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

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**2016/2328(INI)**

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## **DRAFT REPORT**

on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI))

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

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Joint committee procedure – Rule 55 of the Rules of Procedure

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## EXPLANATORY STATEMENT – SUMMARY OF FACTS AND FINDINGS

This Report is aimed at assessing the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime in EU Member States. In particular, it focuses on its coherence, relevance, effectiveness and efficiency. In doing so, it covers various aspects of the application of the Directive: the legal transposition measures at the Member States level, the practical implementation of the Directive on the ground, the benefits it has provided to victims as well as the challenges encountered. The Report finally provides a number of recommendations to the Commission and the Member States for further promoting the implementation of the Directive in the future.

The European Parliament has a relevant role in the promotion of further efforts at EU level to strengthen the proper application of the Directive through the support and the promotion of the rights of victims of crime in general and, more particularly, through the support of EU funding aimed at adequate judicial training.

The Parliament should also support and promote more consistency across the different EU legislative instruments on victims' rights by better streamlining the approach and ensuring a more coherent process.

The Member States had to transpose the Directive by 16 November 2015. In November 2017, 23 out of 27 Member States had officially transposed the Directive (Denmark opted out of the Directive). However, the European Commission has not yet assessed the transposition and implementation as regard the Directive, even though its reporting obligations were due in November 2017, according to Article 29 of the Directive.

Since their appointment, the two rapporteurs have collected information and have relied on the following sources, among others:

- a hearing held in the joint committee meeting of LIBE and FEMM Committees on 11 January 2018;
- Ex-post Impact assessment by Parliament's EPRS services, published in December 2017;
- exchange of information with the relevant institutional stakeholders and victim protection organizations;

### ASSESSMENT

Many people fall victim to crime in the EU every year - around 30 million crimes, excluding minor offenses, alone are reported to the police. More and more people are travelling, living or studying abroad and are therefore potential victims of crimes committed in a country other than their own. The EU has a mandate to ensure that citizens and foreigners moving within its borders are protected.

Victims must have the right to:

- understand and to be understood during contact with an authority (for example plain and simple language);

- receive information from the first contact with an authority;
- make a formal complaint and receive written acknowledgement;
- interpretation and translation (at least during interviews/questioning of the victim);
- receive information about the case's progress;
- access victim support services.

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.

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.

An area where most of the Member States have provided significant progress, both at the legislative and administrative level, concerns individual assessment (Article 22 of the Directive). The setting up of 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 go to report a crime) do not know the personal characteristics of the victims, the type or nature of the crime and the circumstances of the crime.

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. Furthermore, even if individual assessments were conducted adequately across the EU, the availability of victims' support structures is not consistent across Member States, and sometimes even within a Member State. Moreover, proper coordination at Member States level remains challenging. Providers responsible for victims support are usually either organized 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 their respective responsibilities.

## CONCLUSIONS

The co-rapporteurs strongly recommend all Member States to transpose and fully implement the Directive.

They also point out that Member States should avoid possible gaps in the implementation of the Directive due to different interpretation at national level and differences in national criminal law affecting victim protection.

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI))

*The European Parliament,*

- having regard to Articles 2 and 3 of the Treaty on European Union (TEU) and Articles 8, 10, 18, 19, 21, 79 and 82 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 3, 6, 20, 21, 23, 24, 41 and 47 of the Charter of Fundamental Rights of the European Union,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),
- having regard to the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948,
- having regard to the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and to Council Decisions (EU) 2017/865<sup>1</sup> and (EU) 2017/866 of 11 May 2017<sup>2</sup> on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence,
- having regard the Council Framework Decision 2001/220/JHA of 11 March 2001 on the standing of victims in criminal proceedings,
- having regard the Council Conclusions of 6 December 2013 on combating hate crime in the EU and the Council Conclusions of 5 June 2014 on preventing and combating all forms of violence against women and girls,
- having regard to 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,
- having regard to 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<sup>3</sup>,
- having regard to Directive 2011/99/EU of the European Parliament and of the Council

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<sup>1</sup> OJ L 131, 20.5.2017, p. 11.

<sup>2</sup> OJ L 131, 20.5.2017, p. 13.

<sup>3</sup> OJ L 315, 14.11.2012, p. 57.

of 13 December 2011 on the European protection order,

- having regard to 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,
  - having regard to the study by the European Union Agency for Fundamental Rights (FRA) entitled ‘Victims of crime in the EU: the extent and nature of support for victims’, published in February 2015,
  - having regard to the report on the Project IVOR entitled ‘Implementing Victim-oriented reform of the criminal justice system in the EU’, published on 6 May 2016,
  - having regard to the FRA Fundamental Rights Report 2016,
  - having regard to the report by the European Institute for Gender Equality (EIGE) entitled ‘An analysis of the Victims’ Rights Directive from a gender perspective’,
  - having regard to the European Parliamentary Research Service’s European Implementation Assessment of Directive 2012/29/EU, produced by the Ex-Post Evaluation Unit,
  - having regard to Rule 52 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
  - having regard to the joint deliberations of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women’s Rights and Gender Equality under Rule 55 of the Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women’s Rights and Gender Equality (A8-0000/2018),
- A. whereas 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 (‘Victims’ Rights Directive’) seeks to place the victim of a crime at the centre of the criminal justice system, and aims 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;
- B. whereas 23 out of 27 Member States have transposed the Victims’ Rights Directive into national legislation as of September 2017; whereas the Commission has started 16 infringement procedures against Member States that are still not fully compliant in practice; whereas the directive has made it possible to initiate progress in dealing with victims of crime in another Member State;
- C. whereas despite many changes introduced in Member States, victims still often lack awareness of their rights, undermining the Victims’ Rights Directive’s effectiveness on the ground;
- D. whereas some Member States show a lack of coordination between various victim support services, both locally and regionally;

- E. whereas a wide range of health professionals are likely to come into contact with victims, especially victims of gender-based violence, and are often initially contacted by the victim to report a crime;
- F. whereas there is still a systematic underreporting of incidences or perpetrators of domestic violence in the EU, particularly in cases involving minorities, LGBT persons, antisemitic offences and gender-based violence;
- G. whereas victims are all too often unexpectedly informed of the release of an offender through media or other external factors;
- H. whereas stalking as a specific offense has not been taken into account in the criminal codes of seven Member States;
- I. whereas shortcomings in the implementation of the Victims' Rights Directive have been reported, in particular as regards:
  - delivering appropriate services to victims in accordance with their specific needs;
  - implementing properly the requirements for guaranteeing an individual assessment of victims;
  - properly establishing mechanisms allowing the alleged offender to have a copy of the complaint;
  - ensuring equal accessibility for all victims to victim support services, particularly in the cases of LGBT victims and victims of hate crimes and honour-related crimes;
  - guaranteeing rapid, efficient and victim-sensitive procedures in criminal court cases;

#### *Assessment of the implementation of the directive*

1. Deplores that the Commission has not submitted a report to Parliament and to the Council on the application of the Victims' Rights Directive by November 2017, in accordance with Article 29 of the directive;
2. Regrets that two years after transposition was due, only 23 out of 27 Member States had officially transposed the Victims' Rights Directive by September 2017, and among these, some are only partially compliant and only on some provisions;
3. Notes the successful implementation by some Member States of certain provisions of the Victims' Rights Directive, namely:
  - the right to interpretation and translation,
  - the right to be heard,
  - the protection of child victims,

- the rights of victims when making a complaint,
  - the right to receive information from the first contact with a competent authority;
4. Deplores, however, the remaining important shortcomings in the transposition and implementation of the directive in many Member States, in particular as regards:
    - weak links in the victim support system and inconsistent referral mechanisms,
    - the fact that clear information is often not provided in more than one language,
    - the lack of a legislative foot-hold in cross-border cases and the rights of victims resident in other Member States;
  5. Highlights the importance of conducting the first contact with the victim properly, especially in the case of victims of gender-based violence; notes, however, that some victims of gender- based violence – such as minors and uneducated, disabled or elderly victims, as well as (for language reasons) migrant workers and victims of human trafficking – may have difficulties in understanding the information that is communicated to them and, as a result, their right to information stipulated in Article 4 of the directive will not be fully exercised;
  6. Encourages the Member States to promote access to justice, as this contributes greatly to increasing the victim’s sense of justice, decreases the possibility of impunity and allows the victim to begin the process of psychological recovery;
  7. Deplores that too many Member States have failed to implement, in their legislation, individual victim assessments, leading to inefficiency when it comes to detecting and identifying their specific needs, to treating them with respect and dignity and, as a consequence, to granting them protection in accordance with their specific needs;
  8. Deplores the fact that the Victims’ Rights Directive limits the exercise of the victim’s right to legal aid owing to provisions obliging Member States to provide legal aid only when the victim has the status of a party to criminal proceedings and stipulating that the conditions or procedural rules under which victims have access to legal aid shall be determined by national law; stresses that these restrictions may be particularly onerous for victims of gender- based violence who do not make complaints and whose cases will never be dealt with as part of the criminal justice system;
  9. Recalls that EU citizens and third country nationals not resident in the EU country where they fall victim to a crime should enjoy the same level of rights as a resident and/or national, and that victims of criminal offences committed in a Member State other than the one in which the victim resides can lodge their complaint to the competent authorities of the Member State of residence; notes, however, that this right is often undermined by the uncertainty of Member States provisions on extraterritoriality;

## ***Recommendations***

### *Individual assessment*



10. Recalls that one of the most important objectives of the Victims' Rights Directive was to improve the position of victims of crime across the EU and to place the victim at the centre of the criminal justice system;
11. Calls on the Member States to properly implement in their legislation the individual assessment of the victims, this being an essential procedural step to detect and identify the specific needs of a victim, and consequently to grant specific protection in accordance with the victim's needs;
12. Calls on the Member States to pay particular attention to the individual assessment of minors and of child victims of human trafficking;
13. Highlights the fact that individual assessments are crucial as they help the victim realise that he or she has certain rights, and the right to make decisions, from the very beginning of the legal proceedings;

#### *Training*

14. Stresses that ensuring further training programmes at EU level is of paramount importance for the harmonisation and standardisation of procedures across the Member States;
15. Calls on the Commission and the Member States to provide training programmes and guidelines for law practitioners, police officers, prosecutors and judges to ensure that they are better able to execute individual assessments without delay once a crime has taken place, to avoid further victimisation or secondary victimisation experienced by victims of crime and to empower victims, as a means of reducing post-traumatic stress; stresses that such training should also be included in education programmes and that compulsory training should be available, on a regular basis, to all professionals involved in dealing with victims of crime, in order to develop a victim-oriented mind-set;

#### *Cross-border dimension*

16. Calls on the Member States to provide financial and legal aid to family members in cases where a serious crime has taken place – e.g., where the victim is dead or seriously injured – in a Member State other than the one in which they are resident, particularly in cases where the family is unable for financial reasons to travel to that Member State to attend court or provide psychological support to the victim;

#### *Procedural rights*

17. Highlights the importance of providing free legal aid while ensuring that the bureaucratic burden for the victim is as low as possible;
18. Calls on the Member States to provide measures – such as facilities for submitting complaints online or the removal of financial charges – that would facilitate the victim's ability to lodge a complaint and obtain a copy of that complaint;
19. Reminds the Member States of the requirement to provide translation and interpretation services free of charge, noting that lack of information in other languages constitutes a

form of discrimination against the victim;

20. Urges the Commission and the Member States to engage actively in information campaigns to increase awareness about the rights of victims as established by EU law;
21. Calls on the Member States to exchange best practices on establishing mechanisms to encourage and facilitate for victims to report the crimes they have suffered;

*Institutional perspective*

22. Calls on the Commission to meet its reporting obligations as set out in the directive;
23. Calls on the Commission to counteract the judicial and practical flaws in the implementation of this directive by a proper interplay of the various EU victim-protection instruments, such as Directive 2011/99/EU of 31 December 2011 on the European Protection Order, Directive 2011/36/ EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime;
24. Recalls that family members of victims are included in the definition of ‘victim’, and calls on the Member States to interpret the term ‘family members’ – and other key terms, such as ‘particularly vulnerable’ – broadly, so as not to restrict the list of potential rights holders unnecessarily;
25. Calls on the Member States to put in place measures to ensure that written and oral communications comply with simple language standards so that victims can be kept informed in an adequate and targeted manner before, during and after criminal proceedings;
26. Calls on the seven Member States that have not yet done so to consider stalking a criminal offense on the basis of the relevant provisions in the directive on the right to protection of privacy, the right to protection and, in particular, the right to avoid contact with the offender;
27. Calls on the Member States to ensure that an emergency information telephone line is in operation following an attack, and that provisions are made to provide foreign language assistance; calls, therefore, on all Member States to immediately implement Article 22 of the Victims’ Rights Directive in their legislation;
28. Calls on the Member States to guarantee assistance to victims from victim support services before, during and after criminal proceedings, including psychological support; deplores the fact that in some countries, governments rely heavily on NGOs to provide key support services to victims (‘volunteerism’);
29. Calls on all Member States to tackle impunity at all times as not doing so could have a severe impact the psychological recovery process of the victim;
30. Calls on the Member States to guarantee support services such as trauma support and

counselling as a part of targeted support for victims with specific needs, such as children and people with disabilities;

31. Calls on the Member States to establish adequate quality control mechanisms for assessing whether they have met the requirements as regards provisions made by victims support services to encourage the reporting of crimes;
32. Calls on the Member States to help victims deal with legal, financial and practical issues as well as the risk of further victimisation;
33. Calls on the Member States to establish coordinated mechanisms to collect information on victims of a terrorist attack taking place in their territory, and to provide victims, through the creation and development of a one-stop shop and an emergency telephone line, with specific information relevant to their needs, including psychological first aid and referral possibilities in the immediate aftermath of the attack and during any criminal proceedings;
34. Calls on the Member States to establish coordination mechanisms to ensure effective transition of support for victims from immediate care in the aftermath of a crime to assistance as needed in the longer term; stresses that such mechanisms should, in particular, ensure the referral of victims to long-term services whereby different organisations provide support during different phases, noting that these mechanisms should also have a cross-border functionality in order to provide victim support services, and guarantee the victim's right to be informed, when the crime has taken place in a Member State other than the one in which the victim resides;<sup>36</sup> Calls on the Member States to establish a permanent dedicated website on which all public information on a terrorist attack that has taken place in that Member State can be accessed;
35. Calls on the Council to activate the passerelle clause by adopting a unanimous decision to identify violence against women and girls (and other forms of gender-based violence) as a criminal offence under Article 83(1) TFEU;
36. Calls on the Member States to implement, properly and in full cooperation with the Commission, all provisions of the Victims' Rights Directive;
37. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.