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*Committee on Civil Liberties, Justice and Home Affairs
Committee on Women's Rights and Gender Equality*

2011/0129(COD)

2.7.2012

AMENDMENT 539

Draft report

Teresa Jiménez-Becerril Barrio, Antonia Parvanova,
(PE480.616v01-00)

on the proposal of a directive of the European Parliament and of the Council
establishing minimum standards on the rights, support and protection of
victims of crime

Proposal for a directive
(COM(2011)0275) – C7-0127/2011 – 2011/0129(COD))

(Rule 51 - Joint Committee meetings)

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Amendment 539

Teresa Jiménez-Becerril Barrio, Antonia Parvanova,

Draft directive

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AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

[DIRECTIVE **2012/.../EU** OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

establishing minimum standards on the rights, support and protection of victims of crime

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

¹ OJ C 43, 15.2.2012, p. 39.

² OJ C 113, 18.4.2012, p. 56.

³ *Position of the European Parliament of ... [(OJ ...)] (not yet published in the Official Journal)] and Decision of the Council of*

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.
- (2) The Union is committed to the protection of victims of crimes and to the establishment of minimum standards and has adopted Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings⁴. Under the Stockholm programme – *An open and secure Europe serving and protecting citizens*⁵, adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States have been asked to examine how to improve legislation and practical support measures for the protection of victims, *with attention, support and recognition for all victims, including for victims of terrorism, as a priority*.

⁴ OJ L 82, 22.3.2001, p. 1.

⁵ OJ C 115, 4.5.2010, p. 1.

- (2a) *Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgements and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (c) of Article 82(2) TFEU refers to 'the rights of victims of crime' as one of the areas where minimum rules may be established.*
- (2b) *In its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings⁶, the Council stated that action should be taken at Union level in order to strengthen the rights, support and protection of victims of crime. To that end and in accordance with that Resolution, this Directive aims to revise and supplement the principles set out in Framework Decision 2001/220/JHA and to take significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings.*
- (3) The Resolution of the European Parliament of 26 November 2009 on the elimination of violence against women⁷ called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.

⁶ *OJ C 187, 28.6.2011, p. 1.*

⁷ *OJ C 285E, 21.10.2010, p. 53.*

(3a) *The Resolution of the European Parliament of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women⁸ proposes a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislative criminal-law instruments against gender-based violence, including a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by an EU action plan. International regulation within this area includes United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, the CEDAW Committee's recommendations and decisions, and the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 7 April 2011.*

⁸ *Not yet published in the Official Journal.*

- (3b) *Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order⁹ [and Regulation (EU) No .../2012 on mutual recognition of protection measures in civil matters¹⁰] establish mechanisms for the mutual recognition of protection measures between Member States. Directive 2011/92/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 pornography¹¹ and 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 victims¹² address the specific needs of the particular categories of victims of child sexual abuse, sexual exploitation and child pornography and human trafficking.*
- (3c) *Framework Decision 2002/475/JHA of the European Council of 13 June 2002 on combating terrorism recognises that terrorism constitutes one of the most serious violations of the principles on which the Union is founded and based on, including the principles of democracy and the free exercise of human rights.*

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⁹ OJ L 388, 21.12.2011, p. 2.

¹⁰ OJ L ...

¹¹ OJ L 335, 17.12.2011, p. 1.

¹² OJ L 101, 14.04.2011, p. 1.

- (5) Crime is ***a wrong*** against society as well as a violation of the individual rights of victims. As such, victims should be recognised and treated in a respectful, sensitive and professional manner ***without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or state of health.*** In all contacts with any competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support service or restorative justice service ***victims'*** personal situation and immediate needs, age, gender, ***possible*** disability and level of maturity ***should be taken into account while*** fully respecting their physical, mental and moral integrity. They should be protected from secondary and repeat victimisation and ***from*** intimidation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

- (5a) *This Directive does not deal with the conditions of the residence of the victims of crimes in the territory of the Member States. Member States should take the necessary measures to ensure that the rights provided for in this Directive are not made conditional on the victim's legal residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings does not create any rights regarding the residence status of the victim.*
- (6) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, *that* Framework Decision should in the interests of clarity be replaced in its entirety.
- (7) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular it seeks to promote the right to dignity, life, physical and mental integrity, *freedom and security, the right to non-discrimination, the right to respect for* private and family life, *the principle of equality between men and women, the* right to property, **■** the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.

- (8) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.
- (8a) The rights provided for in this Directive are without prejudice to the rights of the offender. The use of the term "offender" is without prejudice to the presumption of innocence and refers to suspected and accused persons, when it refers to stages prior to a possible acknowledgement of guilt or the conviction. However, it covers also the state when a person has been convicted of having committed a crime.***
- (8b) This Directive applies in relation to criminal offences committed in the European Union and to criminal proceedings that take place in the Union. It only confers rights on victims of extra-territorial offences in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.***

- (8c)** *In applying the provisions of this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child. Child victims should be considered and treated as the full bearers of rights provided for in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.*
- (8d)** *In applying the provisions of this Directive, Member States should ensure that victims with disabilities fully enjoy the rights under this Directive on an equal basis with others, including by facilitating the accessibility to premises, where criminal proceedings are conducted as well as access to information.*
- (8e)** *Victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and social recognition due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore pay special attention to victims of terrorism, and should seek to protect their dignity and security.*

(8f) *Violence that is directed against a person because of his or her gender, gender identity or gender expression or affects persons of a particular gender disproportionately is understood as gender-based violence. It may result in physical, sexual, psychological or economic harm to or in suffering of the victim. Gender-based violence is understood as a form of discrimination and a violation of the fundamental freedoms of the victim and includes, but is not limited to violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings and slavery and different forms of harmful practices, such as forced marriages, female genital mutilation and crimes committed in the name of so-called "honour". Women victims of gender-based violence and their children often require special support and protection because of a high risk of repeat victimisation and intimidation with these types of crime.*

(8g) *When violence is committed in a close relationship, the violence is committed by a person who is a current or former spouse or partner or other family member of the victim, whether or not the perpetrator shares or has shared the same household with the victim. Such violence may cover physical, sexual, psychological or economic violence and may result in physical or mental injury, emotional suffering or economic loss. Violence in close relationships is a serious and often hidden social problem which may cause systematic psychological and physical trauma with severe consequences because of it being committed by a person the victim should be able to trust. Victims of violence in close relationships may therefore be in need of specific protection measures. Women are affected disproportionately by this type of violence and the situation can be more severe if the woman is dependent on the offender financially, socially or as regards her right to residence.*

- (9) A person should be considered *to be* a victim regardless of whether *an offender* is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the *offender* and *that person*. Family members of victims may also *be* harmed as a result of the crime. *In particular family members of a person whose death has been caused directly by a criminal offence may be harmed as a result of the crime.* Such indirect victims *may* therefore also benefit from protection under this Directive. *However, Member States may establish procedures to limit the number of family members who may benefit from the rights under this Directive. In the case of a child, the child himself/herself or the holder of the parental responsibility on behalf of the child should be entitled to exercise the rights provided for by this Directive, unless this is not in the best interests of the child. This Directive is without prejudice to any national administrative procedures and formalities confirming that a person is a victim.*

(9a) The role of victims in the criminal justice system and their possibility of actively participating in criminal proceedings vary in each Member State, depending on the national system, and is determined by one of the following criteria: the national system provides for a legal status as a party to criminal proceedings; the victim is under a legal requirement or is requested to actively participate in criminal proceedings, such as witnesses; and/or the victim has a legal entitlement under national law to actively participate in criminal proceedings and is seeking to do so, where the national system does not provide for a legal status as a party to the criminal proceedings.

Member States should determine which of those criteria will be applicable to determine the scope of rights provided for under Articles, where there are references to the role of the victim in the relevant criminal justice system.

- (9b)** *Information and advice provided by competent authorities, victim support services and restorative justice services should as far as possible be given through a range of media in a manner which can be understood by the victim. This information and advice should be provided in a simple and accessible language. It should also be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, their age, maturity, intellectual and emotional capacities, literacy levels and any mental or physical impairment should be taken into account. Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.*
- (9c)** *The moment where a complaint is made should for the purpose of this Directive be considered as falling within the context of the criminal proceeding. This also includes situations where authorities ex officio initiate criminal proceedings as a result of a criminal offence suffered by a victim.*

- (9d)** *Information on reimbursement of expenses may, from the time of the first contact with a competent authority, be provided e.g. in a leaflet stating the basic conditions. Member States are not required, at this early stage of the criminal proceedings, to decide on whether the victim in question fulfils the conditions for reimbursement of expenses.*
- (9e)** *When reporting a crime, victims should receive a written acknowledgement from the police, stating the basic elements of the crime, such as the type of crime, the time and place, damage and harm caused by the crime, etc. This acknowledgement should include a file number and the time and place for reporting of the crime in order to potentially serve as physical documentation that the crime has been reported, e.g. in relation to insurance claims.*
- (9f)** *Without prejudice to the rules on statute of limitation, the delayed reporting of a criminal offence, due to fear of retaliation, humiliation or stigmatisation, should not result in refusing acknowledgement of the victim's complaint.*

- (10) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings ■ . In this respect, information allowing the victim to know about the current status of any proceedings ■ is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. ***Unless specifically required, the information communicated to the victim may be provided orally or in writing, including through electronic means.***
- (10a) ***Information to a victim should be provided to the last known correspondence address or electronic contact details given to the competent authority by the victim. In exceptional cases, e.g. due to the high number of victims involved in a case, information may be provided through the press, through an official home page of the competent authority or any similar communication channel.***
- (10b) ***Member States should not be obliged to provide information, where disclosure of that information could affect the proper handling of a case or harm a given case or person, or if the Member State considers it contrary to the essential interests of its security.***

- (10c) Competent authorities involved should ensure that victims receive updated contact details for communication about their case, unless the victim has expressed a wish not to receive such information.***
- (10d) Reference to a "decision" in the context of the right to information, translation and interpretation, should be understood only as a reference to the finding of guilt or otherwise ending criminal proceedings. The reasons of that decision may be provided to the victim either through a copy of the resolution where that decision is included in or through a brief summary of them.***
- (10e) The right to information on the time and place of a trial resulting from the complaint of a criminal offence suffered by the victim also applies to information on the time and place of a hearing related to an appeal of a judgment in the case.***

- (10f) Specific information on the release or the escape of the offender should be given to victims where they have so requested at least in cases where there might be danger or identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all risks when determining an appropriate action. The reference to "identified risk of harm to victims" should cover such factors as severity or nature of the crime and risk of retaliation. Therefore, it should not be applied to those situations where petty crimes occurred and thus there is slight possibility of harm to the victim.*
- (10g) Victims should receive information on any right to appeal of a decision to release the offender, if such a right exists in national law.*

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(12) Justice cannot be effectively achieved unless the *victims* can properly explain the circumstances of the crime they have suffered and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure the respectful treatment of the *victim* and to ensure they are able to access their rights. Free of charge interpretation should therefore, *in accordance with the role of the victim in the relevant criminal justice system*, always be available during questioning of the victim and for their *active* participation in court hearings. For other aspects of criminal proceedings, the need of interpretation and translation can vary depending on specific issues, the *role* of the victim and their involvement in proceedings and any specific rights they have. As such interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights.

(12a) The victim should have the right to challenge a decision finding that there is no need for translation or interpretation, in accordance with procedures in national law. That right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such decision may be challenged and should not unreasonably prolong the criminal proceedings. An internal review of the decision would suffice.

(12b) *The fact that a victim only speaks a language, which is rarely spoken, should not in itself be grounds to decide that translation or interpretation would unreasonably prolong the criminal proceedings.*(13) Support ■ should be ■ available from the moment *the authorities are aware of the victim and* throughout criminal proceedings and *for an appropriate time* after such proceedings in accordance with the needs of the victim *and the rights under this Directive*. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution to allow all victims ■ opportunity to access such services. *Victims who have suffered considerable harm due to the severity and gravity of the crime* may require specialist support services ■ .

(13a) Those who are most vulnerable or who find themselves in particularly exposed situations, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents, are in need of specialised support and legal protection. Specialised support services should be based on an integrated and targeted approach which should notably take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about their rights covered by the scope of this Directive and to contribute to that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The types of support that such dedicated services should offer may include but are not limited to providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape and sexual assault, short and long-term psychological counselling, trauma care, legal counselling, access to advocacy and specific services for children as direct or indirect victims. Victim support services are not by definition expected to provide extensive specialist and professional expertise themselves. If necessary, victim support services should assist victims in calling on existing professional support, for instance psychologists.

- (14) Although the provision of support should not be dependent on *victims* making a complaint of an offence to a competent authority such as the police, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be *and are* adhered to. ***Repeat referrals should be avoided.***
- (14a) ***The right of victims to be heard should also be considered to have been granted where the victims may make statements or explanations in writing.***
- (14b) ***The right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or of the child's age.***

- (15) *The right to have the decision not to prosecute reviewed refers to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by courts. Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review may be made, in which case the review may be carried out by that same authority. The right to review a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position.*
- (15a) *A decision ending proceedings should cover also situations where the prosecutor decides to withdraw charges or discontinue proceedings.*
- (15b) *A decision of the prosecutor resulting in an out-of-court settlement and thus ending proceedings, should only exclude victims from the right to have a decision of the prosecutor not to prosecute reviewed, if the settlement imposes a warning or an obligation.*

- (16) Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent any further victimisation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as ***the type, nature and gravity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity***, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to and in conducting a restorative process. ***Private*** proceedings should in general be confidential, unless agreed otherwise by the parties, ***or as required by national law due to an overriding public interest***. ***Factors*** such as threats made ***or any forms of violence occurring*** during the process may be considered as requiring disclosure in the public interest.

(16a) Victims should not be expected to incur expenses to participate in criminal proceedings. However, they should not incur unnecessary expenses in doing so. Member States are required to reimburse only necessary expenses, but are not required to reimburse the victims' legal fees. Member States can impose conditions of payment in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts for loss of earnings. The right to reimbursement of expenses in criminal proceedings should not be related to a situation where a victim makes a statement on a criminal offence. Expenses need only be provided to the extent that the victim is obliged or requested by the competent authorities to be present and actively participate in the proceedings.

(16b) Recoverable property which is seized in criminal proceedings should be returned as soon as possible to the victim of the crime, unless there are exceptional conditions, such as a dispute concerning the ownership, the possession of the property or the property itself is illegal. Return of the property should be without prejudice to its legitimate retention for the purpose of other legal proceedings.

- (16c) The right to a decision on compensation from the offender and the relevant applicable procedure should also apply for victims resident in a Member State other than the Member State where the criminal offence occurred.*
- (16d) The obligation contained in this Directive to transmit complaints should not affect Member States' competence to institute proceedings and is without prejudice to the rules of conflict of jurisdiction, including on the exchange of information, as laid down in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings¹³.*
- (16e) If the victim has left the territory of the Member State where the criminal offence occurred, that Member State should no longer be obliged to provide assistance, support and protection except for what is directly related to any criminal proceedings it is conducting regarding the criminal offence in question, such as special protection measures during court proceedings. The Member State of the victim's residence should provide assistance, support and protection required for the victim's need to recover.*
- (16f) Measures to protect the safety and dignity of victims and their family members from retaliation, intimidation, repeat or further victimisation, such as interim injunctions or protection or restraining orders, should be available.*

¹³ OJ L 328, 15.12.2009, p. 42.

(16g) The risk of further victimisation either by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a co-ordinated manner which treats victims with respect and enables them to establish trust in authorities. Interaction with authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through for example video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his family, associates or members of the public. To that end, Member States are encouraged to introduce, especially in court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances, waiting areas, etc., for victims. In addition Member States should, to the extent possible, plan the criminal proceedings so that contacts between the offender and the victims and their family members are avoided, such as by summoning the victim and the offender to hearings at different times.

- (16h) *Protecting the privacy of the victim can be an important means of preventing further victimisation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim. Such protection is particularly important for child victims, including non-disclosure of the name of the child. However, there might be cases where exceptionally the child can benefit if information is being revealed or even publicised widely, e.g. where a child has been abducted. Measures to protect the privacy and images of victims and of their family members should always be consistent with Articles 6 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms on the right to a fair trial and the freedom of expression.*
- (17) Some victims are particularly *at risk* during criminal proceedings to secondary and repeat victimisation and to intimidation by the offender ■ . Such *risks derive* broadly ■ from the personal characteristics of the victim, the type or nature of the crime *and the circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, may these risks be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of further victimisation and what specific protection measures they require.*

- (18) **Individual assessments** should take into account ***the personal characteristics of the victim such as*** age, gender and gender identity ***or expression***, ethnicity, race, religion, sexual orientation, health, disability, ***residence status***, communication difficulties, relationship to or dependence on the ***offender***, previous experience of crime, the type or nature of the crime ***or the circumstances of the crime*** such as ***hate crime***, bias ***crime or crime committed with a discriminatory motive***, ***sexual violence***, ***violence in close relationships***, ***where the offender was in a position of control***, ***the victims residence is in a high crime or gang dominated area***, or whether the victim is a ***foreigner***.
- (18a) **Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, victims with disabilities and child victims tend to experience a high rate of secondary or repeat victimisation or intimidation. Particular care should be taken when assessing whether such victims are at risk of further victimisation and there should be a strong presumption that those victims will benefit from specific protection measures.**

- (19) Victims who have been identified as vulnerable *to secondary and repeat victimisation or to intimidation* should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment *taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence* and in accordance with rules of judicial discretion. The *victims'* concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.
- (19a) *Immediate operational needs and constraints may make it impossible to ensure for example that the same police officer consistently interview the victim; illness, maternity or parental leave are examples of such constraints. Furthermore, premises specially designed for interviews with victims may not be available due to renovation, etc. In the event of such operational or practical constraints, a special measure envisaged following an individual assessment may not be possible to provide on a case-by-case basis.*

- (23) *Where*, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles may be performed by the same person or by a legal person, an institution or an authority.

- (24) Any officials *involved* in criminal proceedings *who are* likely to come into *personal* contact with victims should be *able to access and receive appropriate training so they are able* to identify **■** victims *and their needs and deal with them in a sensible, respectful, professional and non-discriminatory manner* both through initial and ongoing training and to a level appropriate to their contact with victims.
- Practitioners who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure this training requirement for police services, staff within the judicial authorities. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support and restorative justice services. This requirement should include training on the specific services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training as appropriate. Where relevant, such training should be gender-sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with Council Resolution of 10 June 2011.*

- (25) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policy-making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. ***For victims of crime to receive the proper degree of attention, support and protection, public services should work in a coordinated manner and be involved at all administrative levels – at Union level, and at national, regional and local levels. Victims should be assisted in finding and addressing the right authorities in order to avoid repeat referrals. Member States should consider developing multi-agency services, following the principle of ‘sole point of access’ or ‘one-stop shop’, that address victims’ multiple needs when involved in criminal proceedings, including the need to receive information, support, assistance, protection and compensation.***

(25a) In order to encourage and facilitate reporting and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services should be available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, considerate, equal and professional manner. This could increase victims' confidence in the criminal justice systems and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims about criminal offences are appropriately trained to facilitate reporting, and measures should be put in place to enable or third-party reporting, including by civil society organisations. It should be possible to make use of communication technologies, such as e-mail, video recordings or online electronic forms for filing complaints.

(25b) Systematic and adequate data collection is recognised as an essential component of effective policy-making in the field of victims' rights covered by the scope of this Directive. In order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant data related to the application of national procedures on victims of crime, including at least the number, type or nature of the reported crimes and, as far as such data is known and available, the number of the victims, their age and gender. Relevant statistical data can include judicial data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by health care and social welfare services and by public and non-governmental victim support, restorative justice and other organisations working with victims of crime. Judicial data can include information on reported crime, number of cases that are investigated, prosecuted and sentenced. Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as number of referrals by police to victim support services, number of victims that request support, receive and do not receive support or restorative justice.

- (26) Since the *objective of this Directive, namely* establishing ■ minimum standards *on the rights, support and protection of victims of crime*, cannot be sufficiently achieved by Member States acting unilaterally, either at national, regional or local level, *but can rather, by reason of* the scale and potential effects be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as *set out* in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (27) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.

- (28) This Directive shall not affect more far reaching provisions contained in other *Union* acts which address the specific needs of *particular* victims, *such as victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography*, in a more targeted manner.
- (29) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Directive .
- (30) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is **■** not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Chapter 1

INTRODUCTORY PROVISIONS

Article 1

Objectives

1. The purpose of this Directive is to ensure that █ victims of crime, *as defined in Article 2*, receive appropriate *support and* protection █ and are able to participate in criminal proceedings █.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, individual, professional and non-discriminatory manner █, in all contacts with █ victim support or restorative justice service or any competent authority, operating within the context of criminal proceedings. The rights provided for in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. *Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child sensitive approach, taking due account of the child's age, level of maturity and the child's views, needs and concerns, shall prevail in all interactions. The child and his/her legal representative, if any, shall be informed of any measures or rights specifically focussed on the rights of the child.*

Article 2

Definitions

1. For the purposes of this Directive:

(a) 'victim' means :

- (i) a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by a criminal offence;
- (ii) **■** family members of a person whose death *was directly* caused by a criminal offence *and who have suffered harm as a result*;

(b) 'family members' means the spouse, *the person who is living with the victim in a committed intimate relationship on a stable and continuous basis having a joint household*, the relatives in direct line, the *siblings* and the dependants of the victim;

■

(e) 'restorative justice services' means *any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party*;

(f) 'child' means any person below 18 years of age.

■

2. *Member States may establish procedures:*
 - (a) *to limit the number of family members who may benefit from the rights under this Directive taking into account the individual circumstances of each case; and*
 - (b) *in cases falling within Article 2(1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights under this Directive.*

Chapter 2

PROVISION OF INFORMATION AND SUPPORT

Article 2a

Right to understand and to be understood

1. *Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any necessary interaction they have with any competent authorities in the context of criminal proceedings, including where information is provided by such authorities.*
2. *Member States shall ensure that communications with victims are offered in a simple and accessible language, either orally or in writing. Such communications shall take into account personal characteristics of the victim including any disability which may affect their ability to understand or to communicate.*

3. *Unless this would be contrary to the interests of the victim or the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with competent authorities, where the victim requires assistance to understand and to be understood due to the impact of the crime.*

Article 3

Right to receive information from first contact with a competent authority

1. Member States shall ensure that victims are *offered* the following information, without unnecessary delay, from their first contact with the *competent* authority *to enable them to access their rights provided in this Directive*:
- (a) *the type of support they can obtain and from whom, including where relevant basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;*
 -
 - (d) procedures *concerning* the making of a complaint of an offence and their role in connection with such procedures;
 - (e) how and under what conditions they can obtain protection, *including protection measures*;

- (f) *how and under what conditions they can access* legal advice, legal aid or any other sort of advice;
- (g) *how and under what conditions they can access compensation;*
- (ga) *how and under what conditions they are entitled to interpretation and translation;*
- (h) if they are resident in *a* Member State *other than that where the offence occurred*, any special *measures, procedures or* arrangements, *which are* available to ■ protect their interests *in the Member State, where the contact is made;*
- (i) any procedures for making complaints where their rights are not respected *by the competent authority operating within the context of criminal proceedings;*
- (j) contact details for communications about their case;
- (ja) *available restorative justice services;*
- (jb) *how and under what conditions they can have expenses incurred as a result of their participation in the criminal proceedings reimbursed.*

2. *The extent or detail of that information may be varied based on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and its relevance at each stage of proceedings.*

Article 3a

Right of victims when making a complaint

1. *Member States shall ensure that victims receive written acknowledgement stating the basic elements relating to the crime of any formal complaint of a criminal offence made by them to the competent authority of the Member State.*
2. *Member States shall ensure that victims who wish to make a complaint of a criminal offence and who do not understand or speak the language of the competent authority shall be enabled to make the complaint in a language the victim understands or by receiving the necessary linguistic assistance.*
3. *Member States shall ensure that victims, who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of the complaint, provided for in paragraph 1, if they so request, in a language understood by the victims.*

Article 4

Right to receive information about their case

1. Member States shall ensure that victims are notified *without unnecessary delay* of their right to receive, *and that they, if they so request, receive* the following information on **█** the criminal proceedings instituted as a result of the complaint of a criminal offence *suffered* by the victim:
 - (a) *any* decision not to proceed with or to end an investigation or *not to prosecute the offender*;
 - (b) *the time and place of the trial, and the nature of the charges.*
- 1a. *Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, are notified without unnecessary delay of their right to receive, and that they, if they so request, receive the following information on the criminal proceedings instituted as a result of the complaint of a criminal offence suffered by the victim:*
 - (a) *any* final judgment in a trial **█** ;
 - (b) information enabling the victim to know about the state of **█** the criminal proceedings **█** , unless in exceptional cases the proper handling of the case may be adversely affected.

- I**
- 1b. Information provided for under paragraph 1(-a) and 1a(a) shall include either reasons or a brief summary of reasons for the decision in question except in the case of a confidential or jury decision where reasons are not provided as a matter of national law.**
 - 1c. The wish of victims whether or not to receive information shall bind the competent authority, unless this information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, which shall then be taken into account.**
 2. Member States shall ensure that victims are offered the opportunity to be notified **without unnecessary delay**, when the person **remanded in custody**, prosecuted or sentenced for offences concerning them is released from **or has escaped detention**. **Furthermore, victims shall be informed of any relevant measures issued for their protection in case of release or escape.**
 3. **Victims shall receive the information provided for in paragraph 2, if they so request, at least in cases where there might be danger or identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification.**

Article 6

Right to interpretation and translation

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, if they so *request*, with *free of charge* interpretation, *in accordance with their role in the relevant criminal justice system in criminal proceedings, at least* during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their *active* participation in court hearings and any necessary interim hearings.

3. *Without prejudice to the rights of the defence and in accordance with rules of judicial discretion*, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victim to properly exercise their rights or understand the proceedings.

4. Member States shall ensure that *victims* who *do* not understand or speak the language of the criminal proceedings concerned shall, *in accordance with their role in the relevant criminal justice system in criminal proceedings*, receive translations *in a language understood by the victims*, if they so *request*, free of charge, of **■** information *essential to the victims' exercise of their rights in criminal proceedings*, to the extent that such information is made available to the *victims*, *at least*:

■

(b) any decision ending the criminal proceedings related to the criminal offence *suffered by the victim, and upon request of the victim, reasons or a brief summary of* **■** reasons for such decision, *except in the case of confidential or jury decision where reasons are not provided as a matter of national law.*

■

4a. *Member States shall ensure that victims, who are entitled to information on the time and the place of the trial, in accordance with Article 4(1), and who do not understand the language of the competent authority, receive a translation of this information to which they are entitled, if they so request.*

- 4b. There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling victims to actively participate in the criminal proceedings. Victims may submit a reasoned request to consider a document as essential.*
- 5. As an exception to the general rules established in paragraphs 1, 3 and 4, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.*
- 6. Member States shall ensure that the competent authority assesses whether victims need translation and assistance of an interpreter as provided for under paragraph 1 and 4. Victims may challenge a decision not to provide translation or interpretation. The procedural rules shall be determined by national law.*
- 6a. Translation and interpretation, as well as any consideration of a challenge of a decision not to provide translation or interpretation, shall not unreasonably prolong the criminal proceedings.*

Article 7

Right to access victim support services

1. Member States shall ensure that victims ■ in accordance with their needs ■ have access to free of charge, confidential victim support services *acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the crime committed against the victim.*
2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and *by* other relevant agencies, to victim support services.
3. Member States shall *take measures to establish free of charge and confidential* specialist support services in addition to, *or as an integrated part of*, general victim support services, *or by enabling victim support organisations to call on existing professional agencies providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the crime committed against the victim.*

- 3a. *Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.***
- 3b. *Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint of a criminal offence to a competent authority.***

Article 7a

Support available from victim support services

- 1. *Victim support services, as set out in Article 7, shall as a minimum provide:***
- (a) *information, advice and support relevant to the rights of victims including on accessing state compensation schemes for criminal injuries, and their role in criminal proceedings including preparation for attendance at the trial;***
 - (b) *information on or direct referral to ■ any relevant specialist victim support services in place;***
 - (c) *emotional and, where available psychological support;***
 - (d) *advice relating to financial and practical issues ■ arising from the crime;***
 - (e) *unless otherwise provided by other public or private services, advice relating to the risk of retaliation, intimidation and repeat or further victimisation and how to prevent or avoid it.***

2. *Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity and gravity of the crime.*
3. *Unless otherwise provided by other public or private services, specialist support services referred to in Article 7(3), shall as a minimum develop and provide:*
 - (a) *shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of retaliation, intimidation or repeat or further victimisation;*
 - (b) *targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.*

Chapter 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

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Article 9

Right to be heard

1. Member States shall ensure that victims may be heard during criminal proceedings and may supply evidence. ***When a child victim is to be heard due account shall be taken to the age and maturity of the child.***
2. ***The procedural rules under which victims may be heard during criminal proceedings and may supply evidence shall be determined by national law.***

Article 10

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, ***in accordance with their role in the relevant criminal justice system,*** have the right to ***a review of a*** decision not to prosecute ***the criminal offence suffered by the victim. The procedural rules for such a review shall be determined by national law.***

- 1a. Where, in accordance with national law, the victim's role in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious criminal offences have the right to a review of a decision not to prosecute the criminal offence suffered by the victim. The procedural rules for such a review shall be determined by national law.**
- 2. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they, if they so request, receive sufficient information to decide whether to request a review of any decision not to prosecute.**
- 2a. In case the initial decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be made under national law, the right to review may be carried out by the same authority.**
- 2b. Paragraphs 1, 2 and 2a shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, insofar as the national law provides for such a possibility.**

Article 11

Right to safeguards in the context of ■ restorative justice services

1. Member States shall **take measures** to safeguard the victim from intimidation or further victimisation, to be applied when providing ■ restorative justice services, **if any**. Such **measures shall ensure that the victim, who chooses to participate in restorative justice processes, has access to safe and competent restorative justice services and shall** as a minimum include the following:
 - (a) ■ restorative justice services are used only if they are in the interest of the victim, **subject to any safety considerations**, and **shall be** based on **the victim's** free and informed consent; this consent may be withdrawn at any time;
 - (b) before agreeing to participate in the process, the victim is provided with full and unbiased information about the process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;
 - (c) the ■ offender must have **acknowledged the basic facts of a case**;
 - (d) any agreement should be arrived at voluntarily and **could** be taken into account in any further criminal proceedings;

- (e) discussions in ■ restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.
2. Member States shall facilitate the referral of cases, *appropriate for such measures*, to ■ restorative justice services, including through the establishment of *procedures or guidelines* on the conditions for referral.

Article 12

Right to legal aid

Member States shall ensure that victims have access ■ to legal aid, where they have the status of parties to criminal proceedings. *The conditions or procedural rules under which victims may access legal aid shall be determined by national law.*

Article 13

Right to reimbursement of expenses

Member States shall ■ afford victims, who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their *active* participation in criminal proceedings, *in accordance with their role in the relevant criminal justice system. The conditions or procedural rules under which victims may be reimbursed shall be determined by national law.*

Article 14

Right to the return of property

Member States shall ensure that ***following a decision by a competent authority*** recoverable property ■ which is seized in the course of criminal proceedings is returned to ***the victims*** without delay, unless required for the purpose of criminal proceedings. ***The conditions or procedural rules under which such property is returned shall be determined by national law.***

Article 15

Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, ***except*** where national law provides for ***such a decision to be made in other legal proceedings.***
2. Member States shall ***promote*** measures to encourage offenders to provide adequate compensation to victims.

Article 16

Rights of victims resident in another Member State

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the offence occurs, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the crime took place shall, in particular, be in a position:
 - (a) to take a statement from the victim immediately after the complaint of the criminal offence is made to the *competent* authority;
 - (b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000¹⁴ for the purpose of hearing victims resident abroad.

¹⁴ *OJ C 197, 12.7.2000, p. 3.*

2. Member States shall ensure that victims of criminal offences in Member States other than the one where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the offence is committed or, in the event of a serious offence determined by national law *of that State*, if they do not wish to do so.
3. ***Member States shall ensure that*** the competent authority to which the complaint is made *transmits* it without delay to the competent authority in the territory in which the criminal offence was committed, ***if the competence has not been exercised.***

Chapter 4

■ PROTECTION OF VICTIMS *AND RECOGNITION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS*

Article 17

Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect the safety of victims and their family members from retaliation, intimidation, repeat or further victimisation, including against the risk of psychological or emotional harm and to protect the dignity of victims during questioning and when testifying. When necessary, the right to protection shall also include procedures established by national law for the physical protection of victims and their family members.

Article 17a

Right to avoidance of contact between victim and offender

- 1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and offender within premises where criminal proceedings are conducted unless the criminal proceedings require such contact.*

2. *Member States shall ensure that new court premises have separate waiting areas for victims.*

Article 17b

Right to protection of victims during criminal investigations

Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

- (a) when victims are to be interviewed, the interviews shall be conducted without unjustified delay after the complaint of a criminal offence has been made to the competent authorities;*
- (b) the number of interviews with victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of criminal investigations;*
- (c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary in respect of one or both of these persons;*
- (d) medical examination for the purpose of criminal proceedings is kept to a minimum and is carried out only where strictly necessary for this purpose.*

Article 17c

Right to protection of privacy

- 1. Member States shall ensure that competent authorities may adopt during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics taken into account in the individual assessment provided for under Article 18, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.*
- 2. In order to protect victims' privacy, personal integrity and personal data, Member States shall, with respect for media freedom and freedom of expression, encourage the media to pursue self-regulatory measures.*

Article 18

Individual assessment of victims to identify specific protection needs

1. *Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided under Article 21, due to their being particularly vulnerable to secondary and repeat victimisation or to intimidation.*
2. *The assessment shall particularly take into account:*
 - (a) *the personal characteristics of the victim;*
 - (b) *the type or nature of the crime; and*
 - (ba) *the circumstances of the crime.*

- 2a. *In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity and gravity of the crime, victims who have suffered a crime committed with a bias or discriminatory motive, which could notably be related to their personal characteristics, and victims whose relationship to and dependence upon the perpetrator make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in close-relationship, sexual violence or exploitation, hate crime and victims with disabilities shall be duly considered.*
3. *For the purposes of this Directive, child victims shall always be presumed to have specific protection needs due to them being vulnerable to secondary and repeat victimisation or to intimidation. To determine whether and to what extent they should benefit special measures as provided under Articles 22 and 23 they shall receive an individual assessment as provided in paragraph 1.*

█

5. The extent of the assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.
 - 5a. The individual assessment shall be carried out with close involvement of the victims and take into account their wishes including where they do not wish to benefit from special measures.***
 - 5b. If the elements for the individual assessment have changed significantly, Member States shall ensure that the individual assessment referred to in paragraph 1 is updated throughout the criminal proceedings.***

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Article 21

Right to protection of ■ victims *with specific protection needs* during criminal proceedings

1. *Without prejudice to the rights of the defence and in accordance with rules of judicial discretion*, Member States shall ensure that ■ victims *who shall benefit from specific measures identified as a result of an individual assessment may* benefit from the measures provided for in paragraphs 2 and 3. *A special measure envisaged following the individual assessment may not be provided if operational or practical constraints make this impossible, or where there is a an urgent need to interview the victim and failure to do so could harm the victim, another person or the proceedings.*
2. *The following special measures shall be available to victims identified in accordance with Article 18* during criminal investigations:
 - (a) interviews with the victim carried out in premises designed or adapted for that purpose;
 - (b) interviews with the victim carried out by or through professionals trained for that purpose;

- (c) all interviews with the victim are conducted by the same persons unless this is contrary to the good administration of justice;
 - (d) all interviews with victims of sexual violence, *gender-based violence or violence in close relationships, unless conducted by a public prosecutor or a judge*, are conducted by a person of the same sex, *if the victim wishes so, and if the course of proceedings will not be prejudiced*.
3. *The following measures shall be available for victims identified in accordance with Article 18* during court proceedings:
- (a) measures to avoid visual contact between victims and *offenders* including during the giving of evidence, by appropriate means including the use of communication technologies;
 - (b) measures to ensure that the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies;
 - (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
 - (d) measures allowing a hearing to take place without the presence of the public.

Article 22

Right to protection of child victims during criminal proceedings

- I. In addition to the measures provided for in Article 21, Member States shall ensure that where the victim is a child:
 - (a) in criminal investigations, all interviews with the *child* victim may be *audiovisually* recorded and such ■ recorded interviews may be used ■ as evidence in criminal court proceedings. *The procedural rules for such recordings and the use thereof shall be determined by national law;*
 - (b) in criminal investigations and court proceedings, *in accordance with the role of victims in the relevant criminal justice system, competent* authorities appoint a special representative for *child victims* where, according to national law, the holders of parental responsibility are precluded from representing the child *victim* as a result of a conflict of interest between them and the *child* victim, or where the child *victim* is unaccompanied or separated from the family;

- (c) *where the child victim has the right to legal counsel, the child shall have the right to his/her own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties.*
2. *Where the age of a victim is uncertain, and there are reasons to believe that the victim is a child, that victim shall, for the purpose of this Directive, be presumed to be a child.*



Chapter 5

GENERAL PROVISIONS

Article 24

Training of practitioners

1. Member States shall ensure that *officials likely to come into contact with victims, such as police officers* and court staff receive both general and specialist training to a level appropriate to their contact with victims to sensitise them to the needs of victims and to deal with them in an impartial, respectful and professional manner.

2. ***Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase judges' and prosecutors' awareness to the needs of victims.***
- 2a. ***With due respect to the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the lawyers' awareness to the needs of victims.***
3. ***Through its public services or by funding victim support organisations, Member States shall encourage initiatives enabling that those providing victim support and restorative justice services receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.***
4. ***In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise and treat victims in a respectful, professional and non-discriminatory manner.***

Article 25

Co-operation and co-ordination of services

1. Member States shall ***take appropriate action*** to facilitate ***co-operation between Member States to improve victims' access to their rights as provided in this Directive and under national law. Such co-operation shall be aimed at least at:***
 - (a) ***exchange of best practices;***
 - (b) ***consultation in individual cases; and***
 - (c) ***assistance to European networks working on matters directly relevant to victims' rights.***

2. Member States shall ***take appropriate action, including through the internet, aimed at raising awareness about the rights set out in this Directive, reducing the risk of victimisation, and minimising the negative impact of [] crime and the risks of secondary and repeat victimisation [], in particular by targeting groups at risk such as children, victims of gender-based violence and violence in close relationships. Such action may include information and awareness raising campaigns, research and education programmes, where appropriate in co-operation with relevant civil society organisations and other stakeholders.***

Chapter 6

FINAL PROVISIONS

Article 26

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **three** years after the date of adoption **█** at the latest.

█

3. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 27

Provision of data and statistics

Member States shall *by ...*^{*} ***at the latest and every three years thereafter*** communicate to the European Commission ***available data showing how victims have accessed their rights covered by the scope of this Directive.***

* ***OJ: please insert date: five years after the date of adoption of this Directive.***

Article 27a

Reporting

*The Commission shall, by ...** , submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Articles 7, 7a and 21, accompanied, if necessary, by legislative proposals.*

Article 28

Replacement

Framework Decision 2001/220/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law.

In relation to Member States participating in the adoption of this Directive, references to *that* Framework Decision shall be construed as references to this Directive.

Article 29

Entry into force

This Directive shall enter into force on the █ day following *that of* its publication in the *Official Journal of the European Union*.

** *OJ: please insert date: two years after the date of transposition of this Directive.*

Article 30

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at █

For the European Parliament

For the Council

The President

The President
