, such as generic and

specialised victim support organisations and restorative justice services, should also be consulted. **Member States with a federal structure should carry out this coordination at the appropriate state/provincial/local level.**

To meet the high demands for a modern coherent legal framework on victims' rights set out in the Directive, Member States may consider *a priori* as suitable for national transposition of the Directive the following options: (a) to adopt an all-embracing criminal law Victims' Codex (Statute) or (b) to divide the transposition between the Criminal Code of Procedure and (creating) an all-embracing criminal law Victims' Statute depending on the categories of Articles.

- The choice of the overall transposition technique may assess the best option between:
 - Amending the existing general Criminal Code of Procedure
 - Creating a single criminal law Victims' Statute
 - Divide the transposition between Criminal Code of Procedure, an administrative law instrument and/or (creating) a single criminal law Victims' Statute
- As for practical assistance to victims, Member States will have to decide:
 - How to ensure the proper functioning of general and specialist victims' support services, which form a significant and prominent part of the requirements of the Directive, at the national level;
 - What existing national action plans aimed at combating some specific crimes, such as all or certain forms of violence against women, are to be amended;
 - What technical modalities on legislation in this sphere already exist (would any be created);
 - How the system of financing and mutual coordination among national authorities and the private and non-governmental sector would be governed.

However, every Member State — each with different criminal justice systems — must assess each Article of the Directive to determine the most suitable instrument of transposition for the different objectives set in the directive.:

In this context, Article 288 TFEU provides that the manner and form of implementation of Directives are a matter for each Member State to decide, but at the same time, the CJEU has established **case law with general criteria according to which the Commission should review the adequacy of the implementation method chosen**. According to the Court, the State's freedom to decide on the manner of implementation:

‘does not however release it from the obligation to give effect to the provisions of the Directive by means of national provisions of a binding nature ... Mere administrative practices, which by their nature may be altered at the whim of administration, may not be considered as constituting the proper fulfilment of the obligation deriving from that Directive.’⁶

⁶ Case 96/81

A particularly strong stance on the obligations was taken in case C-361/88⁷, when the Court pointed out that implementation requires Member States to put in place **a specific legal framework relevant to the Directive's subject matter to enable individuals to recognise clearly their rights and obligations under EC law**. For example, administrative measures such as circulars are inadequate as a means of transposing Directives.

3. COMMENTS ARTICLE BY ARTICLE

In the section below, DG Justice deals with each of the Articles of the Directive and has highlighted any problematic, sensitive or vague provisions. The relevant Recitals, the corresponding provision(s) in the FD, any relevant conclusions from the 2009 Implementation Report and CJEU case law that may help in interpreting the provisions are also indicated.

For implementing each Article, DG Justice presents some reflections which should help Member States in the context of their transposition and implementation efforts.

In order to better understand the wide context in which provisions of the Directives have been developed, it is suggested to read the text of the FD still in force and the 2009 Implementation Report.

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61988CJ0361:EN:HTML:>

"1. The transposition of a directive into domestic law does not necessarily require that its provisions be incorporated formally and verbatim in express, specific legislation; a general legal context may, depending on the content of the directive, be adequate for the purpose provided that it does indeed guarantee the full application of the directive in a sufficiently clear and precise manner so that, where the directive is intended to create rights for individuals, the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts. The fact that a practice is in conformity with the requirements of a directive in the matter of protection may not constitute a reason for not transposing that directive into the national legal system by provisions capable of creating a situation which is sufficiently precise, clear and transparent to enable individuals to ascertain their rights and obligations. In order to secure the full implementation of directives in law and not only in fact, Member States must establish a specific legal framework in the area in question. "

ARTICLE 1 — OBJECTIVE

(Recitals 9-14)

The purpose of the Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. Member States should ensure that victims are recognised and treated in a **respectful, sensitive, tailored, professional and non-discriminatory manner**, in all contacts with victim support or restorative justice services or competent authorities operating within the context of criminal proceedings. Member States should ensure that the national criminal justice system recognises the victim as an **individual** with **individual needs**, with a **key role** in the criminal proceedings, while **ensuring the fair trial principle** and bearing in mind that the rights set out in the Directive are **without prejudice to the rights of the offender**⁸.

The Directive applies in relation to **criminal offences committed in the Union and to criminal proceedings that take place in the Union** (see further Recital 13). However, **its object is not to criminalise certain acts or behaviours in the Member States**. Thus, whether the Directive will apply and define as a ‘victim’ a person who has been a victim of specific conducts depends on whether such acts are criminalised and prosecutable under national law.⁹

Victims of crime under international law are not specifically mentioned in the Directive. However, most EU Member States have recently taken steps to incorporate international crimes such as **genocide, war crimes** and **torture** into their national criminal codes and to establish **universal jurisdiction** over them, so that these types of crimes may be prosecuted within their national legal systems even if committed abroad.

Consequently, the Directive also confers rights on victims of extra-territorial offences who will become involved in criminal proceedings, which take place within the Member States (see Recital 13).

Recent practice in Member States¹⁰ with regard to the **investigation and prosecution of crimes under international law** has demonstrated that **in principle, 3 scenarios** can arise when **extra-territorial crimes** are being addressed through **proceedings in Member States**:

1. Cases in which a crime was committed outside the EU, the victims of which are located within the Member State, and criminal proceedings in relation to the crime take place within the MS. An example of this scenario was seen in the case of A. Scilingo, who was convicted in Spain in 2005 of crimes against humanity and torture committed in Argentina in the 1970s and 80s; victims of his crimes were located in Spain or held Spanish nationality.

⁸The Article is based on FD Art. 2 and UN and other international instruments, in particular Council of Europe Recommendation (2006)8 (which requires in particular respect for the security, dignity, private life and family life of victims and the recognition of the negative effects of crime on victims). International law has progressively recognised the importance of safeguarding the rights of victims of crimes under international law and international standards which recognise the rights of such victims to participate in legal proceedings; to be protected from reprisals and to safeguard their privacy and psychological integrity; and to have recourse to effective remedies and adequate forms of reparation.

⁹ For example, **the criminalisation of some acts**, such as for example road traffic offences or discrimination, hate- or bias conducts or stalking varies to a large degree between the Member States.

¹⁰ As researched by Redress Trust, an international human rights non-governmental organisation based in the UK.

2. Cases in which a crime was committed outside the EU, the victims of which are located within a Member State and criminal proceedings in relation to the crime take place within another member State. An example of this scenario was seen in prosecution of J. Mpambara; the accused was convicted in 2009 of crimes which were committed in Rwanda in 1994, after a trial which took place in the Netherlands and involved victims living in Germany.

3. Cases in which a crime was committed outside the EU, the victims of which are located outside the EU, but who take part in criminal proceedings within a Member State in relation to that crime. An example of this can be seen in case of Y. Basebya, who was convicted in Netherlands in March 2013 of incitement to genocide in Rwanda in 1994; the Dutch court heard testimony from a large number of victims and witnesses in a number of European, North American and African countries, including Rwanda.

Member States should pay particular attention to the **principle of non-discrimination**, which covers all possible discrimination grounds, including sexual orientation and gender identity. This is particularly relevant in the context of **gender-based violence** (explained in Recital 17) as well as all forms of hate crime.

The application of the Directive in a non-discriminatory manner also applies to a victim's residence status. Member States should ensure that rights set out in this Directive are not made conditional on the victim having legal residence status on their territory or on the victim's citizenship or nationality (see also Recital 10). Thus, third country nationals and stateless persons who have been victims of crime on EU territory should benefit from these rights. This may be of particular importance in the context of racist and xenophobic hate crime¹¹, crime against undocumented migrant women and girls who are particularly exposed to various forms of gender-based violence (such as physical violence, sexual exploitation and abuse, female genital mutilation, forced marriages and so-called 'honour crimes') and trafficking in human beings. However, reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.

When applying this Directive, **Member States should also ensure that their national criminal justice systems develop a child-sensitive approach.** This means that if the victim is a child, the **child's best interests** will be a primary consideration and must be assessed on an individual basis. Both the child and his/her parent/guardian or other legal representative must be kept informed during the proceedings. However, this right to information should be without prejudice to specific procedures that address the situation in which there are objective, factual circumstances whereby the parent/guardian/legal representative are suspected of being involved in a criminal offence against the child. In general, the **Guidelines of the Council of Europe on child-friendly justice** may serve as guidance.¹² These Guidelines aim to ensure that all rights of children involved in judicial proceedings are fully respected with due consideration to the child's level of maturity and understanding.

¹¹ Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law penalises racist and xenophobic hate speech and crime.

¹² Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2011), www.coe.int/childjustice

MEMBER STATES ARE INVITED TO CONSIDER:

1. Adopting a **coherent and comprehensive national policy** on the rights of crime victims, including access to support, protection and participation throughout the criminal proceedings.
2. Measures intended to achieve the directive's objectives may include **nation-wide codes of conduct/guidelines for professionals in regular contact with victims of crime** (police, judicial authorities, victims' support services providers etc.) and probably will require **setting clear responsibilities for the entities concerned**. These guidelines should be made public, promoted and followed up by appropriate **training** of professionals (see Article 25).
3. Paying particular attention to **inter-agency co-operation**. It is of utmost importance to ensure **horizontal collaboration** and **coherence** between **police, judicial authorities** and **victim support organisations**, when they are dealing with a victim's case in order to minimize the burden upon the victim. Ensuring that rights set out in this Directive are **not** made **conditional** on the victim having **legal residence status** in their territory or on the victim's citizenship or nationality. Thus, third country nationals and stateless persons who have fallen victims of crime on EU territory as well as victims of crime committed extra-territorially in relation to which criminal proceedings are taking place within the EU must benefit from these rights. Current practice from some Member States shows this can be achieved by adapting appropriate immigration rules, for example, by suspending deportation orders and/or issuing temporary residence permits in relation to on-going criminal proceedings.

ARTICLE 2 — DEFINITIONS
(Recitals 19 and 20)

The FD defines a crime victim as '*a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State*'. According to the Council of Europe, the term 'victim' should also include 'where appropriate, the immediate family or dependants of the direct victim' (Recommendation (2006)8). In relation to the cross-border compensation of crime victims (Directive 2004/80/EC) the definition of a victim is limited to a victim of an intentional violent crime.

The CJEU, when addressing the preliminary ruling questions on interpretation of the FD, repeatedly confirmed that the concept of victim for the purposes of the FD does not include legal persons who have suffered direct harm by violations of the criminal law in a Member State (C-467/05, Dell'Orto, C-205/09, Eredics). However, Member States may choose to apply the standards set out in the Directive to legal persons.

The Directive lays down **definitions of 'victim', 'family members', 'child' and 'restorative justice'**. The first two definitions require some clarifications:

- **‘Victim’** is a natural person¹³ who has suffered harm (including physical, mental or emotional harm or economic loss) directly caused by a criminal offence — regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them (see Recital 19).
- The definition of ‘victim’ also covers **family members of the deceased victim**, who have suffered harm because of person’s the death directly caused by a criminal offence (paragraph 1(a)(ii)). The criterion **‘harm’** should be interpreted in the context of the individual emotional relationship and/or direct material inter-dependence between the deceased victim and the relative(s) concerned.
- **‘Family members’** are the spouse, the person who is living with the victim in a committed intimate relationship (i.e. same - or different-sex), in a joint household and on a stable and continuous basis, the relatives in direct line (i.e. parents and children), the siblings and dependants of the victim (i.e. other than dependent children). The criterion **‘committed intimate relationship, in a joint household and on a stable and continuous basis’** presupposes close emotional ties and financial interdependence between two persons (as if they were formally married).

In transposing and implementing the Directive, Member States should use inclusive definitions of ‘family members’ when it comes to the victim’s partners. Such definitions should include spouses, as well as unmarried partners, regardless of whether the partners are in a registered civil partnership under its national laws. Thus, **Article 2 para 1(b) should apply in all Member States, regardless of the national legislation on the recognition of unmarried couples, same-sex couples and same-sex marriages.**

Paragraph 2 allows Member States to **limit** the number of family members who may benefit from the rights and to determine which family members should have **priority**. This is to avoid that the definition gives rise to disproportionate demands on criminal justice actors, since all the rights in the Directive apply to all family members of deceased victims and the rights to support and protection apply to family members of surviving victims. National authorities may thus establish procedures whereby, for example, a single contact person is nominated by a family to benefit from certain rights instead of one household receiving multiple identical notifications in respect of a single offence (e.g. a family spokesperson). Moreover, prioritisation may be needed to ensure that the spouse/intimate partner and children of the deceased victim are the prime focus in contacts with the authorities.

The notion **‘role of victims in the relevant criminal justice system’** (recital 20) varies significantly among Member States. The notion ‘role of the victim’ determines in particular the procedural rights of victims set out in the Directive and should not be confused with the definition of ‘victim’ included in Article 2. **A victim falling within this definition is a victim notwithstanding his/her ‘role’ in the national criminal justice system.**

¹³ Thus, the Directive does not define as victim a legal person, which is in line with the ‘victim’ definitions of the FD, Council of Europe Recommendations (2006) 8 on Assistance to Crime Victims and Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power.

The Directive's concept of the 'role of the victim in the criminal justice system' emphasises the importance of legislative transposition for determining which of the criteria listed in Recital 20 are used in national laws and procedures to define the victim's role in criminal proceedings. Member States do have a margin of discretion, but the transposition should not be too restrictive and the purpose and objectives of the Directive to support and protect all victims of all crimes should be preserved.

MEMBER STATES ARE INVITED TO CONSIDER:

4. **Reflecting these definitions in national legislation and policies relevant for victims' rights** in a precise and concise manner. The 2009 Implementation Report showed that most Member States referred to existing national definitions instead of amending their legislation to implement the provision on definitions in the FD. However, shortcomings of the previous experience can be avoided by including **the definitions of the Directive in national legislation by full legislative transposition to preserve the legal certainty and clarity of victims' rights.**
5. **Specifying clearly and precisely the moment at which criminal proceedings are considered to begin for the purposes of the Directive** (recital 22) in order to allow for victims' enjoyment of Directive rights from the earliest opportunity within the context of their national legal systems.
6. Paragraph 2 allows for **'procedures in national law' to limit and/or prioritise family members.** However, to preserve legal certainty in decisions to limit or prioritise family members there is a need for objective and transparent foreseeable criteria. Any limitation or prioritisation of **rights to support and protection should be avoided,** since these rights are inherently **needs-based.**
7. **Providing training and guidance for competent authorities** to ensure full understanding of the definitions in practice, in particular regarding 'victims' and the fact that **'a person should be seen as a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted'.**

ARTICLE 3 — RIGHT TO UNDERSTAND AND TO BE UNDERSTOOD
(Recital 21)

Article 3 clarifies ‘**communication safeguards**’ in detail. It **applies to Articles 4, 5, 6 and 7 of the Directive**. The approach taken in the Directive underlines the individual victim’s ability to ‘follow the proceedings’. This new **personalised approach** will give the victim the right to understand and be understood. This is different from the FD’s concept of broad procedural safeguards to ‘minimise as far as possible communication difficulties’ as regards victims’ understanding of, or involvement in, the relevant steps of the criminal proceedings, to an extent comparable with measures which Member States take in respect of defendants. The 2009 Implementation Report concluded that communication difficulties could be interpreted broadly to include an understanding of the procedure itself, but all Member States understood this to be limited to linguistic barriers.¹⁴

It is therefore important to emphasise that the Directive seeks to ensure that victims — based on their **personal characteristics** (e.g. gender, disability, age, maturity, relationship to or dependence on the offender) — understand and can make themselves understood during criminal proceedings (linguistically or otherwise) and that authorities **pro-actively assist** victims to do so throughout criminal proceedings.

Paragraph 2 is about **practical aspects** of giving victims particular information. It is intended to cover explicitly the personal situation of a victim regarding literacy, hearing, speech, sight impairment etc. There should be demonstrable efforts to provide information in a **child-friendly manner** if a child is involved (linked to Art. 1).

Paragraph 3 gives victims the **right to be accompanied** by a person of their choice in their first contact with the authorities if they need assistance due to the impact of the crime or if the victim has difficulties understanding proceedings or to be understood. The purpose of this right is to practically assist the victim and to provide moral support when reporting a crime. This provision may also cover a person whom the victim has not explicitly chosen, but who has volunteered to help because of the victim’s mental/physical state in relation to the crime (e.g. a taxi driver who finds a victim on the street or person helping a traumatised elderly victim after a robbery). **This right is provided in addition to the right to be accompanied under Article 20(c).**

MEMBER STATES ARE INVITED TO CONSIDER :

- 8. Developing procedures allowing authorities to assess the communication needs and constraints of each individual victim, from the victim’s first contact with the criminal justice system** to be able to assess whether victims have any communication difficulties. The assessment process should look at all factors affecting the victim’s ability to communicate and include any language requirements or other needs that must be met to ensure the victim understands the information provided and is able to be understood. This assessment should also include all factors affecting the victim’s ability to cope with the consequences of the crime.

¹⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0166:FIN:EN:PDF>, page 5, Article 5.

9. Setting up **national practices and schemes to provide information in simple and accessible language, available both orally and in writing** to comply with paragraph 1. Good practice shows that standard basic pieces of information should be readily available in a range of languages, including **Easy Read versions**.
10. To allow for translation and interpretation as quickly as possible, especially in urgent situations, competent authorities and professionals working with victims should establish an **operational network of easily accessible translators and interpreters**. The competent police/criminal justice authority should provide such services without the request of the victim. Particular attention should be given to the **gender** of the translator/interpreter in contact with the victim, in accordance with the needs and wishes of the victim (e.g. in cases of gender-based violence).
11. Developing **internal (predominantly police) practices** to comply with paragraph 3, whereby a person of the victim's choice may be present during the first contact with police and other criminal justice authorities. The safeguard '**unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced**' allows for some flexibility on the part of Member States. The authorities may exclude the person of choice, say, in cases of conflicts of interest (e.g. if the person of choice may be suspected of domestic violence or honour crime; or the confidentiality requirement of the accompanying person would not be met).

ARTICLE 4 — RIGHT TO RECEIVE INFORMATION
FROM THE FIRST CONTACT WITH A COMPETENT AUTHORITY
(Recital 21 and 23)

Article 4 is largely covered by Art. 4 FD, para 1. Its concept is similar to the common law concept of '**Bill of Rights**', which would list rights to be provided by Member States without the request of the victim¹⁵. The 2009 implementation report clearly demonstrates that Member States do not provide victims with sufficient information, and finds inconsistencies in practices. Article 4 establishes a 'right for victims to receive information'. The rationale behind this provision requires the **criminal justice authorities to provide extensive information proactively ex officio**, rather than the onus being on victims to seek out such information for themselves. Victims must be granted 'effective **access to information**'.

The right applies **from the first contact with the competent authorities**. The term 'competent authority' is broader than the FD's 'law enforcement authority' (i.e. police). The competent authorities, acting in the criminal proceedings under this Directive, are determined by national law. This does not exclude, for example, customs or border agencies, if they have the status of law enforcement authorities under national law. This is particularly important in cases of trafficking in human beings (e.g. **FRONTEX**¹⁶ experience) or customs/smuggling offences. **Hospitals, employment centres and similar facilities should not be deemed competent authorities in criminal proceedings.**

¹⁵ The wording also aims to ensure consistency with the Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power and the CoE Recommendations (2006)8.

¹⁶ European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, <http://frontex.europa.eu/>.

First contact can be made when the victim reports a crime at the police station, but also when in contact with the police at the scene of crime without the victim having made a formal complaint (link to Article 8). Contact with the authorities also includes helpline phone calls and online/ internet contacts.

The principal requirement of Article 4 is to ensure that victims **effectively understand** the information given (as required by Article 3). As this requirement goes beyond the simple linguistic issue, the effective implementation of the Article requires officials to take an **individual, pro-active approach** when dealing with victims. Consequently, the main challenge is to develop appropriate tools that make different types of information accessible to victims.

Information may be provided by **various means**, both orally and in writing, usually by distributing information **booklets** and **leaflets** and creating systems whereby there is **an obligation on police officers, prosecutors and judges to inform victims of their rights**. However, the individual needs and personal circumstances of victims must always be duly considered when providing information in each particular case. For example, it would not be enough to post information on websites without referring to such a website in an information leaflet; and a reference to a website may not be appropriate for a person who does not possess a computer.

The Article introduces the notion that information has to be provided ‘**without unnecessary delay**’. Case-law of the European Court of Human Rights in Strasbourg has developed, in relation to Article 6 of the Convention of Human rights and Fundamental freedoms and suspects/accused rights, similar notions and has used various criteria (without undue delay, reasonable time etc.). There are thus different interpretations of this expression, but it should in principle mean that a victim is informed as soon as he/she meets a competent official and can reasonably absorb such information.

Paragraph 1(a) is an important prerequisite for a victim’s right to access **support**. **Information given by the competent authorities about the type of support available must be directly linked to their obligation to facilitate referrals to victim support services pursuant to Article 8(2)**. Thus, a police officer should ensure that victims are informed about support available **and** that they ask victims if they want to contact/be contacted by support services. Without this information and referral, victims are unlikely to access services that are often crucial for their ability to cope with proceedings and to recover.

Paragraph 1(b) requires authorities to inform victims how to make a **formal complaint** (unless they have already done so when first getting in contact with the authorities). It also requires them to explain the victim’s ‘**role in connection with such procedures**’, in line with Recital 20 and properly mirroring the role of the victim throughout the various stages of criminal proceedings.

Paragraph 1(c) explicitly mentions available **protection measures**, which is linked to Directive 2011/99/EU on the European Protection Order and Regulation 606/2013/EU of the European Parliament and of the Council on mutual recognition of protection measures in civil matters.¹⁷ Based on an individual assessment of the victim, carried out under Article 22, the

¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:338:0002:0018:EN:PDF> . <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:181:0004:0012:EN:PDF> .

victim may be entitled to ask for protection measures during their first contact with the competent authorities.

Paragraph 1(d) highlights ‘**any other sort of advice**’, and does not include the previous ambiguous condition in the FD that such information is only available when victims are ‘entitled to receive it’. This term should be interpreted broadly, it is therefore meaningful if the advice can go beyond simple legal advice. It may also cover information on social security schemes or financial advice, if appropriate.

Paragraph 2 stresses that the **extent or details of information may vary** depending on the specific needs and personal circumstances of the victim and the type or nature of the crime and that additional details can also be provided later. This implies that authorities should carry out a ‘**relevance test**’ and personalised ‘**needs-based evaluation**’ when assessing the extent or detail of information linked to the particular stage of proceedings. For example, a traumatised victim who has been physically injured may not be able to absorb all relevant information at a first contact at the crime scene and will need the information later.

The practical effectiveness of the Directive could be improved by ensuring that the authorities (police, prosecutors and judges) keep the victim informed **continuously** during the course of proceedings, where necessary and appropriate. This means that authorities would provide relevant, updated information at the relevant time to enable victims to understand the process and their rights. The provision or sharing of information under Article 4 should **not be confused with disclosing information related to the criminal investigation or from the case file, which is not required by the Article**.

It is obvious that due to the broad obligation on providing extensive information in Article 4, this provision would involve Member State authorities in a major effort to ensure **practitioners are properly trained** to comply with the Directive (link to Article 25).

To safeguard the overall transparency of the proceedings, the authorities should make sure that once information has been effectively provided to the victim, this fact is recorded in **the police or judicial file records**, including, for example, a specific reference number given to their case.

MEMBER STATES ARE INVITED TO CONSIDER:

12. Developing appropriate **models, templates, IT tools etc. for providing information to victims** and **specify which criminal justice actor is responsible** for providing each type of information listed **under Article 4**. For general/generic types of information, the **brochure/leaflet/website** available at the police/judicial authority could be deemed sufficient, provided that additional individual information is provided simultaneously by competent officials/victims’ support services on an individual assessment basis (orally or in writing). It is also very important **to differentiate between different types of information from the outset**, reflecting the actual victim’s personal situation. Member States should ensure the information provided to victims of crime is provided in a sensitive manner that takes into account their personal characteristics and the nature of the crime in which they were a victim, making sure they understand the concepts as clarified in Recitals 55, 56 and 57 of the Directive.

13. Developing **internal practices and procedures** that duly respect **data protection rules** and the **wishes of the victim** to ensure that victims actually receive the required information. When implementing Article 4, Member States may decide on the most appropriate methods of providing information and **the role of national police and judicial authorities in doing so** (including their internal subordination and supervision competences). However, good practice illustrates that the various actors dealing with victims (including police, prosecution, judiciary authorities, social services, victim support organisations) should cooperate closely to ensure that the **appropriate, updated flow of information for victims** is maintained throughout **all stages of criminal proceedings**. **Modern means of communication technology** such as **electronic transfer systems** may be very useful to achieve this goal.
14. Consulting Member States that already have experience with good practices of **police sharing information with victim support organisations** (VSOs) so that they can assist individual victims. Some Member States already provide for information exchange between the authorities and VSOs, but this is often done on a case-by-case basis, not in a structured manner. Thus, a **more structured, sustainable approach** would be valuable. For example, a **one-stop-shop victim agency** (see Recital 62) could be established to serve as the main contact for victims and should be responsible for keeping the victim informed, liaising between the victim and all authorities and agencies involved. This is an approach promoted by the **Istanbul Convention**¹⁸, as such one-stop shops have been tried and tested for services to victims of domestic violence and could be adapted to victims of other types of crime.
15. The **situation of victims normally residing in another country** entering into contact with the competent authority in the country in which the crime occurred should be treated specifically, and linguistic factors should be taken into account.
16. **Acknowledging that victims who choose not to report a crime to the police may also benefit from receiving much of this information** (for instance, information on where and how to report a crime, role of the victim in criminal proceedings, access to support etc.) **as not all provisions of the Directive are applied only if the victim has made a formal complaint**. Therefore, Member States should ensure that there are general awareness raising campaigns and that information is available to the general public (leaflets, poster campaigns, websites etc.) and in places where victims are likely to go as a result of crime (hospitals, school nurse, housing and employment centres, women's organisations, embassies, consulates etc.), also in line with the requirements of Article 26 para 2.

¹⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>.

ARTICLE 5 — RIGHT OF VICTIMS WHEN MAKING A COMPLAINT
(Recitals 22, 24, 25 and 63)

Article 5 provides new rights for when victims make a complaint. The complaint may be made either orally or in writing, by various means (e.g. at a local police station, by telephone, text message or online). The Article requires the authorities to provide the victim with **at least a written acknowledgment** that a formal complaint has been made, containing the basic elements of the criminal offence (see Recital 24). Practice shows that some Member States do not provide a copy of the complaint itself, so a written confirmation or acknowledgement is therefore a **minimum requirement** and should not necessarily change practices in Member States in which a copy of the complaint itself is always given to the victim.

Victims are entitled to make their complaint in a language that they understand. To that end, they have the right to get **linguistic assistance** from the authorities **free of charge**. Thus, the competent authority should ascertain whether the person speaks and understands the language when making a complaint. Although Article 5 does not explicitly address the individual assessment procedure, a **parallel approach should be taken in line with Articles 7 and 22**.

The notion ‘**linguistic assistance**’ in Article 5 is more flexible than the stricter requirement for translation and interpretation in Article 7. Thus, a victim may be assisted under Article 5 by a person who speaks his/her language but who is not an official interpreter if this is deemed appropriate by the competent authorities, respecting the proper conduct of criminal proceedings and confidentiality. With regard to linguistic assistance, there are examples where a family member, friend or member of the community is used to help with interpreting when a victim is making a complaint. However, authorities should assess the risk of biased or incorrect interpretation by such a person before accepting such assistance.

Victims also have the right to request a **translation of a written acknowledgement** if they do not understand the language of the document. This translation must be provided free of charge in any language the victim understands (which does not, however, necessarily mean the victim’s mother tongue).

MEMBER STATES ARE INVITED TO CONSIDER:

17. Any possible need to take measures to align **internal procedures** with the new requirements when victims make complaints, particularly regarding police internal organisation (see recital 24), e.g. **copy of their complaint, or a written confirmation that they have filed a complaint, that they can take with them when leaving the police station** (or without delay, if the crime was reported by electronic means of communication). In line with good practice in some Member States, it is often possible to produce an acknowledgement using a standard **template** that states the contact details of the victim and a description and circumstances of the criminal offence, to ensure speed and efficiency in delivering the acknowledgement. To guarantee the overall transparency of the process, it is suggested to **record the delivery of a copy or written acknowledgement of the formal complaint in the police/judicial file**, including a specific **case reference number**. This is particularly important for **victims in cross-**

border cases, especially if the victim is unlikely to remain in the country.

18. Developing **internal practices and procedures for police services** to provide **immediate access to linguistic assistance** in order to ensure that victims can make a complaint in a language they understand. Police should therefore have **operational access to a network of translators and interpreters** to ensure their services are available as and when required. Instantaneous **translation service available via telephone or videoconference** is another way to arrange immediate access to translators/interpreters for victims who want to report a crime but who do not speak/understand the language.

ARTICLE 6 — RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE (Recitals 26, 27, 28, 29, 30, 31, 32 and 33)

Article 6 clarifies existing FD provisions elements in a structured and concise manner. It includes major changes concerning the limitation to victims with a ‘role’ in criminal proceedings for receiving some of this information.

Paragraph 1 provides that **all victims** must be notified of their right to receive information related to (a) a decision to end criminal proceedings (including the reasons for this) and (b) the time and place of the trial and the nature of the charges. Once they are aware of such rights, victims can then receive such information if they so request. The rationale for giving these rights to all victims is that too often, they are forgotten in the administration of justice, so being entitled to such information should be one of the basic rights in the procedure.

Paragraph 2 provides that only **victims with a ‘role’** in the relevant criminal justice system will be notified of their right to receive (a) the final judgment (and its reasons) and (b) information about the state of criminal proceedings (unless this would adversely affect the case). Again, victims will receive this information upon request.

If the victim requests information about the state of the proceedings under **paragraph 2(b)**, they will normally receive all relevant updates regarding their case, in accordance with the authority’s established procedures. However, the provision does not require authorities to accept that victims pick only certain pieces of information ‘à la carte’, which would be difficult to manage. Authorities should take into account the interests of the victim and ensure proper conduct of the proceedings and handling of each case.

As recalled in Recitals 26 and 27, information can be **communicated to the victim orally or in writing, including through electronic means**, to the last known correspondence or e-mail address. The general rule is thus a personalised means of communication. Simply posting the information on the authority’s official website would not be enough to ensure that victims receive the requested information (except for exceptional cases, as noted in Recital 27).

Paragraph 3 imposes an obligation to **provide reasons or a brief summary of reasons** for above-mentioned decisions to end proceedings (i.e. not to proceed with or to end investigations or not to prosecute the offender) or the final judgment. As an exception to this rule, the reasons for a jury decision or a decision where the reasons are confidential as a matter of national law do not have to be disclosed. The obligation to provide reasons was a point strongly favoured and defended by numerous stakeholders in DG Justice’s public

consultations when preparing the proposed Directive. **Giving victims reasoned decisions is important to allow victims to access justice. Moreover, it is also a basic form of respect and recognition of the victim. In addition, the right of victims to review a decision not to prosecute in Article 11 would not be effective without proper knowledge of the facts leading to a contested decision.** Giving victims complete information also helps to reduce the administrative burden of following proceedings as it makes it less likely that victims might come back repeatedly seeking answers to their questions.

Paragraph 4 focuses on the **wish of the victim to receive information** that must be respected as a general rule (as well as any modification to their wish). There is one important exception to the rule that allows Member States to provide information to victims — **regardless of their wish**: it regards information with respect to the procedural entitlement of the victim to active participation in criminal proceedings, according to national procedures. **Such an exception may arise, for example, when a victim has decided to act as a civil party/*partie civile* in criminal proceedings and is informed (under Article 4.1(b)) that this means that certain information has to be given to the victim regardless of his/her wishes.**

Paragraph 5 states that all victims shall be ‘**offered the opportunity to be notified**’ of the **offender’s release or escape from detention and any protection measures available.**

Paragraph 6 is closely linked to paragraph 5: it deals with receiving such notifications if requested **at least** when there is danger or identified risk of harm to the victim, unless there is an identified risk of harm to the offender as a result.

Considering that the offender may be released or escape from arrest, this means in practice that the victim should be informed of their right to be notified of the offender’s escape or release **as from the first contact with the competent authority and thereafter at any relevant stage of the proceedings** (each time the offender is detained for any reason). This includes notifying the victim if there is a sentence of imprisonment. Whether the victim requests such notification at that first contact or at any time during or after the proceedings, the request should be binding on the competent authorities and **the information requested should be submitted to the victim without unnecessary delay** (for release, as soon as there is a decision).

The victim also has the right to be informed of **applicable protection measures** in line with the **individual and risk assessment** that the authorities carry out. As the offender may be at risk of reprisal (and may thus also need protection), the authorities must, on a case-by-case basis, strike a proper balance between the safety of both the offender and the victim when applying this provision.

In relation to recent public and policy debate in some Member States, it should be noted that the **Directive does not introduce the right for victims to lodge an appeal against a decision on releasing the offender, nor the right to be heard in the release procedure before the competent authorities.** Extending victims’ procedural participation in the decision-making process on release remains a matter for national discretion, taking due account of provisions of the **European Convention on Human Rights (ECHR)** from the **victims’ rights** perspective.

MEMBER STATES ARE INVITED TO CONSIDER:

19. Developing **standard practices for police, public prosecution and courts**, whereby every victim is notified of their right to receive information and is asked to confirm what type of information about their case they wish to receive. Since victims may not know what information is available, the State (through criminal justice authorities) should be responsible for informing victims of their options as soon as possible. Victims' preferences in their individual cases should be recorded and adhered to, and they should be allowed to modify these later.
20. Making **practical arrangements** for victims to receive **appropriate, updated flow of information** about their case. When providing information to victims, there must be compliance with **data protection rules**. Article 6 leaves it up to the Member States how to provide access to such information in practical terms. Good practice shows the benefits of close cooperation among the **various entities** dealing with victims (including **police, prosecution, judiciary authorities, victim support organisations**) to ensure that an **appropriate, updated flow of information** for victims is maintained throughout criminal proceedings. The use of **modern communication technology** (such as an electronic transfer) may be particularly useful in achieving this objective.
21. As existing examples of good administrative practice may show, Member States should introduce the obligation in national legislation for criminal justice authorities to **record reasons (or summaries) for their decisions (including decisions not to prosecute)**, so that victims can be provided with such information. Member States should adjust their **administrative procedures** to make the information available to victims. Developing **models** for summaries may be helpful.
22. Member States should ensure that **victims' requests for notifications** on the *escape or release of an offender* are **shared by all competent authorities** involved in such processes (e.g. **police, probation and prison services**) and that victims **actually receive notifications they have requested in a coordinated and efficient manner**. Article 6 allows Member States to decide how such requests and notifications are managed and by whom (**for example, there is no obligation to set up specific entities or to establish particular information-sharing protocols for such purpose**). However, **victims' notification procedures or schemes** should be **timely and effective**. Member States could consider establishing a **victim notification system** through which victims can get information regarding their offender's custody status and register to receive notifications when that status changes. The system could allow the different national authorities involved in the administration of custody to coordinate and share information.¹⁹
23. **In the cross-border cases** context, Member States are invited to consider what the **role of issuing and executing Member State** should be when providing information to victims in the application of the Council Framework Decision 2008/947/JHA (**Probation and Alternative Sanctions**) and the Council Framework Decision

¹⁹ See, for example, the Victim Notification System set up in the United States: <https://www.notify.usdoj.gov/>.

2009/829/JHA (European Supervision Order).

ARTICLE 7 — RIGHT TO INTERPRETATION AND TRANSLATION (Recitals 34, 35 and 36)

The right to interpretation and translation was covered by Art. 5 FD but the obligation was very ambiguous and required Member States to ‘minimise as far as possible communication difficulties’ (see also above regarding Article 3). The Commission’s implementation report concluded that communication difficulties could be understood broadly so as to include an understanding of the procedure itself. However, all Member States took it as being limited to linguistic barriers.

Paragraph 1 provides a right to **interpretation**, but only for **victims with a formal role in proceedings**. Nevertheless, the obligation is still stronger than in the FD (witnesses or parties only). Thus, the Directive emphasises the focus on victims’ participation and role in proceedings, not their technical status.

Interpretation must be given **on request**, i.e. the victim must have expressed the wish to receive interpretation. Such requests should be recorded and the authority needs to take a decision in each case (see also paragraph 7).

The assistance must be given **free of charge** and for **a broad set of procedural actions: it covers contacts with investigative and judicial authorities from first interview/hearing throughout investigation to trial**. Recital 34 provides an important clarification: Interpretation should be made available, free of charge, during **questioning** of the victim and to enable her/him to participate actively in **court hearings**. In other cases, the need **may depend** on specific issues, the victim’s ‘role’ and involvement in proceedings or any specific rights they have and need only be provided to the extent necessary for victims to exercise their rights.

This paragraph draws on Article 2 of the 2010 Directive on the right to interpretation and translation for suspects and accused persons (**‘Interpretation and Translation Directive’**).²⁰

There is a link to Article 5(2). The difference between **‘necessary linguistic assistance’ when making a complaint** (applicable for all victims) and **‘interpretation’ during criminal proceedings** (for victims with a formal ‘role’) is justified by the **different stages of criminal proceedings** and the need for law enforcement authorities to act in an operative manner when providing translation/interpretation. Operative circumstances may require a wide range of possibilities when ensuring interpreters (e.g. using informal interpreters without certification or internal staff with appropriate linguistic skills).

Paragraph 2 promotes the use of **modern communication technology**. In practice, this means that the police may call an interpreter by phone if urgently needed.

Paragraph 3 on the right to **translation of essential information is probably the most important paragraph of the Article**, with the highest cost implications for Member States. As a result, it is limited to **victims with a formal role in the criminal proceedings**.

²⁰ Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

- Translation must be provided to the victim on request, free of charge.
- Translation must be made of ‘**information essential to the exercise of rights**’ ‘to the extent that such information is made available to the victims’. **This is linked to information rights in Articles 4 and 6.** If information is not given to victims, they naturally will not have the right to ask for translation.
- The term ‘**information essential to the exercise of rights**’ is covered by the **minimum list in Art. 6(1) (a): ‘at least** any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim’s request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.’²¹
- **Paragraph 3 is also linked to Article 5(3):** All victims have the right to get translation, free of charge, of the written acknowledgement of their complaint if they so request.

Paragraph 4 gives the right to victims who are entitled to be informed about the time and place of the trial under Article 6(1) (b) to get such information translated upon request. This should not be a major problem for Member States if they use **standard templates in the most frequently used languages**.

Paragraph 5 entitles victims to submit a reasoned request to consider a document as essential. The provision does not require a specific procedure; Member States’ national law/policy have a margin of discretion how to meet this requirement.

Paragraph 6 allows for **oral translation or oral summary of essential documents** instead of a written translation ‘provided it does not prejudice the fairness of the proceedings’, meaning that the rights of victims to interpretation and translation must in all cases be safeguarded.

Paragraph 7 requires the authorities to assess whether a victim who has requested translation or interpretation actually needs such assistance. Consequently, it also allows victims to challenge a decision by the authorities to refuse translation or interpretation, determined by national procedural rules. However, unlike the **Interpretation and Translation Directive**, the Victims’ Directive does not require Member States to allow victims to **challenge the quality** of translation/interpretation.

Paragraph 8 is a declaratory provision, which reflects the concerns of some Member States that the efficient conduct of proceedings may be harmed due to unnecessary obstacles caused by translation/interpretation for victims. There is in particular a concern about how to deal with ‘rare’ languages (these depend on the individual country’s geographic and demographic context). It may be practically impossible to have information available and to offer interpretation/translation in every language. The use of modern communication technology should help speed up the process.

²¹ Note that the concept of ‘essential documents’ is used in the Interpretation and Translation Directive and that Article 6 of the Directive 2012/13/EU on the right to information in criminal proceedings deals specifically with the right of access to the materials of the case.

MEMBER STATES ARE INVITED TO CONSIDER:

24. **Transposing Article 7 preferably into criminal law legislation** (supported through practical guidelines and administrative provisions).
25. A number of **implementing measures** which can ensure effective achievement in the practice of the objectives set by the Directive, e.g.
- Introducing an **official registration/accreditation system (albeit not obligatory)** for certified interpreters and translators at national level. Such a system would be a basis for developing a **network of translators and interpreters** with appropriate coverage to provide services as and when required (for example, to build on **EULITA**²² experience).
 - Use a **variety of means**, such as **model questions for the victims** or (especially in case of doubt) the **involvement of a specialised service or experts**.
 - **When assessing the victim's needs for translation/interpretation**, clear and **transparent mechanisms** (e.g. guidelines or administrative instructions) to enable competent authorities to determine what information and documents are '**essential**' for the victim to exercise their rights in criminal proceedings, and that allow victims to submit a reasoned request for such information, thus safeguarding the principle of a fair trial.
 - An **extension of the mechanism' in place for defendants** to challenge refusals to provide translation/interpretation to victims.
 - Establishing **videoconferencing and other technological tools** that may be used to ensure victims can access interpretation and translation as and when required.
 - Developing **cooperation** practices among **competent authorities in Member States** to share resources and liaise between translation and interpretation services in **cross-border cases**.

²² The **European Legal Interpreters and Translators Association**, <http://www.eulita.eu/>.

ARTICLE 8 — RIGHT TO ACCESS VICTIM SUPPORT SERVICES
(Recitals 37, 40, 62 and 63)

Article 8 follows Art. 13 (and 6) FD but is much more detailed and extends the level of obligations²³.

The right to support is one of the core rights in the Directive. The purpose of this Article **(to be read together with Article 9)** is to ensure that victims, and their family members, have access to **confidential support services free of charge**. These should provide information and advice, emotional and psychological support and practical assistance. Victim support is often crucial to the recovery of victims to help them cope with the aftermath of a crime and with the strain of any criminal proceedings. Without proper support, a victim's recovery will be much more difficult and lengthy.

Support should be available from the **earliest possible moment** after a crime has been committed, **irrespective of whether it has been reported**. Equally, victims may require support both during proceedings and for an **appropriate period** thereafter, **depending on the victim's individual needs**. Support will be valuable, for example, if medical treatment is on-going due to the severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to their statements during criminal proceedings. Research shows that **providing support at an early stage** after a person has suffered a crime can considerably reduce the medium and long-term consequences for the individual and for society as a whole (in terms of human suffering, burden for health care and social services, loss of earnings, absence from work). Support can also prove to be particularly important with regard to a victim's decision to report a crime and to cooperate with police investigation and trial.

Victims must have access to victim support in accordance with their needs. Their **family members** must have access in accordance with their **needs and the degree of harm suffered** as a result of the crime committed against the victim. **The competent authorities have a margin of discretion to determine how to assess such needs since a formal needs assessment is not explicitly required in Article 8.** In practice, there may be an implicit demand to establish internal procedures or protocols for assessing the support needs of victims and their families (link to Article 22 on individual assessment). The assessment would normally be carried out by victim support services.

Paragraph 2 requires Member States to **facilitate referrals of victims to victim support organisations (VSOs) by the competent authority that received the complaint or by other relevant entities**. This is an important aspect of delivering services since the absence of a referral system is often a bottleneck for victims requiring proper support. **Referrals** (most often from the police) are in some Member States not formalised, while in others, there are well established practices with police automatically referring victims to the relevant VSO. The police should explain what services can be offered and refer victims to a VSO unless the victim does not want such support. The reason why referral systems do not always work is a combination of constraints regarding personal data protection rules, lack of information, a

²³ The obligation to provide support services exists in the Draft UN Convention on Justice and Support for victims of Crime and Abuse of Power (2006) and the Council of Europe Recommendation (2006)⁸ requires that States provide or promote victim support services. In addition, the Council of Europe 2011 Convention on preventing and combating violence against women and domestic violence (the 'Istanbul Convention') includes detailed provisions on access to various support services, including shelters.

lack of training for police officers on the importance of support and referrals to appropriate services, or a lack of simple referral protocols.

Competent authorities should ensure robust **data protection systems** and impose **confidentiality** requirements to safeguard the personal data of victims referred to VSOs. They should also provide **appropriate training** for police officers dealing with referrals to ensure safe and smooth handling of each case (see Article 25).

Referrals ‘by **other relevant entities**’ in contact with victims of crime is understood to include public agencies or entities, such as hospitals, schools, embassies, consulates, welfare or employment services, who are in contact with victims and identify the need for the victim to seek the specialised services of a VSO.

Some victims require **specialist support** due to their personal vulnerability or particular circumstances or the nature of the crime (most commonly victims of sexual violence, violence in close relationships, victims of hate crime or human trafficking).

Paragraph 3 ensures that such victims, and their family members, have the right to access **confidential specialist support services free of charge** in accordance with their specific needs (and for family members, their needs and degree of harm suffered as a result of the crime committed against the victim). Member States have some flexibility in how such specialist support should be set up. Specialist services can be provided **by separate entities** or **within the framework of general support services**; or through a **referral mechanism** whereby general support services can call on existing specialist services to support victims with specific needs.

Paragraph 4 provides that general and specialist support may be provided by **governmental or non-governmental organisations, on a professional and/or voluntary basis**. Access to support should not involve excessive procedures or formalities for victims, as these might reduce effective access to such services. Support may be provided in a variety of ways, such as face-to-face meetings, by telephone, online or other remote means to maximise the geographical distribution and availability of services. For example, there is a wide range of **specialist services for victims**, particularly for **victims of domestic violence and rape and sexual violence**. Detailed information can be found in the **EIGE** report on services in the EU for women victims of violence²⁴ and the yearly country reports from **Women against Violence Europe**²⁵.

The current practice of existing victim support organisations in the EU shows that victim support is provided mainly by non-governmental organisations (NGOs) working on a voluntary basis. Provisional information based on recent mapping of existing services²⁶ shows there are:

- **General VSO services: 20 Member States**

²⁴ **European Institute for Gender Equality**, <http://eige.europa.eu/sites/default/files/Violence-against-Women-Victim-Support-Report.pdf>

²⁵ <http://www.wave-network.org/sites/default/files/WAVE%20COUNTRY%20REPORT%202012.pdf>.

²⁶ Provisional information based on an on-going research by the **Fundamental Rights Agency** and input from **Victim Support Europe**. See also the 2012 Report on support services for victims of domestic violence by the European Institute for gender equality, available at <http://eige.europa.eu/content/document/violence-against-women-victim-support-report>.

(Austria, Belgium, Czech Republic, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, UK)

- **Only support for specific types/groups of victims: 8 Member States**

(Bulgaria, Cyprus, Greece, Italy, Latvia, Lithuania, Romania, Slovenia)

Paragraph 5 requires Member States to ensure that a victim's access to support is **neither dependent on having made a formal complaint** regarding the crime, nor conditional on the authorities launching a criminal investigation. This provision is particularly important for victims in very exposed or vulnerable positions due to threats or intimidation from the offender (e.g. in cases of violence in close relationships, hate crimes²⁷ and organised crime where victims seek medical care or assistance from a VSO directly, and do not want to report the offender for fear of reprisals or repeat violence). **The victim is free to choose whether to report a crime, but, as stated in Recital 63, reporting of crimes should be encouraged and facilitated by reliable support services, modern communication technologies and well-trained practitioners to allow safe and easy reporting.** In addition, any measures enabling third parties (including civil society organisations) to report crimes should be considered.

For referrals of victims to VSOs and to facilitate reporting of crimes, **a sound channel of cooperation between VSOs, police and judicial authorities** is essential to create **trust and efficient ways of collaborating.**

MEMBER STATES ARE INVITED TO CONSIDER:

Examples of current practice, as experienced in particular by the Victim Support Europe²⁸, in order to ensure effective implementation, such as:

26. At national level, victim support services and any specialist support services can be provided in various ways: **public bodies/entities** (including regional entities/municipalities), **private sector service providers** or **NGOs**. **The victim support services can be performed on a professional or voluntary basis.**
27. VSOs should be able to provide support and information services (including telephone services) which are **free of charge** for the victim and which provide **a sufficient geographical network** across the Member State, adequately covering also **rural and remote areas.**
28. If the Member State decides to operate **victim support services through the private sector** or **through NGOs, the State should evaluate the allocation of sustainable**

²⁷ Article 8 of Council Framework Decision 2008/913/JHA requires that investigations into or prosecution of the racist and xenophobic hate speech offences shall not be dependent on a report or an accusation made by the victim, at least in the most serious cases where the conduct has been committed in its territory.

²⁸ **Victim Support Europe** is the umbrella network for national victim support organisations in Europe. It consists of 32 national member organisations, providing support and information services to victims and witnesses of crime in 24 European countries (including also some non-EU members of Council of Europe), <http://victimsupporteurope.eu/>.

financial or other required resources to these organisations, unless the organisation chooses to function without government funding and remain independent. To this end, Member States could develop **private partnerships based on service agreements**, where financial support is provided for the provision of specifically agreed support services to victims of crime. The **selection of providers** may be **run in different ways**, such as through **specific accreditation/certification systems**, **public procurement systems for victims' services providers** or **through subsidy systems**, where a VSO applies to the public entity concerned, based on **quality, reliability and transparency criteria**.

29. In countries with more than one organisation providing general victim support services, good practice suggests that **cooperation agreements or a national network should be set up**, to ensure that the same quality of support is available across the whole Member State's territory.
30. Exploring the possibility of launching the **116 006 telephone number**²⁹ for **helplines for victim support** at national level. Member States may also consider requesting the telephone number **116 016** for providing specific, up-to-date information and assistance to victims of **gender-based violence**.³⁰
31. Establishing a **national fund for crime victims to fund non-public VSOs**. This fund could be directly State funded, funded for example by **proceeds gathered by financial penalties, surcharges or fees imposed on offenders, from confiscated assets or as a solidarity fund financed by insurance policies**.
32. **Establishing national referral arrangements between the police and VSOs**, ensuring all victims are offered **as soon as possible** preferably **automatic access to general/specialist victim support services**³¹, taking into account **consent of the victim and data protection requirements**. For example, some Member States with more than one victim support organisation have effective referral agreements, whereby one organisation acts as a focal point, directing victims to the most appropriate service, according to their needs. It is also important **not to duplicate referrals**, to avoid victims being contacted by several victim support organisations simultaneously. Member States should make referral arrangements according to their national conditions and the availability of victim support services.
33. If several specialised victim support services are developed, focusing on particular groups of victims, there should be flexible **referral arrangements among victim support organisations**, ensuring that victims get the support services most suited to their needs **without unnecessary delays**.

²⁹ This is a harmonised number listed in the Annex to the Decision 2009/884/EC of the EC of November 2009 amending Decision 2007/116/EC as regards the introduction of additional reserved numbers beginning with '116'. Accordingly, each Member State should reserve in its national numbering for 'harmonised numbers for harmonised services of social value'.

³⁰ See point 28 of **Council Conclusions on Combating Violence Against Women, and the Provision of Support Services for Victims of Domestic Violence** adopted in December 2012. Moreover, the **Istanbul Convention** specifically recognises the need for telephone helplines for victims of violence against women in Article 24.

³¹ Such as in cases of domestic violence, child abuse or trafficking in human beings.

34. Arrangements could also be made to allow **other relevant agencies** that are in direct contact with victims of crime (e.g. hospitals, schools, embassies, consulates, welfare or employment services) to refer victims to VSOs, based on their needs.

ARTICLE 9 — SUPPORT FROM VICTIM SUPPORT SERVICES
(Recitals 38, 39 and 40)

This Article is to be read in conjunction with Article 8. It provides a specific list of general and specialist support services as a minimum requirement. These requirements will significantly improve current standards for providing victim support in the EU.

Every victim reacts differently in the aftermath of crime. The best way to offer victims support services and the range of services offered will depend on the **victim's needs** and **vulnerability**, according to **individual assessments by the authorities or victim support services**.

In many Member States, the overwhelming majority of services for victims are run by NGOs or civil society organisations. This particularly applies to services for victims of different types of **gender-based violence** (in particular domestic and sexual violence, harmful practices and trafficking) and **terrorism**. NGOs have a long tradition of providing **shelters and other forms of safe, accessible alternative accommodation, legal advice, medical and psychological counselling** as well as of **running hotlines** and **other essential services** for victims and their families. These various types of specialised services reflect optimally the **individual approach** to every victim, taking into account the **nature and severity of crime**. However, as indicated in paragraph 3, specialist support may also be provided by other public or private services (such medical establishments, health and psychiatric entities or social services).

The list of minimum services to be provided is fairly self-explanatory, but the expression '**targeted and integrated support**' for victims with specific needs' in **paragraph 3(b)** may require some clarification. An '**integrated**' approach when providing victim support should take into account the relationship between victims, perpetrators, children and their wider social environment to avoid the risk of assessing their needs in isolation or without acknowledging their social reality. Thus, when providing targeted, integrated support, it is important to ensure that the needs of victims are assessed in the light of all relevant circumstances to allow professionals to take properly informed, appropriate decisions. This approach is in line with requirements under the **Council of Europe Istanbul Convention**.

MEMBER STATES ARE INVITED TO CONSIDER:

Examples of current practice, as experienced in particular by the Victim Support Europe, in order to ensure effective implementation, such as

35. **Needs assessment tool** identifying support needs, ensuring that any support services can be tailored to fit the individual needs of the victim. **This assessment could be linked to and combined with the individual assessment set out in Article 22.**

36. A **horizontal coordinated approach at national level** among the authorities involved (such as the ministries responsible for justice, home affairs, equality, non-discrimination and social affairs and the police, prosecutor and probation services etc.) for **targeted** and **integrated support for victims with specific needs**.
37. A **regular policy dialogue** with VSOs regarding the national availability and provision of support services, any challenges met during service delivery, gap analysis to identify any victims currently not offered automated access to victim support services and how such gaps can be addressed and resolved. Any irregularities or challenges in referral arrangements should be addressed. Member States should aim to fulfil the requirement of ensuring that quality victim support services, **including as a minimum the services listed in Article 9**, are always routinely offered to all victims of crime and their families throughout their territories.

ARTICLE 10 — RIGHT TO BE HEARD (Recitals 41 and 42)

The purpose of this Article is to ensure that **all victims** have an opportunity to provide information, views or evidence throughout criminal proceedings. **The applicable procedural rules (how and when victims may be heard) is left to national law.** Thus, this right may range from basic rights to communicate with and supply evidence to a competent authority to more extensive rights such as a right to have evidence taken into account, the right to ensure that certain evidence is recorded, or the right to give evidence during the trial.

The principles of judicial discretion and free assessment of evidence must be preserved.

Concerning the right to be heard, the CJEU stated in the preliminary ruling **Katz (case C-404/07)** that: ‘Articles 2 and 3 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings are to be interpreted as not obliging a national court to permit the victim to be heard as a witness in criminal proceedings instituted by a substitute private prosecution such as that in issue in the main proceedings. However, in the absence of such a possibility, **it must be possible for the victim to be permitted to give testimony which can be taken into account as evidence.**’

MEMBER STATES ARE INVITED TO CONSIDER :

38. **Transposition into the criminal procedure code** directly in order to ensure that national legislation provides an opportunity for victims of crime to be heard and provide evidence during criminal proceedings. Good practice suggests that a victim should be free to present to the authorities concerned his/her view about the manner in which he/she would like to participate in the trial and that the Member State would respect and fulfil this request, to the greatest extent possible. For example, when deciding on sentence, jurisdiction of one country operates with the concept of a **Victim Personal/Impact Statement (VPS)**. In general, this allows the victim to explain to the court what impact the crime has had on them, whether emotionally, physically,

financially or in any other way. The criminal practice direction provides judges with information about the weight of consideration to be given to the VPS when sentencing. Judges are required to take the VPS into consideration during sentencing.

39. Developing appropriate **training for practitioners** handling the questioning of victims, in line with Article 25.

ARTICLE 11 — RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE **(Recitals 43, 44 and 45)**

The purpose of this Article is to enable the victim to verify that established procedures and rules have been complied with and that a correct decision has been made to end a prosecution in relation to a suspected person. **The Directive respects national procedural autonomy and does not harmonise the relations of subordination among authorities.** Therefore precise modalities of such a mechanism for a review are left to national law.³² This Article is also linked to Article 6 (regarding obligation to provide reasons for decision not to prosecute).

The Article is limited to victims with a formal role in the criminal justice systems and the procedural rules for carrying out such a review are governed by national law. However, where, in accordance with national law, the role of the victim is to be established only after a decision to prosecute the offender (e.g. the question whether the victim wishes to constitute civil party/*partie civile* will only be asked after the offender has been prosecuted), **Member States should ensure that at least victims of serious crime have the right to a review of a decision not to prosecute**, in accordance with procedural rules determined by national law. As the notion ‘**serious**’ crime is not defined by the Directive, the existing **EU criminal law legislation** and **international criminal justice standards** may be taken into account when interpreting this term at national level.

Which decisions can be reviewed? In practice, the decision not to prosecute may be based on technical and legal reasons, as well as on the principle of opportunity, e.g. the lack of public interest, the nature and seriousness of the offence, the evidence available, etc.

Whose decisions can be reviewed? The intention is that the review of decisions is taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but does not apply to decisions taken by courts. A decision ending criminal proceedings should include situations where a prosecutor decides to withdraw charges or discontinue proceedings. **Exceptions to this rule are:** (i) a decision that results in an out-of-court settlement, but only if the settlement imposes a warning or an obligation; and (ii) special procedures, such as proceedings against members of parliament or government having acted in their official position (see Recital 43).

What authority should carry out the review at national level? The review must be carried out by a person or authority other than whoever made the original decision. If the highest prosecuting authority took the decision not to prosecute, the review may be carried out by the same authority, but it should not be the same official. **The Directive respects national**

³² This new Article follows the approach of the Draft UN Convention and CoE Recommendation 1985(11) (although the 1985 instrument is more limited since it allows private prosecution as an alternative).

procedural autonomy and does not harmonise the relations of subordination among authorities. It is important that the decision be taken in an impartial way and that the review be carried out impartially.

To exercise the right to a review, victims must receive **sufficient information** to decide whether to request one. Thus, paragraph 3 ensures that victims are notified of their right to receive such information and that they receive it upon request.

Currently, some national practice applies the system whereby the victim has the right to pursue the prosecution as a **private or subsidiary prosecutor** (as a consequence of the ‘role of the victim in the relevant criminal justice system’). It may be argued that such a concept is not qualitatively — from the perspective of victims’ interests — the same as a review set out in Article 11. Becoming a private prosecutor may have its advantages but also constitutes an additional burden on the victim in terms of time, costs etc. Therefore it is questionable if this burden may be mitigated by the provision of free legal aid and other assistance.

MEMBER STATES ARE INVITED TO CONSIDER:

- 40.** Developing a procedure **in the criminal procedure code** whereby a victim will be entitled to ask for a review of a decision not to prosecute. The process should be **clear** and **transparent** and not overly bureaucratic to ensure that victims can request the review without legal representation.
- 41.** Ensuring in **internal procedures** (public prosecution, court) that victims are able to make an informed decision as to whether to request a review of a decision not to prosecute. If a more formal process for requesting a review is adopted, ability to ask for a review should not be hindered by limited financial resources.

**ARTICLE 12 — RIGHT TO SAFEGUARDS IN THE CONTEXT OF
RESTORATIVE JUSTICE SERVICES**
(Recital 46)

This Article is partially covered by Art. 10 FD, but the definitions of various **safeguards** are new.³³

Restorative justice services encompass a range of services, whether attached to, running prior to, in parallel with or after criminal proceedings (**pre-trial** and **post-trial**). They may be available in relation to certain types of crime or only in relation to adult or child offenders and include for example victim-offender mediation, family group conferencing and sentencing circles.

The purpose of this Article is to ensure that **where such services are provided, safeguards are in place to ensure the victim is not further victimised as a result of the process**. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing harm to the victim and avoiding further harm. **Participation** of the victim should be **voluntary**, which also implies that the victim has sufficient knowledge of the risks and benefits to make an informed choice. It also means that factors such as power imbalances, and the age, maturity or intellectual capacity of the victim that could limit or reduce their ability to make an informed choice or could prejudice a positive outcome for the victim should be taken into consideration in referring a case and in conducting a restorative process.

While private proceedings should in general be **confidential**, unless agreed otherwise by the parties, factors such as threats made during the process may be considered as requiring disclosure in the public interest. **Ultimately, any agreement between the parties should be reached voluntarily.**

The Article does not oblige the Member States to introduce restorative justice services if they do not have such a mechanism in place in national law. Indeed, the CJEU has confirmed that Member States are not obliged to use mediation/restorative justice for all offences (CJEU rulings in cases C-205/09 Eredics³⁴ and Joined Cases C-483/09 and C-1/10 Gueye/Sanchez³⁵ interpreting Article 10 FD on mediation). Nevertheless, the Commission's 2009 Implementation Report showed that most Member States have a regime making some form of criminal mediation available.

³³ They build on the UN basic principle on use of restorative justice (2002) and CoE Recommendation No R (99) 19 concerning mediation in penal matters.

³⁴ The CJEU found that Articles 1(a) and 10 of the FD must be interpreted as meaning that the concept of 'victim' does not extend to legal persons for the purposes of the promotion of mediation in criminal proceedings in Article 10(1). Article 10 must be interpreted as not requiring Member States to make recourse to mediation possible for all offences the substantive components of which, as defined by national legislation, correspond essentially to those of offences for which mediation is expressly provided by that legislation.

³⁵ The CJEU found that Article 10(1) of the FD must be interpreted as permitting Member States, having regard to the particular category of offences committed within the family, to exclude recourse to mediation in all criminal proceedings relating to such offences.

MEMBER STATES ARE INVITED TO CONSIDER:

42. A **coordinated national approach among the competent criminal justice authorities**, including the police, judicial authorities, relevant administrative bodies (such as legal aid administration, probation and mediation service) and victims' support providers. Mediators and those directly involved in restorative justice processes should cooperate with psychologists, psychiatrists, debt counsellors, child protection specialists etc.
43. **Establishing national restorative justice service providers as a public authority** or concluding **service agreements with accredited private/non-governmental restorative justice service providers** so as all restorative justice measures delivered in their territory fulfil the minimum standards in this Article. To this extent, it may be useful to:
- Develop **national service delivery standards** relating to the provision of restorative justice, which fulfil the Directive's requirements and reflect European good practice in relation to victims of crime. Where mediation is envisaged, Member States should support the adoption of **model standards** to protect the interests of victims. These should include the ability of the parties to give **free consent**, be **duly informed of the consequences** of the mediation process, issues of **confidentiality**, **access to impartial/neutral advice**, the **possibility to withdraw** from the process at any stage, the **monitoring of compliance with the agreement** and the **competence of mediators**. The **interests of victims** should be fully and carefully considered when deciding upon and during a mediation process, taking into account the **vulnerability of the victim**. Due consideration should be given not only to the potential benefits but also to the potential risks for the victim. It is understood that any restorative justice process must also safeguard the fundamental procedural rights of the offender.
 - **Meeting regularly with service providers of restorative justice** to discuss opportunities and challenges, for instance, how current service delivery meets the needs of victims of crime, any gaps regarding victims not able to access restorative justice services and how that can be addressed.
44. Ways to ensure that victims are **informed** about the possibility of participating in restorative justice processes at their first contact with the competent authorities (linked to Article 4, paragraph 1(j)).
45. Establishing **referral arrangements** for victims looking to participate in restorative justice measures, adapted to national circumstances and restorative justice measures offered in the Member State.
46. Encouraging **the use of mediation during criminal proceedings, as well as during the execution phase, at least in cases of less serious or minor crimes.**³⁶ The use of

³⁶ The **European Forum for Restorative Justice**'s recent findings suggest that if appropriate methodology is used, the mediation can be successful for all types of crimes, minor and serious, for juveniles and adults. In the context of these findings, it is suggested that restorative justice can be of benefit to victims of serious crimes,

mediation as **an important factor that plays a role in the conditional discontinuation of proceedings or out-of-court settlement at the pre-trial stage of the proceedings**. In fact, the use of restorative justice services has an important link to offender compensation to the victim (as an alternative or complement to financial compensation).

ARTICLE 13 — RIGHT TO LEGAL AID

The Directive imposes a concrete obligation, by stating that victims have access to legal aid *‘where they have the status of parties in the criminal proceedings’* and not *‘when it is possible for them to have the status of parties’*.

National law must provide for the **appropriate legal framework** to ensure that victims have the **right to legal aid**.

Member States may define the conditions and procedures for ensuring victims’ access to legal aid. However, if a victim has the right to access legal aid under national law, it should **at least** cover **legal advice** and **legal representation free of charge**.

MEMBER STATES ARE INVITED TO CONSIDER:

- 47.** Specifying in **national criminal law legislation** under what conditions and circumstances victims are able to access legal aid, bearing in mind the need to ensure equal access to justice and victims’ right to a fair remedy.³⁷
- 48.** Adopting **administrative procedures to implement victims’ access to legal aid**, without excessive bureaucratic requirements. Good practice suggests that application forms for legal aid should be available in a range of different languages, or assistance should be given to victims not speaking the official language of the country but looking to apply for legal aid.
- 49.** Ensuring that victims are **informed** about how and under what conditions they can access legal aid at their first contact with the competent authorities (linked to Article 4, paragraph 1(d)).

who are likely to have many questions to which they do not get answers in the trial. Victim-offender mediation can provide a safe context to answer these questions, <http://www.euforumrj.org/home>.

³⁷ Member States could draw on the Human Trafficking Directive wording: ‘Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge when the victim does not have sufficient financial resources.’

ARTICLE 14 — RIGHT TO REIMBURSEMENT OF EXPENSES
(Recital 47)

The purpose of this Article is to ensure that victims are not prevented from actively participating in criminal proceedings — and thus seeing justice done — due to their own financial limitations. The right to reimbursement is covered in Art. 7 FD. It covers victims who have the status of parties or witnesses in proceedings. The Directive has a potentially wider scope than the FD, as it gives the right to reimbursement for victims who actively participate in proceedings **depending on their ‘role’ in the criminal justice system** (thus, including roles other than only parties and witnesses, depending on the national system). Nevertheless, Member States will have the possibility to limit the eligibility for such reimbursement in accordance with national law.

As a minimum, only **necessary expenses** should be reimbursed to the extent that the victim is obliged or requested by the competent authorities to be present and actively participate in criminal proceedings. Recital 47 states that Member States should not be obliged to reimburse legal fees (which should be covered by legal aid).

In practice, the core of this Article focuses on travel expenses and loss of earnings. If a victim has to take time off work, Member States have different rules on how they can be compensated for loss of earnings. In some Member States, victims receive a fixed rate of compensation for travel and loss of income (which may be exempt from income tax). In other Member States, the code of labour law requires all employers to allow employees to attend court hearings without loss of earnings or imposed leave if they present due justification.

MEMBER STATES ARE INVITED TO CONSIDER:

50. Specifying in national **criminal law legislation/policy guidelines/labour law guidelines** how and under what conditions and circumstances victims are able to get their expenses reimbursed and what type of expenses could be covered, bearing in mind the need to ensure equal access to justice and victims’ right to a fair remedy.
51. Developing an effective **administrative process** whereby victims can apply for reimbursement. This could, for instance, be done on the day of the trial while the victim is present in court. Alternatively, payment for expenses could be settled beforehand (for instance, by the court service or victims’ support organisation) paying for the victim’s travel upfront or by using vouchers.
52. Ensuring that victims are **informed** about how and under what conditions they can get expenses reimbursed at their first contact with the competent authorities (linked to Article 4, paragraph 1(k)).

ARTICLE 15 — RIGHT TO THE RETURN OF PROPERTY
(Recital 48)

This Article follows Art. 9, FD, para 3 but deleted the notion ‘urgently’. There is no major difference on substance. National law determines the conditions or procedural rules under which such property is returned to the victims. The 2009 Implementation Report concluded that most Member States have introduced this obligation.

MEMBER STATES ARE INVITED TO CONSIDER:

53. Specifying in national **criminal law legislation/ policy guidelines** when and under what conditions victims can have their property returned. It should also be clarified within what **timeframe and in what condition** the property should be returned. The return of property should be free of charge for the victim. All costs related to returning the property should be borne by the State.
54. Where appropriate, developing an effective **administrative procedure** whereby victims can ask to have their property returned sooner under certain circumstances. This could, for instance, be applicable if an investigation is closed or a prosecutor decides not to prosecute the case. In addition, due to the information technology nature of many criminal acts (e.g. identity theft or cyber stalking), the competent authorities should be encouraged to take a copy of the relevant information in the victim’s mobile phone or computer containing evidence and return the device as soon as possible. Alternatively, the authorities may provide a certificate to the victim that the property has officially been seized, which entitles the victim to terminate immediately any mobile phone or internet services contract linked to that particular device as a consequence of that crime if the victim so wishes.

**ARTICLE 16 — RIGHT TO DECISION ON COMPENSATION FROM THE
OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS**
(Recital 49)

This Article has a very similar concept to Art. 9 FD: a victim is entitled to obtain a decision on compensation by the offender within a reasonable time in the course of criminal proceedings, except where national law provides for such a decision to be made in other legal proceedings. Member States are also asked to encourage offenders to pay compensation to victims.

The wording of the Directive allows broader interpretation as for use of ‘other legal proceedings’ compared to the FD’s *ad hoc* exception (‘where, in certain cases, national law provides for compensation to be awarded in another manner’). Thus, if the victim is claiming compensation from the offender outside the criminal proceedings, for instance, through a separate civil claim, the exclusion in the Article applies.

The Article only deals with compensation from the offender, and not from the State. Pursuant to Article 4, paragraph 1(e), information about how and under what conditions victims can access compensation (i.e. from all available compensation schemes)³⁸ must be

³⁸ Cross- border state compensation claims are governed by the Directive 2004/80/EC relating to compensation to crime victims.

provided at first contact with competent authorities. In addition, victim support services must provide information on accessing national compensation schemes for criminal injuries under Article 9, paragraph 1(a).

Despite the fact that State compensation schemes are not covered by the Directive, further legal questions inevitably arise in this context on the **subsidiary role of the State**: What happens if a convicted offender is not in a position to provide compensation and is lacking the means? How can the victim get a compensation decision enforced? Do Member States foresee a proactive role for the State in their systems? Can the State advance payment to the victims and then reclaim and recover the money from the offender? **The practice in Member States varies significantly and options to ensure effective implementation are multiple, but should be evaluated from the beginning of the transposition process.**

MEMBER STATES ARE INVITED TO CONSIDER:

55. Specifying **in national legislation** how and under what circumstances victims are able to receive **compensation from the offender**. Member States could explore ways to simplify national procedures for claiming compensation (e.g. one single ‘access point’ for victims at the legal aid administration or Ministry of Justice etc.).
56. As compensation is intended to assist the victim in his/her **recovery process**, it is important that it is made available as soon as possible. Therefore, the **legal and/or administrative procedures** should ensure that a decision on compensation is reached within a **reasonable time** in criminal proceedings. Member States may consider developing ways to speed up proceedings by, for example, applying **the adhesion procedure in criminal proceedings**³⁹ for compensation matters (instead of referring the compensation claim to civil proceedings, where victim bears the burden of proof and pays court fees), or **compensation orders** imposed by judges.
57. Mechanisms that give offenders **an incentive to pay adequate compensation awards** to victims. For example, the payment of compensation to the victim by the offender can be taken into account as a positive element in the assessment of application of supervision measure in pre-trial stage or custodial sentences or conditions for early release.. Good national practice in one Member State shows that when compensation has been awarded (e.g. as the part of a **conviction decision**), the State pays the compensation to the victim as an **advance payment** and then recovers the amount from the offender. Alternatively, a **victims’ surcharge** paid by the offender can be applied, which would go to a fund for victims’ services.

³⁹ Adhesion procedure, adhesive procedure or ancillary proceedings is a procedure through which a court can rule on compensation for the victim of a criminal offence. Rather than pursuing damages in a separate civil action, the victim files a civil claim against the offender as a part of a criminal trial.

**ARTICLE 17 — RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER
STATE**
(Recitals 50 and 51)

In comparison to Article 11 FD, Article 17 mirrors rather minor amendments made to provide clarification and no major substantive changes were introduced.

Paragraph 2 enables a victim to lodge a complaint in his/her State of residence, if the victim was not able to do so in the State where the crime was committed (e.g. due to administrative, legal or personal constraints) or if the victim simply does not wish to do so in case of serious offences. This flexibility should respond to the protection of the legitimate interests of the victim in complex cross-border situations, typically if a serious crime (such as rape or robbery) occurred during holidays or on a business trip to a foreign country.

Consequently, according to **paragraph 3, as a general rule**, the complaint must be transmitted from the State of residence to the State where the crime occurred without delay. As an **exception to this rule**, to prevent conflicts of jurisdiction in cross-border cases (which may be triggered by the strict application of the legality principle and ex officio prosecution), there is strictly speaking no obligation to transmit the complaint if the competent authorities in the State of residence have already exercised their national competence to prosecute. Thus, the obligation set out in this Directive to transmit complaints should not affect Member States' competence to institute proceedings and is **without prejudice to the rules of conflict relating to the exercise of jurisdiction**, as laid down in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

However, for information purposes and to enhance cross-border judicial cooperation, the State where the crime occurred should be informed about the complaint and/or investigation.

Although the Article does not explicitly mention the provision of support, the obligation to ensure access to support under **Article 8 applies to victims who are not resident in the State where the crime was committed**. Recital 51 clarifies this obligation and states that if the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection **other than in direct relation to any criminal proceedings** it is conducting regarding the criminal offence concerned, such as special protection measures during court proceedings. The Member State in which the victim resides should provide assistance, support and protection required for the victim's need to recover (as listed in Article 9). **In other words, the obligation to provide support for non-resident victims is 'shared' between the two Member States.**

MEMBER STATES ARE INVITED TO CONSIDER:

- 58. Criminal law procedure/administrative practices** whereby victims can report a crime in their country of residence or in the country where the crime took place. For the transmission of a victim's complaint to the victim's country of residence, criminal justice authorities in the countries involved should develop at least internal practices to immediately transmit the report and cooperate regarding the investigation and throughout the criminal proceedings, benefiting **from the existing legal instruments on judicial cooperation in criminal matters or use Article 17 of this Directive as a**

basis for this flexible information transmission.

- 59. Bilateral cooperation agreements (e.g. memoranda of understanding between Ministries of Justice) with other Member States** to ensure that **networks** are established and made available as and when required in **cross-border cases**, respecting **data protection rules**. Police authorities, central authorities and VSOs could also be encouraged to develop networks to ensure they know whom to contact when cross-border cases arise. This may be particularly beneficial in the **border regions of neighbouring Member States**.
- 60.** Providing training and practical guidance to practitioners regarding the rights of victims in cross-border cases and the manner in which to provide mutual legal and victim assistance in cross-border cases.
- 61.** Encouraging VSOs to establish **cross-border cooperation agreements** to share information on support necessary for cross-border victims more easily (to apply the arrangement set out in Recital 51).

ARTICLE 18 — RIGHT TO PROTECTION (Recitals 7 and 52)

Article 18 requires Member States to ensure that a **wide range of protection measures** is available to protect **victims** and their **family members** from secondary and repeat victimisation, intimidation and retaliation. It also requires Member States to **protect victims and their family members from physical, emotional and psychological harm**.

These measures (such as interim injunctions or protection/restraining orders) have to be issued with a view to protecting a person when there are serious grounds for considering that that person's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk. The Article has wide scope and requires a **holistic approach** in relation to the range of protection measures needed to protect victims and their family members. For instance, **protection of the victim's dignity** entails adopting measures guiding the behaviour of professionals in contact with victims, and ensuring that victims are treated in a sensitive and professional manner in accordance with their needs. Protection of dignity also includes ensuring that disclosure procedures are limited to disclosing only information relevant to the case.

Within criminal proceedings, authorities must protect victims from **secondary victimisation** by, for instance, limiting intrusive questions, ensuring that only questions that are of interest and importance to the case in hand are asked during questioning and cross-examination. Other possible measures to **protect the dignity** of victims during questioning include limits on the number of times a victim can be questioned, the manner in which criminal justice professionals ask questions and ensuring that victims are respected and recognised as victims throughout the criminal justice process.

Protection from **repeat victimisation** applies to all victims, but may be of particular importance in situations of gender-based violence and violence in close relationships, such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion. Physical protection from **intimidation and retaliation** includes measures to

improve the victim's feeling of safety and security at police and court premises, at the victim's residence and in public (see also Article 19).

Although the Directive does not cover **witness protection** *per se*, victims who are participating in criminal proceedings as witnesses may need particular protection from intimidation or retaliation from the offender or his/her associates. Thus, the Article should be understood as meaning that comprehensive protection of a victim must be ensured on an individual assessment basis.

The reference '**without prejudice to the rights of defence**' should be interpreted strictly proportionately, as real situations in which such defence rights could legitimately override the need for victims' protection are likely to be extremely rare. The rules on interpretation should be developed to ensure transparency and avoid decisions on an arbitrary basis.

The matter of domestic protection measures is not explicitly dealt with by the Directive. Thus, Article 18 does not harmonise the types of national protection orders. However, Article 5 of the Directive 2011/99/EU on the European Protection Order ('**EPO Directive**') and Article 3(1) of the Regulation 606/2013/EU on the mutual recognition of protection measures in civil matters ('**EPO Civil Regulation**') could be used as **guidance** what should be deemed as a minimum (i.e. (a) prohibition from entering certain localities, places or defined areas where the protected person resides or visits; (b) prohibition or regulation of contact, in any form, with the protected person; (c) prohibition or regulation on approaching the protected person more closely than a prescribed distance).

The EPO Directive and the EPO Civil Regulation will require Member States to ensure the mutual recognition of protection measures issued in another Member State. As from January 2015 both these EU instruments will enable circulation of civil and criminal protection measures between Member States.

MEMBER STATES ARE INVITED TO CONSIDER:

- 62. Making criminal, administrative or civil protection measures available** to victims in order to address the protection needs of individuals under national legislation.
- 63. Providing training to professionals** so as to ensure that they treat victims of crime with respect and dignity in all their contacts with them. The physical safety of victims should be protected throughout criminal proceedings.

**ARTICLE 19 — RIGHT TO AVOID CONTACT BETWEEN
THE VICTIM AND OFFENDER**
(Recital 53)

Article 19 is similar to Art. 8(3) and Art. 15(1) FD but extends and clarifies the obligation to avoid contact between the victim and the offender. The Directive requires that contact be avoided in **all premises involved in criminal proceedings** (i.e. including police stations, prosecutors' offices and court premises) and that all new court premises have to designate separate waiting areas for victims (not 'progressively' as required by the FD).

The Article requires **new court buildings** to be designed so as to increase victims' sense of security by limiting the number of times they see the accused or have any other contact with them, giving them separate facilities in court and limiting the number of people present when sensitive evidence is discussed in court. The court room itself should be designed to avoid the victim/witness having to walk in front of the accused or any associated friends/family to get to the witness box, as this may increase the victim/witness's sense of feeling threatened or intimidated.

The reference '**unless the criminal proceedings require such contact**' should be interpreted strictly **proportionately** — as the wording implies — meaning that the victim's interests are secondary to the interests of proceedings. However, this exception should be construed carefully at national level to ensure transparency and avoid decisions on an arbitrary basis. In cases where victims deliberately intend to confront the offender, they should not strictly speaking be prevented from doing so, provided that the legitimate rights of the defendant and the proper conduct of the criminal proceedings are also protected.

The notion '**within premises where criminal proceedings are conducted**' does not cover situations where the investigation is brought outside premises, such as the crime scene.

MEMBER STATES ARE INVITED TO CONSIDER:

64. Various means to achieve Article 19 objective, such as **providing separate entrances, waiting areas and facilities** (e.g. eating and refreshment facilities) for victims of crime, separate from the offender and his/her associated friends and family or by controlling the arrival of victims and the accused in the premises and in the courtroom. The **time arrangement of appointments for victims** should be carefully scheduled by the authorities.
65. Adopting **national courtroom specifications** for any new courts to be established after 16 November 2015, designating separate **waiting areas** for victims. Ideally, the design of the courtroom itself should also be constructed to avoid the victim/witness having to walk in front of the accused or any associated friends/family in order to get to the witness box, as this may increase the victim/witness' sense of feeling threatened or intimidated.
66. Establishing **procedures whereby a victim/witness who feels insecure about attending court can contact a victim or witness support service**, which can provide generic information and support and prepare them for the trial. If required, the victim support service should also be able to meet a victim/witness upon arrival in court and wait with them to provide moral support during the trial.

ARTICLE 20 — RIGHT TO PROTECTION OF VICTIMS **DURING CRIMINAL INVESTIGATIONS**

This is a new right which was not included in the FD. The idea comes from the Human Trafficking and Child Sexual Abuse Directives, and to some extent from Art. 8, FD, para 4.

The purpose of this Article is to prevent secondary victimisation of all victims — not just vulnerable victims. Treating victims properly during criminal investigations should be a basic element of good administration of justice. It will improve the quality of evidence victims provide and thus facilitate a good outcome of the criminal proceedings. Member States should ensure that a holistic approach is taken in relation to victims, to limit any risk of secondary victimisation, remove any undue bureaucratic burden and provide proactive assistance throughout the criminal investigation. Victims should be interviewed as early as possible and interaction with authorities should be as easy as possible, while limiting the number of unnecessary interactions the victim has with them.

The planning and conducting of interviews should take into account the victim's needs, but at the same time consider any urgency for gathering evidence.

The right to be **accompanied by a person of choice** in paragraph 2 (c) applies to all victims (not just to vulnerable or child victims). If the victim has a legal representative, this lawyer should be present at interviews. In addition, the victim should be able to bring a trusted person for moral support. This should be a positive right, which can only be limited by a reasoned decision. Only in exceptional circumstances should the possibility to be accompanied by a person of the victim's choice be limited, and then only in relation to a specific person. If this happens, the victim should be able to choose another person. **A typical example for refusal** would be that the person chosen has **a conflict of interests in the proceedings** (e.g. being the offender - for example in cases of domestic violence or child abuse family members may also be the perpetrators) or **confidentiality concerns**. Experience from Member States where victims have this right has shown that the practice is beneficial for the quality of evidence, the conclusion of the cases and also lightens the burden on police and lawyers. The support person is bound by confidentiality rules like anybody else.

MEMBER STATES ARE INVITED TO CONSIDER:

- 67.** Ensuring that **professionals** in contact with victims are fully aware of victims' rights to protection, the various protection measures available and how to provide these measures in practice (linked to Article 25 on training).
- 68.** Developing **professional codes of conduct for the criminal justice authorities** in contact with victims of crime, ensuring they have the protection of victims of crime as a priority in their work. Member States could adopt **administrative and practical procedures** to incorporate these protective measures into the daily work routines of criminal justice authorities.

ARTICLE 21 — RIGHT TO PROTECTION OF PRIVACY
(Recital 54)

The requirement to protect the privacy of victims and their family members is mainly based on CoE Recommendations (2006)⁸, which state: ‘*States should encourage the media to adopt and respect self regulation measures in order to protect victims’ privacy and personal data*’, and developed in Art. 8, FD, paras 1 and 2. The 2009 Implementation Report found that a large number of Member States had taken measures to protect victims, but not the family.

The recent policy debate in several Member States shows that in practice, victims are often treated without respect by media and left with no rights to privacy, dignity or basic respect when involved in criminal proceedings. They are thus victimised a second time. As a solution, Member States should encourage the media to take **self-regulatory measures** on ethical conduct towards victims. Criminal law measures against individuals who violate privacy protection rules should also be considered. However, while considering suitable options, **freedom of expression and information and freedom and pluralism of the media must be ensured**. Since this matter is sensitive and controversial, a **cautious approach** is recommended, starting with **dialogues with the media** to improve mutual cooperation.

In the interests of child victims, authorities must prevent information that could lead to their identification being publicly disseminated. However, sometimes identification is necessary and in the interests of the **child’s safety** (e.g. missing or abducted children, girls at risk of female genital mutilation, forced marriage or honour crime) and should in these exceptional cases be allowed.

MEMBER STATES ARE INVITED TO CONSIDER:

69. National authorities should adopt **proportionate disclosure regulations** regarding background information relating to victims’ personal life, to protect the personal integrity and personal data of victims, and images of the victim and their family members or the crime scene. In practice, only information about the victim and his/her personal circumstances that is strictly relevant for the case should be disclosed to the accused (**proportionality test**). Detailed descriptions and images of sexual abuse should never be left in the possession of the accused/offender, but kept by the defence. Member States should explore how **professionals in close contact with the victim, the crime scene or the case file** (e.g. police officers, court medical experts, emergency medical staff and fire brigades) could be guided in their potential contacts with the media.
70. Guaranteeing that Member States’ judicial authorities have powers to restrict recording and reports on **activities in the court room** to protect victims’ privacy.

**ARTICLE 22 — INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY
SPECIFIC PROTECTION NEEDS**
(Recitals 55 – 57)

This provision is one of the major achievements in the Victims’ Directive as it makes clear that there needs to be a case-by-case approach towards victims. Current practice shows that Member State authorities are not familiar with this mechanism in general and that national attitudes vary significantly.

The procedures for its application have to be determined by each Member State in its national law. According to Recital 56, a number of different aspects have to be taken into account during the **assessment process**. To help Member States to comply with this obligation DG Justice will consider developing best practices.

The purpose of individual assessment is to **determine whether a victim is particularly vulnerable to secondary and repeat victimisation, to intimidation and to retaliation during criminal proceedings**. It is important to understand this in order to establish the appropriate extent and scope of questions the victim is asked in this assessment.

The assessment implies a **two-step process** (which could be combined): (1) to determine whether a victim has **specific protection needs** against the criteria listed in **paragraph 2** (the personal characteristics of the victim, the type or nature of the crime, the relationship between the victim and the offender and the circumstances of the crime); and, if so, (2) to determine if **special protection measures** should be applied, and what these should be (as listed in **Article 23 and 24 for children**).

Children are always presumed to have specific protection needs and are therefore only subject to the second part of the assessment (**paragraph 4**). **The assessment for children would thus consist of determining which of the protection measures listed in Articles 23 and 24 would need to be put in place for each individual child.** Children’s houses or **child protection centres** with an integrated and multidisciplinary approach are particularly well placed to conduct such individual assessments.

The **individual approach** taken in the Directive does **not create priority categories or a hierarchy of victims**. Nevertheless, in the context of the individual assessment, **paragraph 3** states that particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; or victims whose relationship to and dependence on the offender make them particularly vulnerable. Victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime; and victims with disabilities shall be duly considered since they typically have particular vulnerabilities.

Since this individual assessment is required for all victims of all crimes, **paragraph 5** allows for a certain **degree of flexibility**, whereby the extent of the assessment is adapted according to the severity of the crime and the degree of apparent harm the victim has suffered. **For example, there would logically be a simpler assessment for a bike theft case than for a rape case, determined by national procedures and on a case-by-case basis.**

Paragraph 6 emphasises the **involvement and wishes of the victim**. Thus, a victim’s wish not to benefit from any of the protection measures offered under Articles 23 and 24 must be

taken into account (but is not strictly binding the authorities — e.g. if the wish would be contrary to ‘good administration of justice’).

Member States need to determine the authority or entity responsible at national level to perform the individual assessment of victims - be it law enforcement (police) authorities, judicial authorities, victims’ support organisations or another body. The competent authority or entity may differ according to the stage of criminal proceedings (pre-trial or trial stage); the assessment may be also performed repeatedly during various stages, if appropriate in the individual case.

The **procedure, level or intensity of the assessment** should also be agreed: **Member States should determine how to transpose the objective and general criteria of the assessment under Article 22, paragraph 1 into national legislation (with accompanying practical protocols/templates/questionnaires or additional psychological examining methods).** Although the assessment is individually based and its extent can be adapted in accordance with paragraph 5, the authorities should establish **clear objective procedures** which determine, in practical terms, if it is enough to simply talk to a victim to identify his/her protection needs, or whether an in-depth experts’ risk assessment is required.

The Directive does **not include any remedies and procedural consequences** should a victim not be satisfied with the assessment and not offered all the measures that should have been given. Only national law would be applicable in this respect.

MEMBER STATES ARE INVITED TO CONSIDER:

71. Establishing **national models (e.g. criminal code practices, written guidelines) to introduce individual assessments of all victims** of crime, adapted according to the criteria set out in Article 22. These models should be based on **a tool and practical guidance on how to assess the individual needs of all victims** of crime. The tool should be flexible enough to take the needs and wishes of the victim into account. The Member States should make use of inclusive definitions of the concept of ‘**personal characteristics**’ and of ‘**the type or nature of the crime**’ regarding the victim. In particular, Member States should make sure that the **correlation between victims’ personal characteristics and the possibility of the occurrence of a crime committed** (e.g. with bias or discriminatory motive) is taken into consideration.
72. **Identifying which police/criminal justice authority/victim support service should conduct the individual assessment and provide sufficient training to the appointed agency.** The agency conducting the needs assessment should have experience and knowledge of working with victims in a respectful and professional manner. Good practice shows that the **police or victim support services** are ideally placed to conduct the needs assessment. To ensure the assessment takes place promptly after the crime, there need to be **robust national referral mechanisms** whereby the **police** refer the victim to support services for assessment (link to Article 8).
73. Ensuring that, in addition to the criteria listed in this Article, **the individual assessment takes into account all other factors affecting the victim’s reaction to the crime and recovery.** Good practice demonstrates that factors such as gender, age, maturity, ethnicity, language skills, relationship/dependency between the victim and the offender,

previous experience of crime etc. should be taken into account to identify the victim's communication needs, support needs, protection needs and any need for any other kind of assistance.

74. Developing **national practices regarding the regularity of individual assessments**. Good practice suggests that service providers should continually follow up the individual needs assessment to ensure that the services offered are amended and adjusted in line with the victim's recovery and changing needs.
75. Ensuring that **children are automatically given protection measures, as all child victims are presumed to have specific protection needs**. Standardised national practices and criminal justice policies should reflect and fulfil this requirement.

**ARTICLE 23 — RIGHTS TO PROTECTION OF VICTIMS WITH SPECIFIC
PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS**
(Recitals 58 and 59)

This **new Article** is based on Art. 15 FD. Victims with specific needs should benefit from special protection measures listed in this Article, as determined in the 'second step' of the individual assessment established in Article 22. **Children** may benefit from these measures and those listed in Article 24.

Whether a victim with specific needs should benefit from some or all of these measures is thus determined in the individual assessment (taking into account the victim's wishes). In some cases, they may not be necessary (e.g. a 17 year old victim of a minor crime is presumed to have specific needs due to him/her being legally defined as a child whereas the individual assessment of his needs may conclude that he does not need any special protection during the proceedings). This shall be evaluated on individual ad hoc basis.

The fact whether a victim can benefit from these protection measures must be assessed in the light of the following principles:

- 'without prejudice to the rights of the defence and in accordance with rules of judicial discretion'
- 'if operational or practical constraints make this impossible' — clarified in recital 59. This provision takes into account individual situations where, **temporarily**, due to **exceptional circumstances in an individual case**, the particular measure cannot be provided e.g. compelling reasons related to the personal unavailability of specific (police) officers or in case of an extraordinary event or circumstance beyond the control of the authorities (*force majeure*), such as a strike, riot, crime, or an event such as hurricane, flooding, earthquake etc.
- 'contrary to the good administration of justice'

MEMBER STATES ARE INVITED TO CONSIDER:

76. Adjusting **national criminal code practices to introduce the listed protection measures as part of standard practice** and working routines of criminal justice professionals. To this end, facilities need to be adapted and modernised. Depending on the individual assessment of needs, relevant measures include interviews conducted by specially trained professionals, interviews of victims of gender-based violence by a person of the same sex (if the victim so wishes), avoidance of unnecessary questioning about the victim's private life, and the organisation of court hearings without the presence of the public. Good practice suggests that the measures listed in paragraph 2(a)-(b) should be offered to all victims of crime, not just victims recognised as having specific protection needs.
77. Ensuring that **all professionals working with victims with specific protection needs receive specialised training** as regards the impact of crime on victims, coping strategies and how to identify and limit risk of re-victimisation (see Article 25).

**ARTICLE 24 — RIGHT TO PROTECTION OF CHILD VICTIMS DURING
CRIMINAL PROCEEDINGS**

(Recital 60)

In addition to the protection measures listed in Article 23, the specific measures listed in Article 24 apply to **child victims**, in line with the **child-sensitive character of this Directive**.

All of these measures are included in the Human Trafficking and Child Sexual Exploitation Directives.⁴⁰ There should thus already be structures in place to comply with these requirements, and they should be available on a scale that enables them to be applied to all child victims, if need be, in each individual case.

Measures to protect child victims shall be adopted in their best interests, taking into account an assessment of their needs. When a special representative needs to be appointed for a child during a criminal investigation or proceeding, this role may be carried out by a legal person, an institution or an authority. If a child victim has to take part in criminal proceedings, this should, as far as possible, not cause further trauma as a result of interviews or visual contact with offenders. A good understanding of children and how they behave when faced with traumatic experiences will help to ensure high quality evidence-taking and reduce the stress on children while the necessary measures are carried out.

⁴⁰ Directive 2011/36/EU —

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>;

Directive 2011/92/EU- <http://eur->

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF](http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF)

MEMBER STATES ARE INVITED TO CONSIDER:

78. How to ensure that **the best interests and needs of the child victim are a primary consideration** throughout the victim's interaction with the criminal justice system, if necessary by reviewing their national criminal justice system. Ensuring that **professionals working with child victims** receive **specialised training** in how to communicate with young victims of crime and how to identify and limit the risk of re-victimisation (see Article 25).
79. **Adjusting and modernising** police, prosecutor and court **facilities** to enable the smooth application of listed measures. This includes the set-up of an adequate video conferencing system to use when interviewing children.

ARTICLE 25 — TRAINING OF PRACTITIONERS
(Recital 61)

Appropriate training of justice professionals will enhance the public's **trust in the criminal justice system**.

All practitioners and professionals in contact with victims should be trained, including police, court staff, prosecutors, lawyers, judges, victim support and restorative justice services. However, because of the independence of the judiciary (which includes prosecutors in several Member States) and the lack of State control over lawyers and non-governmental organisations, the Directive has a lighter obligation for training these practitioners compared to police and court staff.

Training is absolutely essential for making the victims' rights in the Directive real and effective for victims in Europe. Member States should do their utmost to ensure that all practitioners in contact with victims receive proper training. A number of Articles in this Directive presuppose that training is available, notably the provisions on support and restorative justice services (training being a requirement for accreditation). **Member States' obligations in the area of training include developing awareness of victims' needs, in a professional and non-discriminatory manner. The notion "victims' needs" is covered notably by provisions of Article 8 and 9 on general and specialist victim support services and Chapter 4 on the protection of victims and the recognition of victims with specific protection needs.**

As a result, according to Recital 61, the proper implementation of Article 25 should be assessed against the capacity of all practitioners to actually conduct the tasks and missions that are part of Member States' obligations under this Directive.⁴¹

⁴¹ DG Justice has funded many projects for training practitioners and will continue to do so under the Justice Programme. DG Justice would encourage and facilitate the cross-border exchange of best practice and dissemination.

MEMBER STATES ARE INVITED TO CONSIDER:

- 80.** Which **types of training** will allow and best suit the achievement of the objectives set in this Directive.
- Training on victims' rights and needs is part of the basic training for **police officers and court staff**. Good practice shows that for **lawyers, judges and prosecutors**, victim awareness training should also form part of the **basic curriculum** in law or bar school. Specialised courses regarding the rights and needs of victims of crime should also be offered as part of on-going **professional development**. Professionals could be encouraged to take part in training courses, including **cross-disciplinary training**, if, for instance, taking and completing specific victim awareness courses were a requirement for professional promotion and specific judicial positions.
 - Victim awareness training to all staff/volunteers within **victim support and restorative justice services**. A requirement for specialised victim awareness training could, for instance, form part of the funding or service delivery agreement between the State and individual support organisation(s).
- 81.** The importance of feedback from victims, e.g. by providing procedures whereby victims can complain about the manner in which they were treated by professionals and/or the lack of access their rights in practice. If a professional/authority/entity is found to have breached a victim's rights, it could be obliged to undergo specialised victim awareness training to inform staff of victims' rights and to raise their awareness of the needs of victims of crime.

ARTICLE 26 — COOPERATION AND COORDINATION OF SERVICES
(Recitals 62 and 63)

Article 26 aims to encourage Member States to cooperate with each other and to coordinate actions on victims' rights at national level.

It is important to explore channels through which national authorities can cooperate on individual cases. This provision may also require establishment of national contact points. **At national level**, the emphasis will be put on **inter-agency coordination among national authorities and agencies** (see paragraph 2), such as Ministries of Justice and Interior, police, prosecution and judicial authorities and health, social, welfare services and education providers. In cross-border cases, the involvement of consular authorities/embassies should be encouraged.

The involvement of the **private sector** (such as hotels, insurance or travel companies) should be **encouraged**, as a significant number of crimes take place abroad, e.g. during holidays or business travel. Cross-border victims are particularly vulnerable, since they may face a different language, legal system and culture and may be far from home. The need for cooperation between services is therefore particularly important. Networks of national contact points should be built up and should cooperate so that they can help people in the country in which the crime takes place and once they return home. For example, good practice from one Member State illustrates the efficiency of a **Tourist Assistance Service**, a specialist service offering immediate support and assistance to tourists who become victims of crime. This

service is free and confidential and is sponsored by leading public/private sector entities linked to tourism services.

Member States can **exchange best practices** through the **European Judicial Network in criminal matters**, the **E-Justice Portal** as well as through **experts' meetings, workshops** organised by DG Justice in Brussels or on a regional basis. Assistance to European networks working on matters directly relevant to victims' rights can be provided through **policy dialogue** with victims' support organisations.

MEMBER STATES ARE INVITED TO CONSIDER:

- 82.** Establishing **close cooperation among themselves and with DG Justice** throughout the implementation phase of this Directive.
- 83.** Investing resources in **European networks, civil society and cooperation** in the field of victims of crime, including **private sector service providers**.
- 84.** Supporting and encouraging national law enforcement and judicial authorities to take part in **European networks and cooperation**, as a way to learn and exchange best practice and expand knowledge regarding the manner in which to protect and fulfil victims' rights. Cooperation between criminal justice professionals would also be required to ensure that victims' rights are fulfilled in cross- border cases.
- 85.** **Formulating European standards of good practice in selected areas** such as victims' support service providers, **in cooperation with DG Justice**.

ARTICLE 28 — PROVISION OF DATA AND STATISTICS
(Recital 64)

Member States must by 16 November 2017, and every three years thereafter, provide the Commission with **data showing how victims have accessed the rights** set out in the Directive. **Recital 64** specifies what type of statistical data should be provided, including at least the number and type of crimes reported and, if known and available, the number of victims, and their age and gender. Statistical data can include judicial, police and administrative data (collected by health and social services, victim support organisations and restorative justice services and other organisations working with victims).

In addition to **general data and statistics**, Member States are also invited to focus on the prevalence of particular forms of crimes, such as crimes falling under the category of gender-based violence, and how victims of such crimes are assisted and protected. Such data is difficult to collect due to the general under-reporting of certain types of crimes (e.g. rape, domestic violence, hate and bias crime), so Member States should promote **systematic registration and handling of complaints** received by police, judicial, health, social and other relevant authorities and NGOs that work in contact with victims. In order to contribute to the preparation of the Commission reports, a robust system for data and statistics collection should be established as soon as possible.

MEMBER STATES ARE INVITED TO CONSIDER

- 86. Collecting and disseminating reliable, regularly updated judicial, police and administrative data on victims and perpetrators of all crimes, working in close cooperation with national and the European statistical office (Eurostat).**

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