



The Victims' Rights Directive 2012/29/EU

European
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Assessment

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Study

On 28 October 2016, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Women's Rights and Gender Equality (FEMM) jointly requested authorisation to draw up an own-initiative implementation report on Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (Rapporteurs: Teresa Jiménez-Becerril Barrio, EPP and Angelika Mlinar, ALDE). Following authorisation by the Conference of Committee Chairs, the Ex-Post Evaluation Unit (EVAL) of the Directorate for Impact Assessment and European Added Value, Directorate-General for Parliamentary Research Services (EPRS), was asked to prepare an assessment of the implementation of the directive in support of the up-coming committee report.

Abstract:

This study assesses the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime in EU Member States. It assesses its coherence, relevance, effectiveness, efficiency and added value. In doing so, it covers various aspects of the directive's application: legal transposition measures at Member State level, practical implementation on the ground, benefits to victims, and also the challenges encountered. Finally, the study offers a number of conclusions and recommendations for further promoting implementation of the directive in the future.

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Table of Contents

List of abbreviations and acronyms	3
Methodology	4
Part I: EPRS opening analysis	5
Key findings.....	5
1. EU action in the area of victims' rights: background and rationale	6
1.1. JHA policies before Lisbon: challenges and constraints for victims' rights	6
1.2. EU competence in the area of victims' rights	7
1.3. The principle of equal access to rights and protection across the EU	9
2. The victims' rights package	10
3. Implementation of the Victims' Rights Directive: state of play	13
3.1. Recognition of the status of victims.....	13
3.2. Application of procedural rights: main findings.....	14
3.3. Victims resident in another Member State	15
3.4. Impact of the directive.....	16
4. The role of the European Parliament	17
4.1. Parliament's support for the rights of victims: scrutiny role and budgetary powers.....	17
4.2. Ensuring consistency and better readability of victims' rights at EU level.....	19
Part II: Assessment of the implementation of the Victims' Rights Directive	24
Glossary of terms	25
Executive summary	28
1. Introduction and methodology	33
1.1. Study objectives and scope	33
1.2. Report overview	33
2. Context and the directive's key provisions	35
2.1. Situation before the 2012 Victims' Rights Directive	35
2.2. Victims' Rights Directive 2012/29/EU	39
2.3. Intervention logic	43
3. Assessment of the directive's transposition	44
3.1. Summary of key findings.....	44
3.2. Definition of compliance.....	46
3.3. Methods of transposing the directive.....	47

3.4. Comparative analysis of the directive's transposition	49
3.5. Other provisions.....	63
4. Assessment of the application of the directive	65
4.1. Baseline situation before the directive	65
4.2. Overall impact	68
4.3. Information, training and coordination	69
4.4. Individual assessment of victims.....	81
4.5. Recognition of victims with special needs.....	85
4.6. Secondary victimisation.....	85
4.7. Specific types of victim.....	86
5. Key evaluation issues	97
5.1. Coherence.....	97
5.2. Relevance	99
5.3. Effectiveness	100
5.4. Efficiency	101
5.5. Added value	102
6. Conclusions and recommendations	103
6.1. Overall conclusions.....	103
6.2. Recommendations for the future	106
Appendix A: Definitions of victims in the EU Member States	108
Appendix B: Bibliography	110
Appendix C: List of country codes	117
Appendix D: Stakeholder feedback overview	118
Appendix E: Overview of the directive's transposition.....	119

List of abbreviations and acronyms

AFSJ	Area of freedom, security and justice
CoE	Council of Europe
EC	European Commission
ECHR	European Court of Human Rights
CJEU	European Court of Justice
EIA	European implementation assessment
EJN	European Judicial Network
EJTN	European Judicial Training Network
ENVR	European Network on Victims' Rights
EPO	European protection order
EPRS	European Parliamentary Research Service
ERA	Academy of European Law
EVAL	Ex-Post Evaluation Unit (EPRS)
EVVI	Evaluation of Victims project
FEMM	European Parliament's Committee on Women's Rights and Gender Equality
FRA	Fundamental Rights Agency
JHA	Justice and home affairs
LIBE	European Parliament's Committee on Civil Liberties, Justice and Home Affairs
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Methodology

This European implementation assessment (EIA) is divided in two parts: (1) an opening analysis prepared in house by the Ex-Post Evaluation Unit (EVAL) within the European Parliamentary Research Service (EPRS), and (2) an outsourced study.

The opening analysis provides background information to improve understanding of the context in which the Victims' Rights Directive was adopted. It is based mainly on primary sources and official EU documentation. It also reviews the available assessments of the directive and evaluates its coherence as part of the set of rights existing at EU level.

The accompanying study has been prepared by a research team from the Centre for Strategy & Evaluation Services LLP (CSES). In conducting its research, the selected team took into account a list of specific questions prepared in coordination with EPRS, the LIBE/FEMM secretariats and the co-rapporteurs, covering various aspects of the assessment: on transposition measures at Member State level, on the practical implementation of the directive, and on the challenges encountered.

The accompanying study builds on the literature and reports available and on the team's own data gathered for the purpose of the study. A combination of desk research, stakeholder interviews and an online survey were used. In addition, two focus groups were organised with key stakeholders from a number of Member States to help validate the findings.¹

Transposition into national law has been analysed for each of the 27 Member States concerned. Practical application of the directive is assessed in more depth in a sample of 12 Member States representing a balance in terms of geography, size, different legal traditions and approaches as regards the rights of victims in the criminal justice system and the level of existing support: Austria, Belgium, Czech Republic, Finland, France, Germany, Hungary, Italy, Lithuania, Poland, Spain and Sweden.

The opening analysis of the study was peer-reviewed internally by colleagues from EPRS and submitted for comments to the European Commission (DG JUST).² The outsourced study was peer-reviewed internally by the EVAL team.

¹ The methodology of the accompanying study is presented in more details in Part II, Section 1.

² The European Commission does not take any responsibility for the content of this document. The European Commission may have different views regarding opinions expressed in this document and, in particular, may take a different position regarding assessment of compliance of national laws and practice with EU rules.

Part I: EPRS opening analysis

Key findings

(1) The rationale for tackling the rights of victims at EU level derived from the gradual development of the freedom of movement and residence. The need to extend EU integration in this field was reinforced by the Lisbon Treaty, which gave the EU an explicit competence to set minimum standards on the rights of both individuals in criminal procedure and victims of crime. This paved the way for the adoption of a 'victims' rights package'. Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime, is a key part of this package. It establishes important procedural provisions, such as the right to be heard, understand and be understood; and the right to receive information, to make a complaint and to access support services. The Victims' Rights Directive is an instrument of harmonisation that establishes minimum standards to be applied across the EU.

(2) The Member States had to transpose the directive by 16 November 2015 (according to its Article 27). At the time of writing, 23 out of 27 Member States have officially transposed the directive (Denmark opted out). However the European Commission has not yet assessed the directive's transposition and implementation, even though its reporting obligations were due by 16 November 2017 (according to the directive's Article 29).

(3) In terms of practical implementation, most of the directive's key provisions appear to have been transposed adequately in the vast majority of Member States. However, the ways in which these provisions have been built into administrative procedures differ across the Member States. One area where most of the Member States have shown significant progress, at both legislative and administrative levels, is the individual assessment of victims' needs. Meanwhile, an area that is still unclear is the application of the directive's provisions when it comes to victims of crimes that occurred in a Member State other than their habitual place of residence. Despite a consensus around the principle of non-discrimination on the basis of nationality, research suggests practitioners across Member States are often uncertain of the path to be taken if such situation arises.

(4) The European Parliament has a critical role in ensuring the European Commission follows up on the proper implementation of the Victims' Rights Directive. It can also promote further efforts at EU level to strengthen proper application of the directive through support aimed at promoting and upholding the rights of victims of crime in general and, more particularly, by means of EU funding for appropriate judicial training. Such training is key to ensure that victims are well aware of their rights and are treated in a respectful manner.

(5) The Parliament could also support more consistency of victims' rights at EU level. These rights are currently spread across various EU legal instruments, which at times makes the general coherence of the existing set of rights difficult to grasp. For instance, the Victims' Rights Directive reinforces certain aspects of some related EU instruments (particularly in adopting an all-encompassing approach to victims with special needs), while omitting

important provisions provided in certain crime-specific instruments. As an illustration, the provision on the non-prosecution of victims for involvement in criminal activities they were compelled to commit (a provision of the directive on trafficking in human beings) is absent from the Victims' Rights Directive. It appears that the EU's set of rights for victims could be better streamlined. Victims and practitioners alike would benefit from improved clarity and coherence.

1. EU action in the area of victims' rights: background and rationale

The first steps in establishing victims' rights at EU level, and the way they developed afterwards, cannot be disconnected from the specific context in which they were adopted: a pre-Lisbon environment.

1.1. JHA policies before Lisbon: challenges and constraints for victims' rights

The introduction of justice and home affairs policies to the European agenda began with the Treaty of Maastricht³ in 1993. The organisation of the EU around three 'pillars' had important consequences for the decision making process regarding these policies. As a result, JHA policies were essentially intergovernmental and decisions required unanimity in the Council. This arrangement entailed serious challenges,⁴ most notably:

- no democratic oversight of third pillar policies as the role of the European Parliament was limited on paper (to be informed, to give an opinion and to ask questions) and even more so in practice;
- no judicial control as the Court of Justice had no jurisdiction to review and interpret third pillar acts;
- no enforcement powers with respect to third pillar measures (nor right of initiative) taken by the European Commission;
- non-transparent decision-making procedures, 'by and large characterised by unaccountable, complex, secretive and intergovernmental decision-making methods';⁵
- a tendency for JHA measures to be adopted at the 'lowest common denominator' on account of the unanimity requirement in Council;
- legal uncertainty - JHA acts 'did not qualify as 'normal' EU legal instruments'.⁶

³ Maastricht Treaty, Title VI on the Provisions on cooperation in the fields of Justice and Home Affairs, C 191, 29 July 1992, pp. 61-62.

⁴ These challenges are elaborated in some detail in the study, Implementing the Lisbon Treaty. Improving the functioning of the EU on Justice and Home Affairs, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2015, pp. 9-11.

⁵ J. Apap and M. Anderson (eds.), *Police and Justice Cooperation and the New European Borders*, Kluwer Law International, 2002.

⁶ Implementing the Lisbon Treaty. Improving the functioning of the EU on Justice and Home Affairs, op.cit., p.9.

While these challenges would have been problematic in any policy field, they were all the more so in justice and home affairs policies, which are liable to affect individual rights and freedoms and which can have serious repercussions for citizens' lives. The absence of parliamentary oversight and judicial control compounded by non-transparent decision-making was therefore increasingly seen as untenable.

The Treaty of Amsterdam (1997) brought further changes. It moved some JHA policies from the third pillar to the first pillar (and thus to the co-decision procedure). These were immigration, asylum, border controls, civil and family law. However, policies on cooperation in criminal matters remained in the third pillar, which was renamed 'police and judicial cooperation in criminal matters'. As a result, discussions around victims' rights in the 1990s remained largely constrained and limited at EU level.

Still, as the Treaty of Amsterdam introduced an 'area of freedom, security and justice' (AFSJ), political will for further cooperation in the field of justice and home affairs evolved and a more comprehensive approach gradually began to be adopted towards the issues surrounding the movement of people, calling into question the conventional notion of national sovereignty.⁷

1.2. EU competence in the area of victims' rights

The issue of protecting victims in criminal proceedings was first raised at EU level in the 1999 Tampere Programme, which implemented the above-mentioned AFSJ.⁸ This programme was the first of its kind, introducing the practice of multiannual (five-year) programmes on JHA adopted by the European Council. This programme and those that followed⁹ opened the way for more EU action relevant to several AFSJ policies, including policies relating to victims' rights.

In the Tampere programme, the Council adopted a specific section, 'Better access to justice', which concluded that minimum standards should be set for the protection of victims of crime, in particular as regarded access to justice and the right to compensation for damages, including legal costs. The European Council also emphasised that national programmes should be set up to finance measures, both public and non-governmental, for assistance to and protection of victims.

Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings¹⁰ was subsequently adopted with the aim of securing minimum rights for crime victims. It set out provisions whereby victims were guaranteed the right to be heard, the opportunity to participate in proceedings, protection, compensation and

⁷ See Historical events in the European integration process (1945–2014): [An area of freedom, security and justice](#), from the University of Luxembourg's Centre Virtuel de la Connaissance sur l'Europe (CVCE) online research infrastructure; W. van Ballegooij, [Area of freedom, security and justice: Untapped potential](#), EPRS, October 2017.

⁸ [Conclusions](#) of the Tampere European Council of 15 and 16 October 1999.

⁹ See the [Hague](#) Programme in 2004 and the [Stockholm](#) Programme in 2010.

¹⁰ [Council Framework Decision 2001/220/JHA](#) of 15 March 2001 on the standing of victims in criminal proceedings.

access to mediation and to any relevant information. These rights would also be guaranteed when the crime was committed in another Member State.

Furthermore, in 2004 a specific instrument on financial compensation for victims of crime¹¹ (Directive 2004/80/EC) was adopted. Its aim was to ensure that each EU country had a national scheme in place to guarantee fair and appropriate State compensation for victims of violent intentional crimes. It was also designed to ensure that compensation was easily accessible regardless of where in the EU a person fell victim to crime.

However, the move towards strengthening victims' protection across the EU was constrained by many challenges, including a poor level of scrutiny in Member States' action in JHA areas, as described above. As a result, the decision and the directive suffered from many of the constraints that derived from the specific place occupied by justice and home affairs (JHA) before the entry into force of the Lisbon Treaty. Implementation reports on the Council Framework Decision 2001/220/JHA, published in 2004¹² and 2009,¹³ concluded that the EU legislation had not been effective in achieving minimum standards for victims across the EU.¹⁴

In parallel, between 2005 and 2011, the European Court of Justice (CJEU) intervened in several rulings to clarify the interpretation of some aspects of the framework decision.¹⁵ These rulings include the landmark 'Pupino Case' in Italy (see below). The role of the CJEU here illustrates further the gradual integration of JHA into EU policy, with the CJEU's role in the field evolving from 'virtually non-existent' in the early 1990s to growing 'extensively throughout the 1990-2000s'.¹⁶

¹¹ [Council Directive 2004/80/EC](#) of 29 April 2004 relating to compensation to crime victims.

¹² [Report](#) from the Commission on the standing of victims in criminal proceedings, COM/2004/0054 final.

¹³ [Report](#) from the Commission on the standing of victims in criminal proceedings, COM/2009/0166 final.

¹⁴ [Rights of the victims](#), European Commission website.

¹⁵ See: [Eurocrim database](#) on the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

¹⁶ I. Grigoriev, Role of the European Court of Justice in the Third Pillar: Does Not it Grow Too Fast?, Higher School of Economics [Research Paper No WP BRP 11/IR/2014](#).

CJEU Pupino case

Ms Pupino was a nursery school teacher charged with inflicting injuries on pupils under five years of age at the time of the facts. The matter for debate concerned the issue of cross-examination during the trial and derogations to protect minor witnesses. More specifically, the Italian code of criminal procedure did not provide for a special procedure for children testifying in this case, while the framework decision did. The CJEU ruling in this case established that, in respect of particularly vulnerable victims, it was admissible to use a special procedure for the collection of evidence, i.e. testimony could be given by children under a special procedure rather than in the usual court proceedings. The judge was obliged to interpret Italian domestic law in conformity with the framework decision.

In the Pupino case, the CJEU established that, although third pillar legislation did not have a direct effect, it was nonetheless binding through the principle of indirect effect.¹⁷ In practice, this meant that judges in Member States were obliged to interpret their domestic law in conformity with the JHA framework decisions.

1.3. The principle of equal access to rights and protection across the EU

The rationale of both the above-mentioned Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings and Directive 2004/80/EC on compensation have derived from a development that has greatly influenced further integration of third pillar policies within the regular 'communitarised' set of policies: the freedom of movement and residence.

The Treaty of Maastricht introduced EU citizenship, to be enjoyed automatically by every national of a Member State. The Schengen agreements gradually erased internal borders. 2004 saw the adoption of the Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the EU.

The above-mentioned logic connecting freedom of movement and further integration of JHA policies was simple: if citizens could freely move within the borderless European space, so could criminals and so could victims of crime. This logic was reinforced in the Lisbon Treaty, which stipulates that '[t]he Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.'¹⁸

This 'area of freedom, security and justice' is placed high among the EU's key objectives as set out in Article 3 TEU, immediately after the aim to promote 'peace, its values and the

¹⁷ See Judgment in Case C-105/03, CJEU, 16 June 2005 and T. Magno, The Pupino Case: Background in Italian Law and consequences for the national judge, ERA Forum, 2007, Vol. 8 (2), pp. 215-223.

¹⁸ Article 3(2) TEU.

well-being of its people' and before the objective of 'establish[ment] of the internal market' or the 'establish[ment of] an economic and monetary union'. This broader AFSJ paved the way for the adoption of the victims' rights package (see below), whose aims were to ensure that 'people can rely on the same level of basic rights and have confidence in the justice system wherever they are in the EU'.¹⁹ It was then estimated that 'up to 15 % of the EU population may fall victim of a crime somewhere in the EU every year': 'the risk of being a victim is just as great when travelling abroad as it is at home. With Europeans making around 1.25 billion trips as tourists within the EU every year, some will inevitably become victims of crime in another country'.²⁰ The principle of establishing minimum rules for victims was thus seen as being part of the 'EU's broader objective to build a European area of justice' as well as safeguarding the principle of 'non-discrimination in accessing victims' rights.

2. The victims' rights package

The Treaty of Lisbon is of crucial importance for the JHA policies as it merged the remaining policies from the third pillar on police and judicial cooperation in criminal matters into the regular, mainstream, 'communitarised' set of EU policies. Furthermore, the EU Charter of Fundamental Rights became legally binding.

Consequently, the remaining policies on police and judicial cooperation in criminal matters joined more 'traditional' EU policies, with everything that entailed:²¹

- decision making through the ordinary legislative procedure (with the European Parliament and the Council as co-legislators on an equal footing), thus no requirement for unanimity in the Council;
- democratic oversight by the European Parliament,
- judicial control of the Court of Justice,
- right of initiative and enforcement powers of the European Commission, more transparency in the decision-making process,
- simplified legal tools (regulations, directives, decisions, recommendations and opinions),
- legal certainty.

In its Article 82, the Treaty provides for an explicit EU competence to set minimum standards on the rights of both individuals in criminal proceedings and victims of crime.²² As a result of these established EU competences, the post Lisbon period has seen a flurry

¹⁹ European Commission ensures better protection of crime victims, press release, European Commission, 18 May 2011.

²⁰ Ibid.

²¹ It is important to note that there exist several exceptions and derogations (e.g. emergency breaks, enhanced cooperation or application of special legislative procedures in certain areas). On this, and on general matters relating to post-Lisbon JHA, see *Implementing the Lisbon Treaty. Improving the functioning of the EU on Justice and Home Affairs*, op.cit.

²² Article 82(2) TFEU, in particular Article 82, paragraph 2, sub-paragraph b (Article 82(2)(b)) on the rights of victims of crime).

of legislative activities in the AFSJ and, relevant to this study, of activities under both Article 82(2) and Article 82(1).

Those directives, of particular relevance to victims' rights, are presented below, together with the relevant legal basis or TFEU article:

Article 82(2)(c) on the rights of victims of crime

- 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, OJ L 315, 14.11.2012, pp. 57-73 (legal basis: Article 82(2); specific sub-paragraph of Article 82(2) not indicated, but see recital 3: 'rights of victims of crime', thus sub-paragraph c)

Article 82(2) with no specific sub-paragraph of Article 82(2) defined

- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on **preventing and combating trafficking in human beings and protecting its victims**, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, pp. 1-11 (legal basis: Article 82(2) and Article 83(1); specific sub-paragraph of Article 82(2) not indicated)
- Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on **combating the sexual abuse and sexual exploitation of children and child pornography**, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, pp. 1-14 (legal basis: Article 82(2) and Article 83(1); specific sub-paragraph of Article 82(2) not indicated). Note corrigendum: Directive 2011/92 should read Directive 2011/93.
- Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the **freezing and confiscation of instrumentalities and proceeds of crime** in the European Union, OJ L 127, 29.4.2014, pp. 39-50 (legal basis: Article 82(2) and Article 83(1); specific sub-paragraph of Article 82(2) not indicated)

Article 82(1)(a) and (d)

- Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the **European protection order**, OJ L 338, 21.12.2011, pp. 2-18 (legal basis: Article 82(1)(a) and (d))*

These activities of the co-legislators relating to victims' rights have gone hand in hand with measures to secure defendants' rights (the rights of individuals in criminal proceedings, Article 82(2)(b)).²³ These include the right to interpretation and translation²⁴; the right to information²⁵; the right of access to a lawyer²⁶; the strengthening of certain aspects of the

²³ See The Cost of Non-Europe in the area of Procedural Rights and Detention Conditions, EPRS, European Parliament, December 2017.

²⁴ Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

²⁵ Directive 2012/13/EU on the right to information in criminal proceedings.

²⁶ Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

presumption of innocence²⁷; procedural safeguards for children who are suspects or accused persons²⁸ and legal aid for suspects and accused persons.²⁹

The Stockholm programme³⁰, adopted at the same time as the entry into force of the Lisbon Treaty, established in particular the intention to create an integrated and coordinated approach to victims within the EU. Through this programme, the European Council called on the Commission and the Member States to examine how to improve legislation and practical support measures for the protection of victims and to improve implementation of existing instruments; offer better support for victims; and examine whether it would be worthwhile framing one comprehensive legal instrument for the protection of victims. The Budapest roadmap,³¹ adopted in 2011, anchored the Council's commitment to strengthen EU action in this field.

Subsequently, a horizontal piece of legislation was adopted: Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (the 'Victims' Rights Directive'), replacing the above-mentioned Framework Decision 2001/220/JHA. The aim of the directive was to strengthen victims' rights across the EU while addressing the deficiencies raised in the implementation of the 2001 framework decision. The directive establishes minimum standards and safeguards and establishes important procedural provisions, such as the right to be heard, to understand and be understood; and the right to receive information, make a complaint and access support services. The Victims' Rights Directive is thus an instrument of harmonisation that establishes minimum standards to be applied across the EU.

As shown in the above table, the Victims' Rights Directive is part of a 'victims' rights package' adopted after 2009, which also includes Regulation 606/2013 on mutual recognition of protection measures in civil matters and Directive 2011/99/EU on the European protection order in criminal matters,³² whose aim was to ensure the right for victims to continue to benefit from civil and/or protection measures when moving to another Member State. Alongside this package on victims' rights, several other EU directives were put in place to strengthen the rights of victims of particular crimes: a directive relating to trafficking in human beings³³ (in its Articles 11 to 17); a directive on

²⁷ [Directive \(EU\) 2016/343](#) on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

²⁸ [Directive \(EU\) 2016/800](#) on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

²⁹ [Directive \(EU\) 2016/1919](#) of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

³⁰ [The Stockholm Programme - An open and secure Europe serving and protecting the citizens](#), Council of the EU, 2009.

³¹ Resolution of the Council of June 2011 on a [Roadmap for strengthening the rights and protection of victims](#), in particular in criminal proceedings.

³² See [European Protection Order Directive 2011/99/EU](#), Implementation Assessment, EPRS, European Parliament, September 2017.

³³ [Directive 2011/36/EU](#) of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

child sexual abuse³⁴ (in its Articles 18, 19 and 20); and the recently adopted directive on combatting terrorism³⁵ (in its Title V).³⁶

As a result of these successive additions to victims' rights at EU level, the range of rights appears to be spread across several instruments, which at times makes coherence and complementary aspects difficult to grasp. This aspect will be detailed in the section on the role of the European Parliament (see Section 4).

Almost a decade after the entry into force of the treaty and five years after the entry into force of the Victims' Rights Directive, the following question can be raised: to what extent are EU citizens and residents who are victims of crime benefiting from equivalent rights across the EU?

3. Implementation of the Victims' Rights Directive: state of play

In terms of transposition, at the time of writing, 23 out of 27 Member States (Denmark opted out) have officially transposed the directive. Ireland, Slovenia, the Slovak Republic and the UK are in the process of doing so.³⁷ The European Commission has not yet assessed the transposition and implementation of the directive, although according to its Article 29 it was due to report in November 2017.

3.1. Recognition of the status of victims

One of the most important objectives of the Victims' Rights Directive was to improve the standing of victims of crime across the EU and to place the victim at the centre of the criminal justice system, which in many Member States focused primarily on the role of the prosecution and judge, and the interests of the state more generally. This objective could only be fulfilled if victims were recognised as such.

In terms of definition, the directive provides the following: (a) 'victim' means: (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss caused directly by a criminal offence; (ii) family members of a person whose death was caused directly by a criminal offence and who have suffered harm as a result of that person's death.

Most Member States include the word 'victim' in their legislation and provide a

³⁴ [Directive 2011/93/EU](#) of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

³⁵ [Directive 2017/541](#) of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

³⁶ Not all directives are included above given that some of the relevant directives have their legal basis in articles other than Article 82(2) TFEU.

³⁷ See Part II (Section 3).

definition.³⁸ Although in several countries, no exact definition of the term 'victim' exists,³⁹ other terms are used with definitions that resemble the directive's definition closely, such as 'witness', 'plaintiff', 'reporter of a crime', or 'injured party'. Hence, the fact that the term 'victim' is not used universally across EU Member States' legislation does not necessarily mean that victims are not recognised and supported as such, as other terms do cover the relevant conditions and situations of being a victim.⁴⁰ Furthermore, research suggests that the way in which victims are treated as part of the criminal justice system varies greatly across the EU.⁴¹

Therefore, perhaps more important in the adequate provision of victim support are the procedural steps necessary for a victim to be recognised as such by the competent authorities. The individual assessment requirement introduced by the directive is key here. Proper training for front-line officers likely to come into contact with victims and good coordination between authorities and support services/organisations are equally important. In these different fields, as the dedicated study available in Part II of this EIA shows, despite the fact that much progress has been achieved across the Member States, challenges remain.

3.2. Application of procedural rights: main findings

Proper assessment of the application of the provisions of the directive is not an easy task, as the directive combines a mix of legislative and administrative measures.

When it comes to legal procedural rights, most of the key provisions of the directive appear to have been transposed adequately in the vast majority of Member States: the right to be heard, to understand and be understood; the right to receive information, to make a complaint and to access support services. However, the ways in which these legal provisions have been built into administrative procedures differ across the Member States.

An area where most of the Member States have made significant progress, both at the legislative and administrative level, is individual assessment (Article 22 of the directive). Arranging an individual assessment when victims report a crime is key to ensure their needs and options are assessed properly by practitioners. No victims can be supported adequately if the front-line officials (in most cases, the police where a victim goes to report a crime) do not know the personal characteristics of the victims, or the type, nature or circumstances of the crime.

³⁸ See APAV (Portuguese Association for Victim Support), Implementing victim-orientated reform of the criminal justice system in the European Union, 2016 (co-funded by the Criminal Justice Programme of the EU), pp.110 and following. A table with all definitions of victims in the EU Member States is provided on p. 113 of the report, which is reproduced in Appendix A.

³⁹ Cyprus, Denmark, Finland, Greece, Germany, Poland, Scotland, Slovakia and Sweden, See APAV report, op.cit.

⁴⁰ APAV report, p.116.

⁴¹ See Part II, Section 2.2.1; APAV report, op.cit.; Fundamental Rights Agency, Victims of crime in the EU: the extent and nature of support for victims, 2014.

Nevertheless, the ways in which individual assessments are conducted vary greatly across the Member States, and in some instances rely solely on a 'ticking boxes' exercise.⁴² Furthermore, even if individual assessments were conducted adequately across the EU, the availability of victim support structures is not consistent across Member States, and sometimes not even within individual Member States. Moreover, proper coordination at Member State level remains challenging.⁴³ Providers responsible for victim support are usually organised either by the government or by NGOs – and often they co-exist, thus raising the question of consistent and long-term funding for support services, as well as the issue of the division of responsibilities.

Another area for improvement is the quality and adequacy of the information offered to victims. Many different formats have been adopted by Member States: leaflets, signposting on official websites, etc.⁴⁴ However, this information is not always easily accessible and is not necessarily provided in more than one language. The latter aspect undermines the principle of the non-discrimination of victims across the EU as, as previously mentioned, many individuals moving across the EU may become victims of crime.

A closely related field where improvement could be made is training. On this aspect the need for further training programmes at EU level is of paramount importance, not only for students in police academies and judicial colleges, but also as training for experienced practitioners.⁴⁵ There seems to be a lack of standardised best practice across Europe despite the fact that training is key for raising awareness of the needs of the victims of crime.⁴⁶ On the other hand, there is also a need to take into account the 'societal ecology' of the positions of victims in the various Member States.⁴⁷

3.3. Victims resident in another Member State

The rights of victims resident in another Member State are set out in Article 17 of the directive. It proposes three different ways in which reporting a crime and participating in criminal proceedings can be facilitated for victims from other EU Member States.⁴⁸ The first concerns the possibility of taking a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority. The second concerns recourse to the provision on videoconferencing and telephone calls. Finally, Member States must ensure that victims of a criminal offence committed in Member States other than where the victim is resident can make a complaint to the competent authorities of the Member State of residence.

⁴² See Section 4.4 in Part II.

⁴³ See Section 4.3 in Part II.

⁴⁴ See Sections 3.4.6 and 4.3 in Part II.

⁴⁵ Part II, Sections 3.5.1 and 4.3.

⁴⁶ See APAV report, *op.cit.*, p.165.

⁴⁷ As explained in detail in the APAV report, victims' experience is largely driven by their interaction with the police force, and victims and citizens view the police very differently in the various Member States. Perception and trust of the police and the judiciary varies widely from one country to the other. See the APAV report, *op.cit.*

⁴⁸ APAV report, p.143.

In most Member States, compliance with the cross-border dimensions of victims' rights has been ensured within the legal system by the principle of non-discrimination on the basis of nationality.⁴⁹ Research however suggests that in this field, practitioners are often uncertain of the provisions available in their country.⁵⁰ Whereas there seems to be a general consensus that victims from other Member States should be treated similarly to victims who are residents where the crime has occurred, specific issues arise with provisions related to the possibility of complaint in Member States of residency.⁵¹ Many practitioners indeed admit it is unclear what would happen if a resident of one Member State reports a crime that was committed in another Member State because of extra-territorial jurisdiction.⁵² More could therefore be done at European level to support the cross-border element of victim support, including by reinforcing practitioners' networks at EU level, for instance the European Network on Victims' Rights (ENVR), the European Judicial Network (EJN) and the European Judicial Training Network (EJTN) (see point 4.1 hereafter).

3.4. Impact of the directive

The directive has had a strong impact in Member States that had a poor level of protection for victims prior to its adoption. The directive has in these cases helped to strengthen procedural rights. In Member States where the level of protection for victims was already high, the directive had a less significant impact. Finally, where some Member States had victim support provisions for specific victims (victims of sexual abuse, victims of terrorism or victims of gender-based violence), the directive had the merit of expanding this support to a broader range of victims. The directive also provides for a broad concept of 'vulnerable' victims and, in its Recital 38, adopts an all-encompassing approach to victims with specific needs/persons who are particularly vulnerable. Whereas many EU instruments in this case refer to minors and persons with disabilities, the directive includes, inter alia, persons subjected to repeated violence in close relationships and victims of gender-based violence.

Overall, the directive has helped to draw more attention to victims' rights across the Member States. Furthermore, the directive has led to some progress in dealing with victims of crime in another Member State, especially in the field of interpretation and translation to ensure victims from other Member States understand the entire process and the services available to them. This also applies to non-EU citizens. However, as mentioned above, improvements could be made in many areas to ensure proper access to justice and support.

As such, the directive illustrates the difficulty in accommodating EU intervention and the need for minimum standards against a backdrop of very different national traditions.⁵³

⁴⁹ The CJEU played a key role here in defining the notion of EU citizenship before it was mentioned in the treaties. The landmark case of *Ian William Cowan v. Tesor Public* for instance established that a victim of crime could receive compensation even if the crime occurred in a Member State other than the victim's country of residence. See [Judgment](#) in Case 186/87, CJEU, 2007.

⁵⁰ See APAV report, op.cit., p.143, and Part II of this EIA.

⁵¹ See APAV report, op.cit., p.143.

⁵² Ibid.

⁵³ V. Mitsilegas, *EU criminal law after Lisbon. Rights, Trust and the Transformation of Justice in Europe*, Hart Publishing, 2016, Chapter 7.

Despite the positive changes the Lisbon Treaty has brought to this area, EU intervention in criminal matters remains contested. As regards victims' rights, some concerns relate to the issue of subsidiarity. This is particularly the case in the harmonisation of measures in the light of the diverse legal systems.

Another frequent concern relates to defendants' rights and the related fear that stronger victims' rights might come at the expense of defendants' rights. Moreover, the disconnection between the various provisions on victims' rights across different interrelated EU legal instruments makes it difficult to provide a complete overview of the rights of victims at EU level.

Eight years after the entry into force of the Lisbon Treaty, the European Parliament now has room for manoeuvre to improve the situation of victims at EU level. There are many potential avenues for action.

4. The role of the European Parliament

Since the entry into force of the Lisbon Treaty, the European Parliament has gained crucial powers in EU legislation in the field of JHA. When it comes to the implementation of the Victims' Rights Directive, the Parliament can play its role of oversight and scrutiny to the full, as well as exercising its budgetary powers, for example, by developing relevant parliamentary resolutions or calling on the European Commission to take certain measures.

4.1. Parliament's support for the rights of victims: scrutiny role and budgetary powers

Ever since the EU began tackling the issue of victims' rights, the European Parliament has strongly supported their development at European level.⁵⁴

The European Parliament plays a critical role in ensuring the European Commission follows up on the proper implementation of the Victims' Rights Directive at Member State level, not least in view of the existence of the review clause in Article 29.

For what concerns allocation of financial resources, activities that support the rights of victims at EU level (through for instance networks of practitioners⁵⁵, research and

⁵⁴ The active role of the Parliament has been described in an EPRS study on the European protection order. See [The European Protection Order](#), Implementation Assessment, EPRS, European Parliament, September 2017, pp. 16-17.

⁵⁵ In particular the European Network on Victims' Rights (ENVR), and to a lesser extent the European Judicial Network (EJN) and the European Judicial Training Network (EJTN). ENVR was created for competent public authorities implementing the directive and received support of the [Justice Programme](#) up until May 2017. ENVR is now seeking to become a more permanent association. EJTN also receives support from the Justice Programme, whereas EJN, governed by the [Council Decision 2008/976/JHA of 16 December 2008](#), works closely with Eurojust. Both EJN and EJTN have some activities related to victims' rights. However, their mandate is broader than the ENVR.

projects⁵⁶, specific training programmes⁵⁷) are currently funded across various budgets. The paragraph that follows provides a short overview of one of this budget: the Justice Programme, which aims, *inter alia*, at promoting and supporting the rights of victims of crime as well as to supporting the relevant judicial training.

Within the Justice Programme, for 2016, a sum was assigned specifically 'to contribute to the effective and coherent application of EU criminal law in the area of the rights of victims of crime.' This sum then corresponded to €3 048 000, constituting approx. 6 % of the funds allocated to the Programme (over €50 million). However, the actual sum allocated to the rights of the victims was in all likelihood higher than the above-mentioned €3 048 000 (e.g. additional funds were allocated within the Justice Programme to support relevant judicial training, or European Judicial Network meetings and workshops for instance). The overall sum dedicated to victims' support is thus not easily discernable from the documents consulted.⁵⁸

It is to be hoped that the forthcoming interim evaluation of the Justice Programme in June 2018 will point to possible synergies, identify any overlaps and propose overall solutions to improve the effectiveness of the programme. This would be in line with Article 14 of Regulation 1382/2013 establishing a Justice Programme 2014-2020⁵⁹ which states in paragraph 3 that the interim evaluation shall 'also address the scope for any simplification of the programme, its internal and external coherence, and the continued relevance of all objectives and actions.'

The EU Fundamental Rights Agency (FRA) also plays a key role in assessing the state of fundamental rights: this includes regular updates on both victims' and defendants' rights at EU level.⁶⁰ The FRA has a special budget line for victims of crime that is important for the collection and analysis of data and evaluation purposes at EU level.⁶¹ Such evaluations should be promoted consistently, and more exchange of views could be established between the FRA and the Parliament on matters related to victims.

⁵⁶ Many projects in the field of victims' rights were funded under the Daphne Initiative that funded projects supporting victims of violence and combatting violence against women, children and young people. The initiative is now part of the Rights, Equality and Citizenship Programme (for 2014-2020). The Justice Programme also funds many research projects related to victims' rights.

⁵⁷ For instance, both the Academy of European Law (ERA) and the European Union Agency for Law Enforcement Training (CEPOL) provide some training in this area, in addition to the above mentioned networks of practitioners.

⁵⁸ In particular C(2016)1677, Section 2.2.5. See The Justice Programme, Commission website.

⁵⁹ Regulation 1382/2013 of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020.

⁶⁰ See FRA annual reports on Fundamental Rights on the FRA website. The FRA has also worked on several projects dedicated to victims' rights, including a mapping of victims' support systems across the EU.

⁶¹ See FRA Statement of revenue and expenditure for 2017

4.2. Ensuring consistency and better readability of victims' rights at EU level

As explained above, victims' rights are spread across various EU legal instruments, thus creating overlaps and sometimes gaps.

Consistency of procedural rights for victims

Two additional directives deal respectively with the right to compensation (Directive 2004/80/EC) and the right to continue to benefit from protection measures adopted in criminal matters when moving to another Member State (the European Protection Order Directive).⁶²

Directive 2004/80/EC on compensation is particularly relevant to victims of crime in a Member State that is not their place of residence. Not only does it require all Member States to have a state compensation scheme dedicated to victims of intentional violent crime; it also creates a system of cooperation between national authorities for the transmission of applications for compensation in cross-border situations. As a result, victims of a crime committed outside their Member State of habitual residence should be able to turn to an authority in their own Member State to submit the application and get help with practical and administrative formalities. An assessment of this directive conducted in 2008 concluded that all Member States provided compensation for victims of intentional crimes. However, a more integrated cross-border system was still very much lacking at EU level.⁶³

The Victims' Rights Directive provides only for the right to obtain a decision on compensation by the offender and encourages mechanisms to recover compensation awards from the offender (Article 16). The directive does not refer at all to the 2004 directive concerning access to State compensation.⁶⁴ Therefore, victim compensation is provided via two different channels, which is detrimental to victims' access to justice.

When it comes to the right to continue to benefit from protection measures in criminal matters when moving to another Member State, and hence the application of Directive 2011/99/EU on the European Protection Order,⁶⁵ it appears clear that the Victims' Rights Directive complements and enhances protection offered to victims for whom special protection measures have been issued.

Of particular relevance here are the provisions of the Victims' Rights Directive relating to

⁶² The counterpart of the EPO Directive on protection measures adopted in civil matters - the Regulation - has been left out of the scope of this assessment, as the Victims' Rights Directive is dedicated to victims of crime and thus related to criminal matters. The complexity of the two intertwined instruments related to protection measures is described in the EPRS European Implementation Assessment dedicated to the EPO. See [The European Protection Order](#), op.cit.

⁶³ Matrix Insight, [Analysis of the application of Directive 2004/80/EC relating to compensation to crime victims](#), dated September 2008.

⁶⁴ This information can be found only on the official website of the European Commission in relation to [compensation](#).

⁶⁵ See EPRS implementation assessment on the European Protection Order, op.cit.

the right to receive information from the first contact with a competent authority (Article 4), to receive interpretation services and translation of information free of charge (Article 7(1) and 7(3)), as well as provisions relating to particularly vulnerable victims (Recital 38).

Receiving relevant and comprehensive information on the rights available to victims is of significant importance when an individual is granted special protection measures, such as restraining orders. In those cases, the possibility offered by the EPO Directive should be clearly stated and explained to victims.

Furthermore, the provisions of the Victims' Rights Directive relating to free interpretation services and free translation of information are key in the processing of an EPO, when victims who benefit from special protection measures move across the EU, and therefore are more likely to speak a language other than that or those used in the Member State in which they are applying for an EPO. Therefore, both these provisions could reinforce the EPO Directive in ensuring that victims can exercise their rights equally across the EU.

Another complementary effect of the Victims' Rights Directive on the EPO is the provision relating to particularly vulnerable victims. The EPO Directive deals only briefly with the issue of minors and people with disabilities (in its Recital 15) whereas, as mentioned above, the Victims' Rights Directive (in its Recital 38) adopts an all-encompassing approach to victims with special needs, including victims of gender-based violence, who are the type of victims particularly concerned by protection measures.

Dealing with specific groups of victims in a coherent way

On specific groups of victims – who are considered more vulnerable and as such requiring dedicated provisions – three instruments complement the Victims' Rights Directive: the directive on child sexual abuse;⁶⁶ the directive on trafficking of human beings;⁶⁷ and the directive on terrorism.⁶⁸

Child victims are dealt with both in the directive on trafficking of human beings and the directive on child sexual abuse, both of which have dedicated sections for victims who are minors (Articles 13 to 15 and 18 to 20 respectively). Both directives provide for identical protection (with minor differences) and assistance measures for the child victim, covering all stages of criminal proceedings. Minor differences appear that take into account the specific context within which the crime has occurred: in the anti-trafficking directive, due account is to be taken if the child is unaccompanied or separated from his or her family, whereas in the child abuse directive, due account is to be taken when a child reports cases of abuse within her or his family. The child abuse directive also has an additional provision to protect the privacy of the child victim and to prevent the public dissemination of any information that could lead to the identification of the child. The Victims' Rights Directive

⁶⁶ See A. Scherrer and W. van Ballegooij, Combating sexual abuse of children Directive 2011/93/EU, implementation assessment, EPRS, European Parliament, 2016.

⁶⁷ See EPRS Implementation assessment on trafficking in human beings from a gender perspective, 2016.

⁶⁸ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism

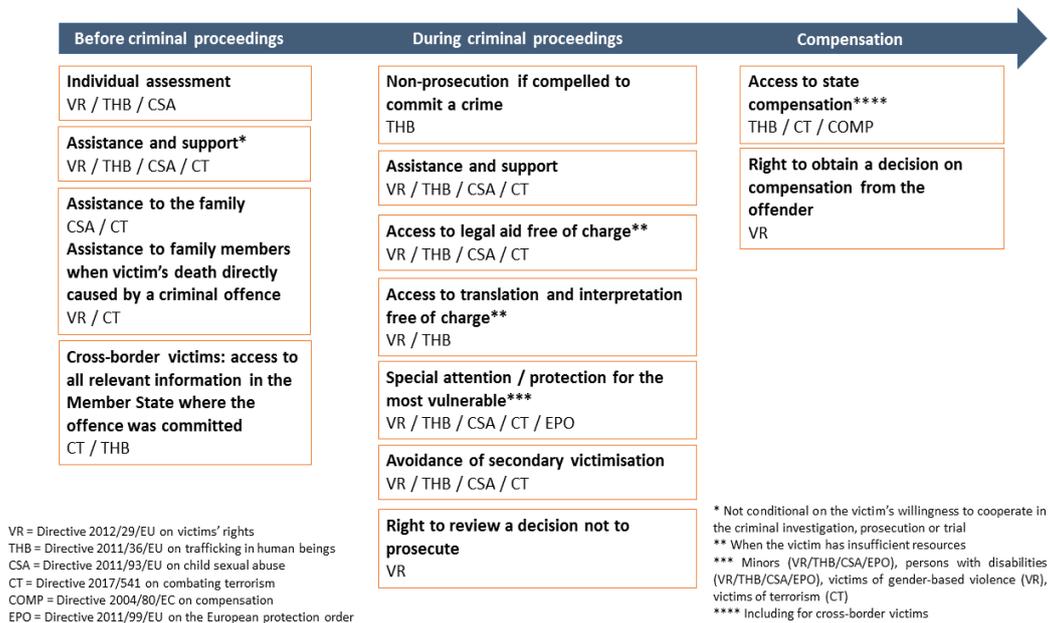
is in that regard fully consistent with both the above-mentioned directives, which are explicitly referenced.

When it comes to victims of human trafficking, the Victims' Rights Directive is also consistent with the provisions of the related directive. It reaffirms the provisions related to assistance, support and access to legal aid and representation. It reiterates the fact that access to any victim support services should not be dependent on a victim making a formal complaint (Article 8). However, the Victims' Rights Directive is much clearer and detailed regarding the provision on free translation and interpretation services (in its Article 7). Similarly to the above-mentioned EPO directive, the level of detail found in the Victims' Rights Directive could enhance the related provisions in the directive on trafficking. On the other hand, the Victims' Rights Directive does not provide for the following key provision included in the directive against trafficking: 'National authorities are entitled not to prosecute or impose penalties on victims of trafficking for their involvement in criminal activities which they have been compelled to commit'. The absence of this provision in the Victims' Rights Directive is somehow surprising, as situations where victims are compelled to commit a crime can occur in a broad range of criminal activities.

Finally, victims of terrorism have a dedicated section as part of the recently adopted directive on combatting terrorism (in its Title V – Articles 24 to 26). The victim-related provisions from the Counter-Terrorism Directive build on the Victims' Rights Directive but respond more directly to the specific needs of victims of acts of terrorism. Provisions include dedicated support services and their establishment within the framework of their national emergency-response infrastructures; access to adequate medical treatment immediately after a terrorist attack and, for as long as necessary, enlargement of protection measures to the victims' family members. Concerning the rights of victims of terrorism resident in another Member State, the directive provides that those victims have access to information regarding their rights, the available support services and compensation schemes in the Member State where the terrorist offence was committed. The directive on terrorism states explicitly that these provisions should be applied 'in addition, and without prejudice', to measures laid down in the Victims' Rights Directive. This is repeated in several parts of the directive, including the sections on legal aid, protection and assistance to victims. The Counter-terrorism Directive in its Title V also builds on the 2004 Compensation Directive.

The full set of victims' rights at EU level and the scattered nature of provisions relating to victims' rights can be illustrated as follows:

Graph 1 - Main victims' procedural rights established in EU legal texts



Source: EPRS.

It clearly appears that some provisions of the Victims' Rights Directive could complement existing provisions in related directives and that some provisions included in these could be incorporated in the Victims' Rights Directive. The European Parliament could draw the European Commission's attention to the need to streamline – and where necessary align – the set of rights dedicated to victims.

In view of many interlinkages between the above legislative acts, the European Parliament could consider requesting a fitness check, i.e. an evaluation of the set of legal acts that are related to victims' rights, in line with the better regulation provisions.⁶⁹ This exercise would paint a complete picture of the set of victims' rights at EU level and provide a more strategic view on how to improve it further, while providing economies of scale and placing a greater focus on overall objectives and performance.

The Parliament could also encourage the European Commission to provide a coherent platform of information easily accessible and available in at least all EU languages. The e-Justice portal currently has a dedicated page for victims accessible in all EU languages,⁷⁰ but access to information could be more user-friendly – at the moment the information contained on the portal refers back to the related directives. Further efforts could be made to summarise the whole sets of victims' rights. Moreover, reference to the e-Justice portal

⁶⁹ See [Better regulation guidelines](#), in particular Tool #43 on 'What is an evaluation and when is it required?', p.316.

⁷⁰ See : [e-Justice portal webpage](#) for victims of crime

should be signposted on all Member State official websites dealing with victims' rights, so that victims can access the website easily.

These efforts are all the more necessary given that new EU instruments are currently being discussed that contain crime-specific provisions for victims.⁷¹

⁷¹ An illustration can be found in the current Proposal for a Directive of the European Parliament and of the Council on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA, 13 September 2017 ([COM\(2017\)226](#)) that has a specific section on assistance to victims.

Part II: Assessment of the implementation of the Victims' Rights Directive 2012/29/EU

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Glossary of terms

Key concepts	Definition
Victim	As defined by Article 2 of the directive, a victim is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence. The definition of victim also expands to family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.
Family member	As defined by Article 2 of the directive, family members are the spouse or a person living with the victim in a 'committed intimate relationship, in a joint-household and on a stable and continuous basis'; it also includes relatives in direct line (parents or children), as well as siblings and dependants of the victim. It is implied that persons in a 'committed intimate relationship' have close emotional ties and financial interdependence.
Secondary victimisation	This term is not defined in the directive. However, for the purpose of this study we refer to the definition set out in the European Crime Prevention Network (EUCPN) Toolbox Series on secondary victimisation. Secondary victimisation refers to victimisation that occurs through the response of institutions and individuals to the victim. This could include for instance not recognising and treating the victim in a respectful manner or approaching the victim in an insensitive or unprofessional manner that may further traumatise the victim. Avoiding secondary victimisation also includes the need to avoid repeat interviews of the victim through multiple professionals in order to limit further traumatic accounts of a crime.
Repeat victimisation	Repeat victimisation, or re-victimisation, occurs when the same crime or incident is experienced by the same victim within a specific amount of time. A victim may be the target of several subsequent incidents.
Reporting/ underreporting	Reporting refers to victims giving a spoken or written account of a crime to competent authorities (to be defined by national law, but generally this occurs at the police station). Underreporting occurs when victims do not report a crime. Lack of reporting from victims can be explained by many factors: fear of retaliation, status of the victims in the society, relationships with the author(s) of the crime, among others. This may be problematic since it leads to inaccurate data and reports may show less than the actual level of crime. It also suggests that victims don't receive the support and assistance they have the right to access.
Needs of victims	Based on the European Commission guidance document ⁷² , victims have a range of needs that should be addressed to help them recover.

⁷² [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](#)

Key concepts	Definition
	They should be recognised, treated with respect and dignity, protected and supported, given access to justice and the right to obtain compensation and restoration. The objective of the directive is to address the needs of victims in an individual manner thanks to an individual assessment.
Individual assessment	One of the main achievements of the directive is the inclusion of an individual assessment to address victims' individual needs. The purpose of this assessment is to determine whether a victim is particularly vulnerable to secondary and/or repeat victimisation through a case-by-case approach. As such, there is a two-step approach: first to determine if specific protection needs are required (taking into account the victims' personal characteristics, the type and nature of the crime, among other considerations); second, to determine if special protection measures should be applied.
Support	Victims need to receive support through information, psychological, emotional, financial and practical assistance. This may be done through governmental action or institutional responses, or through the work of civil society and victim support associations.
Protection	Protection is not only the need for physical protection, but also the protection from secondary victimisation. In all Member States, many provisions exist to protect victims during criminal proceedings. This may also include data protection, which refers to a victim's private life and the prohibition of sharing their personal data.
Victims with specific protections needs	Victims of specific crimes such as victims of gender-based violence often have specific protection needs. For example, they may be at a higher risk of secondary and/or repeat victimisation, intimidation or retaliation. Moreover, there are victims with special needs such as disabled people. The Directive also insists on a child-sensitive approach, as such children are always presumed to have to have special protection needs.
Cross-border victims	Free movement within the EU inevitably increases the number of individuals that become victims of crime in a Member State other than their own. Since a Member State may not be able to fully guarantee the rights the victim, cross-border cooperation and mechanisms to support non-national victims is a priority.
Restorative justice	The EC guidance document ⁷³ defines restorative justice services as a range of services that can either run in prior to, in parallel, with, or after criminal proceedings take place. These can include victim-offender mediation, family group conferencing and sentencing circles.

minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Ref. Ares(2013)3763804 - 19/12/2013

⁷³ Ibid.

Key concepts	Definition
Sentencing circles	A sentencing circle is a community-directed process, conducted in partnership with the criminal justice system, to develop consensus on an appropriate sentencing plan that addresses the concerns of all interested parties ⁷⁴ .

⁷⁴ California Courts, n.d., [Sentencing Circles](#)

Executive summary

1. The Victims' Rights Directive

This study was commissioned by the European Parliament's Research Services to assess the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. The study covers all 27 EU Member States subject to the provisions of the directive⁷⁵ and all types of victims.

The Victims' Rights Directive 2012/29/EU replaces the Framework Decision 2001/220/JHA. Its legal basis is Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) which provides for the establishment of minimum rules to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters, in particular with regard to victims of crime. The directive's aim is to strengthen the rights of victims of crime so that any victim can rely on the same level of rights, no matter where the offence took place or their nationality.

Article 2 (1) of the directive defines a victim as: a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; or a family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death. This definition applies to all victims regardless of their residence status, and regardless of the crime that affected the victim (covering both violent and non-violent crimes and ranging from general offences to terrorism, human trafficking and to road traffic victims where there has been a crime). The principle of victimhood adopted in the directive depends on the national criminal law and what is considered a crime in this context in each country. For instance, stalking is a crime in some Member States but not in others.

The Victims' Rights Directive should have been transposed into national law by Member States before 16 November 2015. The research focused on the directive's transposition (i.e. how Member States have translated the directive's provisions into national law) and on its application (i.e. how the directive has been put into practice in Member States). The study also provides an assessment of the directive's overall coherence, relevance, effectiveness, efficiency and added value. A combination of desk research, stakeholder interviews and an online survey were used to collect data for the assessment. In addition, two focus groups were organised with key stakeholders from a number of countries to help validate the findings. The transposition into national law was summarised in a fiche for each of the 27 Member States. The practical application of the directive was then assessed in more depth in a sample of 12 Member States representing a balance in terms of geography, size, different legal traditions and approaches as regards the rights of victims in the criminal justice system and the level of existing support.⁷⁶

⁷⁵ Denmark opted out of the Victim's Directive but continues to be bound by the 2001 Framework Decision. It has an exemption from the area of freedom, security and justice and hence does not have to adopt respective EU legislation. Ireland and the United Kingdom have a flexible opt-out, but chose to opt into the Victims' Directive.

⁷⁶ The sample of Member States consisted of: Austria, Belgium, Czech Republic, Finland, France, Germany, Hungary, Italy, Lithuania, Poland, Spain, and Sweden.

2. Key study findings

Overall, the study suggests that the directive is succeeding in its objective of bringing about a more victim-centred approach in criminal proceedings, strengthening victims' rights support services, and helping to ensure that citizens can exercise their rights throughout the EU if they are the victims of crime. However, steps could nevertheless be taken to strengthen the directive's implementation.

2.1 Transposition of the directive

Almost all the EU Member States have now formally transposed the Victims' Rights Directive. Those Member States that have not transposed the directive attribute this to domestic political and/or legislative complications in national parliaments. **Moreover, in some cases not all the key provisions have been adopted.** This includes Member States transposing an article without including the detailed requirements it contains, or narrowing the application of a provision by adapting a pre-existing piece of legislation which is only applicable to certain groups of victims.

Different methods have been used to transpose the directive depending on factors such as the legal systems and traditions in different Member States, and the existence or otherwise of laws relating to victims' rights prior to 2012. Reflecting these and other factors, Member States have transposed the directive by either amending existing national laws, or by combining existing laws with new legislation, or by introducing entirely new measures. The study suggests that in countries which previously had a less-developed victim support system, the transposition of the directive through a single legal act has tended to heighten the focus on victims' rights while bringing different measures together in one package has advantages in terms of implementation. It is of course entirely up to Member States how to transpose EU directives but the methods used does have a bearing according to the research on the internal coherence of the legal framework for victim support and the practical implementation of measures.

2.2 Implementation by Member States

Whilst the relatively recent transposition of the directive by many Member States makes it difficult to assess its impact, several conclusions can be drawn.

The directive appears to have had a greater impact in EU Member States where victim support and protection were previously not well-developed. Conversely, the impact and added value of the directive has been less pronounced in countries that already had a high level of victim protection. The directive has also had less of an impact in countries that have not allocated sufficient resources to fully implement its provisions.

The directive has introduced several requirements that are innovative for most EU Member States. Thus, a key innovation of the directive is the introduction of an individual assessment for all victims of crime. This has led to many Member States extending special protection rights previously only granted to certain categories of victims (for example, to victims of sexual violence) to all victims. Another feature of the directive that did not exist in many Member States is the requirement to provide translation and interpretation services free of charge to victims of crime.

The directive is also proving to be an important advocacy tool for NGOs with a role in promoting victims' rights. More specifically, it empowers them by setting out requirements where NGOs have a key role to play in ensuring that the directive's objectives are met. The directive has also helped to strengthen victims' rights organisations in countries where they were previously weak or even non-existent. More generally, the directive is acting as a key reference point in the discussion of victims' rights and helping to bring about a shift towards a more victim-centred approach across Europe.

An area where the potential impact and added value of the directive is especially high is in relation to the cross-border dimension of victims' rights. In particular, the directive is helping to ensure that citizens have the same rights if they are victims of a crime, irrespective of where in the EU the crime occurs. However, at the moment, there is still a considerable variation in the accessibility of victims' support services in cross-border situations.

One of several practical challenges faced in implementing the directive relates to weak links in the victim support system and inconsistent referral mechanisms. The study suggests that the police in particular may not always refer victims to support organisations, in which case victims do not receive the special support they may need. Moreover, many victims lack awareness of their rights and the support services available to them, undermining the directive's effectiveness. Insufficient training of practitioners also poses a practical challenge in some countries. Training of victim support service practitioners and the provision of interpretation and translation services have been identified as the biggest cost drivers associated with the directive. In some countries, there remains a heavy reliance on provision of key services to victims by NGOs ('volunteerism'). There is a risk in such cases that the level of support and protection for victims varies across different types of crime and across different areas of the countries concerned.

This assessment confirms the generally strong **internal and external coherence** of the directive. Nevertheless, coherence remains constrained by different interpretation at national level / differences in national criminal law (e.g. definition of victim). As regards the directive's **relevance** to victims' evolving needs, the evidence suggests it remains highly relevant but practical implementation still falls short of victims' needs in some respects, in particular concerning access to justice, and the availability of relevant support systems for all types of victims. The **effectiveness** of the directive is being hampered in many Member States by a lack of financial resources being committed to the implementation of key provisions. This applies, for example, to two new requirements introduced by the directive, namely to provide translation and interpretation services free of charge to victims of crime as well as to undertake individual assessments. Furthermore, victim support services remain generally under-funded in many countries.

3. Recommendations for the future

This study highlights a number of actions that could be taken to strengthen the directives' implementation.

Firstly, there is a need to do more to ensure that victims of crime are aware of their rights. In addition to the laws themselves, material should be available that summarises victims' rights in an easily accessible format.

There is a need for better signposting mechanisms within Member States so that victims of crime are not only aware of their rights but also know where to go to obtain help to exercise them. The study indicates that signposting mechanisms are better developed for certain types of crimes than others.

More generally, there is a case for an 'opting in' to victims' support services being made the default option for those who are affected by a crime so they are automatically referred to support organisations unless they explicitly indicate that they want to 'opt out'.

At the same time, there is a need in many Member States to do more to ensure that police, lawyers and others involved in helping victims are aware of their role in ensuring victims' rights are upheld. **More emphasis should be placed on capacity building and the training of practitioners with regard to implementation of key aspects of the directive.** This is particularly important in Member States with relatively under-developed systems of victims' support.

While family and friends should not be responsible for victim support, more awareness-raising campaigns could inform the population at large of victims' rights. More could be done, for example via the media, to help family and friends to understand the issues faced by victims of crime and importance of the support they can provide to the individuals concerned.

In all Member States, more effective ways should be developed of reaching victims of crimes that go unreported. The scale of the problem of unreported crime is by nature difficult to assess but is likely to be considerable with significant consequences for victims' access to justice. Measures to encourage the reporting of crime could include the creation of dedicated hotlines, online platforms, or local 'walk-in' centres for victims. In order to be effective, such measures need to cover all types of crimes.

The EU and Member States should ensure that the victims of all types of crime are treated equally in being helped to exercise their rights set out in the directive. Thus, although crime rates have generally fallen, reports of gender-based violence such as rape have increased and this trend is continuing. The directive, in particular through the requirement for individual assessments, is helping to ensure that all types of victims can exercise their rights but more could be done in this respect.

Last but not least, there is a key role for the EU to play in ensuring that citizens who are victims of crime in another Member State or outside Europe are able to fully exercise their rights. Apart from raising awareness of how the directive's provisions can help victims of crime in another Member State, measures that could be taken when the crime occurs outside Europe include encouraging Member States to work more closely with each other in helping their citizens and in sharing resources irrespective of their nationality.

1. Introduction and methodology

1.1. Study objectives and scope

The aim of this study was to assess and evaluate the implementation of directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (henceforth: the directive). Replacing a previous Framework Decision on victims' rights adopted in 2001, the directive was adopted to reinforce national legislation on victims' rights and support as these were not addressed on a consistent basis across the EU. The study covers all Member States subject to the provisions of the directive.⁷⁷

The research focused on the directive's transposition (i.e. how Member States have translated the directive's provisions into national law) and on its application (i.e. how the directive has been put into practice in Member States). The study covers all types of victims but considers victims of specific crimes (e.g. terrorism) in relation to certain provisions of the directive. An emphasis is also put on examining the relevance of the directive to situations where a citizen of one EU Member State is the victim of a crime in another Member State.

1.2. Report overview

This research paper is structured as follows:

- **Section 1: Introduction and methodology** – the rest of this section provides an overview of the study objectives and scope and summarises the study methodology.
- **Section 2: Baseline and the directive's key provisions** – this section summarises the situation regarding victim support and protection in EU Member States before entry into force of the directive, the key provisions of the directive and previous research that is relevant to this study.
- **Section 3: Assessment of the directive's transposition** – this section presents an analysis of the transposition of the directive into national law in the 27 EU Member States subject to the provisions of the directive.
- **Section 4: Assessment of the Application of the Directive** – this section presents the study's findings on the application of the Directive in a sample of 12 Member States.⁷⁸
- **Section 5** presents an **evaluation** of the Directive's overall relevance, coherence, effectiveness, efficiency and added value.
- **Section 6: Conclusions and recommendations** – the last section presents the study's overall conclusions and recommendations on how application of the Directive could be enhanced.

In addition, there are several appendices. Appendix B contains a bibliography; Appendix C contains a list of country codes; Appendix D provides supplementary information and Appendix E provides an overview of the transposition of the directive.

Academic studies, reports by EU institutions and related agencies, as well as NGO position papers were reviewed for the background section of this report. The baseline situation is based on information

⁷⁷ Denmark opted out of the Victim's Directive but continues to be bound by the 2001 Framework Decision. It has an exemption from the area of freedom, security and justice and hence does not have to adopt respective EU legislation. Ireland and the United Kingdom have a flexible opt-out, but chose to opt into the Victims' Directive.

⁷⁸ The sample of Member States consisted of: Austria, Belgium, Czech Republic, Finland, France, Germany, Hungary, Italy, Lithuania, Poland, Spain, and Sweden.

collected for the application fiches (see below) and existing analyses carried out by the Fundamental Rights Agency (FRA).

The **transposition analysis (Section 3)** is based on transposition fiches developed by the study team summarising the legal transposition of key provisions of the directive in each of the 27 Member States which had to transpose the directive. The fiches are based on a review of the transposing laws available in EURLex⁷⁹. In addition, guidance documents and other relevant legislation in Member States were reviewed. In some cases, Member State authorities provided the European Commission with an explanation of how key provisions of the directive were transposed into national law, and these documents proved highly useful in completing the transposition fiches. The fiches were then sent to national authorities together with any questions of clarification, and authorities were asked to validate the information. In some cases, revisions were made based on national authorities' feedback.⁸⁰ The transposition fiches purely served to inform this report and collect supplementary information and are not published separately.

The **application assessment (Section 4)** examines the practical application of the directive on the ground in a sample of 12 Member States. The sample was chosen in a way that is geographically balanced and includes small and large Member States. It also includes Member States with different legal traditions and different approaches as regards the role of the victim in the criminal justice system and the role of civil society in victim support, and in relation to authorities and the judiciary. The sample also reflects different approaches to transposing the directive, including transposition through a single legal measure and transposition by amendments to pre-existing legislation. Finally, the sample includes both Member States with comparatively high and comparatively low standards of victims' rights prior to the adoption of the directive.

The application section contains a number of case studies highlighting features of the directive's implementation relating to specific types of crimes, as well as innovative approaches and good practice examples in Member States in relation to specific aspects of victim support. The application fiches purely served to inform this report and collect supplementary information and are not published separately.

The assessment of the directive's application in Section 4 is based on interviews and other research involving national authorities, victim support services, practitioners such as police officers, judges and lawyers, and academic experts. In addition, stakeholders were consulted through an online survey (a total of 31 responses were obtained). This survey sample cannot be treated as representative but the responses are nevertheless included to illustrate findings. A list of the interviews carried out and survey responses received by country and type of stakeholder is provided in Appendix D.

Section 5 **evaluates** the directive's internal and external **coherence, relevance, effectiveness, efficiency and added value**.

Last but not least, two focus groups were organised towards the end of the study with key stakeholders from a range of countries. One of these took place in Brussels with representatives of the national authorities and civil society from Belgium, France and the UK, and the other focus group took place in

⁷⁹ EUR-Lex - 32012L0029 - EN, accessed November 2017, [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](#)

⁸⁰ Of the 27 countries, 17 were validated: 13 by national authorities (AT, BE, CZ, FR, HU, IE, IT, LV, NL, RO, SK, SI, UK) and 4 by NGOs (BG, HR, PL, PT) where national authorities did not respond, 3 did not require validation (ES, FI, SE) as the transposition was almost a direct translation of the Directive and 7 (CY, DE, EE, EL, LT, LU, MT) did not respond to our requests for validation.

Budapest with participants from Croatia, the Czech Republic and Hungary. The focus groups helped to validate the study's conclusions and recommendations.

2. Context and the directive's key provisions

This section summarises the developments that led to the adoption of the directive and summarises its key provisions. Appendix B provides a list of the main secondary sources used for the assessment.

2.1. Situation before the 2012 Victims' Rights Directive

Victims of crime make up a sizeable share of the European population. The European Commission states that approximately 30 million crimes, excluding minor offences, are reported to the police annually. An impact assessment in 2010 estimated the total number of people falling victim to a crime (with an estimate for unreported ones) to amount to 59.2 million per year (2007 figures) across Europe.⁸¹ Eurostat data⁸² suggests that between 2008 and 2015, the number of incidents of sexual assault, intentional homicide, and assault has decreased by between 10 and 35%, but the number of rape incidents has gone up by almost 50% over the same period. Even if this number does not take into account unreported crimes, it strongly suggests that victims continue to be in need of protection and support across the EU. Incidents of burglary, robbery, and theft have decreased by 10% to 20% over the same period. Overall, physical safety has improved in most EU Member States over the ten years up until 2013.⁸³ However, individual perceptions of crime rates do not always correspond to the actual prevalence of assaults, vandalism and violence, and fear of crime is generally more widespread than the reality. People at risk of poverty reported higher rates of crime, highlighting the importance of paying particular attention to vulnerable groups and victims with special needs.

The treatment of victims' rights has steadily evolved across the EU since the 1970s, both in terms of providing basic structures of victim support and developing a national legal framework in Member States. Initiatives bringing victims' rights to the forefront of policy have been mostly driven by the NGO sector, and by civil society movements⁸⁴. Victim support structures were first created in Western European countries (AT, DE, FR, NL, UK) in the 1970s and 1980s, whereas Central and Eastern European countries only established them in the 1990s (CZ, LV, SK) and some only in the late 2000s (HR, PL)⁸⁵. Reflecting this, Western European countries were also the first to incorporate and recognise victim rights in national legislation in the 1970s and 1980s, while Central and Eastern European countries (BG, HR, HU, LV, LT, MT, RO, SK) started embedding these in the 2000s⁸⁶.

Apart from these differences, **some shortcomings existed with regard to victims' support in most if not all EU Member States prior to the directive.** A 2012 report by the Centre for European Constitutional Law and the Institute of Advanced Legal Studies⁸⁷ looked at the measures in place in EU Member States to protect victims and identified a need to improve access to rights and to create a common culture and ethos among institutions involved in victim protection. The Fundamental Rights Agency (FRA) published a report in 2014 looking at the extent and nature of support for victims in the

⁸¹ Matrix Insight. 2010. [A Study for an Impact Assessment on Ways of Improving the Support, Protection and Rights of Victims across Europe](#). P. 7. Figure is based on an estimated 29.2 million people reporting a crime to authorities and another 30 million crimes going unreported.

⁸² Eurostat, data extracted May 2017, accessed November 2017, [Crime and criminal justice statistics](#)

⁸³ Eurostat, Data from October 2013, accessed November 2017, [Quality of life indicators - economic and physical safety](#)

⁸⁴ FRA, 2015, [Victims of Crime in the EU: the extent and nature of support for victims](#), p.17

⁸⁵ Ibid. p.21

⁸⁶ Ibid. p.23

⁸⁷ Centre for European Constitutional Law and the Institute of Advanced Legal Studies, 2012, [Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. Comparative Report and Policy Recommendations](#)

EU.⁸⁸ This concluded that victims could not fully exercise their rights, a conclusion that was underlined by the level of under-reporting uncovered by FRA research previously. Another study looked at victim-oriented reforms in EU Member States⁸⁹ and concluded that the Victims' Rights Directive represented an important piece of legislation strengthening the rights of victims. At the same time, the report cautioned that the directive's actual impact on the experience of victims rests on assumptions based on a certain understanding of victims' needs and of how EU legislation changes practice on the ground for which the empirical evidence base was lacking.

As regards **support for victims of different types of crime**, in many countries, victim support services predominantly tended to focus on victims of sexual violence before the directive was adopted. A FRA study suggests that while all EU Member States offer services to some victims of crimes through specialist services (most frequently focusing on human trafficking, child abuse and domestic violence⁹⁰), only 20 offer generic victims' support (i.e. not limited to certain types of victims) whereas eight countries do not offer generic but rather only specialist services (BG, CY, EL, IT, LV, LT, RO, SI)⁹¹. The nature of the victim support system varies because of differing legal traditions and the relationship between victims, the criminal justice system and civil society. Factors that help explain the difference in supporting victims' rights across the EU are: the legal protection and rights available to victims, the interaction between civil society and authorities, the role of public prosecutors and court staff and victims, and the political willingness to promote victims' rights.

Notwithstanding the fact that victims of **sexual violence** receive more intensive support than other groups of victims, a 2014 report by the NGO Women Against Violence Europe (WAVE)⁹² showed that only one third of 46 European countries provided a national 24/7 women's helpline, and only 8 out of 28 EU Member States provided a 24/7 helpline free of charge. According to a recommendation by the Council of Europe Task Force⁹³, one women's shelter should be provided per 10,000 inhabitants. Based on this figure, WAVE calculates that 26,669 places are missing in the EU, with provision of places much better in Western European Member States than in Central and Eastern European ones. In criminal proceedings, the conclusions of the Council of Europe hearing on 'Access to Justice for Women Victims of Violence' on 9 December 2013 emphasised that lengthy procedures, high levels of attrition, corruption, low conviction rates and discriminatory practices constitute serious barriers to women victims of violence seeking justice and that Council of Europe member states should continue to address these issues.

A number of international legal instruments helped to prepare the ground for the 2012 directive by drawing attention to the need for enhanced victim protection at international / European level. Thus, **the United Nations Declaration of Basic Principles for Victims of Crime and Abuse of Power**,⁹⁴ adopted by the UN General Assembly in 1985, is considered, despite its non-binding nature, as a "Magna Carta" for victims since it lays down the basic principles of treatment of crime victims in the criminal justice process.⁹⁵ Similar principles are set out in **the Council of Europe's Recommendation**

⁸⁸ FRA, 2015, Victims of Crime in the EU: the extent and nature of support for victims

⁸⁹ APAV, 2016, Implementing Victim-Oriented Reform of the criminal justice system in the European Union

⁹⁰ Ibid. p. 79

⁹¹ Ibid, p.21

⁹² WAVE, 2015, Fact sheet: Women's Support Services in Europe

⁹³ Council of Europe, 2008, Recommendations of the Council of Europe Task Force to combat violence against women, including domestic violence, in: Council of Europe Explanatory Report to the Istanbul Convention (2011) regarding Article 23.

⁹⁴ General assembly Resolution 40/34 of November 1985, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power [1985]

⁹⁵ Irvin Waller, 2003, Crime Victims: Doing Justice to Their Support and Protection, The European Institute for Crime Prevention and Control (Heuni), pp.:9

85 (11) on the position of the victim in the framework of criminal law and procedure⁹⁶ issued in the same year and aimed at improving the overall victim's position at different stages which victims have to undergo including police level, prosecution, questioning, court proceedings, enforcement, victims' privacy and special protection.⁹⁷ At a European level, victim support groups started forming in the 1980s, and their efforts culminated in the **Council of Europe's Explanatory Memorandum of 1995** which further developed national initiatives to strengthen the victims' position during criminal proceedings⁹⁸. From this point onwards, EU Member States began progressively offering services and support for victims. Early victim support mostly relied on voluntary work, and was often linked to specific categories of victims, such as victims of gender-based violence and child victims.

This was then followed at the EU level by the **Council Framework Decision 2001/220/JHA** on the standing of victims in criminal proceedings in 2001⁹⁹. The Framework Decision was the first legal framework for victim support in Europe. EU Member States were required to adapt their national legal frameworks by 2006, but according to both experts¹⁰⁰ and the European Commission, the Framework Decision had several shortcomings that impeded actual change in terms of victims' rights. Reluctance by Member States to implement the Decision, an unrealistic timeframe for its transposition into national law, different perceptions in Member States of the Decision, and apparently vague language were all credited with limiting its impact in terms of harmonising the legal framework across countries.¹⁰¹

Above all, because it required the unanimous agreement by Member States' justice ministers, the 2001 Framework Decision was limited in its ambitions to provisions whereby victims are guaranteed the right to be heard, the opportunity to participate in the procedures, offered protection, compensation and access to mediation and to any relevant information, but it lacked more ambitious provisions relating to victims' treatment, protection and support, and access to (restorative) justice.¹⁰² Member States were required to adapt their national legislations in line with the requirements by 2006. However, two implementation reports in 2004 and 2009 found that the legislation was not effective in achieving common minimum standards for victims across the EU¹⁰³. No Member State had fully transposed the requirements into national law, which was largely credited to an unrealistically short transposition timeframe, and to the vague nature of the Decision's provisions¹⁰⁴. Moreover, the Commission's report on the transposition found that Member States had largely used non-binding legal measures.¹⁰⁵ The Framework Decision could not be relied upon in national courts to assert victims' rights. Rulings by the

⁹⁶ Council of Europe Committee of Ministers, Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the position of the victim in the framework of criminal law and procedure, adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies

⁹⁷ Ibid.

⁹⁸ The Explanatory Memorandum of Act 35/1995, of 11 December, on Aid and Assistance to Victims of Violent Crimes and Against Sexual Freedom

⁹⁹ EUR-lex, 2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings

¹⁰⁰ APAV, 2009, Victim Support Europe, promoted by Portuguese Association for Victim Support, Victims in Europe, Implementation of the EU Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union

¹⁰¹ Groenhuijsen, M. & Pemberton, 2009, The EU framework decision for victims of crime, European Journal of Crime, Criminal Law and Criminal Justice

¹⁰² See, for example: Matrix Insight 2010. A Study for an Impact Assessment on Ways of Improving the Support, Protection and Rights of Victims across Europe. P. 8

¹⁰³ European Commission, Report From The Commission, on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings' COM (2004) 54 final/2.

¹⁰⁴ Groenhuijsen, M. & Pemberton, 2009, The EU framework decision for victims of crime

¹⁰⁵ European Commission, 2004, Evaluation of the Compliance with Framework Decision 2001 on standing of victims in criminal proceedings

Court of Justice¹⁰⁶ stated the Framework Decision “does not include legal persons who have suffered harm [because of] a violation of the criminal law of a Member State”.

Notwithstanding the inadequacies of the Framework Decision, it was considered a milestone in the development and establishment of basic rights for victims within the EU. Pemberton and Groenhuijsens' 'Developing victims' rights within the European Union: past, present and future'¹⁰⁷ concluded that the position of victims of crime has shown vast improvements since the 1970s, thanks to EU legislation including the Framework Decision of 2001. At the same time, in view of the authors, due to the soft law nature of the measures up until then, the level of protection of victims across the Member States differed vastly. Pemberton and Rasquette¹⁰⁸ assessed the effects of the Framework Decision on the standing of victims in criminal proceedings. Their conclusions matched the Commission's but emphasised that the time allowed for Member States to transpose the Framework Decision into national law was very tight.

Victims' rights in Europe were further enhanced after the adoption of the Treaty of Lisbon which in Article 82 explicitly stipulates that EU directives can be passed to establish minimum rules concerning the rights of victims of crime and the rights of individuals in criminal procedure. In 2009, the **Stockholm Programme** called for measures to be adopted to bring EU added value to areas including protecting children that are victims of sexual exploitation and abuse, and of trafficking. It also called for protection of women who are victims of violence and of victims of crime more generally, including victims of terrorism. It particularly raised the issue of the specific needs of persons who fall victim to crimes in a Member State of which they are not nationals or residents. The programme thus called for a coordinated and integrated approach to victims.

In 2010, the European Commission carried out “**A Study for an Impact Assessment on Ways of Improving the Support, Protection and Rights of Victims across Europe**”¹⁰⁹. The study concluded that further action was needed to improve the situation for victims across Europe and that cross-border problems justified EU action. The report recommended a combination of revised legislation to reduce ambiguities and introduce new rights, and complementary soft law measures. The greatest need for action was identified with regard to strengthening support services for victims, providing victims with the possibility to be accompanied by a trusted person during criminal proceedings, and improving practices in restorative justice and victim compensation. At the same time, the report recommended steering away from more radical reform which could conflict with defendants' or other parties' rights in criminal proceedings since such changes were believed to undermine Member States' willingness to implement such changes.

Finally, in 2011, the Commission presented a proposal for a directive replacing the 2001 Framework Decision. This was endorsed by the Council in the **Budapest Roadmap**¹¹⁰ and paved the way for the adoption of the directive.

¹⁰⁶ Court of Justice rulings, [Dell'Orto](#), 2007, and [Eredics](#), 2010

¹⁰⁷ Pemberton, Antony and Groenhuijsen, Marc, October 21, 2011, [Developing Victim's Rights within the European Union: Past, Present and Future](#)

¹⁰⁸ Pemberton, A. & Rasquette, C., 2010, Victims in Europe – [Assessment of the implementation on the Framework Decision on the standing of victims in criminal proceedings: Preliminary results](#). In: Hartmann, J. (eds.) *Perspektiven professioneller Opferhilfe*, Wiesbaden, Germany. VS Verlag.

¹⁰⁹ Matrix Insight. 2010. [A Study for an Impact Assessment on Ways of Improving the Support, Protection and Rights of Victims across Europe](#)

¹¹⁰ EUR-lex, [Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings](#)

2.2. Victims' Rights Directive 2012/29/EU

2.2.1. Definition of victims

The Victims' Rights Directive 2012/29/EU replaces the 2001 Framework Decision. Its legal basis is Art. 82(2) of the Treaty on the Functioning of the European Union (TFEU) which provides for the establishment of minimum rules to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters, in particular with regard to victims of crime. The directive was adopted by the ordinary legislative procedure under which the European Parliament and the Council have co-decision powers in shaping legislation.

The directive seeks to place the victim of a crime at the centre of the criminal justice system, which has traditionally tended to focus on the defendant's rights. The directive's aim is to strengthen the rights of victims of crime so that any victim can rely on the same level of rights, no matter where the offence took place or their nationality. The directive is more concrete, ambitious and wider in scope than the previous Framework Decision. The directive recognises that “crime is a wrong against society as well as a violation of the individual rights of victims [and] as such, victims... should be recognised and treated in a respectful, sensitive and professional manner without discrimination”.¹¹¹

Article 2 (1) of the directive defines a victim as:¹¹²

- A natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- Family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

This definition applies to all victims regardless of their residence status, and regardless of the crime that affected the victim (ranging from general offences to terrorism, human trafficking and to road traffic victims where there has been a crime)¹¹³. The Fundamental Rights Agency (FRA) recognised that while this definition of a victim was adopted at the EU level to place the victim at the centre of the criminal justice system, Member States still vary in the way victims feature in the judicial system.¹¹⁴ The FRA identifies three models adopted by Member States:

1. Treat the victim as a witness (the FRA cites Ireland and the UK as examples).
2. Address the damage done to victims and award compensation (the French *partie civile* is an example)
3. Recognise victims as rights holders (the directive is an example of this model, as are the Austrian and German judicial systems).

¹¹¹EUR-lex, Preamble, (9), 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

¹¹² EUR-lex, 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

¹¹³ Fédération Européenne des Victimes de la Route, 2015, Survey of the transposition and the implementation of the European Directive 2012/29/EU on the rights, support and protection of victims of crime in different Member States of the EU from the point of view of road victim associations, November 2015 Report

¹¹⁴ FRA – European Union Agency for Fundamental Rights, 2014, Victims of crime in the EU: the extent and nature of support for victims

A discussion of the definition of victims in EU Member States in the context of the Victims' Rights Directive's Article 2 is also provided in a report by APAV.¹¹⁵

Moreover, even though victim support is supposed to extend to all types of victims, certain types of victims may still be neglected, as two examples show:

Looking at another specific group of victims, in November 2015, a report was published summarising findings from a survey of the transposition and implementation of the directive from the point of view of **road victim** associations. This is interesting to read since road victims – to the extent that road crashes qualify as criminal offences under criminal law in Member States – are perhaps not a category of victims directly in the focus of policy makers, making them a good test case of the extent to what Member States actually comprehensively implement the directive covering different types of victims of crime. It shows that most Member States do treat road traffic victims as victims of a criminal offence, but that this needs to be communicated more clearly. The survey also revealed some deficiencies with regard to the information provided to victims, their support, the compensation management, and with regard to respect of privacy. These issues are further taken up in Section 4 of this report.

In 2016, a report summarising findings from an EU-funded project¹¹⁶ looked at the impact of the Victims' Rights Directive on the rights of **victims of corporate crime**. It argues that victims of corporate crimes, and particularly of corporate violence, and the issue of criminal offences committed by corporations in the course of their legitimate activities harming persons' health, integrity, or life, have not been given enough attention in the debate about the directive. Examples of such crimes cited are exposure to toxic agents, financial fraud, and food safety violations, and offences in the pharmaceutical industry. The report argues that applying the directive in such instances would shift the prevailing strategy of a risk-centred, preventive approach to an 'ex post fact' and victim-centred one. Given that individual victims of corporate crime are particularly affected by asymmetry of information and means to access justice, their situation could be viewed as test of the capacity of the directive to bring about change. As part of the project, a set of guidelines for the individual assessment of victims' protection needs in case of corporate violence will be drafted and published in due course.

2.2.2. Definition of victims' rights

The Victims' Rights Directive enshrines the following basic rights for victims of crime into law:

- A right to respect and recognition at all stages of the criminal proceedings;
- A right to be recognised and treated with respect and dignity;
- A right to have access to justice;
- A right to receive information and information about the progress of the case;
- A right to provide information to officials responsible for decisions relating to the offender;
- A right to protection, for victims' privacy and their physical safety;
- A right to be protected from further victimisation and intimidation from the offender and further distress when taking part in the criminal justice process;
- A right to compensation, from the offender;

¹¹⁵ APAV, 2016, Implementing Victim-Oriented Reform of the criminal justice system in the European Union

¹¹⁶ CSGP, KU Leuven, LinC, Max-Planck-Institut für ausländisches und internationales Strafrecht. 2016. Rights of Victims, Challenges for Corporations. Project's first findings

- A right to receive victim support;
- The duty for governments to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure and to provide safeguards when applying restorative justice.

The rights listed above are facilitated by a range of supplementary rights including the right to appeal a decision not to prosecute, the right to have expenses covered, and the right to legal aid in line with national law.

2.2.3. Crimes covered by the directive

The principle of victimhood adopted in the directive, namely that a victim (or their family member) is a person who has suffered harm as a result of crime, means that the scope of victims covered in each country depends on the national criminal law and what is considered a crime in this context. For instance, stalking is a crime in some Member States but not in others.¹¹⁷ Though not an exhaustive list, we define the types of crime that this study focuses on in the table below:

Table 1 Typology of crime

Crime type	Remarks
Assault and violent crimes	Assault includes the crimes consisting in the threat of violence and hate crimes. Violent crimes include battery, deadly assault (different degrees and definitions of assault would apply here) and gang-related violence.
Child abuse	This category includes child physical abuse and child sexual abuse. Article 24 of the directive sets out the right to protection of child victims during criminal proceedings. Child victims of sexual abuse are also protected and covered by Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography.
DWI (driving while intoxicated) /DUI (driving under the influence)	Road traffic accidents involving motor-vehicles where a driver was under the influence of alcohol or drugs (DUI) or was legally intoxicated (DWI) are particularly relevant in an EU context to the movement of persons across borders as the number of journeys made in the EU increases, the risk of being a victim remains the same.
Fraud and white-collar crime	Including identity theft, deliberate deceptions for unlawful gain, or non-violent crime for financial gain committed by means of deception.
Gender-based or sexual violence	Articles set out in the directive will have particular relevance to domestic violence, sexual offences including rape, attempted rape, and sexual harassment. The guidance note produced by the European Commission that accompanies the directive cites the overall objectives of the directive as particularly relevant to gender-based violence. ¹¹⁸ The Council of Europe estimated in 2006 that 20-

¹¹⁷ According to Susan van der Aa, in May 2016, 'the seven countries that have not (yet) introduced stalking or harassment as a specific offense are: Bulgaria, Estonia, Denmark, Greece, Latvia, Lithuania, and Cyprus'. Suzan van der Aa, 2017, *New Trends in the Criminalization of Stalking in the EU Member States*, Tilburg Law School

¹¹⁸ European Commission, DG Justice, 2013, *DG Justice Guidance Document related to the transposition and*

Crime type	Remarks
	25% of women experience physical acts of violence at least once during their adulthood. 12-15% find themselves in a relationship of domestic abuse and more than 10% suffer sexual violence. ¹¹⁹ A study by the Fundamental Rights Agency (FRA) estimates that one in three women has experienced physical and/or sexual violence since the age of 15; one in five women has experienced stalking; every second woman has been confronted with one or more forms of sexual harassment. ¹²⁰
Human trafficking	The directive affects victims of all crimes regardless of their nationality or residency status. Victims of human trafficking who are arriving in the European Union are primary beneficiaries of the directive in the context of limited access to support and the intimidating nature of traffickers and their inherent cause of risk to the victim's well-being. Human trafficking is also governed by Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.
Robbery	Robbery and by extension burglary feature heavily in the practices of restorative justice systems compensation mechanisms. This is pertinent to Article 16 (concerning the right to decision on compensation from the offender in the course of criminal proceedings) and in more limited cases Article 15 (concerning the return of property).
Stalking	The directive's Article 21 on the right to protection of privacy, Article 2 on right to protection, and in particular Article 19 on the right to avoid contact between victim and offender are relevant to stalking.
Terrorism	The definition of "terror" either as a crime of its own or as an aggravating factor in case of murder (politicised murder) or other crimes is the source of academic debate and varies to some extent across Member States. Victims of terror may be restricted to those that are physically harmed (and by extension their family members) or civil society at large.

The assessment of the directive should also consider other dimensions of different types of victims of crime, with each group having their own special needs.

The first is the **distinction between residents and non-residents**. There are no nationality or residency restrictions which apply to the status of a victim under the directive but non-residents will be more in need of translation services, for instance. Part of the root-cause for EU action in the field of victims' rights is that it is designed to afford EU citizens not resident in the country where they fall victim to crime and third country nationals, as well as stateless persons, the same level of rights as a resident

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, P.8

¹¹⁹ Council of Europe, 2006, Stocktaking study on violence against women

¹²⁰ FRA, 2014, European Union Agency for Fundamental Rights, Violence against women: an EU-wide survey. Main results report

and/or national of that country. This dimension is relevant to all crime types, but in particular to cases of human trafficking, terrorism and DWI/DUI.

Another important distinction is that between victims with and without special needs. Groups with special needs, irrespective of the crime, include minors and persons with disabilities. Taking account of these special needs of victims, Article 22 of the directive prescribes for an individual assessment of victims to identify specific protection needs.

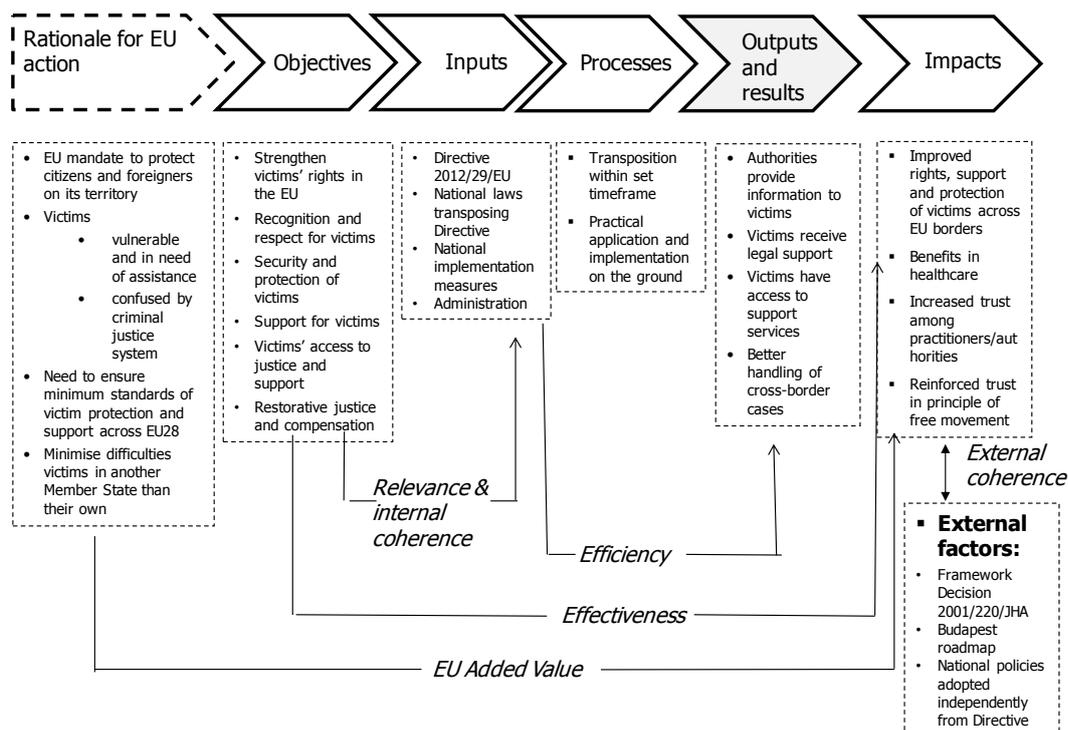
2.3. Intervention logic

The intervention logic provides an overall analytical framework for assessing the directive's application and explains what the directive should achieve and how.

The ultimate justification for EU action was the need to reinforce national legislation on victims' rights as victims' needs were not addressed on a consistent basis across the EU with great variation in terms of the level of protection and support. This also meant that EU citizens moving around Europe were not assured of equal treatment, and could face obstacles in cross-border criminal cases. Potentially, this could undermine the principle of free movement. In response, the directive was drafted on the legal basis of Art. 82(2) of the Treaty on the Functioning of the European Union (TFEU) concerning the mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension.

More specifically, the directive aimed at ensuring that: the victim status is recognised across the EU, victims receive adequate support and compensation, and victims are protected from secondary victimisation. Furthermore, victims should have access to justice. By promoting these general objectives, the directive builds on existing national legislation, Framework Decision 2001/220/JHA and the Budapest Roadmap. The desired outcome and impact of the directive is the better protection of victims, irrespective of what sort of crime affected the victim and the EU country where the crime took place. The following chart summarises the intervention logic:

Figure 1: Intervention logic



3. Assessment of the directive's transposition

This section presents an assessment of how the key provisions of the directive have been transposed into national law in the EU Member States.

The key research questions are:

- Have all Member States transposed and implemented the provisions of the directive?
- What obstacles have been encountered in the transposition and implementation of the directive?
- How coherently have the measures been transposed and implemented by the Member States? Are there gaps arising from different interpretations of the rules contained in the directive? To what extent do differences of criminal law at the level of Member States affect proper protection of victims across the EU?

3.1. Summary of key findings

As noted earlier, the Victims' Rights Directive had to be transposed into national law by Member States before 16 November 2015. The Commission recognises the complexity of transposing national law, as the Quality of Legislation Team highlights in its 2014 paper on the 'Complexity of EU law in the domestic implementing process'¹²¹.

To facilitate the transposition of the Victims' Rights Directive, the European Commission published a non-binding **guidance document**¹²² aimed at helping Member States effectively transpose and implement the directive correctly. It should moreover ensure that Member States have a common understanding of the provisions contained in the directive. The document clarifies that the 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. Assessing transposition and legal compliance thus requires looking not only at the national transposing laws listed in EURLex but also measures - for example on training of legal practitioners, judges, law enforcement personnel - that have been adopted in practice. The national laws transposing the directive in the Member States are available online.¹²³

Of the 27 Member States that have an obligation to transpose the directive¹²⁴, 25 Member States had transposed the EU law into national legislation as at September 2017, even if they may only be partially compliant in case of some provisions. There were two Member States (IE, SI) that had not fully transposed the directive into national law, at least according to the information available to us at the time when the research for this report was being carried out. However, some of the other 25 Member

¹²¹ 19th Quality of Legislation Seminar, 'EU Legislative Drafting: Views from those applying EU law in the Member States', 2014, [Complexity of EU law in the domestic implementing process](#)

¹²² [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](#), Ref. Ares(2013)3763804 - 19/12/2013

¹²³ EUR-lex, National transposition measures communicated by the Member States concerning: [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](#)

¹²⁴ Denmark opted out of the Victim's Directive but continues to be bound by the 2001 Framework Decision. It has an exemption from the area of freedom, security and justice and hence does not have to adopt respective EU legislation. Ireland and the United Kingdom have a flexible opt-out, but chose to opt into the Victims' Directive.

States are not fully compliant in practice. Either they may not have transposed the directive in full or the transposition does not reflect the provisions set out in the directive. Those Member States that have not transposed the directive cite domestic politics and restricted legislative programmes in national parliaments as the reason, rather than attributing this to the directive itself (e.g. potentially ambiguous clauses).

The transposition of the directive has required amendments to laws in all Member States, including the more developed judicial systems that pioneered the rights of victims (e.g. FI, SE).

Articles of the directive specific to intra-EU cooperation and intra-EU mechanisms have usually not been transposed into national law and have instead been implemented on an administrative basis through various models of bilateral working agreements. While EU Networks exist to ensure EU-wide coverage, there is a lack of a legislative foot-hold in cross-border cases and the rights of a victim resident in another Member State. Additionally, provisions on the collation of data relating to victims appears not to have been transposed into national law but may nevertheless be carried out through administrative procedures.

The directive's provisions on the training of practitioners is mostly transposed on an administrative basis rather than specified in legislation. This may have implications for victims of crime accessing their rights and ensuring a consistent treatment of victims across the EU.

Victims' rights are most clearly recognised in civil law systems where the codes of judicial or criminal procedure have been amended with chapters specific to victims, and in common law systems where a specific legal act is in place setting out victim rights.

The table below provides an overview of the current state of transposition according to our research:

Table 2 - Overview of transposition of directive's key articles

Article	Number of countries transposed	Article	Number of countries transposed
Arts 1 & 2: Objectives and definitions	22	Arts 13 & 14: Right to legal aid and reimbursement of expenses	26
Art 3: Right to understand and be understood	22	Art 15: Right to return of property	21
Art 4: Right to receive information from first contact with national authority	23	Art 16: Right to compensation	24
Art 5: Rights of victim when making a complaint	24	Art 17: Rights of residents residing in another Member State	24
Art 6: Right to receive information on a case	22	Arts 18, 19 & 20: Right to protection and avoidance of contact between victim and perpetrator	21
Art 7: Right to interpretation and translation	27	Art 21: Right to protection of privacy	23

Article	Number of countries transposed	Article	Number of countries transposed
Arts 8 & 9: Right of access to and support from victim support services	20	Art 22: Right to an individual assessment	24
Art 10: Right to be heard	24	Art 23: Rights of victims with special protection needs	19
Art 11: Rights in the event of a decision not to prosecute	22	Art 24: Protection of child victims	25
Art 12: Safeguards on restorative justice	12		

3.2. Definition of compliance

In assessing the transposition of the directive in detail, i.e. the different articles, the following definitions have been used in this study:

At a country level, the directive is determined to be formally transposed if Member States have cited national laws implementing the directive. However, in detail, an article of the directive is assessed to be transposed only if an Article or sub-article of equal substance or meaning is ratified in national law. In cases where the national law is divergent, if the divergence is seen to have an added value (i.e. where the directive's requirements are exceeded) then this is still assessed as transposed and fully compliant, as the furthering of victim rights beyond the directive's requirements is considered a positive addition (in other EU regulation relevant to the Internal Market, the practice of 'gold-plating' could have an adverse effect on competition, but this is not believed to be the case in the field of victim rights).

If, however, the national law has transposed the directive but is divergent in a negative sense, either by narrowing the definitions adopted in the EU legislation, undermining the rationale for the intervention, or by limiting the requirements specified by the directive, then the article in question is assessed as not having been fully transposed. In this case, the Member State at country level is assessed to be non-compliant.

Furthermore, where general articles have been transposed but sub-articles from the directive are missing from the national law, the Article is considered transposed but not fully compliant. In these cases, the responsible authority is the European Commission which will assess whether Member States' legal systems are legally compliant and, if necessary, will refer cases to the European Court of Justice (CJEU). For the purposes of our study, classification of Member States as having transposed the directive and being legally compliant is a judgement based and dependent on the number of Articles or sub-articles being omitted and their significance in terms of the rights of victims. There is of course scope for differing interpretations but to reduce the scope we have tried to verify our findings with the national authorities.

Where the directive has been transposed verbatim, the Member State is assessed to have transposed the directive and is legally compliant. However, there are implications for the effectiveness of such a legal framework as it may be non-specific in terms of procedure as to how the rights of victims are guaranteed in practice. In a number of cases (for example with regard to Articles 25 and 26 on training and cooperation), administrative procedures may not be mentioned in transposing acts or other pieces of law. However, if there is evidence that the relevant measures are in place (e.g. if they are mentioned in guidance documents supplementing the transposing laws) these countries are considered compliant.

3.3. Methods of transposing the directive

Before presenting the findings of our assessment of the transposition of the directive in more detail, this section provides some context, highlighting the methods for transposing EU directives into national law and establishing what has been communicated to the Commission by Member States to date.

3.3.1. The methods for transposing EU directives into national law

Unlike EU Regulations and Decisions which are directly applicable in all Member States, directives stipulate minimum standards that all EU Member States should achieve (what) but give Member States themselves flexibility to implement these changes in accordance with their own national legislation (how). Some differences in implementation can therefore be expected, reflecting the different legal and judicial systems of the Member States.

While each Member State has its own unique legal system, it is worth highlighting two broadly different categories of systems. Most EU Member States have **civil law systems** where judicial decisions are subordinate to statutory law whereas a few Member States (Ireland and most of the UK) have **common law systems** where case law and previous judicial decisions determine the application of the law. In some cases (for example, Cyprus and Scotland), Member States have mixed systems with aspects of both common and civil law.

The EC guidance document accompanying the directive indicates that Member States should put in place a specific legal framework to enable individuals to recognise clearly their rights and obligations under this directive. As will become evident, the way in which the directive has been transposed has varied considerably, and a legal framework has not specifically been put in place in all cases:

- In some cases, the directive has been transposed or fulfilled **in a singular act** which takes precedence over or updates other legal acts or procedures;
- Other Member States have transposed the directive through **several legal acts**, whether pertaining to different crime areas or aspects of criminal law, or to different executive bodies (the police, the judiciary etc.) subject to the statute.

In civil law countries, the directive tends to have been transposed by amending existing criminal codes, whereas in common law countries, it tends to have been transposed by adopting a new piece of legislation (or a code of practice in case of the UK¹²⁵) for victims of crime. Any differences in transposition of the directive deriving from the different legal systems are mitigated in practice by the CJEU, which through interpretive decisions converges both common and civil law systems according to EU treaties and regulation.

A critical issue for understanding the added value of the directive is whether Member States have transposed the directive into national law through existing legislation or new legal measures. In the case where a legal framework for victims did not previously exist for all types of victims (e.g. in EL or ES¹²⁶), the adoption of new legal measures more clearly highlights the added value of the directive in promoting victim rights to an extent that may otherwise not have happened. Several Member States (e.g. AT, DE, IT, LT, PL) have no victims-centred single act or legal framework, but rather victims now feature more prominently in the criminal procedure code of these countries generally.

¹²⁵ Ministry of Justice, October 2015, [Code of Practice for Victims of Crime](#)

¹²⁶ In ES, a strong legal framework for victims only existed for specific types of victims, such as victims of domestic violence or victims of terrorism.

In most EU Member States, the rights of victims foreseen in the directive are largely fulfilled through pre-existing legislation, whether in treatment of the victim as a witness or with relevance to other EU legislation (such as the 2001 Framework Decision, legal aid or victim compensation legislation). Here, a significant degree of added value can nevertheless be seen in the gap-filling role of the directive, for example through the expansion of the definition of a victim or the codification of specific rights, and by ensuring a more consistent treatment of victims across the EU. In a small number of cases, the directive was transposed almost entirely through pre-existing national law, and administrative amendments only were required to adopt the directive. These cases imply that, from the perspective of the country's legal system, the directive is of limited added value.

Finally, **there are a few Member States that have either not yet fully transposed the directive** according to our assessment (IE and SI) or despite having transposed the directive, may not be fully legally compliant (MT, LT, PL, RO).

The Commission was expected to report back on compliance of Member States in November 2017 as per Article 29 of the Directive, but has failed to meet this deadline. The Commission recognises the complexity of transposing national law, as the Quality of Legislation Team highlights in its 2014 paper on the Complexity of EU law in the domestic implementing process.

Respondents to the online survey carried out for this study overwhelmingly believed the directive was clear and easily understood, suggesting there should be relatively few misunderstandings when transposing it into national law. Only 14% of the 30 respondents argued that this was not so. Nevertheless, 57% of respondents stated that the transposition and implementation faced obstacles in their country.

3.3.2. Member State's communication on transposing the Victims' Rights directive

Member States have communicated to the Commission how the directive has been transposed, and this information was a starting point for our preliminary analysis of the directive's transposition. Below we provide a table with a summary of the information provided to us by Member States.

Table 3 –Summary of transposition communicated by Member States

Country	No of measures	Date range	Measures since directive	Country	No. of measures	Date range	Measures since directive
Austria	2	2015-2016	2	Italy	1	2016	1
Belgium	28	1967-2016	11	Latvia	21	1971-2015	3
Bulgaria	15	2009-2016	10	Lithuania	60	1992-2016	25
Croatia	37	1999-2015	22	Luxembourg	1	2017	1
Cyprus	1	2016	1	Malta	1	2015	1
Czech Republic	54	1961-2013	5	Netherlands	11	1921-2017	3
Denmark	n/a	n/a	n/a	Poland	15	1984-2016	9
Estonia	6	2014-2016	6	Portugal	1	2015	1
Finland	29	1889-2016	13	Romania	29	2000-2016	8

Country	No of measures	Date range	Measures since directive	Country	No. of measures	Date range	Measures since directive
France	2	2015-2016	2	Slovakia	15	1992-2015	2
Germany	1	2015	1	Slovenia	38	1976-2016	8
Greece	1	2017		Spain	3	2015	3
Hungary	55	1990-2015	24	Sweden	2	2015	2
Ireland	1	2016	1	UK	86	1933-2015	30

Source: EURlex, National transpositions by Member State¹²⁷

In our assessment of the transposition of the directive on a country-by-country basis, our study has in some cases identified more legal measures than were highlighted by Member States themselves in fulfilling the directive. This occurs where a single measure has been cited as transposing the directive but the legislation itself consists in several amendments to other legal acts. Similarly, some Member States list only the legislation that transposes the directive, changing existing legislation, and other Member States list all the relevant legislation that fulfils the directive, whether pre-existing or new. The differences therefore reflect the methods of transposition and the range of legal systems across the EU.

3.4. Comparative analysis of the directive's transposition

In this section, we analyse and summarise the findings of the transposition assessment article-by-article. National authorities were asked to validate the information collected in transposition fiches for each country, and in some cases provided comments and corrections. This section is the output of this exercise. The fiches served to inform the comparative analysis here, and are not published separately.

3.4.1. Transposition of the directive by EU Member States

As noted earlier, according to our research, 25 of 27 Member States have transposed the directive, even if they may only be partially compliant in case of some provisions.

Number of Member States that have transposed the directive	25 out of 27
Member States that have not transposed the directive	IE, SI

There are two Member States (Ireland, Slovenia) that have not fully transposed the directive into national law according to the information available to us at the time (mid-2017) when the research for this report was being carried out. This means that clear information on the transposition of individual articles is not always available for these countries. This applies, particularly in case of Slovenia. In the case of **Ireland**, the Victims of Crime Bill (2016) passed through the senate on 7 July 2017. We understand that the bill was scheduled to proceed through the remaining stages of ratification when the Seanad returned in September, although no update to this effect is available on the Ministry of

¹²⁷ EUR-lex, National transposition measures communicated by the Member States concerning: [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](#)

Justice website.¹²⁸ According to the Ministry of Justice in Ireland, no particular point of issue was raised with the directive.

Similarly, in **Slovenia**, many of the directive requirements are fulfilled in pre-existing legislation but the most recent legislative proposals to fully adopt the directive have not yet passed into national law through a proposed amendment to the Criminal Procedure Act, which in view of national authorities would have represented a radical change in criminal procedural law. Although the proposed changes were accepted by the National Assembly, they were vetoed in the Second Chamber and failed to gather the required absolute majority in a second vote in October 2017. A new proposal is expected soon, which will cover the remaining gaps with regard to transposition and implementation of the Victims' Rights Directive.

In the case of **Slovakia**, a new legal act on victims of crime was approved in October 2017. It is due to be published and in force in January 2018. An infringement case was opened against **Romania** by the European Commission in January 2016.¹²⁹ Despite 29 measures having been reported to the Commission to date, the transposition of the directive is still incomplete with certain measures drafted but still pending according to the information we received. In **Greece**, the Commission reminded the authorities in April 2017 of the requirements for transposition before the deadline of June 2017. Greece then adopted the directive at the end of June and appears to have fully transposed the directive.

3.4.2. Implementation modalities at national level

Member States that have transposed the directive into one single act	CZ, DE, EL, ES, IE, IT, LU, PT
Member States that have transposed the directive into several legal acts	AT, BE, BG, HR, CY, EE, FI, FR, HU, LT, LV, MT, NL, PL, RO, SE, SK, SI, UK

Most Member States have transposed the Victims' Rights Directive through several existing and new legal provisions. In other cases, Member States (including CZ, DE, EL, ES, IE¹³⁰, IT, LU, PT) transposed the directive through a single act. Some of these singular acts however amend several other pieces of pre-existing legislation (as seen in DE, ES, IT, LU, MT). In very limited cases, the directive was almost entirely transposed through pre-existing legislation with the exception of more minor amendments (with respect to victim rights) or amendments for an administrative purpose (DE, FI, SE).

Of those Member States implementing the directive through several legal measures, the number of measures ranges from 1 to 86. The number of measures adopted since the directive was published is 195. These vary between referencing pre-existing laws which already cover certain elements of the directive, making minor amendments to codes of procedure, and introducing a specific act dealing with an area of crime (e.g. human trafficking laws).

3.4.3. Defining victims of crime (Articles 1 & 2)

Most Member States that have transposed the directive have adopted the definition of victim of crime to include a natural person who has suffered harm caused by a criminal offence, and family

¹²⁸Department of Justice and Equality, 2016, Criminal Justice (Victims of Crime) Bill 2016

¹²⁹European Commission, Infringement Decisions

¹³⁰ Not yet formally ratified into national law. (Expected by end of 2017)

members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

Number of Member States that reflect the objectives and definitions of the directive	23
Member States that do not reflect the objectives and definitions of the directive	DE, IT, FR, SI

Some linguistic differences exist where the term 'victim' is instead referred to as the 'injured party' (e.g. **Finland, Sweden**), or the 'aggrieved party' (**Slovakia**). While this approach may result in some victims being excluded, no evidence could be obtained of this happening. The use of the term "persona offesa" in Italian law, for example, has a limiting effect as it does not cover indirect victims of crime. The decision to transpose the directive as an update to the Criminal Code in a number of countries (e.g. Estonia, Italy) may also limit the rights of the victim, as they are only granted these rights once they are recognised as a party under the criminal code.

In other countries (BE, FR, LT, PL), victims have to apply to be recognised as a victim and granted the rights attached to this status. France does not use the definitions set by the directive and, in fact, victims are only formally recognised if they file a complaint to become a civil party. Through this status, they can access their file and ask to expand the investigation where needed. In **Poland**, the status of victim affords rights to protection etc. However, the victim must be designated as either a "litigant" or a "witness" to participate in a trial. Another interesting instance is **Belgium**, that has defined three different types of persons during criminal proceedings: a 'mere' victim has no rights and needs to file a complaint to either become an injured party and a civil party in order to have the right to legal representation or claim compensation.

There are also instances where Member States have expanded the definition of victims. Significant differences can be found in **Finland**, where the definition of victim applied not only to natural persons directly affected by a criminal offence but also to natural persons who are either insulted or endangered by a crime. In Spain, the definition applying to family members has been expanded to include family members of missing or the death of persons who have been murdered.

3.4.4. Provisions on information and support (Article 3)

The directive seeks to ensure that victims, based on their personal characteristics, understand and can make themselves understood during criminal proceedings. Article 3 covers the personal situation of a victim regarding literacy, linguistics, and/or disabilities. This also includes the right to be accompanied by a person of their choice, particularly if the victim has difficulties understanding the proceedings or to be understood.

Most Member States have transposed Article 3 on the right to understand and to be understood. Transposing this article is closely linked with transposing the right to interpretation and translation and Article 4 on the right to receive information from the first contact with a competent authority.

Number of Member States that have transposed Article 3	22
Member States that have not transposed Article 3	AT, DE, EE, IT, SI

Some Member States have transposed Article 3 as an explicit right (e.g. BG, CY, EE, IT, HR, LT, LU, MT, PL) but do not specify how this should be implemented in practice, while others (e.g. BE, CZ, HU, SK) specify procedures in detail (with relevance to a Code of Criminal Procedure) for persons with speech defects, mental or physical disabilities, blindness or for the hard of hearing. Most Member States

adopt the phraseology of the directive with respect to simple and accessible language. Accompaniment is specified in most Member States with the exception of Italy, Poland and Romania.

The right to accompaniment varies from a right which allows victims to nominate someone of their choice (LU), to the right to accompaniment by a psycho-social counsel but no guarantee for accompaniment by a relative (DE), to the more limited right to be represented by the prosecutor bringing a civil action in place of the defendant (BG). Psycho-social accompaniment of victims throughout the trial procedure is offered free of charge to victims (AT, DE, IT¹³¹). More detail on psycho-social accompaniment is available in the application analysis (Section 4).

3.4.5. The right to interpretation and translation (Article 7)

Article 7 provides that linguistic assistance, including interpretation and translation should be given on request and free of charge. This article is linked to information rights, under Article 4 and 6. The assistance covers the victim upon contact with investigative and judicial authorities from the first hearing and throughout the investigation. This Article also allows the provision of oral translation or an oral summary of essential documents instead of a written translation.

All Member States have transposed Article 7 on the right to interpretation and translation. The linguistic capacity in national procedures is not always specified but the right itself is consistently applied.

Number of Member States that have transposed Article 7	All Member States have transposed Article 7
Member States that have not transposed Article 7	n/a

This Article is most consistently cited as a new amendment, even in the case of Member States that fulfil the directive through mostly pre-existing legislation (as seen in DE, FI, SE). The added value of the directive is perhaps most evident here in ensuring the rights of non-nationals, EU nationals residing in another Member State, and stateless persons.

The provisions vary but include making available both oral and written translations or court documents, and the use of interpreters both in court proceedings directly involving the victim (i.e. questioning, judgement issuance) and proceedings where the victim is simply participating. Other provisions may specify the use of braille or special measures with respect to the hard of hearing or those with speech defects (as in CY). In some cases, (ES, FI, IT) the possibility of remote interpretation is specified, usually in exceptional cases, rather than the interpreter being physically present. The right to access interpretation/translation free of charge is not always specified explicitly (BG, EE, LT, UK¹³², SK). Article 7 also provides further rights to victims which were not covered in this analysis which focuses on key provisions.

3.4.6. Right to receive information from the first contact with a competent authority (Article 4)

Article 4 requires criminal justice authorities to provide 'without unnecessary delay' extensive information to assist the victim proactively, rather than the victim having to seek out this information themselves. This right is applied from the first contact with competent authorities, such as officials

¹³¹ Only in certain regions of Italy.

¹³² Only in Scotland.

based in police stations, helplines or online helpline contacts. The main requirement of this Article is to ensure victims effectively understand the information they are provided with. Information may be provided orally or in writing, usually through information leaflets/booklets.

Most Member States have transposed Article 4, in some cases transposing the directive verbatim (CY, ES, MT), or incorporating the various sub-articles through dispersed amendments to codes of judicial or criminal procedure (e.g. BE, FI, FR, SE).

Number of Member States that have transposed Article 4	24
Member States that have not transposed Article 4	DE, EE, SI

In some cases, laws specific to the functions of the Police authority or public prosecutor have been amended to reflect the responsibilities prescribed for in the directive. In three Member States (DE, EE, SI), the transposition of Article 4 could not be identified and in several Member States (BG, DE, LT, PT), sub-articles were missing from the transposition. Some Member States have included aspects of Article 4 with reference to the adoption of Article 3 (the right to understand and to be understood) and Article 7 on the right to interpretation and translation. Other Member States included provisions for competent authorities to provide information on how to become party to the criminal proceedings (e.g. injured party, civil party, litigant or witness) upon first contact (BE, FR, PL).

3.4.7. The right of victims when making a complaint (Article 5)

Article 5 states that victims shall make a complaint either orally or in writing, either at a local police station, by telephone or online (among other options). The minimum requirement of the Article is that authorities provide at least a written acknowledgement that the complaint has been made. Victims have the right to make their complaint in a language they understand and they have the right to linguistic assistance for this, free of charge. Upon making a complaint, the authority should know if the victim speaks or understands the language. A translation of the written acknowledgement may also be requested by the victim.

Most Member States have transposed Article 5 on the right of victims when making a complaint. In three Member States, this article appears not to have been transposed.

Number of Member States that have transposed Article 5	24
Member States that have not transposed Article 5	EE, RO, SI

A total of 24 Member States make provisions for the police authority or public prosecutor to provide written acknowledgement of the complaint but three Member States (Estonia, Romania, Slovenia) appear not to. A total of 22 Member States specify the provision of linguistic assistance to facilitate a complaint specifically, though some Member States include this more generally on linguistic provisions as prescribed for under Article 7 of the directive. Croatia, Estonia and Slovenia appear not to specify linguistic assistance to facilitate a complaint specifically. Of those that do provide for translation provisions, 17 Member States confirm it is free of charge. Most Member States appear to offer this service for free or provide financial aid to cover the expense.

3.4.8. Receiving information about a case (Article 6)

This article states that all victims should be notified of their right to receive information related to the decision to end criminal proceedings (including the reason for this), as well as the time and place of the

trial and the nature of the charges. Victims that have a 'role' in the criminal justice system, shall be notified of their right to receive the final judgement (and reasons), as well as information about the state of the proceedings. The victim may choose to receive such information, if they have requested it. Victims shall also be offered the opportunity to be notified on the offender's release or escape from detention.

In nearly all Member States, the right of victims to receive information about their case has been transposed.

Number of Member States that have transposed Article 6	22
Member States that have not transposed Article 6	CY, DE, LU, PL, SI

In some Member States, procedures are relatively detailed (e.g. Estonia, Ireland, Finland), whereas in Member States where the directive has been transposed verbatim (Italy, Malta) or where the right has been stated but no procedural details provided (e.g. Bulgaria, Lithuania), it is less clear how this right is fulfilled in practice, meaning these countries risk being non-compliant in terms of the application of the directive. No conditions were imposed on the provision of information but the trigger mechanisms for informing the victim can vary. In the UK, a Victims Care Card has been introduced in order to allow victims and the relevant authorities to easily keep track of a case as it proceeds through the different stages. 2 Member States (Cyprus, Slovenia) appear not to have transposed Article 6, and three other Member States have only partially transposed Article 6 (Germany, Luxembourg, Poland).

3.4.9. Access to victim support services (Articles 8 & 9)

The right to access victim support services is one of the core rights of the directive. Articles 8 and 9 are to be read together since it ensures the right of victims, and their family members, to access to confidential support services free of charge. These should provide advice and information, emotional and psychological support, as well as practical assistance. This support is to be made available from the earliest moment possible after the crime was committed and should be made in accordance with the victims' individual needs. Regarding the support from victim support services, victims are to be offered targeted and integrated support for victims with specific needs.

All Member States except for DE, IE, LT, LU, PT and SI have transposed articles 8 and 9 on the right of access to victim support services and support from support services.

Number of Member States that have transposed Articles 8 and 9	21
Member States that have not transposed Articles 8 and 9	DE, IE, LT*, LU, PT, SI

Asterix indicates that information has not been confirmed by national authorities and legal transposition could not be identified.

Where Member States have not transposed these articles, it is claimed administrative structures ensuring these rights are already in place (e.g. as in Germany, Ireland), however these structures are not specified by law (whether in statutes, ordinances, or acts). In some countries (Luxembourg, Portugal), the right to access victim support services (article 8) is specified within the context of the transposition of article 4 (the right to receive information from first contact with a national authority) but the details specified in article 9 are missing. These countries have therefore been classified as not having transposed the directive's provisions relating to access to support services. In the case of

Lithuania, no evidence could be obtained that the articles have been transposed into national law and no clarification was forthcoming from the national authorities.

In those Member States that have transposed the two articles, in many cases (e.g. AT, CY, MT, NL) procedural detail is missing and this could have implications for ensuring the right of access to victim support. In some cases, the onus is on the executive authorities to facilitate and determine the level of support (e.g. CZ, HU); in others, referral mechanisms are in place but the victim is expected to contact the relevant support services (e.g. AT, BE, FI, FR, SE).

3.4.10. Right to be heard (Article 10)

The purpose of this Article is to ensure that all victims have the opportunity to provide information, views or evidence throughout the criminal proceedings. Procedural rules are to be determined by national law, however the principles of judicial discretion and free assessment of evidence must be preserved.

Most Member States have transposed the right to be heard but the extent to which victims may exercise that right does vary in the national legislation.

Number of Member States that have transposed Article 10	24
Member States that have not transposed Article 10	DE, LU, MT

As noted above, most Member States have transposed the right to be heard but the extent to which victims may exercise that right does vary in the national legislation. Examples include the right of attendance and the right to participation subject to the presiding judge who may limit this participation (Czech Republic), multiple rights at procedural level during a criminal trial (Estonia), the use of formal statements, whether specific to a complaint or on the issue of overall impact to the victim (Ireland) or verbatim adoptions of the directive (Cyprus).

Examples of countries that have introduced provisions which exceed those of the directive include Belgium and the UK. In Belgium, victims have the right to provide any information or documentation they believe is relevant or could add to their case. In the UK, the development of a Victims Statement allows victims to provide information on how the crime has affected them, both orally (before the jury) and in writing (to be included in the written record). The right to be heard was not identified in the legislation of Germany, Luxembourg, Malta.

3.4.11. Rights in the event of a decision not to prosecute (Article 11)

Provisions under this Article enable victims to verify that established procedures and rules have been complied with, and that a correct decision has been made to end prosecution against a suspected person. The EC guidance document respects national procedural autonomy and does not seek to harmonise the relations of subordination among authorities. Therefore, it is up to national legislations to set up precise modalities of such a mechanism. This Article can be linked with Article 6, relating to the obligation to provide a reason for a decision to not prosecute.

Most Member States have transposed Article 11. In three Member States, the rights in the event of a decision not to prosecute were not identified in national law. In an additional two countries (Estonia, Croatia), the transposition of this right is unclear and they have therefore been excluded from the analysis of this article.

Number of Member States that have transposed Article 11	23
Member States that have not transposed Article 11	CY, DE, EE*, HR

* Information not verified by national authorities and transposition could not be identified in national law.

The extent of a victim's rights in the event of a decision not to prosecute varies considerably. Some Member States allow for a notification process only, and details are missing on the exact approach to a review of the decision (e.g. in Czech Republic, Finland). In those Member States that have transposed this right, examples included the capability for victims to make a complaint to the senior public prosecutor (Sweden). In some countries other corrective measures exist, such as summoning the offender to court directly for minor offences (Belgium). In some cases, conditions have been imposed regarding timing. In the proposed bill, the victim must request a review within 28 days (Ireland), and in another case, the request must be reviewed within 10 days (Estonia).

3.4.12. Safeguards on restorative justice procedures (Article 12)

Article 12 provides that in those countries with restorative justice services – whose provision is not a mandatory requirement under the directive – these are to be provided in parallel with or after criminal proceedings take place. They should be available for certain types of crime and may include adults and child offenders. These services can include, for instance, victim-offender mediation, family group conferencing and sentencing circles. The main purpose of this Article, is to ensure where such services are provided, safeguards are put in place to ensure the victim is not further victimised as a result of this process. Participation of the victim should be voluntary and any agreement between the parties should also be reached voluntarily. The EC Guidance document states that this Article does not oblige Member States to introduce these services if they do not have these mechanisms already in place.

As mentioned in Section 3.4 restorative justice is controversially debated and many Member States have (so far) chosen not to put such systems or practice in place (BG, CY, DE, EE, IT, LT, LU, PL, PT, SI).

Number of Member States that do not have restorative justice systems/practices	10
Number of Member States that have transposed Article 12	11
Number of Member States that have other practices in place	6

Among the Member States that do have restorative practices, or the notion of restorative justice in their legal framework, 11 Member States have explicitly transposed the safeguards specified in the directive (AT, EL, ES, FI, FR, IE, LV, MT, NL, SK, UK). In some cases, the directive has been transposed verbatim (IE, MT). In some Member States, many of these safeguards are already fulfilled in pre-existing legislation (FI, SE).

It should be noted that some Member States have mediation practices in place rather than restorative justice system (BE, CZ, HR, HU, RO, SE). There is an instance of an 'out-of-court settlement', which takes place as a victim-offender mediation, but its focus is to rehabilitate offenders that are underage with little attention on the victim (Croatia). Here, there are instances where the victim/offender dimension is not explicitly recognised, and rather a mediator reaches a settlement between two neutral parties. The procedural basis for mediation has implications for restitution practices (where property is returned to the victim).

Restorative justice practices are not fully in place in many countries. For example, in Slovakia, restorative justice is still being developed and in Portugal, the Portuguese Criminal Mediation Public System is currently not operating. In some other cases, while provisions on restorative justice exist, access to them is not common as they are not yet part of the country's judicial culture (e.g. France). Where the restorative justice safeguards have been transposed, the procedure is voluntary for the victim in all countries. Often, however, considerations regarding the victims' safety are not expressed in national law.

3.4.13. Legal aid and the re-imburement of costs (Articles 13 & 14)

Victims have the right to access legal aid when they have the status of parties to the criminal proceedings. Minimum provisions should cover legal advice and legal representation free of charge. Article 14 ensures that victims are not prevented from participating in criminal proceedings due to financial limitations. Minimum standards include the reimbursement of necessary expenses (travel or expenses on loss of earnings if the victim has to take time off work). However, Member States are not obliged to reimburse legal fees.

With respect to legal aid, most Member States have fulfilled this requirement through pre-existing national legislation although some amendments were required to ensure the right to the re-imburement of expenses.

Number of Member States that have transposed Articles 13 and 14	26
Member States that have not transposed Articles 13 and 14	PT

The directive allows for conditions to be imposed, and of concern is the requirement seen in some Member States (e.g. Hungary, Sweden, Greece) for the right to legal aid is tied to the victims' legal EU residency status, whether a recognised EU national, third country national family member, asylum seeker, or refugee. Illegal migrants and other stateless persons not recognised by the Member State may therefore be a victim of crime in a country but not entitled to legal aid. Other conditions relate to cross-border cases where a stay or residency exceeding 90 days may be required to be eligible for legal aid (e.g. Czech Republic). The expectation is that the Member State of origin instead provides this coverage but this is often not specified in the national legislation and is reliant on bilateral administrative arrangements.

Rights to legal aid and the re-imburement of costs can depend on an individual's income (BE, EL, FR, LV, PL, UK), or the type of crime (BG, EL, HR, RO, UK). There is also an instance where the first contact with legal aid is completely free of charge, irrespective of income (Belgium). Portugal seems not to have transposed this Article. Any party to a legal proceeding may, however, receive legal aid if their financial situation meets conditions specified in national law. The re-imburement of legal aid costs often occurs in Member States that provide financial aid for the use of interpreters, for example. In other cases, the legal costs (attendance costs, legal advice, etc.) are incurred by the victim but reimbursed through financial aid schemes.

3.4.14. Return of victims' property (Article 15)

This Article specifies that property should be returned to victim. However, procedural details are to be determined by national law. In most Member States, there are mechanisms in place to ensure the return of property and the provision of information regarding this practice, though in some Member States this was difficult for us to identify as a specific right. **Most Member States have already fulfilled this part of the directive through pre-existing legislation, whether in respect to a Code of Criminal Procedure or a specific, theft related legislation (e.g. UK).**

Number of Member States that have transposed Article 15	23
Member States that have not transposed the Article 15	BG, DE, HR*, MT

** Information not verified by national authorities and transposition could not be identified in national law.*

Victims are almost universally told the conditions by which their property may be returned and in what timeframe. It is not, however, clear if some of the more detailed administrative practices cited in the guidelines have been implemented. In Hungary, the return of property is only possible if the offender is imprisoned for more than five years, after which the victim is entitled to an advisor free of charge to submit a property claim.

3.4.15. Compensation from the offender (Article 16)

Victims are entitled to obtain a decision on compensation by the offender within a reasonable timeframe during the criminal proceeding. Practice may vary across Member States, but national legislation should put in place measures to ensure the offender compensate the victim.

A total of 24 Member States have transposed the right to a decision on compensation for victims in criminal proceedings, although not all specify that the money is to be taken from the offender (e.g. Romania). Transposition of article 16 has not according to our research occurred in Estonia, Ireland, and Malta. The right to a decision on compensation is clearer in cases of mediation or restorative justice when the victim is clearly informed of their rights.

Number of Member States that have transposed Article 16	24
Member States that have not transposed Article 16	EE, IE, MT

While state compensation schemes exist in most Member States (though are not within the scope of the directive), the provision of information on the circumstances under which the offender directly compensates the victim is less clear. The directive implies that such a practice could be negated by national law (i.e. Member States can opt for a state compensation model only, such as in CZ, LT, SE). There are examples, such as Finland, that passed a Law on the Victim Surcharge (2015/669), which coordinates a fund paid for by offenders which directly benefits victims. Other examples include an indirect compensation model, where the victim is paid in advance by the state and the costs are charged to the offender.

In some countries, there are provisions for a judge to impose specific conditions to ensure the victim receives compensation (e.g. Belgium, France). The state may freeze or seize the property of the accused person if there are fears they will not compensate the aggrieved person (Bulgaria). In other cases, the state has imposed a maximum limit that can be paid back to the victim (e.g. EUR 15,000 in France).

Swedish Crime Victim Compensation and Support Authority

The Swedish Crime Victim Compensation and Support Authority has the overall objective of promoting the rights of victims of crime. The authority assesses state compensation and administers the fund for victims of crime. The crime victim fund administered by the authority is a unique mechanism: it is funded primarily from money paid by offenders in addition to donations. It has funding of some €2.7 million per year. A council connected to the authority determines who receives the money. Police officers and prosecutors are obliged to give information to the victim on the possibilities of receiving damages and criminal injury compensation, which needs to be presented to the court by the prosecution if the victim asks for it.

3.4.16. Victims residing in another Member State (Article 17)

Article 17 enables victims to file a complaint in their country of residence if they are not able to do so in the country where the crime was committed. The complaint should then be transmitted from the state of residence to the state where the crime occurred without delay. However, this is without prejudice to the rules of conflict relating to the exercise of jurisdictions. Nonetheless, the state where the crime occurred should be informed about the complaint. Based on the EC guidance document, the obligation to provide support for non-resident victims is to be shared between the two Member States involved.

All Member States protect the rights of victims residing in another Member State to some extent, though a legislative basis was not identified in our research for DE, LU and SI.

Number of Member States that have transposed Article 17	24
Member States that have not transposed Article 17	DE, LU, SI*

* Information not verified by national authorities and transposition could not be identified in national law.

The obligation to provide support for non-residents is shared between the Member State of origin and the Member State where the crime occurs. Provision of financial aid in the Member State in which the crime occurred may be limited (e.g. Czech Republic, Hungary) though in other cases compensation for support services can still be awarded even if the victim has left the jurisdiction (e.g. Bulgaria, Hungary, Finland). The guidelines clarify that the obligation to provide assistance once victims leave the Member State where the crime occurred is only applicable to any criminal proceedings (e.g. requirement to testify, participation, etc.).

Bilateral cooperation agreements, including memoranda of understanding between the various Ministries of Justice ensure the protection of victims residing in another Member State. In addition, EU-wide networks exist both within the national authorities (including victim support authorities) and the non-government victim support organisations (such as Victim Support Europe) that can sometimes help victims residing in another Member State. There are cases where the cross-border dimension is explicitly set out in legislation as a separate chapter (e.g. Cyprus, Ireland, Malta) or as sub-sections of various procedures (e.g. Czech Republic, Finland, Sweden). Secondary coverage is ensured by the definition of a victim which clearly applies to victims residing in another Member State.

3.4.17. Provisions on individual assessments (Article 22)

As recognised in the official guidelines, Article 22 is perhaps the most significant aspect of the directive as it necessitates a case-by-case assessment of victims as individuals **as a basis for helping them to exercise their rights**. The directive specifies that the individual assessment should be timely and should help to ascertain whether a victim needs special protection measures (due, for example, to particular vulnerability, the risk of secondary victimisation, intimidation or fear of retaliation). The assessment is expected to consider the personal characteristics of the victim; the type or nature of the crime; and the circumstances of the crime. The directive specifies that child victims can be presumed to have specific protection needs and should therefore automatically be granted an individual assessment. Furthermore, it is specified that the individual assessment should be carried out in close cooperation with the victim and that their wishes be considered. **Most Member States have transposed Article 22.**

Number of Member States that have transposed Article 22	25
Member States that have not transposed Article 22	BG, SI

In terms of transposition, the minimalist position is where a Member State specifies that individuals' protection needs will be met, without specifying exactly how they are assessed (or if they are assessed) (AT, ES, IT, HU, LT, PT, RO, SE). Other countries provide detailed specifications of when and how the assessment is to be carried out (FR, HR), while a third group of Member States provide individual assessments only for victims of specific types of crime (e.g. victims of trafficking). For instance, in Belgium, personalised assessments are mentioned in national laws dealing with specific groups of vulnerable victims to facilitate referrals, but provisions on individual assessments are not mentioned in the law, nor is it applied across all victims of crime. Some Member States have transposed Article 22 of the directive verbatim (AT, CY, IT, LT, MT, PL) while others have incorporated the legislation into codes of judicial or criminal procedure (FI, FR, HR, SE).

Most Member States cite the police as the executive body responsible for carrying out the assessment (Spain, France, Croatia) and, as such, the assessment is not specified in detail (Spain). In some Member States (e.g. Finland, Sweden) the practice of individually assessing victims already exists and the police have pre-existing procedures. The guidelines recognise a two-step process implied by Article 22. The first is the recognition of specific needs and the second step is to determine whether deriving from these needs special protection measures are required. There are examples of Member States (such as Czech Republic) adopting two categories of victim: a victim and, secondly, an 'extremely vulnerable' victim. In the case of the Czech Republic, categorisation as an extremely vulnerable victim may be automatic if a person is a victim of a 'serious' crime (determined by national law) or according to a specific dimension (child, disability etc.). This might imply those failing to meet these classifications may not have their individual needs met. In this case, the first step of the individual assessment in recognising individual needs may not be occurring.

It should be borne in mind that the directive does not specify whether there should or should not be a hierarchy of victims or priority categories, but it does recognise that for some crimes (e.g. bike theft) the process of assessment may be more straightforward than others (e.g. human trafficking). In France, similar steps as in Czech Republic are taken as victims who have been identified as particularly vulnerable (e.g. victims of gender or domestic crimes) go through a secondary in-depth personalised assessment to determine additional measures of protection.

3.4.18. Are victims awarded the rights to protection, protection during criminal investigations, and the avoidance of contact between victim and offender? (Articles 18, 19 & 20)

Articles 18, 19 and 20 cover the protection of victims. Article 18 is the broadest, stating the right to protection for victims and their families from emotional and psychological harm as well as the requirement for procedures to provide physical protection for victims and their families, as necessary, Article 29 covers the avoidance of contact, except where criminal proceedings require it. It further specifies that any new court premises should provide a separate waiting area for victims. Article 20 provides a number of specific protections for the victim during criminal proceedings. These include: avoiding unjustifiable delays in interviewing the victim; ensuring the number of interviews is kept to a minimum and interviews are only carried out where this is strictly required for the criminal investigation; and ensuring medical examinations are also minimised and only carried out when strictly necessary.

All Member States ensure the rights of victim to protection, both generally and during criminal investigations.

Number of Member States that have transposed Articles 18, 19 and 20	22
Member States that have not transposed Articles 18, 19 and 20	BG, LU

How these rights to protection are ensured is facilitated in most cases by fulfilment of Article 22 and the individual assessment of victims. Germany, Lithuania and Slovenia have been left out of this assessment as it is unclear in the legal texts if this article has been transposed and no verification has been obtained from the national authorities. The European Court of Human Rights ruled in Slovenia (which had not fully transposed the directive) that this right (Article 8 of the Convention) was breached when a victim was cross-examined to establish the criminality of the offender. In this case (application no. 41107/10, judgement of the Fifth Chamber, 28 August 2014), the victim's credibility was brought into question by the accused (without evidence). The judgement (by six votes to one) found that cross-examination should not be used as a means of intimidating or humiliating witnesses. The dissenting judge made reference to the 'right to confrontation'. Citing a Roman law, and with reference to a judgement by the US Supreme Court, the right to confrontation entails that "it is always more difficult to tell a lie about a person 'to his face' than behind his back'. In view of the Victims' Rights Directive, the right of the victim to special protections should take precedence, but the European Court of Justice may need to rule to specify the scope of the right to privacy, or otherwise risk a lack of coherence between the directive and the Charter of Fundamental Rights and the Convention.¹³³

3.4.19. Protection of privacy (Article 21)

Article 21 requires that appropriate measures be taken to protect the privacy of victims during criminal proceedings, including any details of the individual assessment and any images of the victim as well as other personal data. The directive also asks that the media be encouraged to take self-regulatory measures in this regard.

A total of 23 Member States explicitly acknowledge the right to protection of privacy, while four Member States (BG, LU, MT, SI) do not.

¹³³ This is a similar ruling to that of the *Pupino case* (CJEU Case C-105/03), which found the interpretation of domestic law in Member States must conform to the wording and purpose of European framework decisions.

Number of Member States that have transposed Article 21	23
Member States that have not transposed Article 21	BG, LU, MT, SI

A minimalist adoption of the directive specifies that personal data is protected under various legal measures (whether as amendments to the Judicial Codes or as an act with relevance to data protection). The more wide-ranging approach (Czech Republic and Finland) ensures the privacy of the victim by allowing for testimony through audio-visual recordings or proceedings that can take place outside of the courtroom. Our research indicates that without these more detailed procedures, there is little added value beyond the specified right to respect private and family life (i.e. Article 8 of the European Convention on Human Rights or Article 7 of the Charter of Fundamental Rights).

The situation with regard to transposition in some countries is unclear.

3.3.20. Victims with specific protections needs (Article 23)

Article 23 is explicitly linked to the individual assessment required by article 22 of the directive and lays out specific protection measures that victims identified as particularly vulnerable. The article provides the following provisions for interviews with victims identified under article 22: interviews should be carried out in specially designed or adapted premises, by or through professionals trained for that purpose; all interviews should be conducted by the same persons unless this is contrary to the good administration of justice; and all interviews with victims of sexual violence, gender-based violence or violence in close relationships should be conducted by someone of the same sex as the victim, unless conducted by a prosecutor or a judge. Furthermore, the following measures are required for victims identified as having special protection needs: measures to avoid visual contact between victims and offenders; measures to ensure that the victim may be heard in the courtroom without being present; measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and measures allowing a hearing to take place without the presence of the public.

The directive does include exceptions, however, stating that “a special measure shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.”

Most Member States have adopted special protection measures in respect to victims with specific needs (such as child victims), but many Member States' judicial codes lack the detail contained in or envisaged by the directive. The provision of special protection measures in most cases stems from the right of protection (determined by an individual assessment).

Number of Member States that have transposed Article 23	19
Member States that have not transposed the directive	EE, LU, MT, SK

The avoidance of contact between victim and offender is specified in the legislation in most Member States, though we could not find it in the legislation of EE, LU, MT and SK. The mechanism for the avoidance of contact varies between allowing for testimony outside of court, the use of audio-visual recordings, and the temporary removal of the defendant. In some Member States (IT, FR, PL, RO) sub-articles of Article 23 were not transposed. There is currently a lack of information regarding the right of victims with specific protections needs in DE, LT, PL, SI and SE.

3.4.21. Protection of child victims (Article 24)

Article 24 concerns particular protections for child victims, in addition to the protections specified in article 23. Three specific protections are envisaged: the audio-visual recording of interviews and use of these recordings as evidence in criminal proceedings; the appointment of a special representative where there is conflict of interest between the parents and the child, or where the child is unaccompanied; and the right for the child victim to have access to a lawyer and receive legal advice in his or her own name where there is or could be a conflict of interest between the child victim and the holders of parental responsibility. In cases where it is hard to determine the victims age, the victim is presumed to be a child.

All Member States that have transposed the directive have a legal structure that fulfils the right to protection of child victims during criminal proceedings.

Number of Member States that have transposed Article 24	25
Member States that have not transposed Article 24	SK

In some cases, this protection is specified without reference to sub-articles of the directive (e.g. Ireland, Italy) with reference to the permissibility of audio-visually recorded testimony. In other cases (Lithuania, Poland, Romania), the right of a child to receive legal advice in their own name is not specified. The preclusion of parental responsibility is specified in most Member States. The situation in Slovenia was unclear and no clarification has been obtained from the national authorities, therefore it has been left out of this assessment.

3.5. Other provisions

Most other provisions refer to administrative measures, such as provisions on training and international cooperation. Whilst these measures have been transposed into legislation in some Member States, in others the need to create specific legislation for such measures was regarded as unnecessary. The practical level of training provided in sample Member States is considered in more detail in the application analysis (Section 4).

3.5.1. Training of practitioners (Article 25)

The purpose of this Article is to ensure all practitioners and professionals in contact with victims are sufficiently trained. This includes police, court staff, prosecutors, lawyers, among others. Training should include developing awareness on victims' needs in a professional and non-discriminatory manner.

There are some instances of Member States (AT, CY, CZ, EL, ES, HR, HU, LT, PT, SE) introducing the training of legal and other practitioner specifically with regard to victim rights.

Number of Member States that explicitly transposed Article 25 in national legislation	17
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Where it is specified in the national law, it is possible to distinguish between qualifying practices (i.e. the training, examination and certification of practitioners) and recurring training applicable to all practitioners, regardless of qualification date or position. Most Member States have opted to do this on an administrative basis, partly to more closely involve civil society organisations without introducing legal requirement with regard to their involvement, and partly as some flexibility was required across

the different types of executive body (e.g. differences between the police and public prosecution services).

Whether or not the absence of Article 25 in national law leads to compliance disputes is a subject for the Commission and European Court of Justice. However, in practice, the requirements of the directive here are mostly being fulfilled. Potential training gaps and deficiencies are explored in Section 4.

3.5.2. The cooperation and coordination of services (Article 26)

Article 26 encourages Member States to cooperate with each other and to coordinate actions on victims' rights at the national level. At a national level this involves inter-agency coordination among national authorities and agencies (which includes victim support services). Member States are also encouraged to exchange best practice.

Number of Member States that have transposed Article 26	13
Member States that have not transposed Article 26 in national legislation	BG, CY, EE, FI, DE, IE, IT, LU, MT, PL, PT, RO, SI, UK

While our research has shown that administrative mechanisms exist to facilitate cross-border cases, this is often not specified in law. A total of 10 Member States specify intra-EU cooperation by law, and 16 Member States do not. This has resulted in a mix of bilateral working agreements and ad-hoc query practices to facilitate the necessary exchange regarding individual cases. At the EU level, the sharing of best practices does not appear to be required by national law at present. There are, nonetheless, several European networks, both across national authorities (European Network of Victims' Rights (ENVR)) the European Judicial Network (EJN), the European Judicial Training Network (EJTN) and across victim support organisations (e.g. Victim Support Europe).¹³⁴ Our study was in some ways a test of both these network systems and to-date they have allowed us to consult the relevant authorities and organisations and facilitate a dialogue about victims' rights.

Regarding individual cases, reference should be made to Section 4.7.6 and 4.7.7 which examine any gaps exist in the treatment of EU nationals, their family members, or third country nationals in cross border cases.

3.5.3. Reference to the directive in official publications of the relevant laws (Article 27)

Most Member States with civil law systems making amendments to codes of procedure do not include references to laws in general and as such do not reference the directive. However, where specific acts amending these codes have been passed for the purposes of fulfilling the directive, the directive is usually specified.

¹³⁴ The European Network of Victims' Rights (co-funded by the [Justice Programme](#)) is an informal network which was established in 2016 under the Dutch Presidency of the EU. It brings together representatives from the Ministries of Justice of different EU Member States to work on improving the situation of victims in their own countries and in cross-border cases. The European Judicial Network (regulated by Council Decision [2008/976/JHA](#)) is a platform and promoter for training and information exchange of the European judiciary, while the European Judicial Training Network (also co-funded by the Justice Programme) promotes training and exchange of knowledge amongst the judiciary in different European countries. Victim Support Europe, meanwhile, is a membership organisation for providers of victim support (mainly NGOs but some public authorities are also members).

Number of Member States that reference the directive	22
Member States that do not reference the directive	BE, FI, LT, SI, SE

As to why the directive is not consistently referenced, even in singular acts, this may be due to the nature of some judicial systems. Some Member States highlight the precedence of the national legal system, even if they are subordinate to EU regulations, treaties and decisions of the CJEU. The effects of not recognising the directive may have implications for EU nationals residing in another Member State recognising their rights as a victim (see Section 4 of this report).

3.5.4. Compliance with Article 28 on the provision of data

Number of Member States that will comply with Article 28	6 confirmed
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Article 28 states that Member States should provide the Commission with data showing how victims have accessed the rights set out by the directive by 16 November 2017. Six Member States¹³⁵ have referred in transposing laws to the data provision requirements of the directive and thus formally transposed this Article. In most other cases, this is viewed as a purely administrative requirement. Hence, it is not appropriate to classify the other Member States as non-compliant. The practical implications of this requirement are discussed in the subsequent section.

4. Assessment of the application of the directive

This section provides an assessment of the directive's application. The analysis focuses on a sample of 12 sample Member States (AT, BE, CZ, DE, ES, FI, FR, HU, IT, LT, PL, SE). The assessment is structured around the questions that were set out in the terms of reference for this research paper.

4.1. Baseline situation before the directive

Country-specific contexts and characteristics help explain the development of victim support structures in the 1990s and 2000s in the different sample countries. In **Italy**, the state particularly supported victims of organised crime in strongly affected regions and developed a strong legal framework to protect victims of terrorism. In **Spain**, media coverage of cases of gender-based violence in the 1990s resulted in new approaches being developed to protect the specific needs of victims.¹³⁶ The country also suffered from terrorist attacks since the 70s, which led to a strengthened framework for victims of terrorism. Concern about domestic violence and violence against women also led to new victim support frameworks in **Finland**. In **Belgium**, several high-profile cases of crime triggered public outrage at the lack of support and lack of influence for victims during criminal proceedings¹³⁷.

In some countries, victim support services and specialised agencies focusing on specific types of crime were already quite well developed prior to the directive. For instance, **Belgium** has a historically strong culture of safeguarding victims' rights and ensuring their access to support services. Practitioners involved in criminal proceedings have been very well trained on victims' rights and needs. In **Austria**, strong administrative structures were already in place providing high levels of legal and psycho-social support. Before 2004, victims in Austria were considered civil claimants and enjoyed only

¹³⁵ In Finland's case, national authorities stated to us that they would comply with this requirement.

¹³⁶ According to interview feedback by a victim support organisation

¹³⁷ ¹³⁷ APAV, 2015, Country factsheet: Belgium, [Project IVOR: Implementing victim-oriented reform in the criminal justice system in the EU](#); see also this [Article published in The Guardian](#) in 2002 for an overview of the Dutroux case.

limited protection while testifying. Similarly, in **Germany** most of the legislation predating the directive was based on the Framework Decision, which granted basic rights to victims of crime.

Finland has been promoting the rights of victims of crime since the 1990s, and this is reflected in pre-existing legislation ensuring victims are heard in court. The overall service delivered by Finnish NGOs was reportedly very strong even before the directive, despite limited national funding¹³⁸. In **France**, the protection of victims under a special status (i.e., 'partie civile'), along with a comprehensive compensation scheme and the ability to rely on national associations, explains why the country also had a relatively high standard of victims' rights¹³⁹. **Sweden**, possibly more so than France, also had a high standard of victim protection and guaranteed many rights prior to the implementation of the directive.

The main **weaknesses among the countries that already had comprehensive victim support services in place before the directive** included: a lack of language provisions¹⁴⁰ (Austria, Belgium, France, Sweden); unnecessary secondary victimisation due to administrative burdens (Belgium); an overwhelming volume of information provided to victims (Austria); lack of training (Germany); little provision of information on victims' rights (Germany, Finland); lack of funding (Finland); and poor coordination among public services (Finland). In some cases, the individual needs of victims were not considered (Finland), and even though strong support structures already existed, generalised support was often less developed than specialised support (Germany).

While victim support structures were first created in Western European countries in the 1970s and 1980s, Central and Eastern European countries only established them in the 1990s and some in the late 2000s (CZ, HU, LT, PL). Reflecting this, Western European countries were also the first to incorporate and recognise victim rights in national legislation in the 1970s and 1980s, while Eastern European countries started embedding these in the 2000s. Initiatives bringing victim rights to the forefront of policy were mostly driven by the NGO sector, however, civil society was close to non-existent in central or east European countries. This may provide some explanation as to why certain Central and East European countries provided limited support to victims of crime.

Among the countries that had weak or limited victim support frameworks prior to the directive, an inefficient support system in the **Czech Republic** resulted from partially implemented provisions of the 2001 Framework Decision (see below). In **Spain** and in **Italy**, except for victims of terrorism, there was no legal framework providing victims with a differentiated legal status and little to no financial support from the government meant there was no national coordinated approach to protect victims. In **Lithuania**, too, special attention was only provided to some victims but not to others. Even though **Poland** had a 'blue-card procedure'¹⁴¹ in place to help coordinate victim support prior to the directive, this was also only applied to specific types of victims and was not used systematically. Polish victim support structures also received no national funding. In **Hungary**, reports show that despite high demand for victim assistance, support was not consistently provided by the state and NGOs before the directive, especially since there was an insufficient supply of state-employed psychologists¹⁴².

¹³⁸ FRA, 2015, Victims of Crime in the EU: the extent and nature of support for victims

¹³⁹ APAV, 2015, Country factsheet: France, Project IVOR: Implementing victim-oriented reform in the criminal justice system in the EU

¹⁴⁰ Language provisions relate to the right to interpretation and translation as in Article 7 of the Directive (see Section 3.4)

¹⁴¹ The blue card procedure was set up as a mechanism to help coordinate different services and to ensure that victims of domestic violence were given free access to medical, psychological, legal, social assistance and family advice (see section 4.3).

¹⁴² Schweighardt Zsanett, 2009, *Áldozatvédelem, áldozatsegítés és büntető felelősségre vonás*, Halasi, op.cit. n. 23

Some trends can be seen across both categories of countries. Overall, prior to the directive, it appears the legal framework focused mostly on the procedural rights of the defendant or perpetrator, and neglected the specific needs of the victim during criminal procedures. It also seems that a lack of funding and other factors severely hindered the development of cooperation mechanisms and limited the provision of services to a quite narrow group of victims. Generally, the legal frameworks were insufficient and all EU Member States were required to make amendments and transpose new features to comply with the directive.

The 2001 Council Framework Decision established basic rights for victims of crime within the EU. Member States had to adapt their legislations in line with the framework decision by 2006. Comprehensive amendments were made following the Framework Decision strengthening victims' legal status, and a range of rights were codified. However, the implementation reports from 2004 and 2009 revealed that the framework directive had not been effective in setting minimum standards for victims of crime across the EU. As such, the victims' rights directive, believed to be more comprehensive and concrete, replaced the framework directive in 2012¹⁴³.

It is possible to categorise Member States into two groups – the first with strong pre-existing support systems (AT, BE, DE, FI, FR, SE), and a second group (CZ, ES, HU, IT, LT, PL) with limited victim support prior to the directive, since they only provided support to specific types of crimes.

The nature of victim support structures and the role of the victim within the criminal justice system vary across Europe to this day. One explanation suggested in this report and also by others previously¹⁴⁴ is that Member States have differing legal traditions and different conceptions of victims and their role in the justice system. More particularly, in some Central and Eastern European countries, the lack of victim support services before the 1990s helps explain why some Member States still have less developed victim support structures.

The FRA¹⁴⁵ cautioned that the difference in national support systems would pose a challenge for some countries in implementing the Victims' Rights Directive. The report made a set of recommendations with regard to implementing the directive. These relate to, inter alia:

- Interpreting 'victim' inclusively also covering family members;
- Allocating sufficient resources on training, individual assessment, and separate waiting areas;
- Making legal aid available and removing bureaucratic hurdles to obtaining such aid;
- Put measures in place ensuring that victims at all stages of the process know of their rights and available support services;
- Facilitating reporting of crimes through information and training;
- Where not yet in place, create generic support services;
- Coordinate victim support and ensure effective referral of victims to other services and respecting victims' right to privacy;
- Complement volunteers with professional and permanent staff;
- Enhance EU support especially with regard to cross-border cases;
- Establish quality control standards and benchmarks while respecting the independence of civil society (and hence non-governmental victim support services).

¹⁴³ EC, 2017, Rights of the Victim

¹⁴⁴ APAV, 2016, Implementing Victim-Oriented Reform of the criminal justice system in the European Union; FRA, 2015, Victims of crime in the EU: the extent and nature of support for victims

¹⁴⁵ FRA, 2015, Victims of crime in the EU: the extent and nature of support for victims

4.2. Overall impact

To what extent have the new provisions introduced by the directive in the EU legal framework brought better assistance and protection for victims?

The answer to this question differs based on characteristics of the support system existing in countries before the directive. While each sample country has its own peculiarities, they can be grouped into three categories according to the magnitude of the impact the directive has had on their victim support systems to date:

- **Group 1:** Countries with a less-developed victim support system where the directive has had a significant impact on victims' rights (CZ, LT);
- **Group 2:** Countries with a quite well-developed victim support system, at least for some types of victims (e.g. sexual violence) but with some support provided on an ad hoc basis. In these countries, the directive has had a moderate impact (BE, DE, FI, FR, PL, SE);
- **Group 3:** This group is more diverse in terms of the level of pre-existing support but includes countries where the directive has had little to no impact for several reasons, including strong pre-existing system requiring less adaptation to new legal provisions of the directive, incomplete implementation or a lack of resources allocated to it (AT, ES, HU, IT).

Group 1 includes the **Czech Republic** where funding for victim support services has considerably gone up between 2010 and 2016¹⁴⁶ and awareness-raising campaigns have led to more victims requesting assistance. In **Lithuania**, the directive has been used as an advocacy tool by civil society organisations to focus the national debate on victims' rights and emphasise the needs of vulnerable groups including those victims of hate crimes. The directive has also triggered legislative changes improving the situation of victims. Despite the fairly high impact, the countries in this group still need to take further steps to reach the same level of victim support and protection as countries in the other two groups.

Group 2 includes **Belgium** and **France**, where the directive triggered the development of new integrated referral systems for victims where individual assessment now features much more prominently in the treatment of victims. It also includes **Germany**, where support systems were already very well developed prior to the directive, but where the directive accelerated a longer trend of rebalancing the focus in the criminal justice system which had previously been focused on the defendant and witnesses.

Likewise, in **Finland**, new provisions on individual assessment of victims and provision of information have reinforced an already fairly well-developed support system for victims. In **Sweden**, the main impact of the directive is that victims' right to information throughout the entire criminal proceeding has been strengthened. This also extends to automatic referrals by the police. Awareness of the needs of specific types of victims, e.g. victims of hate crimes, has also improved. In **Poland**, the directive has helped strengthen the procedures for victim treatment and extended them to other types of victims. It has also helped victim support services and public institutions to develop new forms of support and has drawn attention to the need for a unified national system of victim support.

Group 3 includes **Spain** where the fact that no resources have been allocated to the directive's implementation means that even if provisions have been transposed on paper, in practice this has made little difference. It also includes **Austria** which already had a very well-developed system for victim assistance and protection in place before the directive. In **Hungary**, the recent re-organisation of the

¹⁴⁶ The Czech MoJ provides funding to the entities accredited according to the Act on Victims of Crimes in the amount of CZK 10,415,829 in 2017, up almost 30% compared to the CZK 7,745,051 provided for the same purpose in 2016.

victim support system in the country means the support provided in practice does not yet match the expectations arising from the directive's legal provisions. Nevertheless, some improvements can be identified regarding protection of victims and financial and human resources allocated to this. Moreover, the fact that the directive's transposition made amendments to the criminal procedure code necessary triggered a change in the treatment of victims by the police and other actors. In **Italy**, the level of victim support and protection varies significantly across the country, with some regions having more developed systems in place than others. This does not seem to have changed since the adoption of the directive.

An 'opt-in' and an 'opt-out' approach

A key difference in terms of the approach taken to organising victim support is between an 'opt-in' and an 'opt-out' approach¹⁴⁷ whereby victims can either decide to opt in to support measures, or have to opt out explicitly. Put another way, in case of opt-out systems, this means that victims receive assistance 'by default', whereas the default situation in opt-in systems is that they do not receive assistance. According to feedback from stakeholders in some Central and Eastern European countries, this may determine how well-developed victim support systems are in different countries.

Countries such as the Netherlands and Sweden which already started developing victim support systems in the 1970s have opt-out systems which require the coordination of extensive networks of and a great deal of information exchange between support services to ensure all victims are reached, which can be costly. Opt-in systems, on the other hand, require fewer resources to be maintained and are hence more prevalent in Central and Eastern Europe which historically started to develop victim support at a later stage. Generally, research in other fields (e.g. relating to opt-in and opt-out systems for organ donation where Spain with an opt-out system has a much higher rate of organ donors than other countries with opt-in systems) shows that opt-out systems tend to increase desired outcomes. Even stakeholders from countries with opt-in systems consulted for this study regarded an opt-out system as an aspirational goal.

A third of respondents to our online survey believed the directive has had a significant impact in their country, two thirds believed it had a modest impact, with only 4% stating they believed it had had no impact at all. That the directive has brought better assistance and protection of victims was confirmed by respondents to our online survey, 57% of whom agreed with this statement with a further 22% strongly agreeing.

4.3. Information, training and coordination

Have the European Commission and the Member States ensured an appropriate framework and information tools to enable EU citizens to be informed clearly of their rights and obligations under this directive?

Victims of crime can only effectively exercise their rights if they are properly informed of them. Awareness of their obligations also helps ensure efficient criminal proceedings.

Most Member States make information available online on government websites and on the websites of various victim support organisations (e.g. AT, BE, FR, PL, SE). Others also rely on the EU

¹⁴⁷ This should not be confused with the legal meaning of opting in or out of EU policies under the principle of variable geometry which, for example, led Denmark to opt out of the Victims Directive

e-justice portal, a one-stop shop available in all EU languages.¹⁴⁸ The e-Justice portal is currently undergoing revision and a new version is expected to be operational soon. Stakeholders consulted for this study stated that, provided the new portal is updated regularly, it should serve as a valuable source of information of legal practices in different Member States and as a platform for information exchange. In the CZ and DE, the government websites provide a registry of all victims' support services in the country. In HU, a government website informing on victims' rights is currently under preparation.

The provision of **online information** is usually complemented by **leaflets** available at police stations, courts, hospitals, and in prosecutors' offices. These are available in all official European languages in AT; only translated into English in BE; and translated into the languages of migrant communities in FI and ES; and largely only available in French in FR. In most Member States, **telephone hotlines**, generally assisting specific types of crimes, complete the picture. In AT, **awareness-raising public campaigns** were carried out. DE also published a **handbook for victims** of almost 100 pages extensively covering all legal and support-related issues for victims of crime. The Victims' Rights Directive is explicitly mentioned in this handbook¹⁴⁹ which may constitute a good practice example. In ES, the specific information made available varies across regions.

Several factors may undermine victims' awareness of their rights and obligations. In some countries (e.g. Austria, Hungary), leaflets are not distributed consistently. Moreover, written information is not always the most appropriate way to reach victims and a brief verbal explanation may be more suitable. The latter is more resource-intensive, especially if it requires training. Finally, providing information in 'easy language' would help victims understand their legal rights, and this is currently not provided in many Member States.

Are practitioners (judges, prosecutors, police, administration etc.) sufficiently trained in line with the requirements of the directive?

The directive introduced many new concepts and provisions in relation to victims' rights that were previously not in place in many Member States. These can only be effective if all parties in contact with victims of crime are appropriately trained to correctly and consistently apply the directive's provisions. Generally, it is worth distinguishing between training of new staff, for example in police and judges' academies, and training of existing staff. In view of a Croatian stakeholder, it is more effective to train new staff since it is easier for them to ingrain principles of victim protection than for experienced staff who may be less willing to change. Nevertheless, given the necessity to implement the directive over a period of a few years, most Member States appear to have regarded training of existing staff as essential and have devised courses correspondingly.

In several Member States, national authorities argue that the **training provided to practitioners** was already sufficient for the implementation of the directive and only minor adjustments to the training curricula were necessary to cover all the directive's provisions. Usually, a combination of mandatory and voluntary training courses is on offer. Psychosocial support training is part of training programmes in a number of Member States (AT, FR). In France, 70 psychologists were hired by the Ministry of Interior to provide training to police officers across the country. In Austria, a specific, non-compulsory training course on the Victims' Rights Directive has been developed for existing staff and is run by the Management Zentrum Opferhilfe (Management Centre Victim Support). A first course in March 2017 was attended by 18 of the 180 lawyers currently offering legal assistance in courts, and another course ran in October. Apart from court assistants, established judges and prosecutors also receive compulsory

¹⁴⁸ [European E-Justice Portal](#)

¹⁴⁹ Bundesministerium der Justiz und für Verbraucherschutz, Opferhilfe, 2017, [Rechte von Verletzten und Geschädigten in Strafverfahren](#)

training on victims' rights in AT, BE, ES and FR. Roundtables in Austria ensure ongoing information exchange and learning for existing staff.

These achievements notwithstanding, in some countries (AT, BE, ES, FI, FR, HU, PL, SE), victim support organisations are concerned that some practitioners (judges and police officers) receive insufficient training which may lead to incidents of secondary victimisation.

Training of victims' support practitioners

- In AT, this appears to be particularly problematic in rural regions where there are fewer specialised police officers.
- In BE, one criticism was that the directive is not used as the starting point when devising training curricula meaning that practitioners may be well trained on some aspects of the directive but not on others. In particular, judges, prosecutors and the police need to receive better training on victims' needs and rights, including the right to be heard and informed.
- In CZ, while most practitioners, including police officers, receive some training on the directive's provisions, victim support organisations believe that they will only gradually become fully aware of the provisions.
- In ES, victims are still treated as witnesses rather than as actors with their own rights and interests, and the criminal justice system culturally still focuses on the defendant and convicted. The only exception are victims of terrorism which are awarded a special status accounting for their vulnerabilities.
- In FR, practitioners are still insufficiently trained on how to carry out an individual assessment, in view of a victim support service association.
- In FI, the government is carrying out a consultation on good practices in the area of training relating to the directive, but results are not expected before 2018.
- Similarly, HU is currently participating in a project 'Developing an EU Training Module for the Victims Directive' under the Criminal Justice Programme to devise a training programme for legal professionals based on the Directive. This includes a project to develop practices compatible with the Directive for the identification, assessment and referral of victims and which uses data collection, field research activities, comparative analysis, capacity-building and awareness-raising to achieve its goals. The project was designed in consultation with prosecutors and solicitors in Hungary, and a survey on victim needs was organised with victim support centres. The course is expected to launch in February 2018.¹⁵⁰
- In LT some training of police officers is funded through EU programmes – in 2017, 300 officers in 10 regions are expected to be trained on effective communication with victims of crime through the "Improved Response to Victims of Crime" project funded by DG Justice.¹⁵¹
- In IT, recently qualified judges can be expected to be properly trained on the provisions of the directive, but this is not the case for long-serving judges, illustrating the importance of ongoing and continuous training of practitioners.

¹⁵⁰ See: [Action grants](#) to support transnational projects on judicial training covering civil law, criminal law, fundamental rights and fight against terrorism and radicalisation-JUST/2015/JTRA/AG/EJTR

¹⁵¹ See: [List of applicants](#) for the Justice Programme, 2015, p. 11

- PL lacks a national programme of training, as well as common standards and an obligation for practitioners to undergo any specialist training, although some guidelines are published on the treatment of victims of domestic violence. The lack of official training reflects a wider problem in PL of a great reliance on voluntary measures and the work of NGOs.
- Finally, in SE, there was concern that general practitioners, including lawyers and judges, may not be fully aware of the requirements of the directive.

Respondents to our online survey were quite divided on whether practitioners are sufficiently trained on the requirements of the directive in their country. A total of 42% of those participating in the survey argued there was sufficient training but 58% suggested the opposite. This lack of a clear view may reflect how difficult it is to assess the impact of training in qualitative terms and to assess the extent to which training results in consistently improved victim treatment, support and protection.

Case study: Training in Germany - good practice example

Training measures going beyond the requirements of the directive are in place for police and judicial practitioners in Germany. These are largely organised at a regional level. The comprehensive training programmes in Germany can serve as a good practice example:

In the training courses for established police officers, victim protection forms an elementary part in all 16 states (Länder). The training is designed in line with Article 25(1) of the directive. The content of police training is constantly being evaluated and adapted to latest developments and needs. As regards training for new staff, victim protection is an essential component of the three-year Bachelor studies at police academies and is studied from various perspectives, including criminology, ethics, examination procedures, victimisation and psychology. The courses convey to aspiring police officers' empathy regarding communication with victims of crime. The focus lies on a conduct that is sensitive and appropriate for the situation distinguishing between different types of victims. The theoretical studies are complemented by practical training sessions.

In the state of Baden-Württemberg, for example, 21 training sessions for **police officers** are dedicated to stalking. To date, 500 police officers in Baden-Württemberg have received training on legal and psychological-tactical aspects of police intervention in cases of domestic violence. Furthermore, the Institute for Advanced Learning of the Police College (Institut für Fortbildung der Hochschule für Polizei) offers a seminar running over four days on "professional handling of victims - legal situation and victimology" and a seminar running over five days on "violence in social proximity -legal and psychological-tactical aspects of police intervention". Similar provisions exist in other states.

Moreover, certain police headquarters already have officers specifically responsible for victim protection who are tasked with raising awareness among their colleagues of the need for professional handling of victims. This is done through information sessions, events, workshops and meetings. These coordinators also inform their colleagues on recent legal changes strengthening victims' rights.

The **judiciary** (both established judges and public prosecutors) also receive extensive victim-related training. An emphasis is put on communicative capabilities of judges and public prosecutors and on consideration of psychological elements of victim protection. Introductory

training sessions cover topics such as “examination of victim witnesses”, “fact-finding in the courtroom” and “statement psychology when dealing with witnesses” and offender-victim compensation. Topics covered in training academies for new staff include de-escalation and communication, handling of traumatised persons in criminal proceedings, examination by judges of children and young people, compensation of damage, mentally disabled victims, domestic violence, and video recording during witness examinations. Some relevant trainings are provided by external experts, including medical and psychological experts. One legal expert¹⁵² criticises that trainings of judges on how to handle traumatised and mentally disabled persons are not mandatory, which means that there is a risk that interrogations lead to second traumatisation.

Legal practitioners are trained in the states (Länder) on aspects of victim protection such as victimisation, fear of crime, victims' rights, victim protection legislation, victim support and evaluation of victim-related systems and measures. An example of the academic approach to the issue is a regular seminar offered at the Johannes Gutenberg University Mainz on “psychology of criminal proceedings” which covers inter alia sexual abuse, examination psychology, sanctions in sexual violence law, and psychological aspects of examining children. Junior lawyers are also trained on victim protection issues by coordinators of witness protection services in criminal proceedings. Law officers are also trained to communicate in a professional and respectful manner with victims.

The explanatory document accompanying the 2. Opferrechtsreformgesetz/2nd Victims' Rights Reform Act (pre-dating the directive's transposition) stresses the importance of victims of sexual or other violent crimes to be accompanied by **specially trained personnel from victim support services** during examinations in the context of criminal proceedings. In a survey carried out by the Fundamental Rights Agency (FRA), six states answered they included victim support services in their training of police officers, mostly as visiting lecturers.

Two legal experts and one other stakeholder¹⁵³ issuing statements during the drafting process of the transposing legislation state that there should be nationally harmonised standards for the qualifications that psychosocial counsellors require to prevent federal fragmentation. This, in view of another expert¹⁵⁴, should include a combination of pedagogical, social work, and psychological interdisciplinary training.

Are the different public services (as well as other bodies) sufficiently coordinated and cooperating to ensure proper assistance and protection of victims?

Well-coordinated public services are essential for effective implementation of the directive and ensuring a minimum standard of protection and assistance across the entire territory of a country. Competence for victim support in most Member States is divided between the Ministry of Justice and the Ministry of the Interior, covering the judicial system and police force (usually first point of contact) respectively. The Ministry of Health and Ministry for Social Services may also be involved with regard to areas such as healthcare provision and the provision of shelter or psychological support, although their role is often less central. Other Ministries with specific areas of competence may also be involved.

¹⁵² Clemm, Christina, 2015, Schriftliche Stellungnahme zum Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren.

¹⁵³ Clemm, Christina. 2015. Schriftliche Stellungnahme zum Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren; Karls, Eberhard. 2015. Öffentliche Sachverständigenanhörung des Ausschusses für Recht und Verbraucherschutz – schriftliche Stellungnahme der 18. Wahlperiode am 17.06.2015; KOK e.V.

¹⁵⁴ Fastie, Friesa. 2015. Stellungnahme zum Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren.

In Lithuania, for example, the Ministry for Foreign affairs provides return, shelter, assistance, and referral for victims of human trafficking as well as being responsible for the protection of victims' interests abroad.

Approaches to **coordination between the different Ministries** vary significantly between countries. In Austria (as noted earlier) regular roundtables are organised by the Ministry of Justice to bring together key stakeholders and discuss cross-cutting issues. Minutes from these meetings are also circulated to all the relevant Ministries. In Sweden, the Crime Victim Compensation and Support Authority and the joint cooperation group for questions on victims' rights meet regularly and inform authorities and other organisations of any ongoing developments (for further information, see also p. 25).

In some countries (e.g. Austria), **coordination between national organisations involved in the criminal procedure** is good, whilst other organisations such as immigration services can be somewhat detached, according to our research. Many countries have automatic referral mechanisms in place between police, victim support services, prosecutors, and other relevant organisations (e.g. Belgium, France).

Victim support roundtables

In Austria, roundtables take place every two years in all parts of the country, bringing together judges, prosecutors, lawyers, and representatives from victim support organisations to discuss specific challenges in the regions. Reports on these round tables are made to the national Ministry of Justice. The transposition of the directive was part of such round table discussions, and the approach to be taken to individual assessments was developed in these fora, too.

The way that the services provided by **victim support organisations are organised at a national level** also differs by country, with the state playing an active role in this in some countries, national NGO associations performing this role in others, and no systematic central coordination apparent in others yet:

Coordination of victim support organisations

- In Poland, national coordination is nominally provided by the National Council for Victims. However, this Council appears to be ineffective. Our research showed no knowledge of this Council amongst key stakeholders and a general consensus that there was a lack of national coordination, suggesting that the Council may serve little function in practice.
- In Austria, the Czech Republic, Germany and Finland, which all have a central body responsible for coordinating victim support, the quality of provision appears to be more consistent.
- In France and Germany, several associations at a national level play a coordinating role.
- France, where victim support organisations are funded and supervised directly by the Ministry of Justice, was viewed by some Central and Eastern European stakeholders as a model they aspire to. However, while victim support is very well developed and cooperation has historically been strong, one stakeholder consulted for this study highlighted that there are overlapping missions and that many actors in the system are not well informed on the roles and responsibilities of these different interlocutors.
- In Lithuania, a national network of support services for victims of domestic violence is coordinated by the national Ministry of Social Security, but support services for other types of

victims are less well coordinated and not available throughout the whole country but rather provided on an ad hoc basis.

- In Hungary, the authorities maintain a public register of accredited victim support organisations which provides good visibility for support services for victims (rather than forcing victims to rely solely on medical/police referral).
- Where there is no strong national coordinating function (e.g. ES, IT, PL) there tends to be a heavy reliance on volunteerism and informal local networks.
- In countries with strong regional governments or devolved powers, such as Spain (which also fits the description of lacking a national coordinating function) and Belgium, victim support services are often coordinated at the regional level. In Spain, this has led to differing levels of coordination within different autonomous regions. In the case of Spain, the degree of coordination varies significantly from region to region.
- Conversely, in Belgium, Hungary, Italy, Lithuania (except for victims of domestic violence), there is little coordination among support services, suggesting this is an area of improvement.

Respondents to our online survey were quite evenly divided on the question of whether services are sufficiently coordinated in their country with 48% saying this was the case while 52% expressed the opposite view.

Attempts at improving service provision and coordination nationally are undermined by a lack of financial support from the national government.

In **Belgium**, there is strong cooperation between police and victim support services within the different Communes, however there is less evidence of any strong cooperation between the communes – both at government level and in terms of the victim support services. Before 2013, a national coordination meeting was held to try and promote greater coordination, however this was abandoned due to ineffectiveness.

In **Hungary**, it was pointed out by an NGO that the police can act as a bottleneck in that if they are the first point of contact for a victim and fail to inform that person of their rights, it becomes impossible for victims to access the services provided by other institutions such as NGOs, in which case it does not matter how well developed these are since they will not be accessed. One solution suggested by the NGO is to make training on victims' issues an essential part of courses at police academies so that newly incoming police officers are well aware. In view of the NGO, this may be more effective than trying to educate long-serving police officers 'on the job' but it would mean that it would take considerable time before a majority of police staff has been trained. In view of a Croatian national authority, it is useful to point out to police officers that it is in their own interest to provide such information to victims since it often means that victim support organisations then relieve the police from some of their tasks.

Monitoring of helpline calls

A good practice in this regard is that the Croatian Ministry of Justice monitors how many helpline calls were made by victims after having gone to the police first to check the consistency of referrals.

It is thus possible to identify which police officers do not provide sufficient information to victims and provide repeat training to them. Croatia also tries to incentivise NGO cooperation by handing out money to an umbrella NGO at a national level asking them to distribute funds among NGOs across the country. This way, misallocation of funds can be avoided.

In **Hungary**, the Ministry of Justice requires the main national NGO White Ring to report on how they spent public funds, how many victims they served, what level of education their victim support officers, and other metrics. This improves accountability. Likewise, the **Czech Republic** maintains a catalogue of organisations providing legal information and of organisations providing restorative programmes that have met minimum standards for provision of services and which are supervised on an annual basis.¹⁵⁵

Feedback from several Member States (e.g. Czech Republic, Croatia, Hungary) suggests that it is **essential to underpin the legal transposition of the directive with institutional changes on the ground** in order to make it effective. For example, in the Czech Republic, 74 new offices were opened across the country offering probation and mediation services to victims free of charge.

In **Croatia**, the Ministry of Justice is considering piloting a measure whereby police forces will be asked to pass on contact information on victims reporting crimes to victim support organisations – with the explicit agreement of victims who can then be contacted by support services. The police responded that they could only pass on information to such organisations registered with the courts, but not to other NGOs. The police are also generally more comfortable passing on information to prosecutors than to other institutions. Such legal concerns may explain a lack of cooperation or interaction between different organisations and why some victims may not access all the services they are entitled to. In view of one Croatian stakeholder, the lack of interaction is compounded by a lack of interlinkage between databases held by the prosecutors, the police, and the Ministry of Justice which due to data protection issues would be very costly. What seems necessary is 'buy-in' from all institutions interacting with victims to ensure they receive effective support from the moment they first contact one institutions to the point when they feel they no longer need support.

At a European level, cooperation has been ensured through the **European Network on Victims' Rights** (ENVR) and its follow-up, the ENVR Association¹⁵⁶. This has been a useful place to share experiences and common difficulties with peers in other Member States – through the six-monthly meetings and through an active mailing list. Information is also exchanged in the **European Judicial Training Network**¹⁵⁷ and the **European Forum for Restorative Justice**¹⁵⁸. Finally, victim support organisations can join Victim Support Europe, an umbrella organisation working on exchange of best practices, training and capacity-building for national NGOs to provide general services where these do not yet exist.

What are the measures in place across the Member States that aim at facilitating the reporting of crime?

Crimes that are not reported cannot be prosecuted and victims of such crimes may not receive the protection and support they need. Consequently, it is of paramount importance that authorities put in

¹⁵⁵ These indicators include, for example: i) provision of service within reasonable timeframe; ii) respect for dignity of the victim and taking account their age, health and psychical conditions, intellectual maturity and cultural identity; iii) the provider has rules laid down for treatment of the clients (victims) and observes them; iv) the provider attends to the complaints filed and maintains a record of such complaints.

¹⁵⁶ De Gruyter, The New European Network on Victims' Rights. The European Network of Victims' Rights is an informal network which was established in 2016 under the Dutch Presidency of the EU. It brings together representatives from the Ministries of Justice of different EU Member States to work on improving the situation of victims in their own countries and in cross-border cases. It is co-funded by an EU Action Grant and by the Government of the Netherlands. The ENVR has been a useful tool for national authorities to discuss transposition and implementation of the Victims Directive with their peers in other countries. It has regularly been mentioned as a source of information and support in our interview programme. Funding for the Network came to an end in May 2017, but there are plans to continue it in the form of the ENVR Association.

¹⁵⁷ EJTJN, A platform and promoter for training and information exchange of the European judiciary.

¹⁵⁸ European Forum for Restorative Justice, The Forum helps to establish victim-offender mediation and other restorative justice practices.

place measures to encourage and facilitate the reporting of crimes, while respecting the right of victims not to report and make certain services available to them regardless. A total of 68% of the respondents to our online survey believed that reporting of crimes was encouraged and facilitated in their country, with the remainder disagreeing with that statement.

In Austria, victims can be recognised as such by a victim support organisation before reporting a crime to the police. Austria also imposes a duty on medical staff in hospitals to report suspected crimes to the police and provide victims with information on their rights and access to support. It also helps when victims are given the opportunity to report a crime either orally or in writing, as is the case in the Czech Republic.

Hotlines are a key tool to facilitate reporting of crimes and have been confirmed for Austria, Hungary, Poland, Spain and Sweden helping all types of victims. In **Germany**, emergency hotlines exist for women having fallen victim of sexual violence. In Finland, a hotline exists for all victims but more support including free legal advice by phone are offered for victims of sexual violence. In France, in addition to a general hotline, special hotlines are set up after terrorist attacks and later streamlined into other support channels. Italy operates a special helpline for victims of discrimination. The importance of child helplines in the EU was emphasised in a study¹⁵⁹ which found that these can provide safe entry points into protection systems, act as a referral mechanism, inform victims of their rights, provide data to policy-makers on victims' needs and advocate for their rights. **Language issues** may undermine their effectiveness, however, when they are only available in the national language or a select few other common languages.

In Spain, France, Lithuania and Sweden, victims can also report specific crimes through **online tools**. In France, an online tool allows to submit a form, speeding up the process of reporting a crime, but the victim still needs to visit a police station in person. There is also an on-going project to file complaints directly online for victims of online scams. In Lithuania, a dedicated website allows victims to report a crime in Lithuanian or English and to request support via phone or email. In France, the Ministry of Interior has instructed the Public Prosecutor's Office to inform all police forces not to refuse any victim from filing a complaint. Experience from Italy suggests that the degree of trust citizens attach to local police as well as the degree to which the public prosecutor has a proactive attitude are key to encouraging reporting by victims. Hungary recently opened a 'walk-in' centre for victims in Budapest that is designed to encourage reporting and has staff speaking both English and Hungarian. Two more centres are planned to be opened in other cities. Moreover, the Hungarian authorities no longer require victims to present a police report for them to receive assistance, unless the assistance sought has financial implications (e.g. in case of compensation by the state, legal aid or psychological counselling).

Some sample Member States (e.g. Belgium, Poland) do not appear to have specific measures in place to facilitate the reporting of crimes. In Belgium, a stakeholder interviewed for this study believed that the media could play more of a role in promoting information on services provided by the police to victims to the wider public. In Finland, the government is currently developing a measure to facilitate the reporting of crime in line with the directive's requirements. In Sweden, no new measures were adopted since the directive to facilitate reporting of crimes since in view of the national authorities, Swedish law already complied with the provisions anyhow. Moreover, each of the 100 districts in the country has a Crime Victim Emergency Service facilitating reporting of crime and Swedish social services receive manuals on how to detect potential victims.

¹⁵⁹ Child Helpline International, 2014, [The Importance of Child Helplines for Child Protection in Europe](#).

What are the measures in place across the Member States to ensure victims are treated in the most respectful way?

Respectful treatment of victims by authorities and victim support organisations is essential to gaining victims' trust and to avoid secondary and repeated victimisation (see further below). Police and other practitioners need to be sufficiently trained to ensure they treat victims in a respectful manner (see also further above on training measures in Member States). Special trainings and manuals on these matters were confirmed for Belgium and Spain, and for law officers, police forces and other actors in Germany.

In general, the majority of victims will find their rights covered by national human rights institutions, including procedural rights such as that to a fair trial, and some aspects of compensation, non-discriminatory treatment, etc. A common practical measure ensuring respectful treatment of victims during criminal proceedings is to have separate waiting rooms available at court houses (e.g. in Belgium, Germany, and France).

Another method is the creation of an ombudsman or some other entity to which victims can direct their complaints. A **dedicated national ombudsman** for victims of crime could not be identified in any of the sample Member States, although such offices exist at a regional level in Spain, for example, and many countries have ombudsmen or other entities in place covering some but not all types of crime. Germany has an ombudsman in charge of questions related to sexual child abuse, and a special ombudsman was instituted in response to the Berlin terror attacks of 2016 whose role it is to 'open doors for victims vis-à-vis national authorities'. Croatia has an ombudsperson for children and disabled people who can cover aspects of victimisation. Lithuania has an equal opportunities ombudsman who can be approached by victims of sexual violence but does not cover other types of crime. Moreover, special victims' officers exist in police offices. In Poland, different ombudsmen exist for citizens' rights, for children and for the equal treatment. Hungary has a Commissioner for Fundamental Rights which victims can contact in case they feel mistreated by authorities. Nevertheless, a Hungarian NGO representative stated that many victims were scared to approach the authorities and preferred contacting victim support organisations instead (the same was confirmed for the Czech Republic). In Austria and Lithuania, stakeholders believed the introduction of a dedicated ombudsman for victim could encourage reporting and provide better oversight of the treatment of victims by different organisations. In Belgium, all communities have entities in charge of ensuring the respect of fundamental rights.

What approach has been taken by Member States as regards the role of the victim in the justice system?

The directive can be regarded as the latest step in an ongoing endeavour to balance the rights of victims with those of the defendant in criminal justice systems. In Germany, there is a debate about the best way to balance these two potentially conflicting interests to create justice, and the arguments exchanged may be of relevance for the EU as a whole. The directive is strengthening the role of victims in the criminal justice system, and some experts¹⁶⁰ believe that it may have done so at the expense of defendants' rights, stressing that defendants may be innocent and that consequences of a criminal proceeding are much graver for the defendant than for the victim, who usually seeks redemption and potentially compensation. A concrete example where victims' and defendants' rights may, in view of some experts, be in conflict is in relation to the right of defendants to also examine witnesses. This right could be limited if these witnesses were accompanied during court hearings by counsellors, as foreseen by the directive. Others¹⁶¹ argue that all legal practitioners involved in criminal proceedings know a

¹⁶⁰ See, for example: *Gerät der Strafprozess in eine Schiefelage?*, von Prof. Dr. Robert Esser, 2015.

¹⁶¹ Dr Witt, Olaf, Richter am *Landesgericht Stralsund. Stellungnahme zum Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren* (3. Opferrechtsreformgesetz/BT-Drucksache 18/4621).

defendant is considered innocent until proven guilty and that strengthened victims' rights have no bearing on this.

A key term in this context deserving an explanation is that of '**restorative justice**'. Restorative justice is defined by the European Forum for Restorative Justice as "addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved".¹⁶² In other words, restorative justice exists to prevent, reduce and repair the harm of crime experienced by both victims and offenders. This typically involves the offender, the victim, and a facilitator, and may involve measures such as mediation, conciliation, conferencing and sentencing circles. Essentially, restorative justice places a greater emphasis on the victim of crime, since it gives a role to the victim and the community as a whole.

Restorative justice has been adopted more widely in recent decades in many countries, often citing benefits to young and first-time offenders as a reason, but also benefiting victims by putting their personal damage at the core of the process, in view of the International Juvenile Justice Observatory¹⁶³. The Centre for Justice & Reconciliation also explains that restorative justice substantially reduces repeat offending in some cases; it also reduces victims' post-traumatic stress symptoms and reduces the victims' desire for revenge against their offender¹⁶⁴.

Despite these potential benefits, restorative justice is not an undisputed concept, and has not been introduced by all EU Member States (see also section 3.4.). While there are good examples of restorative justice in practice, it has produced mitigated results as regards victim participation and reparation for injury¹⁶⁵. There is a tendency for overstating the benefits of restorative justice: victims' problems are not fully resolved through these methods and the objectives of reparation should not confine us to a simplistic view of victims' needs and the complex psychological processes in their recovery¹⁶⁶. One study argues that the current top-down approach to restorative justice should be complemented or replaced by a bottom-up approach to give the concept new meaning.¹⁶⁷ Article 12 of the directive sets out the right to safeguards in the context of restorative justice services. Some crimes will be less suitable for restorative justice (e.g. terrorism, domestic violence).

Victims receive various forms of support throughout criminal proceedings. In some Member States (e.g. Austria), psychosocial support and accompaniment are provided free of charge. In the event of a decision not to prosecute, support services are provided to appeal the decision. Support may also be provided for a civil trial after the criminal case is closed.

In some countries, victim support services complain that the victims' needs are still not at the centre of the criminal justice system which rather focuses on the investigation of the crime and the defendant. An additional hurdle for victims in BE is that they have to sign a declaration before being considered a victim with rights in the criminal proceeding. In Czech Republic, where a 2014 FRA report found

¹⁶²European Forum for Restorative Justice, Practice Guide for restorative justice services, The Victims' Directive, Challenges and opportunities for restorative justice.

¹⁶³ International Juvenile Justice Observatory, Restorative Justice for Victims in the EU, Reparation to the victim in the European Juvenile Justice Systems: Comparative analysis and transfer of best practices. JUST/2013/JPEN/AG/4513.

¹⁶⁴ Sherman, LW and Strang, H (2007) Restorative Justice: The Evidence. London: The Smith Institute, as seen on: Centre for Justice & Reconciliation.

¹⁶⁵ Griffiths, G.T. (1999). 'The Victims of Crime and Restorative Justice: the Canadian Experience,' International Review of Victimology, 6: 265-316.

¹⁶⁶ Gaudreault A., President, Association québécoise Plaidoyer-Victims/Lecturer in Victimology School of Criminology, Université de Montréal, 2005, The Limits of Restorative Justice, Article published in the Proceedings of the Symposium of the École nationale de la magistrature, Paris: Édition Dalloz, 2005.

¹⁶⁷Gavrielides, Theo, Repositioning Restorative Justice in Europe, 2015.

deficiencies, new awareness-raising measures and information provisions have been put in place¹⁶⁸. Similar developments can be observed in Hungary. In other countries (e.g. Germany), the shift from a defendant- to a victim-centred justice system started well before the directive's adoption which merely reinforced this trend. In FR, a move to strengthen the role of victims in criminal justice started as a result of terrorist attacks in recent years. One practical deficiency was identified in Hungary where victims still need to be pay for copies of their case files at the police, while perpetrators can obtain a free copy.

Virtual courts – implications for the Victims' Rights Directive

There are on-going developments in the UK to create virtual courts¹⁶⁹. Given efforts to make more extensive use of digital technologies to modernise the public sector, similar initiatives can be expected in other Member States as well. These may have repercussions on how the directive operates in practice, and the extent to which victims can exercise their rights. In the UK, some prisons already have media suites for hearings with prisoners to be held virtually.

Further research could be carried out to examine the implications of these trends for victims' ability to exercise their rights to be heard, to understand, and their right to interpretation which could become reliant on IT systems. For example, a situation where an interpreter is linked to a victim in a virtual environment could diminish the victims' ability to understand. Conversely, through increased efficiency, the increased use of virtual court proceedings may increase the number of trials and reduce the time in which offences are brought to trial, which would both benefit victims.

While the directive explicitly encourages the use of communication technology, such as e- mail, video recordings or online electronic forms for making complaints, for example where it allows victims to avoid direct contact with offenders (Art. 23), the directive may not account for all conceivable IT developments in the near future.

Are the Member States prepared to comply with their obligations set out in Article 28 of the directive, to supply by 16 November 2017 to the European Commission data showing how victims have accessed the rights set out in this directive?

Article 28 of the directive obliges Member States to communicate available data showing how victims have accessed the rights set out in the directive. Member States need to do so by 16 November 2017, and every three years thereafter. Receiving such data should allow the European Commission to assess its correct transposition and application, and its effectiveness in achieving its objectives.

The wording of the Article 28 is rather vague about **the specific kind of data requirements**. The wording “available data showing how victims have accessed the rights set out in this directive.” could be interpreted to mean that Member States are not required to collect additional data specifically to be compliant with the directive but merely compile information based on data already available.

¹⁶⁸ FRANET, 2014, Victim Support Services in the EU: An overview and assessment of the victims' rights in practice – Czech Republic

¹⁶⁹Ministry of Justice, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals Transforming Our Justice System, September 2016, Transforming Our Justice System, Joint Vision Statement

The **scope of the data** is specified in Recital 64. The fundamental metrics are: (i) the number of and type of reported crimes; and (ii) the number, age and gender of the victims. Further metrics are specified for judicial data (including the number of cases that are investigated, and persons prosecuted or sentenced) and service-based administrative data (including the number of referrals by police to support organisations and the take up of victims with support services). In fulfilling the requirements of the directive, the most important data variables would consist in the take up of victims to receiving support (i.e. how many victims are referred to victim support, what is the drop-off rate, how many victims do not receive support despite requests), and the type of victims both by crime area and by dimension (child, gender etc) to identify the most vulnerable and which victims' authorities must help further.

The **guidance document** issued by the Commission in support of this directive specifies that 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).

It is uncertain that all Member States will comply with the 16 November deadline and data requirements. Of those Member States where we could obtain information, four (AT, BE, CZ, DE) stated they would fulfil the data provision requirements seen in the directive. Eight Member States (BG, EL, ES, IT, HU, HR, LT, PT) were more doubtful that the data provision requirements seen in the directive could be fulfilled by the deadline, whether due to inadequate monitoring systems or problems interpreting the meaning of the directive. In HU, for example, a centralised reporting system is being set up but will only be able to provide limited data by the November deadline. In Italy, a scoping exercise is being carried out to assess the level of victim support at the national level, but it is only once this exercise is complete that an accurate assessment of data gaps will be able to be carried out.

As shown in Section 3, data collection is very rarely referred to in national legislation. In some cases, national authorities deemed it more appropriate to deal with the requirements here on an administrative basis rather than specifying it in legislation. It is expected that Member States will express their compliance through official communiques with the Commission. The lack of a legislative foothold in this area though will have significant implications for the effectiveness of the monitoring systems used in Member States and the consistency of the data provided pan-EU.

Authorities in several countries (Czech Republic, Croatia, Hungary) stated they were unclear as to the format in which the European Commission expects data to be provided and that they were missing respective instructions. The Croatian Ministry of Justice stated they had inquired about this in 2016 but had received no response. Moreover, there appears to be disagreement in some countries between national authorities, service providers and NGOs on what data is collected and how accurate this data is. Our research indicates that relevant data is often not held centrally, and is rather held within the Police, various government executive bodies, and various victim support organisations.

Even in Member States with a well-developed victim support system in general (e.g. Sweden), different actors hold different data. It is therefore doubtful that the metrics envisaged in the directive will be met. Some national authority representatives consulted for this study believed that it would be relatively easy to compile data from official institutions but that this would be trickier in case of NGO data. Given that many victims may be in contact with more than one support organisation, there may also be a risk of double-counting.

4.4. Individual assessment of victims

How are individual assessments of the needs of the victims conducted? Are there best practices in this field?

The requirement to carry out an individual assessment is one of the key innovations of the directive that triggered actual change on the ground in many Member States, including in AT, CZ, FI, FR, HR

and HU. Nevertheless, in several Member States (e.g. AT, DE, IT) there is still insufficient clarity as to what an individual assessment should entail, when it should be carried out, and who should be involved, according to victim support organisations. The directive's provision stating that such an assessment should be carried out 'as soon as possible' is somewhat ambiguous.

In practice, in some countries (e.g. Hungary) the level of protection and support provided still varies for different types of victims, with systems for victims of sexual violence typically more developed than for others, and police forces in practice often still adopt a 'yes/no' approach to determine whether a victim has special needs, without going into depth. In Croatia, the Ministry of Justice tried to persuade victim support organisations to extend support to all victims of crime and provide funding for this. However, many organisations still tend to support primarily women and children, oftentimes because widening support has major financial and human resources implications. Nevertheless, the directive has clearly formalised individual assessments which has benefitted victims even in countries where previously such assessments were at least carried out on a voluntary and ad hoc basis.

Respondents to our online survey largely agreed that individual needs of victims were taken into account with only 13% saying this was not the case.

There are ongoing discussions in the European Network of Victims' Rights Association on how to design individual assessments, especially in the context of the **Evaluation of Victims project (EVVI)**. This project was a joint initiative between the French Ministry of Justice with the support of other national ministries, and victim support services Apoio à Vitima. A handbook for practitioners on how to implement the directive was created as a result of this project¹⁷⁰. One recommendation emerging from these discussions is for the individual assessment to be carried out before the public prosecutor's office becomes involved in a case, and preferably at first contact with the police.

The situation as regards individual assessments differs quite substantially across Member States. In some countries (e.g. BE, CZ, DE), individual assessments are prescribed for victims with special vulnerability such as minors, victims of sexual violence, etc., but an individual assessment may not be carried out for *all* victims of crime necessarily. Rather than having an integrated system for individual assessment, Belgian officials rely on 'chain cooperation' based on interventions and referrals as appropriate. This lack of clarity may cause problems, e.g. concerns have been expressed in IT that a lawyer defending the defendant could challenge the findings of the individual assessment and, for example, oblige a victim to face the perpetrator in court.

Conversely, in ES it is clearly specified that an individual assessment needs to be carried out by the police officers and offices of victim support at the initial stage of an investigation. These assessments serve to determine the level of psychological support needed and the protection needs during criminal proceedings.

Finland seems to have a more systematic approach to individual assessments since transposing the directive. In practice, identifying specific protection and referrals to victim services are still not sufficiently implemented. Lithuania has an elaborate points-based system that assesses the vulnerability of a victim on a scale from 1 to 30 based on a set of categories. Italy, Lithuania, Portugal and Romania participate in a new project funded by DG-Justice in September 2017, with the aim to map available services in these countries and improve referrals and individual assessment.¹⁷¹

¹⁷⁰ French Ministry of Justice, in close co-operation with the French Victim Support and Mediation Institute (INAVEM), the French National School for the Judiciary (ENM), the Crown Prosecution Service (United Kingdom), the Polish Ministry of Justice (Poland), the 'Secretaria General de la Administracion de Justicia' (Spain), the 'Associação Portuguesa de Apoio à Vitima' (Portugal), and 'GIP-JCI - Justice Coopération Internationale' (France), 2015, *EVVI (Evaluation of Victims) Guide*

¹⁷¹ Project still in development, financed under grant number: 760463 – VICToRIIA – JUST-AG-2016/JUST-AG-

Some different approaches to the individual assessment of victims are explored in more detail in the case study below.

Case Studies: Different approaches to the individual assessment of victims

France

In France, one of the directive's major impacts was the creation of a **standardised individual assessment** to determine the special needs of victims throughout the criminal procedure – this can be considered good practice. As soon as possible, victims undergo a preliminary individual assessment by the authority that first hears them (police or *gendarmerie*). The forms are computerised, and were provided to us following an interview with national authorities. The form is divided into four sections, with the first covering questions on the nature and severity of the crime, second the circumstances surrounding the crime, third the vulnerability of the victim and last, the estimated risks for the victim. The form is very comprehensive and seeks to understand the individual needs of the victim.

After undergoing the preliminary assessment, police refer victims to victim support services, which are mostly present at police stations, houses of justice, the courts, the *Tribunaux de Grande Instance*, and soon at the Court of Appeal. When victims contact victim support organisations, they also undergo a personalised assessment of their needs. During the court hearing, the police officer that was responsible for hearing and doing the assessment communicates the main elements of the crime to the judicial authority who has the authority to make the victim undergo a more thorough assessment. The in-depth evaluation is conducted by victim support services, and generally implies special protection means will be required during the criminal proceedings (victims of gender-based violence or domestic violence).

The victim support service involved may even call for the victim to be granted a '*Très Grand Danger*' (TGD) or Grave Danger Status. This is part of an experimental project called '*Téléprotection contre Grave Danger*', it allows the public prosecutor to assign a mobile phone to victims of gender-based or domestic violence in cases of grave danger. Victims may alert police forces and benefit from priority interventions directly through a telecare platform. The Ministry of Justice funds the follow-up individual assessments for persons who are granted such phones. In 2016, the costs were of 496 550 EUR, against 201 966 EUR in 2015, an increase of 145,9%. The Service de l'Accès au Droit et à la Justice et de l'Aide aux Victimes (SADJAV, which is part of the Ministry of Justice), has contributed 1 193 371 EUR in 2016 to install personalised assessments in more than 168 trial courts and *Tribunaux de Grande Instance*, and to make experiments prior to setting it in place in 2014 and 2015.

Poland

In Poland, a pre-existing procedure was adapted to meet the requirements of the individual assessment of victims needs under article 22. Known as the **blue card procedure**, this mechanism has previously been used to help coordinate different services and ensure that victims of domestic violence were given access to free medical, psychological, legal and social assistance and family advice. In order to meet the requirement for an individual assessment, the Polish government chose to expand this procedure to apply to all victims with particular protection needs.

The blue card procedure consists of four stages: firstly (Card A), an individual interview is carried out - usually by the police, a public prosecutor or by a social worker. This is often accompanied by

a home visit to assess the victim's security situation. Secondly (Card B), a "family diagnosis" is filled out – usually by the social worker in cooperation with the victim. This includes the victim's personal data, address, information about children, description of the situation, evaluation of the psychological situation of a victim by the psychologist, and the expectations of the victim. Thirdly (Card C), an interdisciplinary working group is called which includes representatives from the police, social workers, medical staff, psychological practitioners (if necessary) and lawyers where information is shared and a support plan is put in place, including identifying what type of support is necessary (e.g. medical, psychological, physical protection etc). Once a decision has been made on the necessary support, this is usually provided by the social worker and other healthcare workers. Social workers also help to continuously monitor the victim's situation and needs.

The directive has expanded the categories of victims for whom a blue card procedure might be instigated and has helped to raise awareness around this procedure. However, its instigation is still not as consistent as might be hoped. There are often delays before the individual assessment is carried out, and sometimes a blue card is not opened at all. This problem could be overcome with more dedicated resources, and targeted and consistent training for police officers in particular.

Lithuania

In Lithuania, an entirely **new system was introduced to meet the requirement for an individual assessment**. The assessment is carried out by police officers on first contact with the victim and is guided by a form that has been developed especially for the purpose. The police officer is asked to assess the victim according to a series of categories of vulnerability, including the type of crime, the victim's relationship to the perpetrator, the victim's level of distress, general states of health, social environment etc. For each of these categories, a maximum of two points may be given. The points are then added up to reach a total out of 30. If the total amounts to 10 points or less, the level of risk is perceived as very low, 11-20 is perceived as a medium risk, and 21+ qualifies a victim for special protection measures.

The form is meant to act as a guideline for the assessment, giving the officer pointers on what to look for. The points system is meant as a guide, but ultimately, the decision on whether a victim in need of specific support measures is left to the discretion of the officer themselves. Unfortunately, without appropriate training and support there is some evidence that the form is being used in an overly mechanistic way – sometimes as a self-assessment questionnaire where victims are asked to rate their own vulnerability on each of the categories. A further criticism is of the use of categories – in order to qualify for special protection, a victim must be assessed as very vulnerable in over 10 categories – sometimes a victim may be very vulnerable in one category and still be in need of special protection measures. Although the points system is meant as a guidance tool rather than a rigid assessment, without appropriate training it could lead to vulnerable victims being denied support.

Lithuania is therefore a good example of a country which has developed a new approach to the individual assessment, with useful tools to help practitioners carry out this duty. However, more support in the form of training and guidance is necessary in order to ensure it fulfils the requirements of the directive.

4.5. Recognition of victims with special needs

Does the implementation of the directive pay due attention to the different types of victims (child victims, victims with disabilities, victims of gender-based violence, victims' families, etc.)?

Most Member States covered by our in-depth research already had special support systems in place for children, and victims of domestic and sexual violence. Other victim groups, such as victims of hate crime and victims of terrorism did not receive such special treatment.

Many countries do not explicitly distinguish different types of victims in the legislation per se but refer to victims with special vulnerabilities in their national provision on how to carry out an individual assessment. To the extent that Member States have developed a comprehensive approach to individual assessments (see above), they are now able to pay due attention to victims with vulnerabilities and/or in need of special protection. Nevertheless, in some countries (e.g. Austria, Lithuania), victims of sexual violence still receive faster special protection than other types of victims. Victims with disabilities have received little attention in Austria and Belgium. In Czech law, victims with particular vulnerabilities include an extensive list of victim categories from children to those in danger of secondary victimisation due to their sexual orientation, race, health status, etc.

Germany and Spain appear to have already distinguished between a wide range of victim categories prior to the directive. France, Italy and Spain seem to be the only countries where victims of terrorism already received a special protected status even before the adoption of the directive due to their respective historical contexts. The directive has not yet led to an extension of special protection status to a wider range of victims with special needs. In Poland, the extension of special protection rights to victims other than victims of children and victims of domestic violence has not had a great impact in practice, because these two groups account for the majority of victims. Nevertheless, a change in attitudes among key stakeholders has been noticed, partly attributed to the broader recognition of a victim as someone who has suffered “any harm or violence” which opens protection up to other types of victims and gives everyone the right to the blue card procedure (see above case study on different approaches to the individual assessment of victims). In addition, deficits with regard to the treatment of children and persons with disabilities in institutions were pointed out by a European NGO representative as being an issue in several countries (BE, CZ, FR, HU).

4.6. Secondary victimisation

Does the directive protect in practice the status of victim and is secondary victimisation avoided?

Secondary victimisation, in the form of repeated subjection to cross-examination, contact with the offender, societal prejudice and public exposure of details of their private life, is a recognised problem in all EU Member States. One of the problems in overcoming this is protecting the victim while ensuring a **balance between the victim's rights and those of the defendant**.¹⁷² Ensuring the procedural rights of both defendant and victim are equally protected is a key tenet of all European justice systems, as guaranteed by the EU Charter. The question of protecting the “balance of interests” between victim and defendant is further complicated within the European context by the multiplicity of different legal systems in different Member states, meaning that a lot of space has been left within the directive for interpretation at national level to ensure that any changes allow for both parties to exercise their rights within the existing legal system.¹⁷³

¹⁷² European Commission, DG Justice, *Rights of suspects and accused*, for more information on how the balance of rights is viewed at the EU level

¹⁷³ For more detailed information on this, see Chapter 7 of Mitsilegas V., *EU Criminal Law after Lisbon: Rights, Trust and the Transformation of Justice in Europe*, *Bloomsbury Publishing*, 2016

Areas where this question arises include those covered by the right to be heard (particularly the right to participate in criminal proceedings) and the right to special forms of protection (such as the right to not come into contact with the defendant). This may impact upon the defendants' rights to answer the accusations made against them. In Italy, for example, the defendant has the right to face their accuser in court and answer the accusation directly. This may lead to conflict between the defence lawyer and those tasked with protecting the victim, as avoidance of contact could be interpreted as impinging on the accused's right to a fair trial. Stakeholder consultation in CZ, IT, LT and HU, and ECHR case law cited in Slovenia¹⁷⁴, suggests that secondary victimisation is an issue when a victim is subject to extensive cross-examination procedures in order to establish the guilt of the defendant. Further research is required to establish the extent to which the directive is addressing the issue of secondary victimisation.

A number of measures have been included in the directive to address **secondary victimisation**, namely those covering the individual assessment, the right to privacy and special protection needs. The processes in place to prevent secondary victimisation are more apparent in some Member States (FI, SE) than others. The requirement for training of practitioners is also a key measure to help tackle the underlying societal attitudes and misunderstandings which may lead to incidences of secondary victimisation. In a number of countries, one of the key impacts identified in our interview programme was a changing awareness and increased sensitivity towards the status and role of the victim within the criminal justice system, in part thanks to training courses (ES, IT, HU, LT). The focus in these countries has historically been on the crime committed and the treatment of the defendant rather than the needs of the victim, something which can be seen by the fact that many of the transpositions were carried out principally by updating the criminal code.

As mentioned above, this shift has led to some difficult considerations regarding the balance of interests between victim and defendant. The directive has acted as a catalyst in promoting national conversations about the role of the victim, and these conversations are seen as an important factor in moving towards a more victim-centred regime. Further examples of measures introduced to reduce secondary victimisation include the use of accompaniment throughout the court system (AT, DE, FI, and some parts of IT), and the use of audio-visual link-ups or pre-recorded interviews (IT) to avoid direct contact between the victim and defendant. Further training and awareness-raising on this issue is needed in all MS included in this analysis.

4.7. Specific types of victim

4.7.1. Victims of terrorism

Given the increase of terrorist attacks in the EU ever since the Victims' Rights Directive was adopted, and the unpreparedness of some public actors, to what extent have victims of terrorism been properly assessed according to the individual assessment as covered in Article 22 of the directive, and, consequently, how have their individual needs been addressed?

Given that sensitive information related to terrorist attacks is not easily being disclosed, have victims of terrorism been properly informed about their case in accordance with Article 6 of the directive?

¹⁷⁴ The case of *Y. v. Slovenia* (May 2015) refers to a sexual assault case, in which the victim was cross-examined personally by the defendant as well as being approached by them during a recess and invited out to dinner. When the case was brought before the ECHR, judges found that "cross-examination should not be used as a means of intimidating or humiliating witnesses" and that personal insinuations made by the defendant regarding the witness 'exceeded the limits of what could be tolerated for the purposes of enabling him to mount an effective defense'. An intervention by the judge to limit the defendant's remarks would have helped to uphold the victim's procedural rights and diminish their distress without curtailing the rights of the defendant. For more information, see: [The Court's Approach in Y. v. Slovenia, Annotated, Corina Heri, Strasbourg Observer 19 June 2015.](#)

The terrorist attacks of recent years in Europe have highlighted the importance of adopting a specific approach to treating victims of such attacks, including family members of deceased. The European Parliament recently published a study exploring the situations in BE, HU, FR, DE, ES and the UK before and after the Paris attacks in 2015 up until the 2017 attacks in Barcelona¹⁷⁵. The study shows that the needs of **victims of terrorism** have been considered to a varying level but that essentially, new laws and policies have been put in place across all Member States since the attacks in Paris in 2015.

Based on our research, in most sample Member States, there are no separate **mechanisms to assess victims of terrorism or to address their individual needs** (AT, CZ, DE, FI, HU, LT, SE). In these countries, victims of terrorist attacks undergo the same assessment as any other victim of crime. However, some Member States, even if there are no separate mechanisms, address the individual needs of victims by systematically categorising them as vulnerable victims and ensuring that they are treated as such (CZ, FI, PL). Some Member States have not suffered any terrorist attacks in recent years, and others experienced small-scale attacks, meaning victims of terrorism have been of low priority compared to other victims of crime. Nonetheless, it is important to consider that victims of terrorism are often nationals from a variety of Member States across the EU. For instance, the Barcelona attacks early this year involved victims with at least 34 different nationalities¹⁷⁶. Regarding these **cross-border victims**, two main categories can be distinguished, including nationals of Member States victimised abroad, and foreign nationals victimised within the territory of the Member State¹⁷⁷.

France, Belgium, Italy and Spain have a specific context in relation to terrorist attacks on their soils. Consistent with our findings, the recent report published by the EP found that **France and Belgium** had made the most significant changes to how victims are helped, although some smaller initiatives have been seen across all Member States¹⁷⁸. This has been particularly evident because prior to the attacks in Paris in 2015, Belgium and France had limited means for assessing victims of terrorism on an individual basis. In Belgium, policy and legislative changes were introduced to address the needs of victims for 'recognition, information, commemoration, interpretation, translation, compensation and foreign victims of terrorism'¹⁷⁹. In France, changes were made in many areas, but most importantly the General Secretariat for Victim Support (SEAV) was replaced by an inter-ministerial delegation. In **Germany**, a new compensation scheme from the state for family members of victims of homicide was introduced earlier this year, and a special Ombudsman was instituted following the Berlin attacks in 2016.

Other Member States, including Italy and Spain, already had elaborate provisions for victims of terrorism. In **Italy**, national laws protecting and providing victims with a separate special protected status exist since the 1980s. Even though they undergo the same process as any other victim, awareness surrounding their rights is relatively well developed.

In light of recent terrorist attacks in the EU, certain Member States have had to urgently adjust existing national frameworks to address the needs of victims of terrorism since pre-existing measures did not adequately support victims of terror. The attacks that took place in Paris in November 2015 and in Brussels in March 2016, created a momentum for improvement in Belgium and France. Both have been included as best practice examples since they have put in place new mechanisms within a relatively short time frame.

Following the wave of terrorist attacks in **Belgium**, there was widespread criticism because no specialised individual assessment or specific provisions existed for victims of terrorism. Police, practitioners and health services (some through crisis points that were set up at the time of the attacks)

¹⁷⁵ European Parliament, 2017, [How can the EU and the Member States better help the victims of terrorism?](#), p.10

¹⁷⁶ The National - Associated Press and wires, 2017, [Barcelona terror attack: victims from at least 34 countries](#)

¹⁷⁷ European Parliament, 2017, [How can the EU and the Member States better help the victims of terrorism?](#), p.10

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

passed on the names of victims they had gathered. The list eventually reached the prosecutor, who passed on this information to different victim support organisations across Belgium's three regions. Victim support services were supposed to contact these victims to offer assistance, but stakeholder feedback suggested that the list in question was so incomplete that victim support services were not able to reach out to all victims in practice. Moreover, the list missed crucial victims' information on some occasions such as contact details or the victims' names. Victims also reported they were not clearly informed of their rights and on administrative procedures, and stated that victim support staff were unprofessional and untrained to deal with the circumstances.

Because of these issues, within a year, Belgium created a **one-stop shop/centralised contact point** managed by the Ministry of Justice to assess and inform victims through one line of communication. Victims of terrorism can now either call or email the service. Each case is individually assessed, support is provided to inform the victim and their family on administrative procedures or other concerns victims may have. In order to participate in criminal proceedings, victims of terrorism no longer need to file a complaint at the police to become an 'injured party' or a 'civil party' like any other type of victim. A law was also passed to double the ceilings of compensation in terms of main assistance and emergency assistance. Stakeholders in Belgium highlighted that this new one-stop shop is directed only for compensation or administrative questions. As such, psycho-social support to victims of terrorism is not very clear. Some participants to the focus group claimed that this contact still needs to be developed, as there is only one physical person behind this contact. The first time this contact point was put to test was during the recent Barcelona attacks.

Adjustments to support and assess victims of terrorism have also been made in **France**. While no specialised individual assessment for victims of terrorism is in place, investigative services and practitioners are required to be more proactive in supporting victims. Victims also have access to other mechanisms that have been identified as good practice. First, a **departmental network of referrals specialised in victims of terrorism** within the victim support structure has been created by the Department of Justice. These stakeholders are trained to the specificities of the needs of victims of terrorism and are required to get directly into contact with relevant administrations and agencies in charge of victim rights. They can also designate a single referent to combat secondary victimisation.

Victims also have access to the Guarantee Fund for Victims of Terrorism and Other Offences (FGTI) (**Fond de Garantie**) (**Guarantee Fund**) in place since the 1980s, which acts as an indirect individual assessment of victims of terrorism¹⁸⁰. In order for victims to claim compensation through this fund, victims systematically undergo a medical examination and trained professional's gather victims' personal characteristics and information on the nature of the attack.

Finally, another instance of best practice has been the creation of a **Cellule Interministerielle de Crise (crisis centre)**. Such a centre is set up by the Prime Minister in the immediate aftermath of a terror attack, whether the attack takes place on French soil or abroad. Depending on the severity of the attack, the organ of government responsible for this centre will reach out to representatives and trained professionals to station themselves on the ground where the attacks took place. As such, victims may either call the crisis' centre hotline or reach out to authorities that have been placed locally to assist victims. **This system is relatively new, and was in operation during recent terrorist attacks in London and Barcelona**. It only operates in the immediate aftermath of an attack, and serves as a single contact point for authorities to contact family members of victims affected by the attacks. The centre also provides assistance to help victims find temporary accommodation, book flights back home, and support victims with other immediate concerns. Finally, a follow-up committee set in place by the

¹⁸⁰ Since the creation of the FGTI in 1985, French or foreign victims of terrorist acts on French soil and French victims of terrorism abroad can request compensation from the FGTI. The creation of this Fund came as a result of a wave of terrorist attacks that occurred in France in the 1980s. In 2015, the FGTI made payments totalling 328.8 million EUR to victims of terrorism and other offences (based on publicly-available information on [FGTI website](#)).

Ministry of Justice is still in open and in operation for victims of the terrorist attacks of the 13th of November to support victims in Paris and from the provinces.

Spain, who also has experienced numerous terrorist attacks in the last decades, established an 'Office of Information and Assistance to Victims of Terrorism' prior to the directive to inform victims on their case and provide advice on administrative procedures. The office has also set up an online portal, where members of the public can openly see the status of criminal proceedings. In cooperation with victim support services, victims of terrorism can set up a private account and receive follow-up individual assessments.

The Office is based on Law 29/2011 (Art. 51, Law29/2011 on acknowledgement and global protection of victims of terrorism). The main tasks of the Office are to inform the victims about the proceedings; advise them on criminal and administrative issues related to their cases; accompany them to trials; protect their privacy in the context of the legal actions; inform them about the enforcement of sanctions. Nevertheless, this initiative shows some weaknesses. The website is not easy to access and the link via the Ministry of Home Affairs does not directly lead to the Office website. There is also an Electronic Office of Support to Victims of Terrorism. The link via the National High Court is not working, and there is very limited public information. The information offered in the Electronic Office is limited to: registration; search of victims and private access. The information is not updated (i.e. the victims of the Barcelona attacks are not included).

The Office was already functioning during the Barcelona attacks, and sent some staff members to Barcelona to provide support to the victims the day after the attacks. The regional authorities opened a centre for supporting the victims the day after the attacks. However, the media revealed that three days after the attacks, only 10 out of the 14 fatal victims had been identified. The National Association of Victims of Violent Crimes reported that the assistance was not sufficient (phone numbers collapsed; support only in Spanish and Catalan; no official website was in place to offer information). According to the Ombudsman in Spain, the data on the number of victims is not clearly registered by the different concerned institutions (i.e., until June 2016, relating to the number of E.T.A. victims, the Office of Information and Assistance to Victims of Terrorism gathers 829 victims, the Basque Government, 916 victims and the National High Court, 864 victims). The Ombudsman also complains that there is no official single register of victims of terrorism in Spain, and neither is there a complete register relating to victims and legal proceeding (Conclusions of the Ombudsman's 'Study on the rights of the victims of E.T.A. Current situation' (page 69)).

4.7.2. Victims of sexual and gender-based violence

For what concerns victims of sexual violence, victims of gender based violence and victims of violence in close relationships: what are the measures to ensure safe accommodation/shelters, including trauma support and counselling and adequate health care?

What are the measures in place to ensure that an individual assessment is properly conducted to identify vulnerability and special protection measures, such as vulnerability to secondary or repeat victimisation or intimidation during criminal proceedings? The research paper should here look at the availability of gender-aggregated statistics; measures to ensure safe accommodation/shelters; measures to ensure adequate healthcare provisions; measures to encourage reporting of crime.

Victims of sexual and/or domestic violence already received special attention in many Member States before adoption of the directive, meaning it has had less of an impact in this area compared to other types of crime.

Of particular importance in the context of **sexual violence** is EU legislation on protection orders. A study¹⁸¹ shows that women applying for protection orders may have specific needs. For instance, some may not be willing to initiate a protection order themselves, whereas others simply want the violence to stop but do not want the perpetrator to be punished. This suggests that not one single type of protection may be adequate for victims in general but rather a suite of options that complement each other. It also shows the importance of ensuring coherence between the Victims' Rights Directive and EU legislation on protection orders.

The case study below takes a closer look at changes triggered by the directive in this area.

Case Study: Domestic violence and the Victims' Rights Directive

The EU defines **violence against women** as “any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”¹⁸² As reports by the European Commission and the Fundamental Rights Agency have found, women in all Member States continue to suffer violence at the hands of abusive partners. The Victims' Rights Directive applies to all crime victims and makes explicit reference to victims of gender-based-violence.

In 2014, the FRA found by surveying 42,000 women in the EU28 that out of all women who have a partner (or previous partner), **22% have experienced physical and/or sexual violence**.¹⁸³ The most common forms of violence involve pushing, shoving, slapping or grabbing, or pulling a woman's hair. The survey found that one in six women are victimised by a previous partner after they had broken up. Of those women who experienced violence by a previous partner and were pregnant during this relationship, 42 % experienced violence by this previous partner while pregnant. In comparison, 20 % experienced violence by their current partner while pregnant.

Specific to **domestic violence** and pregnancy, our research has found special measures, such as automatic screening of expecting mothers at four weeks by medical services (as seen in Finland). While there often are not formal linkages between the medical services and victim support organisations, our research indicates that in Member States with strong NGO networks for victim support (financed in large part by the Government) such as in Finland or Sweden, there are effective, cooperative mechanisms for the recognition and support of victims of domestic violence. Other measures include the use of fictitious identities or special measures to ensure the anonymity of victim reporting, and conversely, in Hungary, as of 2013 victims of domestic violence are no longer required to publicly cite their partner as an offender.

Overall, there appears to be a **budgetary increase that has coincided with the implementation of the directive**, leading to a greater availability of support, including more trauma support, more counselling or psychiatric services and more employees trained and aware of the needs of domestic violence victims. However, our research also indicates that NGOs working specifically in the field of women's rights, or operating as support services to victims of domestic violence, tend to agree that the number of practitioners and the level of training practitioners receive is still insufficient to the scale of the problem.

¹⁸¹ WAVE Network, 2016, Protection orders and domestic violence against women with specific needs Findings from five European countries, Final Report

¹⁸² European Commission, September 2010, Domestic Violence against Women, Report

¹⁸³ FRA, 2014, Violence against women: an EU-wide survey

A specific problem affecting domestic violence victim is that these often are also offenders of 'low' crimes such as property damage or assault against the offender. In these cases, as pointed out by a UK NGO, the victim might be treated as a suspect, leading to secondary victimisation and possibly limited rights such as the right to be heard (Art. 10) or the right to support (Art. 8 and 9). The directive does not address the phenomenon of victims being offenders themselves.

Furthermore, there is still a **systematic underreporting of incidences or perpetrators of domestic violence in the EU**. This is in part influenced by factors such as social stigmas, socio-economic status and patriarchal systems, but also due to inadequate referral mechanisms to link victims with the relevant support services. Practices for receiving and subsequently linking victims to their needed support vary considerably throughout the EU, and in cases where domestic violence victims may not always be recognised, the more effective referral systems are not victim dependent. In Finland for example, the authorities (with the victim's consent) privately contact and arrange the relevant support authorities to reach out to the victim, often through special measures to protect the privacy of the victim from their partner. In terms of changing social stigmas and societal attitudes, there is almost universal agreement that the role the directive has had in changing the victim's place in the criminal procedure and making victims of domestic violence a rights-based epicentre in the justice proceedings, will improve the standing of victims and increase the awareness of the complexities of domestic violence.

The **added value of the directive** is limited in some Member States where good practices and effective support networks for victims of domestic violence were pre-existing, such as in Finland and Sweden (though as stated, both experienced budgetary and resource increases which could be linked to the implementation of the directive).

Also, the added value of the directive may not be realised in some Member States where generic victim support frameworks do not meet the often complex or specific needs of victims of domestic violence. In Hungary, our research indicates a challenging relationship between NGOs operating with victims of domestic violence and the government.¹⁸⁴ This has led to reduced financing, less training for practitioners (as they were previously contracted by the government) and overall is expected to have a negative impact both on the victims of domestic violence, but the attitudes and perceptions of domestic violence as a problem.

4.7.3. Victims of hate crime

What are the measures in place to raise awareness of rights and available support to victims of hate crime offences (including online)? What are the practical measures in place to encourage reporting (including third party reporting) and to deal adequately with the victims?

Victims of hate crime still receive very little attention in sample Member States, despite the introduction of the directive. In some sample countries, trainings exist for police officers and victim support services on hate crime offences.

¹⁸⁴ [Timeline of Governmental Attacks against Hungarian NGO Sphere](#), 22 February 2017

Support for victims of hate crime

- CZ set up a special hotline for victims of hate crime.
- In DE and FI, a crime carried out as a hate crime can carry more severe sentence, but there are no specific provisions for victims of hate crimes. Spain has recently introduced prosecutors specialising in hate crime.
- In ES, FI, PL and SE, there have been awareness-raising campaigns.
- Of the sample countries, only FR seems to have a specific approach to hate crime with a central body¹⁸⁵ coordinating different administrative bodies' actions. Moreover, in FR, the Department of Justice provides funding to associations combatting specific types of hate crime such as racism, and recently also focusing on online hate crime.
- In HU, several NGOs support victims of hate crime, including Roma, but some of these have recently been blacklisted by the government. The reason cited by the government is that these NGOs are under foreign influence, for example because they received funding from the Norway Grants.¹⁸⁶
- In IT, the directive seems to have had little impact regarding the situation for victims of hate crime. In LT and PL, the situation seems to be particularly dire with hate crimes regularly not being recognised as such and being underreported.

4.7.4. Victims' protection across borders

How have Member States implemented the requirements related to citizens of other EU Member States, third country nationals and stateless persons?

The principal of free movement is a cornerstone of European citizenship and is fundamental to the functioning of the European Union. Another underlying principle of the EU legal framework is that of **equal treatment**, which does not allow for discrimination on the grounds of racial or ethnic origin, gender, disability, age, sexual orientation, gender or beliefs. This raises particular challenges for European Member States with regard to criminal justice, as it can be expected to increase the likelihood of a crime being carried out either by or against somebody who is not a citizen of the country in which the crime occurs. Implementation of the directive is intended to ensure guaranteed minimum rights, for victims of crime regardless of their nationality or of wherein Europe the crime has taken place.

Protection of victims across borders

The cross-border dimensions of the directive pertain both to crimes with a cross-border dimension (such as human trafficking, smuggling, or terrorism) and the possibility of a crime occurring in the jurisdiction of one Member State but being reported in another. One common such circumstance is that of tourism. A study by Victim Support Europe suggests that tourist are five to ten times more likely to become victims of crime during their first two weeks of holiday than at any other point during the year.¹⁸⁷ It is also possible that a crime may be committed in one Member State, but its victim may

¹⁸⁵ Délégation Interministérielle à la Lutte Contre le Racisme, l'Antisémitisme et la Haine anti-LGBT (DILCRAH)

¹⁸⁶ Transparency International, 2017, [Timeline of governmental attacks against Hungarian NGOs](#),

¹⁸⁷ Victim Support Europe, 2017, [Cross-border Victimisation: Challenges and solutions with respect to the](#)

be in a different country (one example of such a situation could be cybercrimes, such as online fraud or identity theft).¹⁸⁸ Victims of crime in cross-border cases often find themselves in a particularly vulnerable situation.

Challenges they face include **language barriers, lack of supporting social networks** and difficulties navigating an **unfamiliar criminal justice system**.¹⁸⁹ Furthermore, their oftentimes transitory status can make it difficult to ensure other rights such as the right to be heard, the right to receive information and the right to access legal aid and victim support.

Further cross-border dimensions of victims' rights are referred to in Articles 17 and 26 of the directive. Article 17 aims to ensure the rights of victims who are resident in a Member State other than where the criminal offence was committed. This means ensuring victims can make a complaint to the competent authorities in the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed; and ensuring that the complaint is transmitted without delay to the competent authority of the Member State in which the criminal offence was committed.

More specifically, the directive requires that Member States ensure they are in a position to take a statement from a victim without delay, and to provide access to video and tele-conferencing equipment in line with the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union to ensure a victim's right to be heard in such a case. Article 26 provides for cooperation and coordination between Member States, in the form of exchange of best practices, consultation in individual cases; and the provision of assistance to European networks working on matters directly relevant to victims' rights.

In most Member States (AT, BE, DE, ES, FI, FR, HU, LT, PL, SE) compliance with the cross-border dimensions of victims' rights has been ensured within the legal system by the principle of **non-discrimination on the basis of nationality**. This means that, at least in theory, all victims are guaranteed the same rights regardless of their residency status. Such an approach is relatively passive, however, and does not seek to overcome the particular difficulties identified above. These difficulties are better addressed by other provisions of the directive, namely those covered by Chapter 2 on the provision of information and support.

Perhaps the **most significant added value of the directive with regard to non-residents** can be seen in Article 7, which specifies the right to interpretation and translation free of charge. This right, in conjunction with articles 4 and 6 guaranteeing the right to receive information from first contact with a competent authority regarding (for example, regarding how to access victim support) and the right to information about a case, should provide individual victims in cross-border cases with more tools to navigate unfamiliar judicial systems.

Instances of cross-border cases found within our research are relatively low, although high profile acts of terrorism tend to have a significant cross-border dimension (for more information on this, see the question on terrorism earlier in this section). One common scenario in which cooperation as foreseen under Article 26 does occur is in the provision of **judicial assistance** by one Member State to another. In Austria and Italy, the decision was taken to provide the same support to victims involved in such a case as to those going through the domestic court.

provision of support to victims of crime in a cross-border situation,

¹⁸⁸ Ibid

¹⁸⁹ Victim Support Europe, 2014, Victim Support Europe Manifesto 2014-2019

In specific instances of cross-border crime, it remains unclear how the provisions of the directive will be implemented. Lawyers and judges questioned over the course of our research remained unsure about how cross-border incidents would be resolved, but saw potential for the provisions of the directive to help in individual cases¹⁹⁰. Feedback from the Ministerial level in different countries suggests that dealing with cross-border crime and ensuring victims are able to navigate foreign administrations and receive the support they need is a priority for many Member States going forward.

There was a consensus in the focus groups for this study that more could be done at the European level to support the cross-border element of victim support. Stakeholders pointed out it would be helpful if they knew which victim support organisations they can refer victims to in other Member States. One suggestion put forward was the creation of a EU-level website with information on the relevant laws, rights and contact points for each country.¹⁹¹ Another suggestion was the creation of a European victim support coordination point, which could become a central point of referral – rather like the victims' hotlines. Victim Support Europe already tends to play such a role in the context of terrorist attacks, where information is distributed throughout its membership network. As of 2018, the organisation envisages to establish a cross-border support service which could improve coordination in cross-border cases.

Citizens and residents of other EU Member States

Examples of cross-border crime raised in our research include a lorry driver who was attacked while driving through France and a group of tourists who were attacked by a dog while on holiday. In both instances, the crimes were only reported on their return to their own country. In the first instance, compensation was provided by the French government to pay for psychological support to be provided to the victim.¹⁹² In the second instance a lawyer was engaged in the country where the attack took place. As the case is ongoing, it is yet to be seen how the cross-border dimensions will be addressed – it may be expected, however, that this is an instance where the recourse to audio-visual testimony or rogatory interviews could be expected to be used. In instances such as terrorist attacks of natural catastrophes, the role of the consular offices was seen to be vital, in terms of ensuring that appropriate support, protection and legal advice was given to victims. Provision of training to consular representatives could help to balance out the reported imbalance in responses, which led to unequal treatment of victims in the aftermath of such tragedies, depending on their nationality.

In countries such as France and Spain, multilingual websites have been set up to direct victims of crime to the appropriate authorities and give them relevant information they need. Other approaches, such as that employed in Austria, involve ensuring that information leaflets are translated into multiple languages and are distributed to police stations and hospitals.

In order to ensure the right to be heard for transitory victims¹⁹³, Italy has the possibility for a judge to allow the submission of pre-recorded interviews. In this situation, it can be possible to anticipate the interview of the victim during a special evidential hearing that may take place before the trial with protected modalities and outside the court premises e.g. in specialist support structures. Such an interview can only take place in specific circumstances, for example a potential threat to the victim

¹⁹⁰ In many of the specific instances raised, [Directive 2004/80/EC](#) of 29 April 2004 relating to compensation to crime victims is being used to agree compensation for victims of cross-border crimes. This was the case, for example, regarding the attack on a lorry driver in France – mentioned in the next paragraph.

¹⁹¹ This could be similar to the [e-justice portal](#), which received a great deal of praise, but with more clearly presented victim-focused information provided in all European languages.

¹⁹² The compensation was paid in line with the Compensation [Directive](#), but is still in line with the provisions of the Victims Directive

¹⁹³ This might include, for example, economic migrants or victims of trafficking

from the defendant. In such cases, this pre-recorded interview can be admitted into evidence. This type of interview is often carried out with minors (to protect them from experiencing further trauma in the courtroom) and victims of sexual crimes, particularly crimes such as forced prostitution and trafficking where the victim does not want to be identified and is less likely to remain in the country. The decision to allow such a procedure is made by a judge following an application by the public prosecutor or defendant (the application would be based on the finding of particular vulnerability following an individual assessment).

A piece of legislation which interacts with the cross-border dimension of the Victims' Rights Directive is the **European Protection Order**¹⁹⁴, which allow for restraining orders issued in one Member State to be recognised in any other Member State.¹⁹⁵ The EPO interacts with the Victims' Rights Directive because it enables victims to be protected in multiple European territories through one judicial decision. A good example of an EPO comes from the UK, where a victim of domestic assault was able to have an EPO granted against their former partner to prevent them from visiting the district in Sweden that they were relocating to.¹⁹⁶

As both the EPO and the Victims' Rights Directive are relatively recent pieces of legislation, much of the evidence on their impact and interaction remains to be collected. The EPO was recently assessed in a study by the European Parliament.¹⁹⁷ According to the study, specific challenges remain in the directive's implementation which may explain the rare use (the study identifies only seven cases against 100,000 national protection orders issued to women in 2010 alone) of EPOs to date. These include the complexity and difference of the design of protection orders in Member States, the technology used in some Member States to protect victims from the breaching of protection orders and the lack of resources allocated to this in others, the fact that an EPO can be refused by a Member States on the grounds that it relates to an act that does not constitute a criminal offence under its national law, and a general lack of awareness and training among justice practitioners and NGOs.

Third country nationals and stateless persons

In some countries (e.g. FI, IT, LT), specialist support is available for victims of specific types of crime, which disproportionately affects third country nationals and stateless persons, such as human trafficking and forced prostitution.¹⁹⁸

¹⁹⁴ EPRS, The European Protection Order, Implementation Assessment, September 2017

¹⁹⁵ European Commission (Press Release), 2015, Better protection for victims of violence anywhere in the EU

¹⁹⁶ Supporting Justice blg, accessed September 2017, The Link Between European Protection Orders and Domestic Violence

¹⁹⁷ EPRS, The European Protection Order, op.cit.

¹⁹⁸ EPRS, European Implementation Assessment of Directive 2011/36/EU on preventing and combatting trafficking in human beings from a gender perspective, 2016

Case Study: Refugees as victims of crime

Refugees, asylum seekers and migrants are particularly vulnerable to victimisation and less likely than other groups of victims to report. This is due to a multiplicity of factors, including a transient and often unclear residency status, institutional hostility and xenophobia within society more generally, and their vulnerability due to other extenuating circumstances such as poverty and lack of strong family or social networks. In a 2015 report, the German domestic intelligence service (BfV) documented a five-fold rise in attacks on refugee shelters, along with a significant rise in violent attacks by right-wing extremists – many of which were aimed at migrant communities.¹⁹⁹ According to the FRA, this anti-immigrant feeling is mirrored in a number of other European countries although lack of monitoring and consistent under-reporting makes it hard to assess the extent of the problem.²⁰⁰ The problem of under-reporting is exacerbated by the criminalisation of victims. There is evidence of victims of human trafficking and forced prostitution being prosecuted for soliciting or treated as illegal immigrants (BG, ES).²⁰¹

Some countries have responded to this difficulty by funding community support groups combining outreach with psychosocial support. These services tend to be aimed at reaching victims who are unlikely to report their crimes to the police. In the UK, the London Mayors Office funds very specialised victim support groups who work with minority and refugee communities to provide psycho-social support and other services before a crime is reported (one example is the JAM Trust which provides support for female victims of domestic violence in one Borough in London, working predominantly with people from minority communities who don't report).

The broader definition of victim applied in the directive (which reaches beyond the criminal justice system) and the extension of rights to third country nationals and stateless persons has the potential to be very positive for refugees and migrant groups. In one case in Italy, mentioned in the interview programme by the Judge presiding over the case, a Somali refugee recognised the perpetrators of a crime which had been committed en route to Europe in a processing centre on Italian soil. The crime was reported and the case was able to be tried in Italy, despite having taken place outside of Europe and the fact that both victim and defendant were not EU citizens. The victim was also able to benefit from full access to all victim support systems.

Concerns exist, however, that practitioners lack the know-how to deal with stateless persons and irregular migrants, leading to under-reporting by this category of victims. As mentioned by an interviewee in France, third country or stateless victims may fear coming forward due to documentation checks regarding their status. Some victims may inadvertently find themselves blocked from completing certain procedures, such as claiming for compensation, where they may be asked to provide documentation on their residence status. Evidence of similar problems was found in Italy, Sweden and Lithuania, where language barriers regarding lesser known languages and dialects were perceived as a potential obstacle, despite the rights to interpretation and translation. In Hungary, a third country nationals and stateless persons have the same rights as Hungarian nationals if they are legal residents. Illegal immigrants who are the victims of human trafficking are given a residence permit and are thus provided victim support. Asylum seekers must have their application recognised and refugees who are granted protected status have coverage. Irregular documentation would thus block them from

¹⁹⁹ Report: Five times more attacks on refugee homes in Germany in 2015, Elizabeth Schumacher (Deutsche Welle), January 2016. The German government outlined some of its plans to tackle this problem in a report submitted to the CERD Committee in July 2016

²⁰⁰ FRA, November 2016, Current migration situation in the EU: hate crime

²⁰¹ Ibid.

receiving the rights and support afforded to other victims of crime.

5. Key evaluation issues

In this section we assess the application of the directive in terms of the evaluation criteria as defined in the European Commission's Better Regulation guidelines, namely: coherence, relevance, efficiency, effectiveness and added value which are the evaluation criteria d. The definition of relationship between these criteria is illustrated by the intervention logic in Section 2.3.

5.1. Coherence

The criterion of coherence assesses whether the directive's measures as applied in EU Member States are internally consistent, consistent with other legal acts and consistent with overall EU priorities.

The analysis of coherence included identification of possible **gaps arising from different interpretations of the rules contained in the directive at the national level, and an assessment of the extent to which differences of criminal law at the national level affect the protection of victims across the EU**. Assessing external coherence also includes a comparison of the Victims' Rights Directive with requirements arising from **international conventions** that the EU or its Member States are signatories to, including the United Nations (UN) Basic Principles, the UN Convention on the Rights of Persons with Disabilities (UNCPRD), the Council of Europe (CoE) Istanbul Convention relating to gender-based violence which contains some far-reaching provisions on vulnerability aspects, as well as other CoE conventions and the European Charter of Human Rights (ECHR).

In relation to **external coherence**, i.e. consistency with other relevant legal acts and with overall EU policy / priorities, the Victims' Rights Directive is closely linked to other EU legislation. Highly relevant is **Directive 2004/80/EC governing compensation to crime victims**. The Victims' Rights Directive itself also contains articles that are pertinent to the award of compensation. It is also directly connected to directives in specific areas of crime, such as **Directive 2011/36/EU on prevention and combating of trafficking in human beings** and protecting its victims, and **Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography**. Two studies by the EPRS published in 2016 have assessed the implementation of these two directives.²⁰²

A few more pieces of EU legislation are worth mentioning when looking at the Victims' Rights Directive's external coherence. **Directive 2011/99/EU on the European Protection Order (EPO)**²⁰³ established a mechanism allowing victims issued a protection in one Member State to apply for an EU-level protection order and protect victims (or potential victims) from a person causing risk. The EPO is accompanied by **Regulation No. 606/2013 on the mutual recognition of protection measures in civil matters**. Recently, **Directive 2017/541 on combatting terrorism** was adopted, to be transposed into national law by September 2018.²⁰⁴ It will reinforce protection and rights of victims of terrorism and thus complement the Victims' Rights Directive. Furthermore, it will enshrine the right to receive immediate access to professional support services providing medical and psycho-social treatments, the right to receive legal or practical advice, and will include provisions on assistance with compensation

²⁰² EPRS, European Implementation Assessment on Directive 2011/36/EU on Trafficking in Human Beings from a Gender Perspective, 2016, op.cit.; EPRS, Combating child sexual abuse (Directive 2011/93/EU): European Implementation Assessment, 2016

²⁰³ See also: EPRS, The European Protection Order, op.cit.

²⁰⁴ EUR-lex, Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA; European Council of the European Union, 2016, Directive on combatting terrorism: Council confirms agreement with Parliament

claims. The emergency response mechanisms immediately after an attack will be also strengthened. The European Parliament in September 2017 published a study looking at the Victims' Rights Directive's and Directive 2017/541 provisions on support to victims of terrorism, and making recommendations on how support could further be strengthened in the future.²⁰⁵ Finally, a new directive on combating fraud and counterfeiting of non-cash means of payment which will include provision on assistance to victims of such incidents is currently under preparation.²⁰⁶

Stakeholder feedback confirms strong external consistency of the directive with these acts. Reporting by non-EU stakeholders tends to support that, e.g. Council of Europe²⁰⁷ and UN²⁰⁸ feedback fails to identify any issues over consistency within the EU legal framework.

Regarding **coherence with non-EU legislation**, non-EU stakeholders confirm these complement each other. For example, the Council of Europe²⁰⁹ and UN²¹⁰ suggest strong external coherence. The Council of Europe and UN reporting tends to refer to the directive as an example of good practice. Moreover, the Council of Europe notes coherence with non-EU instruments, most notably with the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), ratified by 14 Member States including DK,²¹¹ and in force since 1 August 2014; but also in the areas of restorative justice and children's rights. The United Nations Office on Drugs and Crime (UNODC) notes coherence with regard to the victims of terrorism and migrants.

Turning to **possible gaps due to different interpretation at national level / differences in national criminal law** affecting victim protection, as this report has shown in Section 3.4 ('Comparative analysis of the directive's transposition'), this aspect requires further attention, with differences in interpretation / differences in national criminal law still presenting important challenges with regard to coherent victim protection across the EU, an issue further exacerbated in cross-border cases, where victims or their (legal) representatives are likely to be confronted with procedures and requirements different from their country of origin.

Indeed, Section 3.4 and the overview table in Appendix E have measured transposition across the directive's individual articles (grouped into categories of key provisions). This shows that there remains significant variation between Member State's performance in terms of compliant transposition of the

²⁰⁵European Parliament, Directorate-General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs, September 2017, [How can the EU and the Member States better help victims of terrorism?](#)

²⁰⁶EUR-lex, 2017, [Proposal for a Directive of The European Parliament and of the Council on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA](#)

²⁰⁷ Council of Europe (2016) [Preventing and combating domestic violence against women](#); Council of Europe (2014) [The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence](#); Council of Europe (2016) [Implementing a Comprehensive and Co-ordinated approach: An assessment of Poland's response to prevent and combat gender-based violence](#); Council of Europe (2017) [Directorate General Human Rights and Rule of Law: PC-CP 15th meeting of the Working Group Strasbourg, 10-12 April 2017](#).

²⁰⁸ UNODC (2015) [Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework](#); UNODC (2015) [Combating violence against migrants - Criminal justice measures to prevent, investigate, prosecute and punish violence against migrants, migrant workers and their families and to protect victims](#).

²⁰⁹ Council of Europe (2016) [Preventing and combating domestic violence against women](#); Council of Europe (2014) [The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence](#); Council of Europe (2016) [Implementing a Comprehensive and Co-ordinated approach: An assessment of Poland's response to prevent and combat gender-based violence](#); Council of Europe (2017) [Directorate General Human Rights and Rule of Law: PC-CP 15th meeting of the Working Group Strasbourg, 10-12 April 2017](#).

²¹⁰ UNODC (2015) [Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework](#); UNODC (2015) [Combating violence against migrants - Criminal justice measures to prevent, investigate, prosecute and punish violence against migrants, migrant workers and their families and to protect victims](#).

²¹¹ As of 8 September 2017, the following EU Member States had ratified the Istanbul Convention: AT, BE, DK, FI, FR, IT, MT, NL, PL, RO, PT, SI, ES and SE.

directive, ranging from 23-50% full transposition/compliance in SI, LU, DE, over 50-75% in SK, PL, MT, LV, LT, IT, EE, BG to 75-100% in SE, PT, NL, IE, HU, HR, FR, FI, ES, EL, CZ, CY, BE, AT.²¹²

One of the key issues with regard to differences in national criminal law affecting victim protection relates to the Member States' use of different definitions of key concepts; most notably, differences in the definition of the concept of 'victim' imply that national legislation extends coverage to differing degrees, e.g. to family members (see Section 3.4 on 'Defining victims of crime'). Stalking is a further example with not all Member States taking this into account in their criminal codes. Indeed, according to Susan van der Aa, in May 2016, '*the seven countries that have not (yet) introduced stalking or harassment as a specific offense are: Bulgaria, Estonia, Denmark, Greece, Latvia, Lithuania, and Cyprus*'.²¹³ However, this could be mitigated by the ratification of the Istanbul Convention (Article 34).²¹⁴

Stakeholders pointed out a few areas where in their view the directive lacked clarity, which could potentially undermine the coherence of its application across Member States. One such area covers the rights of victims in other Member States in cross-border cases. According to the directive, all police stations in Europe should be able to issue a report in any EU official language (Art. 5 and 7). It is questionable how this could work in practice, especially in rural regions. Moreover, it is unclear how victims could give a testimony in the country where the crime occurred once they have returned to their home country. According to the directive, video conferencing should be used to resolve practical issues but such systems are not in place everywhere.

In conclusions, the directive was found to be externally and internally coherent but different interpretations of specific provisions at a national level may nevertheless weaken its coherence.

5.2. Relevance

To assess relevance, the study assesses whether the measures of the directive are still relevant to its original objectives and to the needs of victims.

This section considers whether the way in which the directive has been implemented in Member States sufficiently addresses the needs that provided the initial rationale for the adoption of the directive, and whether these needs remain the same or have changed significantly over time. The assessment focuses on the timeframe from the year the legislation was passed (2012), through to the point of implementation at the national level (2015) and then to the present.

At a very basic level, data collected by Eurostat and FRA provides an indication of the extent to which victims' needs are being met. Data presented in Section 2.1 demonstrates that about 60 million Europeans may fall victim to a crime every year, and that while some crimes have become less prevalent in recent years, others remain as much of a problem as 10 years ago. These figures suggest that, while overall safety has improved, several types of crimes remain a serious issue and hence it can be expected that the number of victims with needs of protection and support remains high. Several reports look at **the extent to which victims' needs are actually being addressed.** In view of FRA²¹⁵, recognition of the relevance of the 'victim' to the criminal justice system and of the importance of guaranteeing victims' rights increased in the past decades. Dedicated support services for victims of crime were established

²¹² The figures refer to the percentage of transposed categories ('Y') as of the total of 22 categories in Appendix E: Overview of Transposition of the Directive

²¹³ Suzan van der Aa, 2017, *New Trends in the Criminalization of Stalking in the EU Member States*, Suzan van der Aa, Tilburg Law School

²¹⁴ Article 34 of the Istanbul Convention reads: 'Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.'

²¹⁵ FRA, 2014, *Victims of crime in the EU: the extent and nature of support for victims*

and victims' rights were guaranteed in national, regional and international legislation. Notwithstanding this progress, important problems remain. A 2010 report for DG JUST highlighted that victims' needs were still not being met despite the enforcement of the 2001 Framework Decision on the standing of victims in criminal proceedings²¹⁶, suggesting the directive is a relevant and needed additional piece of legislation.

The previous sections of this report have shown that the directive has now largely been transposed in all Member States, and has triggered considerable changes both in terms of national legal frameworks and the organisations of victim support at a national level. In 2015, FRA reported²¹⁷ on the extent to which key provisions of the directive relating to victim support and protection were met by Member States. The study found several areas where Member States currently fall short of meeting the directive's requirements.

Specifically, ensuring that all victims have access to victim support services in accordance with their needs remains a challenge, suggesting that the **directive is highly relevant but at the same time, its implementation does not yet address victims' needs sufficiently**. FRA surveys suggest there is a high level of underreporting of crime, suggesting that victims do not yet fully exercise their rights. In one respect, it is more difficult to establish the directive's relevance: statistics on the number of cross-border cases of crime are scarce. FRA states that free movement within the EU leads to an increase in the number of individuals becoming a victim of crime in a Member State other than their own²¹⁸, but this is not further supported by evidence. Some indications of the particular threats to tourists are discussed in the previous section of this report. Certain types of crime which are cross-border by nature, such as human trafficking, seem to be on the rise, however.²¹⁹ This may suggest that the directive's goals of providing a common minimum standard of victims' rights and protection across the EU, and ensure equal treatment for victims no matter their nationality remain relevant, but the evidence is less strong than in case of the needs of victims in general.

In conclusion, the evidence summarised here and the findings presented in previous sections of this report suggest that the directive's objectives remain highly relevant to victims' needs, but practical implementation still falls short of their needs in some respects, in particular concerning access to justice, and the availability of relevant support systems for all types of victims.

5.3. Effectiveness

Effectiveness can be ascertained by comparing the objectives of the directive to the outputs, results and impacts it has had and/or is likely going to have in the future.

As shown in the intervention logic earlier (Section 2.3), the directive is expected to bring about a range of positive outputs, results and long-term impacts, ranging from an increased level of support and protection of victims, cost savings in the healthcare sector due to more appropriate treatment of victims, to increased mutual trust in the judicial system, better facilitated cross-border proceedings, and to victims having better awareness of their rights and access to support services being able to more easily exercise them. More speculative benefits may extend to economic gains due to better supported victims suffering fewer psychological problems, and thus being able to go back to work sooner after having been victimised. While such effects will be difficult to attribute directly to the directive's implementation, they are important to consider also in the context of the more short-term costs of

²¹⁶ Matrix Insight & AEF, 29 November 2010, [A Study for an Impact Assessment on Ways of Improving the Support, Protection and Rights of Victims across Europe](#)

²¹⁷ European Union Agency for Fundamental Rights (FRA), 2015, [Victims of crime in the EU: the extent and nature of support for victims - Summary](#)

²¹⁸ European Union Agency for Fundamental Rights (FRA), [Cross-border support](#)

²¹⁹ Van der Laan, F., Clingendael Strategic Monitor, 2017, [Transnational organised crime](#)

implementing the directive, see below under efficiency.

The directive's effectiveness is first and foremost determined by the extent to which it has not only been legally transposed but also applied systematically and appropriately in practice in all Member States. An important consideration is how the directive has been implemented at the national level (whether through new or pre-existing measures). The research found that in some Member States, provisions were transposed verbatim, and in some countries the transposition was not accompanied by an allocation of sufficient resources to ensuring the provisions can be complied with in practice. Thus, a range of factors were identified that may undermine the directive's effectiveness in practice, including:

- A lack of awareness-raising measures accompanying the directive's implementation;
- A lack of information available in language that victims can understand, including easy to understand or sign language where necessary;
- A lack of financial support to service provision and a lack of coordination of support services, police, prosecutors, and other relevant actors;
- A lack of stakeholder buy-in and training of practitioners.

Conversely, more resources and attention devoted to the above factors could further enhance the directive's effectiveness in practice. For instance, in Croatia, national authorities regularly monitor the referrals of victims made by police officers to victim support organisations, and follow up with individual officers who do not refer victims as requested. Notwithstanding the above-listed limiting factors, **this study has found the directive to have led to better assistance and protection for victims.** This is supported by feedback provided by respondents to our online survey according to whom the directive has brought better assistance and protection for victims (32% of the respondents strongly agreed with the remainder agreeing).

The case studies in Section 4 have shown what measures various Member States have adopted to better assist victims of specific crimes, including terrorism, hate crime and domestic violence, and even some interesting new approaches to assisting refugees having fallen victim of a crime. At the same time, the assessment has identified deficiencies e.g. in case of cross-border cases, where national authorities are not always clear about the way certain provisions should be implemented in practice, and this may limit the impact of the directive in this area.

A more comprehensive assessment of the directive's effectiveness may be possible based on the data to be submitted by Member States to the Commission by 16 November, subject to the quality and comparability of this data.

The directive thus has had a considerable impact in all Member States, but to a varying degree. Awareness-raising measures, information provision and additional financial support could further strengthen its effectiveness on the ground.

5.4. Efficiency

Efficiency relates to the use of resources, i.e. the extent to which financial inputs are proportionate to the outcomes. The question is whether the same financial inputs could achieve increased outcomes or, conversely, whether the same outcomes could be achieved with reduced inputs. In a wider sense, efficiency relates to how well an intervention functions.

It is not appropriate in this study to seek to assess efficiency in its strictest financial sense. What can, however, be said is that **the directive involves additional obligations that have cost implications,**

specifically the requirement to provide translation services to victims, the additional resources needed to carry out individual assessments, compensation rules, and the costs of capacity building (e.g. training of professionals). Moreover, if victim support organisations fulfil the role they are expected to, then they also face additional costs, especially if more victims of crime exercise their rights as a result of the directive's provisions being applied.

Although it is not possible in the context of this study to investigate if Member States are making **additional financial resources available to help with the implementation of the directive**, anecdotal evidence suggests not. For example, in France we were told by an NGO that although funding has increased, twice as much is needed to do everything that is required under the directive. Similarly, feedback from Spain suggests that there has been no significant additional funding of those involved in helping victims of crime to exercise their rights. If this is an accurate picture, it suggests that existing financial and human resources need to be deployed very efficiently if the directive is to be effectively implemented.

In a wide sense, steps need to be taken to develop **efficient ways of reaching victims of crime and enabling them to exercise their rights**. The research suggests that signposting mechanisms are better developed for certain types of crimes than others. Examples cited in the study include a central contact point in Belgium for victims of terrorism and a practice in France of having representatives of victims' support organisations being permanently based in certain police stations to help people who need their advice. Public directories or registers of accredited support organisations, lawyers, etc, would also be helpful. The outcomes of an EU project mapping existing services in Lithuania, Italy and Romania should be useful in this regard (see section 4.4). At the moment, the infrastructure of victims' support is very fragmented in most Member States. This creates a lack of transparency, makes the available assistance less easy to access, and means that networking and cross-referral mechanisms operate less efficiently.

In summary, the directive's implementation has cost implications for Member States relating to translation, individual assessment, compensation, and capacity-building. Evidence suggests that Member States did not always make additional resources available to facilitate the implementation of the directive, and there are ways to make the support of victims of crime more efficient.

5.5. Added value

The added value assesses the extent to which the directive has brought about benefits that could not have been achieved by action at the national level and that would not have occurred otherwise.

The directive's key added value can be seen in providing a **minimum standard of victim protection and support** across Europe. Another benefit of the directive in view of some stakeholders is that it serves as a **reference point in the debate about the role of victims in the criminal justice system**. This strengthens the position of stakeholders arguing for a strengthening the rights of victim.

In some countries (e.g. in the Czech Republic), the directive also helped **streamline and systematise previously disparate provisions**. Some national authorities argued that adopting a new single act helped increase the profile and visibility of the new provisions in their countries. In Hungary, for example, the fact that the directive made it necessary to amend the criminal procedure code meant that the police forces now take these changes seriously when previous separate national legislation had no such result. At the same time, a Hungarian NGO representative cautioned that it was difficult to attribute changes in the debate about the role of victims in the criminal justice system to the directive when this has been a trend in criminal law over the last two decades. More generally, there has been a trend in recent decades reinforced by the directive to move away from treating victims as mere

witnesses to parties claiming compensation and having suffered moral harm, in need of help, and who are entitled to justice and participation in criminal proceedings.

As mentioned at the beginning of Section 4, **the added value of the directive varies between countries** depending on the level and nature of support and protection provided prior to its adoption. Nevertheless, even in countries which already had a well-developed system in place previously, the codification into national law of common practices adds value.

A key **innovation introduced by the directive** - and further evidence of added value - is the individual assessment of victims' needs irrespective of the type of crime or victim. Prior to the directive, such assessments were carried out on an ad hoc basis at best, and corresponding legislation was not envisaged before adoption of the directive. The directive also provides added value in terms of **extending victim support services to all types of victims**. Other areas where the directive introduced changes to all countries' systems include the **handling of cross-border cases** and the **treatment of non-resident EU citizens, third country nationals and stateless persons**, and related provision of **translation and interpretation services**. In this respect, it is worth noting that Article 7 of the directive covering translation and interpretation is the one most consistently transposed through new legislation.

One way to **strengthen the directive's added value** in view of stakeholders consulted for this study is by providing further guidance on the data to be submitted by national authorities to the Commission. Stakeholders also propose to improve cooperation and networking between countries and to clarify how cross-border cases should be handled, to exchange good practices and make these available, ideally through the eJustice portal which should be updated regularly.

To summarise, the directive has introduced a range of benefits across all EU Member States that would likely not have occurred otherwise by now, including an individual assessment of victims' needs irrespective of the type of crime or victim, the codification of provisions and practices into national law, and the consistent handling of cross-border cases. The directive also serves as a reference point in national debates about their role of victims in the criminal justice system, and has triggered farther-reaching reorganisations of victim support in countries that previously had less-developed systems in place.

6. Conclusions and recommendations

This section summarises the overall conclusions of the study and presents recommendations on how to strengthen the directive's implementation and impact in the future.

6.1. Overall conclusions

Although it is still too early for a definitive assessment, our research suggests that the directive is succeeding in its objective of bringing about a more victim-centred approach in criminal proceedings, strengthening victims' rights support services, and helping to ensure that citizens can exercise their rights throughout the EU if they are the victims of crime. However, steps could nevertheless be taken to strengthen the directive's implementation.

6.1.1. Transposition of the directive

Almost all the EU Member States have now formally transposed the Victims' Rights Directive. Those Member States that have not transposed the directive cite domestic political and/or legislative complications in national parliaments as the reason, rather than the delays being due to doubts about the directive itself. In the case of Member States where the directive was only transposed recently (for example, EL, LU and NL only transposed the Directive in 2017), it is still too early to assess the impacts.

According to our assessment, some of the Member States that have formally transposed the directive, have not transposed *all* the key provisions of the directive completely. This includes examples of Member States transposing an article without including the detailed requirements it contains, or narrowing the application of a provision by adapting a pre-existing piece of legislation which is only applicable to certain groups of victims. In practice, stateless persons and irregular migrants may not be able to access victim support to the same extent as EU citizens or third country nationals with a legal residence status as they should. This may be due to a lack of information, and a lack of training of practitioners, meaning that those Member States where this is the case do not fully comply with the directive in practice. Another area where detailed provisions are often missing in Member States is regarding the return of property and compensation of victims but this is to some extent accounted for by a separate directive on compensation (see also Section 4).

Different methods have been used to transpose the directive depending on factors such as the legal systems and traditions in different Member States, and the existence or otherwise of laws relating to victims' rights prior to 2012. Reflecting these and other factors, Member States have transposed the directive by either amending existing national laws, or by combining existing laws with new legislation, or by introducing entirely new measures, often in the form of single all-encompassing piece of legislation. Some stakeholder feedback suggests that in countries with a previously less-developed victim support system transposing the directive through a single legal act can heighten the focus on victims' rights while bringing different measures together in one package.

6.1.2. Implementation by Member States

Whilst the relatively recent transposition of the directive by many Member States makes it difficult to assess its impact, a number of conclusions can nevertheless be drawn.

The practical application of the directive on the ground differs quite substantially from the legal transposition. Often, differences in practice reflect different political traditions, and historical experience with specific types of crime (e.g. terrorism or domestic violence).

To the extent that can be ascertained at this stage, the directive has had a greater impact in EU Member States where frameworks for victim support and protection were previously not well developed. Conversely, the impact and added value has been less pronounced in countries that already has had a high level of victim protection. Although there are some exceptions, the first of these two categories predominantly comprises Member States that joined the EU in 2004 and 2007 and whose legal systems did not historically place as much emphasis on victims' rights as elsewhere. In countries which already had a high level of victim support provision, there have nevertheless been benefits, one of the key impacts of the directive being the codification of these rights in national law. The directive has also had less of an impact in countries that do not allocate sufficient resources to implementing it since even if victims enjoy the required legal protection in those countries, the limited availability of services undermines the value of legal provisions

The directive has introduced a number of requirements that are innovative for most EU Member States. Thus, a key innovation of the directive is the introduction of an individual assessment for all victims of crime. This has led to many Member States extending special protection rights previously only granted to certain categories of victims (for example, to victims of sexual violence) to all victims. Another relatively innovative feature of the directive that was not available in many Member States is the requirement to provide translation and interpretation services free of charge to victims of crime. In Belgium, for example, steps to promote victims' rights have not really been driven by the directive but the requirement to provide translation services was new. More generally, there is still some way to go, however, before the directive's provisions are firmly embedded in Member States' policing and legal practices and fully available to all victims of crime.

An area where the potential impact and added value of the directive is especially high is in relation to the cross-border dimension of victims' rights. In particular, the directive is helping to ensure that citizens have the same rights if they are victims of a crime, irrespective of where in the EU the crime occurs. At the moment, awareness of these rights is more developed in relation to certain types of crime (e.g. terrorist acts) than others and there is also a considerable variation in the accessibility of victims' support services in cross-border situations.

More generally, the directive is acting as a key reference point in the discussion of victims' rights and as an advocacy tool for NGOs calling for a shift towards a more victim-centred approach across Europe. The directive provides benchmarks that can be used to assess how effectively and efficiently victim support services are performing in different Member States and what needs to be done to ensure they match an EU standard. Furthermore, in several countries the drafting of national laws and the transposition of the directive has involved quite extensive consultations between key stakeholders (national authorities, the legal profession, police officers, victim support organisations, etc) on the role of the victim within the criminal justice system, and this has led to more intensive networking. The directive has also helped to strengthen victims' rights organisations in countries where they were previously weak or even non-existent (e.g. LT, RO).

One of several practical challenges relates to weak links in the victim support ecosystem and inconsistent referral mechanisms. Stakeholder feedback suggests that police forces in particular may not always refer victims to support organisations, in which case victims do not receive the special support they may need. Moreover, many victims still lack awareness of their rights and the services available to them, undermining the directive's effectiveness. A lack of sufficient training of practitioners also provides a practical challenge in some countries. Training and the provision of interpretation and translation services and carrying out individual assessments have been identified as the biggest cost drivers of the directive. In some countries, there remains a heavy reliance on provision of key services to victims by NGOs ('volunteerism'). There is a risk in such cases that the level of support and protection for victims varies across the country.

In terms of the directive's **overall coherence**, this assessment confirms the internal and external coherence of the directive. Notwithstanding, coherence remains constrained by different interpretation at national level / differences in national criminal law (e.g. definition of victim). Here an approach combining EC monitoring and reporting but also exchange of experience on effective national approaches is recommended.

As regards the directive's **relevance** to victims' evolving needs, evidence suggests it remains highly **relevant but practical implementation still falls short of victims' needs in some respects**, in particular concerning access to justice, and the availability of relevant support systems for all types of victims.

6.2. Recommendations for the future

Notwithstanding the positive actual and potential impacts so far evident, this study highlights a number of actions that could be taken to strengthen the directive's implementation and impact.

Firstly, there is a need to do more to ensure that victims of crime are aware of their rights. This study suggests that despite many changes introduced in Member States, victims still often lack awareness of their rights, undermining the directive's effectiveness on the ground. In addition to the laws themselves, material should be available that summarises victims' rights in an easily accessible format.

Related to the above point, there is a need for better signposting mechanisms within Member States so that victims of crime are not only aware of their rights but also know where to go to obtain help to exercise them. The research indicates that signposting mechanisms are better developed for certain types of crimes than others. Examples cited in the study include a central contact point in Belgium for victims of terrorism and a practice in France of having representatives of victim support organisations being permanently based in certain police stations to help people who need their advice. Public directories or registers of accredited support organisations, lawyers, etc, would also be helpful.

More generally, there is a case for an 'opting in' to victims' support services being made the default option for those who are affected by a crime so they are automatically referred to organisations that can provide assistance unless they state otherwise.

At the same time, there is a need in many Member States to do more to ensure that police, lawyers and others involved in helping victims are aware of their role in ensuring victims' rights are upheld. Practical guidelines are needed (e.g. a checklist) that the police and others can use on day-to-day basis in advising victims of their rights.

There is also a need to heighten awareness of victims' rights among the population at large, including in schools but also among family and friends who victims often turn to in first instance. Judicial authorities, the police and victim support organisations have a particularly important role to play in promoting victims' rights under the directive but more could be done to help family and friends to understand the issues faced by victims of crime and the support they can provide to the individuals concerned. To achieve this, wider awareness-raising via the media – including social media, posters in public transport, leaflets in courts, hospitals, and police stations as well as mobile applications - is needed that reaches out beyond the providers of victim support services to the general public.

More emphasis should be placed on capacity building and the training of practitioners with regard to implementation of key aspects of the directive. For example, the requirement to undertake individual assessments is a new procedure for most Member States and although there is some evidence from our study of practitioners from different countries sharing their experience and know-how, more could be done at the EU level to promote this type of capacity building in Member States. In addition to bilateral initiatives (e.g. encouraging bilateral cooperation between NGOs operating in fields such as gender-based violence), there are several EU-wide networks that could be used to promote the sharing of know-how (e.g. the European Network of Victims' Rights Associations, Victim Support Europe) – these could be made more effective by nominating a national contact point for victims' rights in each country. The eJustice portal is also relevant. Capacity building could be further promoted if the delivery of victim's support services, for example by the police, is monitored in a way that provides feedback on their performance, thereby enabling shortcomings to be identified and (if necessary) rectified through further training and other activities.

The effectiveness of the directive is being hampered in many Member States by a lack of financial resources being committed to the implementation of key provisions. This applies, for example, to

two new requirements introduced by the directive, namely to provide translation and interpretation services free of charge to victims of crime as well as to undertake individual assessments. These requirements have significant implications in terms of financial and human resources for the police, victim support organisations, judicial authorities and others. At the same time, victim support services remain under-funded in many countries and are often restricted to parts of a country whereas they should be provided nation-wide.

In all Member States more effective ways should be developed of reaching victims of crimes that go unreported. The scale of the problem of unreported crime is by nature difficult to assess but is likely to be considerable, especially in relation to less public types of crime (e.g. domestic violence). The problem of unreported crime has many causes and there are no easy solutions. In relation to the directive's provisions, measures to encourage the reporting of crime could include placing more emphasis on the role of community groups (e.g. those with a role to play in helping victims of domestic violence, gender-based violence and human trafficking). Several good practices highlighted earlier that make sources assistance more approachable (e.g. victim support organisations having a presence in police stations in France in addition to offering their services outside police stations, or setting up drop-in centres as is happening in Hungary) are also relevant. Making victims of crime aware of their rights before they report a crime is also likely to encourage more victims to come forward who can then be helped.

The EU and Member States should ensure that the victims of all types of crime are treated equally in being helped to exercise their rights set out in the directive. In recent years, a lot of the focus on victims' rights has been on those who have been affected by terrorist acts or who have been victims of gender-based violence and human trafficking. Whilst such a focus is entirely justified given recent events in Europe and the fact that gender-based violence still accounts for a considerable proportion of crimes reported across the EU, the EU and Member States should ensure that the victims of all types of crime are treated equally in being helped to exercise their rights. The directive, in particular through the requirement for individual assessments, is helping to ensure that all types of victims can exercise their rights but more could be done in this respect, for example in relation to gender-based violence and victims from minority communities such as the Roma, or in relation to persons with disabilities.

Last but not least, there is a key role for the EU to play in ensuring that citizens who are victims of crime in another Member State or outside Europe are able to fully exercise their rights. Victims of crime abroad face a number of difficulties – coping with a different language in dealing with legal and other documentation, the costs and complications of participating in court proceedings in another country, etc. Measures raising awareness of how the directive's provisions can help victims of crime in another Member State could be taken to ensure cross-border cases are dealt with appropriately.

Appendix A: Definitions of victims in the EU Member States

N.B.: This table was originally published in: APAV (Portuguese Association for Victim Support), Implementing victim-orientated reform of the criminal justice system in the European Union, 2016 (co-funded by the Criminal Justice Programme of the EU)

Member State	Terms used	Definitions
Austria	Victim	Natural persons as well as legal persons (in this last case, the representative of the company or organisation is regarded as a victim). Material and non-material damages which are a direct or indirect consequence of the crime apply.
Belgium	Injured party; Civil party; Victim	Injured party: a person who claims to have suffered damages as the consequence of a criminal offense. Civil party: relevant for claims for compensation and additional rights. Victim: definition aligned to the Victims' Directive [between 2006 and 2013, the definition referred only to rights relevant to the execution of the prison sentence].
Bulgaria	[Direct] Victim	The physical person having sustained material or moral damage from the relevant crime.
Croatia	Victim; Injured party	Victim: a person that suffered physical and mental effects for the criminal offence, material damage or substantial violation of fundamental rights and freedoms. Injured party: the victim as participating party in criminal proceedings.
Cyprus	Victim	No specific definition of the term victim; Directive's definition will be implemented.
Czech Republic	Victim; Injured/ Aggrieved party	Victim: a natural person who as the result of a crime has or may have received bodily injury, incurred property or non-pecuniary damages, or at whose expense the offender gained from the crime. Injured party: a natural or legal person to whom the criminal offence caused bodily harm, damage or non-material damage or at the expense of whom the offender enriched themselves through a criminal offence.
Denmark	Aggrieved party	No specific definition of the term victim.
England and Wales	Victim	Somebody who has directly been affected by a criminal offence. A victim is not a party to the criminal proceedings, and will act as witness.
Estonia	Victim (after 15-11-2015)	A natural or legal person, whose legal rights have been directly violated by a criminal offence or by an unlawful act committed by a person not capable of guilt. In case of a crime attempt, a person is also a victim if instead of the attacked legal right, another related legal right is violated.
Finland	Injured party [asianomistaja]	1) The bearer of the legal value protected by the criminal offence and 2) The one who has suffered harm directly caused by a criminal offence.

France	Partie civil	No specific definition of the term victim; Victim support organisation INAVEM refers to the UN definition. Partie Civil: term used to explain the rights of a victim as participant [civil party] in criminal proceedings.
Germany	Co-plaintiff; Injured party	No specific definition of the term victim.
Greece	Victim; Injured/ Aggrieved party	No specific definition of the term victim.
Hungary	Victim; Injured party	Victim: any natural person who has suffered injuries [in particular bodily or emotional harm, mental shock or economic loss] as a direct consequence of criminal acts or misdemeanours committed on the territory of Hungary. Injured party: a party whose right or lawful interest has been violated or jeopardised by the criminal offence.
Ireland	Victim	[a] A natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence perpetrated against him or her, or [b] a family member of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.
Italy	Offended person; Damaged person	No specific definition of the term victim.
Latvia	Victim	1) Someone who has suffered from a criminal offense; 2) Recognized by criminal justice authorities as a status that comes with rights and several duties.
Lithuania	Victim	A natural person who suffered physical, mental harm or harm to property as a consequence of criminal activity.
Luxembourg	Victim	The one who claims to have suffered damage resulting from an offense. The person who formally reported the [direct or indirect] damage suffered from the criminal offense to police or prosecutor.
Malta	Victim; Injured party	Victim: definition is the same as in the Victims' Directive.
Netherlands	Victim	A natural or legal person who has suffered property damage or other disadvantages as direct consequence of a criminal offense.
Poland	Victim; Injured party	Victim: person whose property or rights have been directly or indirectly violated or threatened by an offence.

		Injured party: natural or legal person whose property or rights have been directly violated or threatened by an offense.
Portugal	Victim	Very similar to definition used in the Victims' Directive.
		Injured party: holder of interests that the law specifically intended to protect with the incrimination.
Romania	Victim	A person who suffered a physical injury or a material or moral prejudice as a result of a criminal act.
Scotland	Victim	No specific definition of the term victim.
Slovakia	Aggrieved party	Any person whose health was aggrieved by the commission of a criminal act or to whom property damage, moral damage or any other damage was caused, or whose rights or legally protected interests or freedoms were infringed.
Slovenia	Victim; Injured party; Applicant	No specific definition of the term victim. Injured party: a person that due to a violent intentional crime suffered damage. Applicant: an individual who submits an application for compensation as a victim of a violent international crime committed against him or her.
Spain	Victim	Any natural person who has suffered loss or damage on his person or property, physical or mental injury, emotional suffering or economic loss directly caused by an offense.
Sweden	Aggrieved party; Injured person	Any natural person who has suffered physical, mental or emotional harm or financial loss as a result of a crime.

Source: APAV (Portuguese Association for Victim Support), Implementing victim-orientated reform of the criminal justice system in the European Union, - Table III-1, p.113.

Appendix B: Bibliography

Sources	Relevance to study
APAV, 2009, Victim Support Europe, promoted by Portuguese Association for Victim Support, <u>Victims in Europe, Implementation of the EU Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union</u>	The project aims to review the implementation of the Framework decision in a comprehensive fashion. It looks at the legal, organisational implementation and the measures of impact.
APAV, 2016, <u>Implementing Victim-Oriented Reform of the criminal justice system in the European Union</u>	This report provides a full overview of current research into and with victims' rights and services, identifying lacunas and offering a vision towards a victim-oriented reform connected with the experience, victimological knowledge and the backdrop of the societal ecology.
Bundesministerium der Justiz und für Verbraucherschutz, Oberfibel, <u>Rechte von Verletzten und Geschädigten in Strafverfahren</u>	This booklet aims to help victims of crime during unfamiliar and stressful situations in criminal proceedings. It provides information on how to manage their criminal proceedings, to use their rights and to access assistance and support facilities.
Child Centre Info, 2017, <u>Best Practices - Bulgaria</u> ,	Case study, efforts to implementing directive: creation of 'blue rooms' for interviewing children and avoiding further trauma by having only one person interview child victim of abuse instead of many people.
Child Helpline International. 2014. <u>The Importance of Child Helplines for Child Protection in Europe</u>	This report briefly introduces the work of child helplines and Child Helpline International, and it summarises some definitions of child protection systems. The last part of the chapter explains the background of the study and recommendations.
Commission, <u>'Report From The Commission, since Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings'</u> COM (2004) 54 final/2	Report of shortcoming of the Framework Decision
Commission, March 2004, Evaluation of the Compliance with Framework Decision 2001 on standing of victims in criminal proceedings.	Official report from the European Commission explaining shortcoming of the Framework Decision
Council of Europe, Stocktaking study on violence against women, 2006	European study on the costs of violence in different sectors (health care, social services, economic output, etc.

CSGP, KU Leuven, LinC, Max-Planck-Institut für ausländisches und internationales Strafrecht. 2016. Rights of Victims, Challenges for Corporations. Project's first findings	Academic paper on victims of corporate crimes and corporate violence, which has not been given enough attention in the debate about the directive
Clingendael Strategic Monitor, Van der Laan. F, <u>Transnational organised crime</u> , 2017	This contribution focuses on the main trends in the area of transnational organised crime that affect security interests in the European Union (EU).
Dehing, A., 2012, <u>Victims' rights in criminal matters post Lisbon</u> , Ghent University	Overview of pitfalls of the Framework Decision and victims' rights developments in the EU since 1970s.
<u>Evaluation of Victims</u> , 2013, Ministère de la Justice	Project led by French Foreign Ministry to assist Member States in the practical implementation of the requirements. This project specifically looks at means to identify the specific protection needs of the victim.
European Commission, <u>Report Domestic Violence against Women</u>	The aim of this survey is to measure the evolution of European public opinion concerning domestic violence against women since 1999, which can be seen as the starting point for collecting information about the public's view on this important problem.
European Commission (Press Release), 2015, Better protection for victims of violence anywhere in the EU	Article/press release on the two new mechanism: the <u>Regulation on mutual recognition of protection measures in civil matters</u> and the <u>Directive on the European Protection Order</u> .
European Federation of Road Traffic Victims (FEVR), November 2015, <u>Survey on the transposition and implementation of the directive with relevance to road victim associations</u>	FEVR investigated the progress of the implementation of the directive by EU Member States a few months before the deadline from the viewpoint of road traffic victims.
European Parliament, 2017, <u>How can the EU and the Member States better help the victims of terrorism?</u>	This study presents a glimpse into the international and selected national responses to the raising global threat of terrorism and the consequent increase in victimisation.
EPRS, 2016, <u>Trafficking in Human Beings from a Gender Perspective (Directive 2011/36/EU)</u>	THB knows no boundaries and most reported victims are female EU nationals from Central and Eastern Europe. THB can be tackled effectively only through a coherent approach at the levels of legislation and executive powers and through strategic policy-making.
EPRS, 2017, <u>The European Protection Order</u>	Directive 2011/99/EU on the European Protection Order establishes a mechanism for the mutual recognition of protection measures for victims of crime. This study examines the implementation of the directive and analyses the practices of the Member States in this area.
Eurostat, <u>Crime and criminal justice statistics</u> , data extracted in May 2017	This article presents crime statistics across the European Union (EU), based on official figures for police-recorded offences.

Eurostat, <u>Quality of life indicators - economic and physical safety</u> , 2013	This article is part of the Eurostat online publication <u>Quality of life indicators</u> , providing recent statistics on the quality of life in the <u>European Union (EU)</u> . The publication presents a detailed analysis of many different dimensions of quality of life.
EUPCN Toolbox Series: Preventing Secondary Victimisation policies & practices, 2016, EUPCN	It is important to focus on this phenomenon, because the nature of a criminal act leaves a victim vulnerable and in need of assistance. Because of this factor of unknown, the toolbox is primarily written for local policy-makers and practitioners since they will be confronted with victims in their daily work.
Falkner, G., Treib O., 2008, <u>Three Worlds of Compliance or Four? The EU-15 Compared to new Member States</u> , Journal of Common Market Studies	The study shows that MS do not all comply with the transposition and the enforcement of EU-legislation, in fact there are so-called different 'worlds of compliance' in Europe, ranging from MS who transpose directives in time and correctly vs. MS who do not effectively implement provisions in practice due to low protection of victims, poor civil society structure and lack of trust in law enforcement.
Fundamental Rights Agency (FRA), 2015, <u>Victims of Crime in the EU: the extent and nature of support for victims</u>	Selection of specific victims of crime themes and assessment of case studies on how the directive has been implemented. Also offers information on the differences between the Framework Decision and the directive.
Fundamental Rights Agency (FRA), 2014, Violence against women: an EU-wide survey, <u>Main results report</u>	This FRA survey is the first of its kind on violence against women across the 28 Member States of the European Union (EU). It is based on interviews with 42,000 women across the EU, who were asked about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence.
Fundamental Rights Agency (FRA), 2016, <u>Current migration situation in the EU: hate crime</u>	FRA data - as of November 2016 - indicate that violence, harassment, threats and xenophobic speech targeting asylum seekers and migrants remain pervasive and grave across the European Union, whether committed by state authorities, private companies or individuals, or vigilante groups.
FRANET, 2014, Victim Support Services in the EU: An overview and assessment of the victims' rights in practice - Czech Republic	Overview and assessment of victims' rights in practice in Czech Republic.
General assembly Resolution 40/34 of November 1985 - Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power [1985]	International framework preceding the Directive to address victims' rights.

Griffiths, G.T. (1999). "The Victims of Crime and Restorative Justice: the Canadian Experience," <i>International Review of Victimology</i> , 6: 265-316	Discusses debates on restorative justice.
Groenhuijsen, M. & Pemberton, 2009, <u>The EU framework decision for victims of crime</u> , <i>European Journal of Crime, Criminal Law and Criminal Justice</i>	Overview of negative results found by the 2004 EU Commission report, including the "calculated reservation of MS", unrealistic timeframe for the transposal into law, gap in perception among MS and vague language that hampered harmonisation of victims' position.
Ingeborg, E., 2000, <u>Victims of crime in 22 European Criminal Justice Systems - The implementation of Recommendation(85) 11</u>	Description of the 'local reality' in each country that help explain how the legal system works in a specific country. This study analyses the position of the victim of crime in 22 European criminal justice systems based on Recommendation (85) 11 of Council of Europe. Answers questions on how jurisdictions have been transposed and if so, how it was achieved. The study concludes that the implementation was disappointing.
Irvin Waller. " <u>Crime Victims: Doing Justice to Their Support and Protection</u> ". 2003. The European Institute for Crime Prevention and Control (Heuni)	The handbook provides policy makers, advocates and voters with guidance as to what must be done to improve services and rights for victims.
JUSTICIA <u>European Rights Network</u> , 2017	"The most up-to-date and relevant documents, press releases, academic comment, legislation, and case-law have been collated and organised here in this fully-searchable central storage space. Here you can get an overall sense of the information available in the area of victims' rights or quickly find a specific document."
Matrix Insight. 2010. A Study for an Impact Assessment on Ways of Improving the Support, Protection and Rights of Victims across Europe	Study that concluded further action was needed to improve the situation for victims across Europe and that cross-border problems justified EU action.
The National - Associated Press and wires, 2017, <u>Barcelona terror attack: victims from at least 34 countries</u>	News article on victims of the Barcelona terror attack.
Pemberton, A., 2011, <u>Developing Victim's Rights within the European Union: past, present and future</u> , International Victimology Institute Tilburg (INTERVICT)	The transposal of Framework decision articles into national law and enforcement of victims' rights was not successful. While the position of victims in Europe did improve since adoption of FD, the study concluded it was not possible to confirm with confidence that these improvements were directly related to the adoption of the FD.
Pemberton, A. & Rasquette, C., 2010. Victims in Europe - Assessment of the implementation on the Framework Decision on the standing of victims in criminal proceedings: Preliminary results. In: Hartmann, J. (eds.)	Assessment of the implementation of the Framework Decision.

Perspektiven professioneller Opferhilfe, Wiesbaden, Germany. VS Verlag.	
Preamble, (9), <u>Directive 2012/29/EU of the European Parliament and of the Council</u>	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
<u>Ratengangsskolan</u> , 2017	Case study, efforts to implementing the directive: Online dynamic court visualisation to help victims understand what happens before, during and after court.
Sherman, LW and Strang, H, 2007, Restorative Justice: The Evidence. London: The Smith Institute, as seen on: Centre for Justice & Reconciliation	A review of research on restorative justice (RJ) in the UK and abroad with 36 direct comparisons to conventional criminal justice (CJ).
Schumacher, E. (Deutsche Welle), January 2016, <u>Report</u> : Five times more attacks on refugee homes in Germany in 2015, The German government outlined some of its plans to tackle this problem in a report submitted to the CERD Committee in July 2016	Five times more attacks on refugee homes in Germany in 2015, The German government outlined some of its plans to tackle this problem in a report submitted to the CERD Committee in July 2016
<u>Supporting Justice blog</u> , The Link Between European Protection Orders and Domestic Violence	Article evaluates the relevance of EPOs for EU citizens in today's context.
Tilburg Law School, Suzan van der Aa, 2017, New Trends in the Criminalization of Stalking in the EU Member States'	There is furthermore evidence that a former (violent) relationship increases the risk of stalking victimization and that a prior romantic involvement has an influence on the seriousness and duration of the stalking. As a result, stalking can be considered a form of (domestic) violence against women.
UNODC, 2015, Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework	This publication represents the outcome of an expert group meeting convened by UNODC. These recommendations are aimed at assisting Member States to establish and enhance policies, laws and institutional capacity to provide improved outcomes for victims, while fully respecting the rule of law and rights of accused persons.
UNODC, 2015, Combating violence against migrants - Criminal justice measures to prevent, investigate, prosecute and punish violence against migrants, migrant workers and their families and to protect victims.	The publication is offered as a tool to support States in their efforts to prevent, investigate, prosecute and punish violence against migrants. It offers several measures for legislators, policymakers and criminal justice practitioners and others who encounter migrants in regular and irregular situations in their work.
Victim Support Europe, 2017, <u>Cross-border Victimization</u> : Challenges and solutions with respect to the provision of support to victims of crime in a cross-border situation	A Victim Support Europe study that identified characteristics of cross-border victims that can turn into barriers and prevent cross-border victims to access to their victims' rights to information, protection, access to justice.

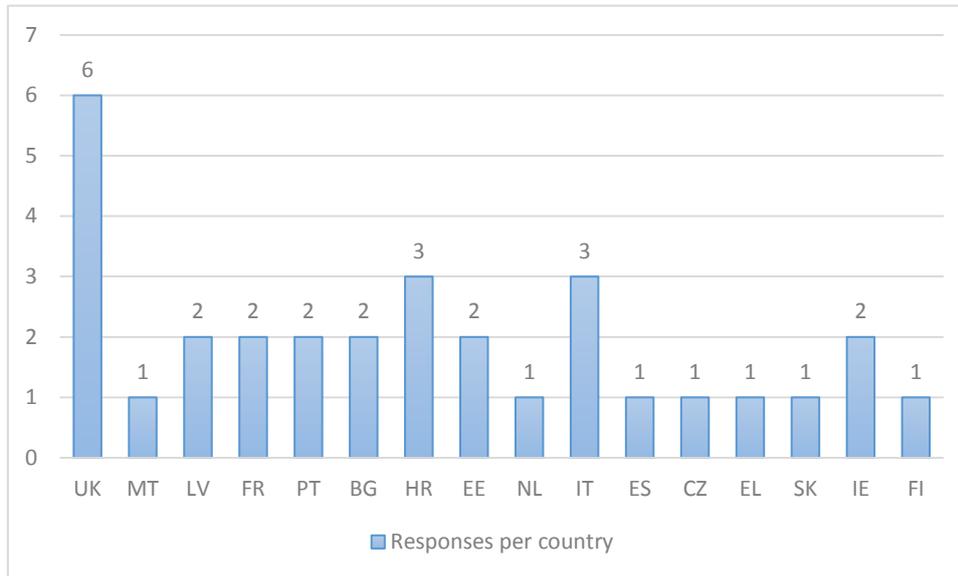
<p>WAVE Network, <u>Protection orders and domestic violence against women with specific needs Findings from five European countries</u>, Final Report, 2016.</p>	<p>This report brings together findings from all five country reports. Differences between the countries are considerable, with regard to legal frameworks, the scope of the research, the case sample and the findings on protection orders and domestic violence against women with specific needs.</p>
<p>WAVE Fact sheet, Women's Support Services in Europe October 2015</p>	<p>The 2014 WAVE Report (published 2015) provides an up-to-date overview of the availability of core specialized support services for women and their children in 46 European countries, including the 28 EU countries.</p>

Appendix C: List of country codes

Country code	Country name
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom

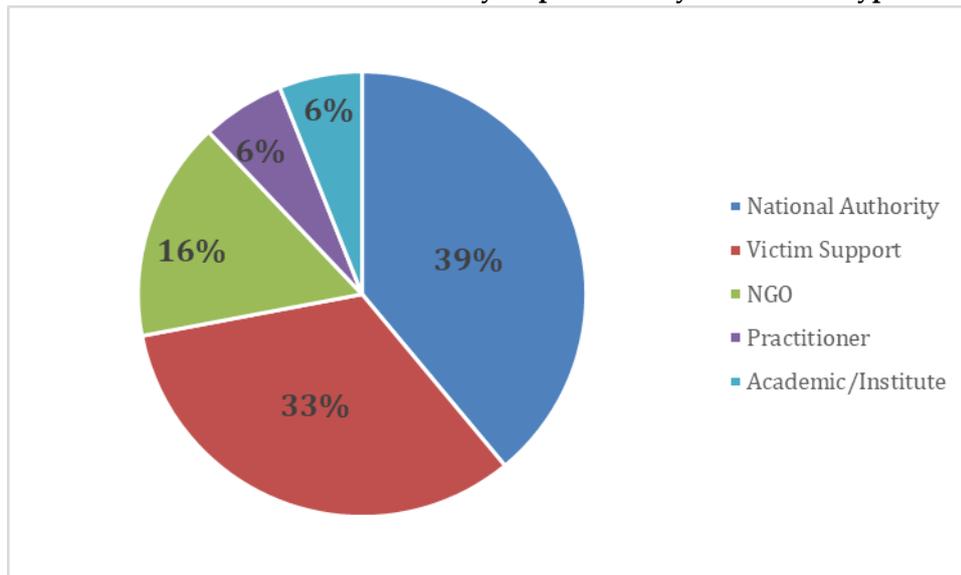
Appendix D: Stakeholder feedback overview

Online survey respondents by country



(n=31)

Online survey respondents by stakeholder type



(n=31)

Appendix E: Overview of the directive's transposition

Below are the findings from the assessment of the transposition of the directive in the 27 Member States that are subject to the directive.

Table 4 –Transposition of the directive

	Articles																					
	1 & 2	3	4	5	6	7	8 & 9	10	11	12	13 & 14	15	16	17	18, 19 & 20	21	22	23	24	25	26	28
AT	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
BE	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
BG	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	Y	N	N	N	Y	Y	N	N	n/a
CY	Y	Y	Y	Y	N	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	n/a
CZ	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
DE	N	N	N	Y	Y	Y	N	N	N	N	Y	N	Y	N	n/a ²²⁰	Y	Y	n/a	Y	n/a	N	Y
EE	Y	N	N	N	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	N	N	n/a
EL	Y	Y	Y	Y	Y	Y	Y	Y	Y	n/a	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
ES	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
FI	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y
FR	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
HR	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	n/a
HU	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	n/a
IE	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N	N	N
IT	NC	NC	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	n/a
LT	Y	Y	Y	Y	Y	Y	n/a	Y	Y	N	Y	Y	Y	n/a	n/a	Y	Y	Y	Y	N	N	n/a
LU	Y	Y	Y	Y	N	Y	N	N	Y	N	Y	Y	Y	N	N	N	Y	N	Y	N	N	n/a
LV	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
MT	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	N	Y	Y	N	Y	N	Y	N	N	n/a
NL	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	n/a
PL	Y	Y	Y	Y	NC	Y	Y	Y	Y	NC	Y	Y	NC	Y	NC (Art 20)	Y	Y	NC	Y	n/a	n/a	n/a
PT	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	n/a

²²⁰ Not considered necessary to transpose by national authorities due to administrative procedures in place

	Articles																					
	1 & 2	3	4	5	6	7	8 & 9	10	11	12	13 & 14	15	16	17	18, 19 & 20	21	22	23	24	25	26	28
RO	Y	NC	Y	NC	Y	Y	Y	Y	Y	NC	Y	Y	NC	Y	Y	Y	Y	Y	NC	Y	n/a	n/a
SE	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	n/a	Y	Y	Y	n/a
SI	N	N	N	N	N	Y	N	Y	Y	N	Y	Y	n/a	n/a	n/a	n/a	N	n/a	n/a	n/a	n/a	n/a
SK	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	N ²²¹
UK	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	n/a	n/a	n/a

((Y = Transposed, NC = Transposed but non-compliant, N = not transposed, n/a = information not available))

²²¹ Slovakia's national authority confirmed this information will not be provided on time since the Directive was transposed only in October 2017.

Directive 2012/29/EU establishing minimum standards for the rights, support and protection of victims of crime is an instrument of harmonisation that sets basic standards to be applied across the EU. It makes important procedural provisions regarding, for instance, the right to be heard, to understand and be understood, and the right to receive information, make a complaint and access support services. This study assesses the implementation of the directive and various aspects of its application: legal transposition measures at Member State level, the practical implementation of the directive on the ground, and the benefits it has provided for victims, as well as the challenges encountered.

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